State Regulatory and Legislative Affairs

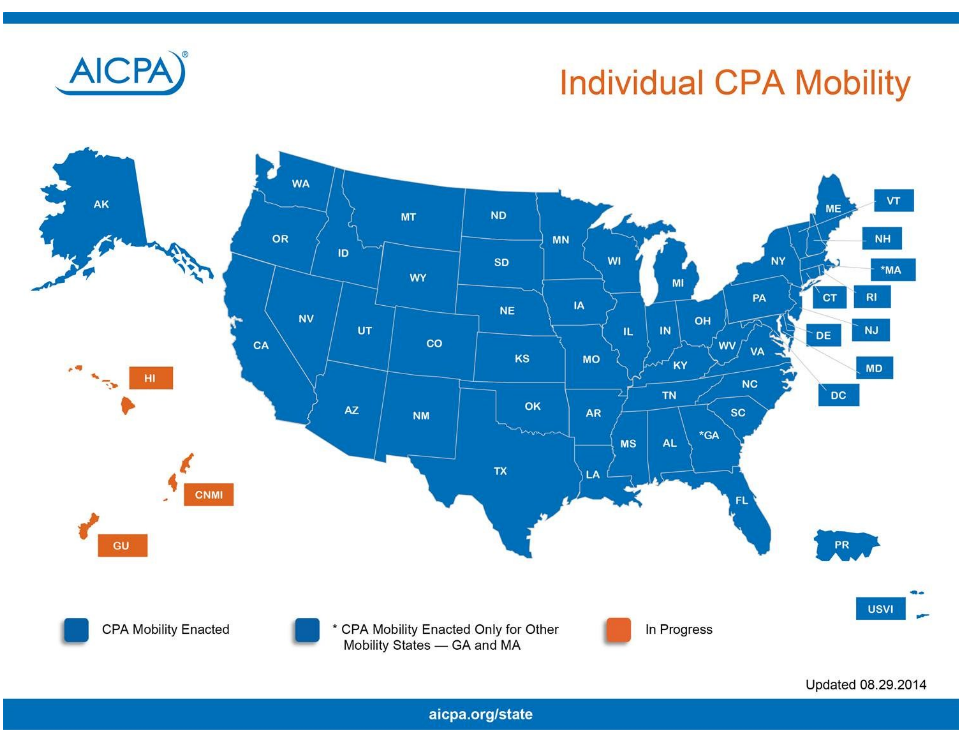
AICPA 2014 Year-in-Review Legislative Summary

In 2014, the American Institute of CPAs' (AICPA) State Regulation and Legislation Team tracked 391 bills and 66 regulations related to or directly affecting the CPA profession. These proposals covered issues ranging from CPA mobility and the updated definition of attest to the regulation of state tax preparers and taxes on professional services. The summary below provides an overview of the major issues the Team tracked in 2014. For a more comprehensive list of state legislation and regulations considered this year, please contact James Cox, Senior Manager, State Legislation, at jacox@aicpa.org.

Interstate CPA Mobility

In 2014, the Virgin Islands and Puerto Rico became the 51st and 52nd jurisdictions, respectively, to pass individual CPA mobility laws. Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands – the 3 remaining jurisdictions without individual mobility laws – have indicated that they will be moving forward with individual CPA mobility legislation in 2015.

These laws, which the AICPA and the National Association of State Boards of Accountancy (NASBA) first began to promote in 2007, allow licensed CPAs to provide services across jurisdictions without having to obtain a reciprocal license in states where they do not have a permanent physical presence.



Individual CPA mobility laws help create a uniform system across the U.S. for state licensing, but new legislation can sometimes have unintended consequences on CPA mobility. Specifically, several states saw two potentially-harmful types of proposals – one involving the establishment of state tax tribunals and another that eases occupational licensing requirements for members of the military and their spouses.

State Tax Tribunals

States continue to look at the adoption of tax tribunals as a means of resolving state tax appeal controversies prior to litigation and in a forum outside the dominion and control of the state taxing authority. More than half of all states and jurisdictions already have independent state tax tribunals, either in the judicial or executive branch. In 2014, Alabama enacted a state tax tribunal bill, and five states (Kansas, Missouri, Oklahoma, Tennessee, and Washington) considered proposed legislation to create a state tax tribunal.

State tax tribunals are generally beneficial for taxpayers, CPAs, and the broader goal of good tax administration because they ensure a fair and effective tax administration system for taxpayers, as all taxpayers have an appeal forum that functions independently from the state tax authority. Additionally, tax tribunals – when structured in line with the ABA Model Act and state CPA mobility laws – provide CPAs with greater taxpayer representation rights and service opportunities.

