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Throughout 2015, state legislatures across the country deliberated on a variety of issues that affected the CPA profession. These issues included: the taxation of professional services, the licensing of tax preparers, the regulation of marijuana and updating state accountancy statutes to include a comprehensive definition of attest. The American Institute of CPAs’ (AICPA) State Regulation and Legislation Team tracked over 300 bills this year. The summary below provides an overview of the key issues tracked in 2015. For a more detailed list of state legislation and regulations considered this year, please contact James Cox, Senior Manager of State Legislation, at jacox@aicpa.org, or Julia Morriss, Project Administrator, State Regulation and Legislation, at jmorriss@aicpa.org.
Individual CPA Mobility
Currently, 52 U.S. jurisdictions have enacted interstate mobility for individual CPAs. This year, the Hawaii Senate overwhelmingly passed mobility legislation (22–2), but the bill was not taken up by the full House of Representatives. The Hawaii Society of CPAs and its profession partners continue to work on a bill for possible future action. Additionally, the Guam Society of CPAs submitted a mobility bill to its legislature and expects it to move by the end of the year.

Uniform Accountancy Act Conformity

Firm Ownership
The Uniform Accountancy Act (UAA), the profession’s model state act, provides for non-CPA ownership of CPA firms as long as a simple majority of the firm is owned by CPAs. There are many legitimate professional reasons for CPA firms to have non-CPA owners. For instance, these highly skilled individuals are needed to perform related professional services and provide specialized expertise on complex audits.

South Carolina Gov. Nikki Haley (R) signed legislation this year moving that state from a two-thirds CPA ownership requirement to a simple majority structure. With the enactment of South Carolina’s legislation, there are 51 jurisdictions with this type of ownership structure. New York also considered legislation; however, the bill was held up in committee. The New York State Society of CPAs and its profession partners expect to continue their efforts in 2016. Additionally, the Delaware Society of CPAs, which has a 100% CPA ownership requirement, also expects to consider this issue next year.

Peer Review
A peer review is a periodic outside review of a CPA firm’s accounting and auditing practice aimed at helping the firm maintain and improve the quality of its services. 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. With its emphasis on remediating deficiencies found in firms’ processes for performing accounting and auditing engagements, peer review is designed to serve the public interest.

Florida Gov. Rick Scott (R) signed legislation this year that revises the state’s definition of the term “quality review” to include a peer review. Additionally, legislation to move Arkansas from its own quality review program to a peer review program failed to pass the Legislature. The Arkansas Society of CPAs expects to move on this issue during the state’s 2017 legislative session.
Comprehensive Definition of Attest

In May 2014, the AICPA and the National Association of State Boards of Accountancy approved changes to the UAA to include a more comprehensive definition of attest. Designed to protect the public, this change closes a loophole that allowed unregulated, non-CPAs to perform certain attest engagements, such as reports on greenhouse gas emissions, using the Statement on Standards for Attestation Engagements (SSAEs).

Currently, 30 U.S. jurisdictions have adopted the comprehensive definition of attest. Eight states — Connecticut, Kentucky, Maine, Maryland, Minnesota, Oklahoma, Oregon and South Carolina — enacted the new definition this year. Additionally, governors in Georgia and Iowa signed legislation adopting critical conforming changes related to the definition of attest to their states’ accountancy statutes. Legislation to adopt the comprehensive definition of attest was also recently introduced in Pennsylvania.

Definition of Attest Map

[Map showing states color-coded as follows:
- States that currently have a comprehensive definition of attest
- States that need conforming changes to otherwise-comprehensive definition of attest
- States with active legislation to adopt a comprehensive definition of attest
- States that do not have a comprehensive definition of attest]

Updated: 8/24/2015
State Boards of Accountancy

In February, the U.S. Supreme Court ruled, in a 6–3 decision, that a state licensing board made up primarily of practicing dentists was not entitled to “state action” immunity from antitrust laws because its actions were not actively supervised by the state. The case, Federal Trade Commission v. North Carolina State Board of Dental Examiners, could potentially affect how some state licensing boards conduct their activities. The court reasoned that active supervision is necessary for state agencies composed of active market participants because their private interests are so strong that they create an increased risk of anticompetitive conduct that may not be readily apparent to them.

As a result of the decision, states have started looking into the issue. For example, Oklahoma Gov. Mary Fallin (R) issued an executive order in July granting the state’s attorney general expanded authority over proposed actions of numerous state regulatory boards, including the state’s board of accountancy. Under the new order, state boards that consist predominantly of members of the professions they regulate are required to submit “all proposed licensure or prohibition actions” to the attorney general for review and a written analysis regarding potential legal violations. Board members who reject the attorney general’s advice are subject to removal for misconduct. Additionally, Alabama’s Legislature considered a bill during its special session that would have created the Office of Regulatory Oversight of Boards and Commissions. While the bill did not pass, the issue is expected to resurface next year during the state’s regular legislative session. Attorneys general in California and Nebraska also released advisory opinions on the issue. We anticipate increased activity in this area in many jurisdictions in 2016.
Tax Issues

Taxation of Professional Services
The state-level debate over the taxation of professional services continued to be one of the greatest threats to the CPA profession in 2015. In fact, 19 jurisdictions considered or are considering the issue either through a specific tax on services or a tax study commission this year, more than doubling the number of states from 2014. The increased legislative activity is a direct result of policymakers re-examining state tax structures to find offsets to lower personal income taxes and new revenue to fill budget gaps. Currently, Hawaii, New Mexico and South Dakota are the only states that broadly levy a sales tax on professional services.

