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**Indiana Tax Conference  
June 24, 2014**

**Tax Simplification Panel**

**Fred Nicely, Sr. Tax Counsel<sup>i</sup>  
Council On State Taxation (COST)**

For over a decade COST has evaluated the states' administrative tax practices to objectively determine which states provide fair, efficient, and customer-focused tax administration. Sound administrative tax practices inherently simplify the tax system by removing procedures that are complex and/or unfair. Indiana scored a "B+" grade in COST's most recent Scorecard on Tax Appeals & Procedural Requirements.<sup>ii</sup> This paper explains Indiana's Scorecard grade.

**About COST**

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of more than 600 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

**Scoring and Areas Covered by Scorecard**

Using a 0 to 3 point scoring system (zero being ideal), COST objectively looked at the states' laws and regulations in seven specific areas and one additional category for other issues impacting state tax administration (e.g., contingent fee audits). Addressed in detail below, those seven specific areas are:

- 1) Independent tax dispute forum;
- 2) No pay-to-play for appeals;
- 3) Even-handed statute of limitations;
- 4) Equal interest rates;
- 5) Ample protest period (at least 60 days);
- 6) Alleviate the corporate income tax return filing burden (adequate time to file and adequate procedures to report federal tax changes, i.e., RAR adjustments made by the I.R.S.); and
- 7) Transparency in letter rulings (redacted) and tax tribunal decisions.

Maine and Ohio<sup>iii</sup> were the topped ranked states with "A" grades, and California and Louisiana were the bottom-ranked states with "D-" grades.

### Explanation of Indiana's "B +" Grade

**Independent Tax Dispute Forum (0 points):** Since 1985, when Indiana's legislature created the Indiana Tax Court, Indiana has an independent tax dispute forum. Another key aspect to having an independent tax tribunal that Indiana meets is that the administrative law judge has substantial knowledge of the state's tax laws. The prior administrative law judge, Judge Fisher, was nationally known as such an expert.

*Concerns:* One concern is that the Indiana Tax Court does not also have the authority to address property tax disputes. Adding property tax disputes to the Tax Court's jurisdiction should be explored. Additionally, similar to the Ohio Board of Tax Appeals, the Indiana Tax Court docket is increasing, reportedly over a 100% increase from 2010 to 2013. Delays in the Tax Court deciding cases are not good either for taxpayers or the state. Taxpayers with similar issues frustratingly have their cases held in abeyance and, depending on the situation, the state increases its exposure to refunds or delays obtaining revenue.

**Pay-to-Play for Appeals (1 point):** A taxpayer is required to file a petition to enjoin the collection of tax before reaching Tax Court.

*Concerns:* The ideal state tax appeal structure does not require a taxpayer to make any tax payments, post a bond, or petition to enjoin collection of tax until all appeals are final. Situations where a taxpayer is intentionally seeking to delay payment and/or there is a legitimate concern with the taxpayer's ability to pay should be addressed by the tax agency having the authority to issue jeopardy assessments.

**Even-Handed Statute of Limitations and Interest Rates (1 point):** Indiana has a three-year statute of limitations that applies equally to refunds and deficiencies. The interest rate on refunds and deficiencies is also the same, average state investment yield plus 2%.

*Concerns:* Some states have modified the interest paid on refunds to not start until the refund claim is filed. Indiana pays interest on refunds from the date of refund claim, not the date of overpayment (Ind. Code Sec. 6-8.1-9-2(d)). It is more equitable and fairly reflects the time value of money to calculate interest on refunds based on the date of the overpayment, just as interest for tax deficiencies is based on the date the tax was due.

**At Least 60-Day Protest Period (0 points):** COST is pleased to report that Indiana increased its appeal period from 45 days to 60 days, effective for notices mailed after Dec. 31, 2010. This additional time allows taxpayers more time to review a decision by the Indiana Department of Revenue and make an informed decision on whether they should appeal that decision.

*Concerns:* COST does not score any points so long as a state provides at least a 60-day appeal period. The ideal period of time under the ABA SALT Tribunal Model is 90 days. Indiana also does not provide a 60-day appeal period for its property taxes; only 45 days is provided.

**Corporate Income Tax Return Due After Federal Return (0 points):** The Indiana corporate income tax return is due 30 days after the federal due date. Additionally, Indiana grants an automatic six month extension, plus 30 days.

*Concerns:* None.

**Adequate Procedures to Report Federal Tax Changes (1 point):** COST is pleased to see that Indiana's legislature increased the time period to report federal tax changes to the Indiana Department of Revenue from 120 days to 180 days, effective Jan. 1, 2011. Unfortunately, however, Indiana does not adequately define what constitutes a "final determination" by the Internal Revenue Service that starts the clock for a taxpayer to report that change to the state.

*Concerns:* To avoid compliance issues, Indiana should better define what constitutes a final determination that is reportable to the Indiana Department of Revenue. COST will soon have a policy statement describing what constitutes an adequate definition, a definition that is substantially the same as that used in New Hampshire.

**Transparency in Letter Rulings and Tax Tribunal Decisions (0 points):** The Indiana Department of Revenue publishes its letters of finding and revenue rulings in a redacted form. In addition, the Tax Court publishes its decisions on its website chronologically.

*Concerns:* In addition to doing a keyword search, it would be helpful if the letters of finding and revenue rulings were also listed chronologically by tax and subject.

**Additional Issues Impacting SALT Administration (1 point):** The Indiana Supreme Court in *Indiana Department of Taxation v. Rent-A-Center East, Inc.*, Dkt No. 49S10-1112-TA-683 (3/9/2012) held the burden of proof to dispute the Department's use of alternative apportionment (deviating from the statutorily proscribed formula) is on the taxpayer.

*Concerns:* The Multistate Tax Commission is presently considering this issue and will likely support the burden of proof being on the party seeking the use of alternative apportionment. Indiana's legislature, similar to legislation recently passed in Mississippi, should enact legislation to fix this important issue. Presently, with Mississippi's change to its law, Indiana is the only state that, through its highest court, has put the burden of proof on the taxpayer to disprove a tax agency utilization of alternative apportionment. This is extremely unfair.

### **Conclusion**

COST appreciates the opportunity to participate in a panel addressing tax simplification at the Indiana Tax Conference. COST is eager to assist any interested parties in making changes to improve Indiana's administration of its taxes.

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<sup>i</sup> Fred Nicely's contact information is: [fnicely@cost.org](mailto:fnicely@cost.org); (202) 484-5213.

<sup>ii</sup> Douglas L. Lindholm, Ferdinand S. Hogroian, & Fredrick J. Nicely, *THE BEST AND WORST OF STATE TAX ADMINISTRATION* (Council On State Taxation, 2013), <http://www.cost.org/WorkArea/DownloadAsset.aspx?id=85976>

<sup>iii</sup> While Ohio received an “A” grade, it is important to note that Ohio still has issues with its complex municipal tax system and concerns with a backlog of cases and how they are heard at the Ohio Board of Tax Appeals.