The 2006 American Bar Association (ABA) Model State Administrative Tax Tribunal Act (Model Act) provides legislative language that often serves as a base for legislation on this issue. While the AICPA supports efforts by state CPA societies to create state tax tribunals structured in line with the provisions of the ABA Model Act, it believes that "Section 16. Representation" of the Model Act should be slightly revised to take into account state CPA mobility laws. It is important that any state tax tribunal proposals ensure that all CPAs authorized to *practice* in the state – not just those *licensed* in the state – are able to represent taxpayers before the tribunal. To address this issue, the AICPA developed model language that can be found in the AICPA position paper on state tax tribunals.

Military Licensing

As part of the White House's Joining Forces campaign, several state legislatures over the past few years have begun to streamline the occupational licensure process for members of the military and their spouses who move across state lines. Despite good intentions to minimize the challenges military families face when they relocate, these legislative efforts can potentially impact CPA mobility and substantial equivalency if they do not consider existing laws and licensing requirements.

In 2014, North Carolina, Connecticut, and New Hampshire all passed legislation related to military licensing, and Montana passed a new regulation related to the issue. Fortunately, none of these proposals harmed CPA mobility or substantial equivalency.

UAA Conformity

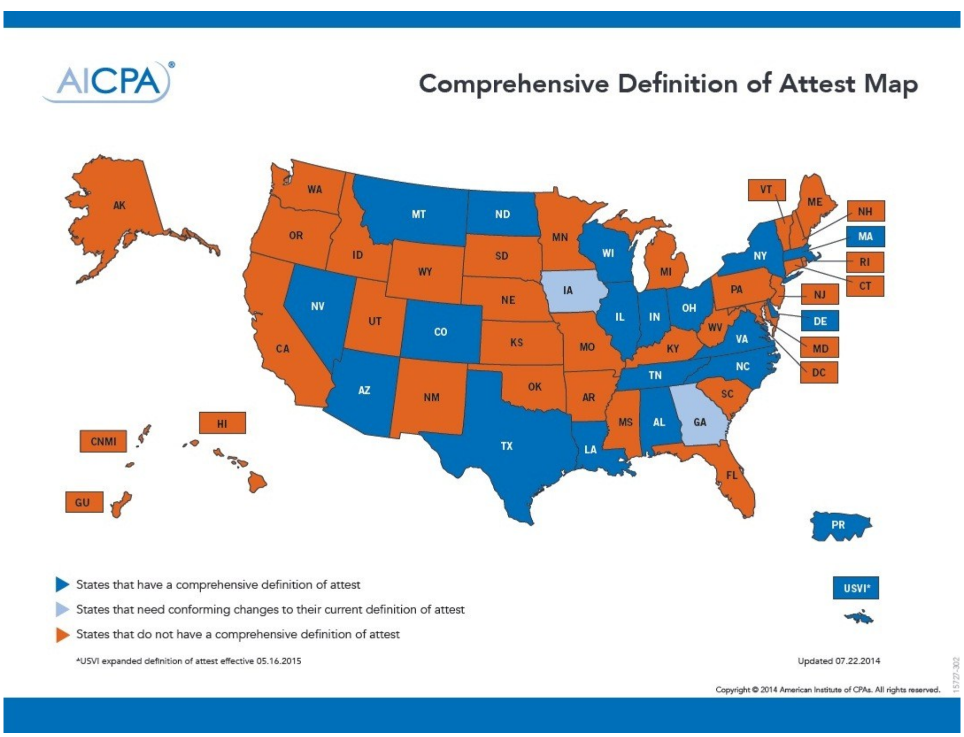
Updated Definition of Attest

In May 2014, the AICPA and the National Association of State Boards of Accountancy (NASBA) approved changes to the Uniform Accountancy Act (UAA) to include a more comprehensive definition of attest. That definition change is designed to close a public protection loophole allowing unregulated, non-CPAs to perform certain attest engagements and to issue reports upon those engagements. Such attest reports, based upon the use of AICPA standards, could potentially mislead the public about the expertise, competency, and regulatory oversight of those individuals and/or firms issuing the reports.

The new, more comprehensive UAA definition ensures that only CPAs operating within a CPA firm can perform:

- audits in accordance with Statements on Auditing Standards (SAS);
- reviews under Statements on Standards for Accounting and Review Services (SSARs);
- examinations, reviews, and agreed-upon procedures under Statements on Standards for Attestations Engagements (SSAE); and
- any engagement performed under PCAOB standards.