Six governors mentioned broadening their state’s tax base to include professional services, including accounting and auditing; however, only the governors of Maine and Pennsylvania actually included it in their budget proposals. For example, Pennsylvania Gov. Tom Wolf (D) proposed a tax on all professional services with a business-to-business exemption in his budget at a rate of 6.6 percent. However, this provision was dropped. Additionally, eight states — Connecticut, Florida, Indiana, Maine, Mississippi, Missouri, Ohio and Vermont — considered legislation to enact a tax on services, though none of the proposals were successful. California remains the only state with an active tax on service bill. The bill would broaden the tax base by imposing a sales tax on services, including those CPAs provide, and phase in a lowering of the corporate and personal income tax. The new tax seeks to raise $10 billion annually that will be directed toward education, local governments, an earned income tax credit for low-income families and incentivize an increased minimum wage. The legislation may be turned into a ballot initiative in 2016. The California Society of CPAs is opposing the bill and would oppose any related ballot effort.

Legislatures in Florida, Georgia, Hawaii, Maryland, Missouri and Virginia debated bills to create tax study commissions with none becoming law. One state, Louisiana, enacted legislation creating the Sales Tax Streamlining and Modernization Commission. Louisiana State Rep. Julie Stokes (R), a CPA lawmaker, chairs the commission and is tasked with providing the state’s new governor with recommendations for a new state sales tax system. Puerto Rico also passed a value-added tax this year that includes professional services.

Missouri voters also will have the chance to weigh in on the issue as they consider five ballot questions this fall that would amend the state constitution to prohibit taxing any new service not taxed as of Jan. 1, 2015.

Regulation of Tax Preparers
The regulation of tax preparers at the state level continues to be an issue of concern for the CPA profession. Currently, California, Maryland, New York and Oregon are the only states that regulate tax preparers. With the current federal tax preparer registration program in limbo, implementing additional state-based programs may create conflicts and confusion for tax preparers and taxpayers, and it also would present additional challenges to the CPA profession. These programs add an unnecessary layer of cost and regulatory burden for tax preparers, and those expenses will be passed on to taxpayers. In addition, in many cases, the bad actors whom these programs are designed to thwart are the ones that are most unlikely to participate in state-based programs, and may continue to harm the public.

Additionally, CPAs operating under states’ interstate mobility laws could be required to register in multiple states if state tax preparer programs (especially ones covering out-of-state licensed preparers) are passed. This would undermine the success of the profession’s highly successful CPA mobility campaign, and would harm the profession and taxpayers without providing additional protections to the public. Conversely, if CPAs are excluded from a state-based program and its registry, then taxpayers may not know, when reviewing the registry, that CPAs offer tax services in the state. Out-of-state CPAs would be at particular risk.

The Illinois House of Representatives is considering a bill to license tax preparers in the state. Even though the bill exempts CPAs from its requirements, the Illinois Society of CPAs urged the bill sponsor to hold the legislation pending a recommendation from the Illinois Tax Return Preparer Task Force.
Ban the Box

In 2015, civil rights and ex-offender advocates continued their efforts on the state and local levels to pass legislation that would prohibit an employer from including a “check box” on an employment application asking potential employees about their criminal background. The goal of these “Ban the Box” initiatives is to give reformed ex-offenders a chance to demonstrate their qualifications without discrimination for past mistakes. However, this approach poses unique challenges for CPAs and CPA firms, where trust, confidentiality, and the handling of sensitive materials are cornerstones of the CPA-client relationship. The CPA profession believes that all “Ban the Box” proposals must include exemptions for CPAs and CPA firms.

Twenty-four states considered “Ban the Box” bills this year. Oregon Gov. Kate Brown (D) signed ban-the-box legislation that exempts those employers required by law to consider an applicant’s criminal history.

Governors in two states, Georgia and Virginia, moved on this issue this year. In February, Georgia Gov. Nathan Deal (R) issued an executive order that postpones questions about an applicant’s criminal history until the applicant has demonstrated he or she is one of the most qualified candidates. The executive order, which only applies to applications for state government jobs, allows an applicant’s criminal history to be considered later in the hiring process and also includes exemption language for “sensitive governmental positions.” Virginia Gov. Terry McAuliffe (D) also signed an executive order that reforms the state’s hiring practices by removing questions pertaining to criminal history from employment applications. Like Gov. Deal’s order, Gov. McAuliffe’s executive order applies only to government positions and exempts those positions that require the handling of sensitive information.
Regulation of Marijuana

The legalization of marijuana for both recreational and medicinal use continues to pose challenges for the CPA profession. While marijuana is illegal at the federal level, state governments and voters are showing a willingness to decriminalize the drug. Currently, it is legal to purchase marijuana for recreational purposes in four states — Alaska, Colorado, Oregon and Washington. Meanwhile, the District of Columbia has effectively decriminalized possession and consumption of the drug without legalizing a market for the drug. Several states considered marijuana legalization efforts this year. Most notably, Georgia Gov. Nathan Deal signed legislation legalizing cannabis oil for specific medical conditions. However, this provision is so narrow as not to be considered a true medical marijuana law. Additionally, voters in Ohio will consider a ballot measure in November to legalize marijuana for both recreational and medicinal use. If passed, Ohio would become the first state to legalize marijuana for recreational use without an already pre-existing medicinal program in place.

United States and Marijuana Laws Map

States and jurisdictions that have passed medical/recreational marijuana laws
States and jurisdictions that have passed medical marijuana laws
States and jurisdictions where medical/recreational marijuana use is illegal

Updated: 1/5/2015
Source: National Conference of State Legislatures