A total of 21 U.S. jurisdictions have already adopted the more comprehensive definition, including six jurisdictions that did so in 2014: Alabama, Arizona, Georgia, Indiana, the U.S. Virgin Islands, and Wisconsin. The approximately 60 percent of remaining jurisdictions that need to update their statute are beginning to look at the new language, and nearly a dozen state CPA societies have reported that they will work with their respective legislatures for a legislative fix in 2015.



Partial and Full CPA Firm Mobility

The 7th edition of the UAA includes language that allows for full CPA firm mobility for attest services. The 52 states and jurisdictions that have individual CPA mobility also have partial CPA firm mobility, as these states allow CPA firms to provide "non-attest" services in states in which those firms do not have a physical presence. "Non-attest" services include items such as tax advice, financial planning, and consulting services. Additionally, 14 states have full firm mobility – meaning that CPA firms can also provide attest services, including audits, reviews, engagements performed under the Statements on Standards for Attestation Engagements (SSAEs), and engagements required by the Public Company Accounting Oversight Board (PCAOB).

Full CPA mobility follows the "no notice, no fee, and no escape" model of individual CPA mobility. This means that CPA firms can perform any service, including attest services, and issue reports in states in which they do not have a physical presence without first registering the firm or paying new fees, so long as they meet the peer review requirements and non-CPA ownership requirements of the state.

Because many states have only just recently implemented individual CPA mobility, which provides for "partial firm mobility," the AICPA and NASBA will not be campaigning for full CPA mobility in 2015. However, the AICPA hopes that several states will consider moving toward full CPA firm mobility over the next several years. The Institute has developed several resources for states to utilize when they are ready to move forward.

Firm Ownership

The 7th edition of the UAA allows for non-CPA ownership of firms by requiring that only a simple majority of firm ownership be by CPAs. While almost all of the 55 U.S. states and jurisdictions have the UAA simple majority provision in place, South Carolina requires at least two-thirds CPA ownership, and Hawaii, Delaware, and New York do not allow for any non-CPA ownership.

In 2014, legislatures in both South Carolina and New York considered legislation to conform to the UAA's simple majority ownership language, but the initiatives did not pass. South Carolina's bill and two pieces of legislation in New York all died during the committee process. A third bill in New York was approved by the Senate, but failed in the House. The New York State Society of CPAs and the South Carolina Association of CPAs, along with their respective profession partners, will continue working toward simple majority ownership in these states in 2015.

Peer Review

A peer review is a periodic evaluation of a CPA firm's accounting and auditing practice that is completed by an outside practitioner and is aimed at helping the firm maintain and improve its quality of services. All firms and individuals enrolled in programs following AICPA Standards are required to have a peer review conducted by an independent reviewer once every three years.

Almost all states and jurisdictions have a peer review requirement for firms in their accountancy statutes. As part of the peer review process, many state boards require CPA firms to submit certain documents as a condition of licensure. These typically include items such as the peer review reports, letters of response, acceptance letters, and more. In order to assist firms in complying with their state board's document submission requirements, the AICPA created the Facilitated State Board Access (FSBA) process. This process allows firms to give permission to the AICPA (or their administering entity) to provide state boards with access to the firms' peer review documents via a website that is only available to state boards.

Some state boards now require their licensees to participate in the FSBA process, while others recognize it as an acceptable process to meet the peer review document submission requirements. In 2014, Virginia passed legislation that will require CPAs to participate in the FSBA process.

Tax Policy

Sales Taxes on Professional Services
In response to stagnant tax revenue streams and ever-present demands upon limited state resources, many state legislatures are considering broadening the sales tax base to include professional services such as accounting and auditing services. Currently, only three states impose some type of tax on accounting services: Hawaii at four percent, New Mexico at five percent, and South Dakota at four percent.

However, five state legislatures considered similar measures in 2014 – Massachusetts, North Carolina, Ohio, Pennsylvania, and Virginia. In Massachusetts, the legislature passed a bill imposing a "sales and use" tax on certain computer-related services, but the tax was retroactively repealed within just two months. Additionally, in 2014, Washington, D.C. passed a measure implementing a tax on personal services, such as gym memberships. There were concerns that the proposal would be expanded to professional services, but pushback from the business community kept the tax to personal services only.

Despite the unpopularity of these types of taxes, states continue to push these taxes on professional services, both as a means of bridging budgetary gaps and as part of broader tax reform measures. Twelve state CPA societies have already indicated they anticipate their legislatures will look at adopting taxes on professional services in 2015.

Regulation of State Tax Preparers
The regulation of tax preparers continues to be a growing issue of concern by policymakers at both the federal and state level. In 2012, the IRS instituted a program whereby all paid tax preparers (excluding lawyers, CPAs, and enrolled agents) were required to pass an exam and meet on-going education requirements. The following year, a U.S. District Court struck down the exam and education requirements – a decision that was later unanimously upheld by the Court of Appeals. In response, the IRS launched a controversial voluntary program, and taxpayer advocates in Congress have looked at legislation to overturn the court decision. While that federal legislation has stalled, state-level policymakers are increasingly looking at approving additional regulatory measures on state tax preparers.

Unfortunately, additional state-level regulations can have negative consequences on the CPA profession while doing little to protect taxpayers. As such, the AICPA does not support an expansion of regulation at the state-level. In conjunction with the federal program, state-based programs add an unnecessary layer of cost and regulatory burden for tax preparers – and those expenses will be passed on to taxpayers. Additionally, state-level continuing education and testing requirements create extreme compliance challenges for tax preparers when states adopt conflicting, duplicative, and/or variable requirements. CPAs operating under states' interstate mobility laws could be required to register in multiple states if state tax preparer programs are passed, undermining the success of the profession's highly successful CPA mobility campaign.

Currently, four states regulate individuals who prepare state-level tax returns: California, Maryland, New York, and Oregon. Additionally, Colorado, Illinois, and New Jersey all considered legislation related to the issue in 2014. Colorado's bill died in the Senate, but the Illinois Legislature approved the creation of a task force designed to prepare a report on a program for regulating tax return preparers. As 2014 came to a close, New Jersey was still considering legislation to establish a task force to study and make recommendations concerning the regulation of tax preparers. Moreover, the National Consumer Law Center released model state-level language this past year, and the AICPA anticipates that several more states will consider passing regulatory measures regarding tax preparers in 2015.

CPA Service Providers and Marijuana-related Businesses

In November, voters in Alaska, Oregon, and Washington, DC, approved ballot initiatives that decriminalized the recreational use of marijuana in those states. Colorado and Washington state already allow recreational marijuana use, and 23 states allow for the production, distribution, consumption, and taxation of medicinal marijuana. Moreover, in the 2014 State Policy Priorities Task Force survey, over a dozen state CPA societies said that their state legislatures will likely consider legislation related to the decriminalization of marijuana in 2015.

While marijuana-related businesses in these states need legal, financial, and accounting services, marijuana is still classified as a Schedule 1 Controlled Substance at the federal level and is subject to federal prosecution. In 2013, the AICPA, in conjunction with the Colorado Society of CPAs and Washington Society of CPAs, developed a White Paper to assist CPAs and their firms as they begin to consider the potential business opportunities associated with providing services to these businesses. While the AICPA does not have a position on these specific laws, it realizes that CPAs are increasingly being asked to consider offering tax, consulting, and audit services to these businesses operating in a murky legal area. The AICPA plans to continue to examine the multiple legal, regulatory, ethical, and liability-questions around this issue, and will release an updated White Paper in early 2015.

Patent Assertion Entities

A major issue in state legislatures across the country this year was "patent assertion entities" (PAEs) – more commonly known as "patent trolls." These are companies that obtain and assert patent rights for the express purpose of filing patent infringement lawsuits against individuals or businesses. The PAEs then seek to obtain licensing fees or a legal settlement, rather than actually supporting or developing products. The PAEs' claims are made in bad faith and are based on overly-broad patents related to common business practices and technologies. PAEs often target small- to medium-sized businesses, including CPA firms and state CPA societies, alleging patent infringement and demanding payment for licensing fees. Because many PAEs create shell companies, it can be difficult for their targets to determine who is threatening to sue them.

Federal legislation to address this issue moved through the U.S. House of Representatives late in 2013. When it stalled in early 2014, however, many states began introducing their own legislation to prohibit a person or company from making a bad faith assertion of a patent infringement or to create a cause of action for damages. In total, 27 states considered legislation aimed at fighting PAEs in 2014, with 17 states passing their proposals: Alabama, Georgia, Idaho, Illinois, Louisiana, Maryland, Missouri, Maine, North Carolina, New Hampshire, Oklahoma, Oregon, South Dakota, Tennessee, Utah, Virginia, and Wisconsin.

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