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**FACULTY WORKING
PAPER NO. 778**

State Control of Sales-Tax-Delinquent Vendors

John F. Due

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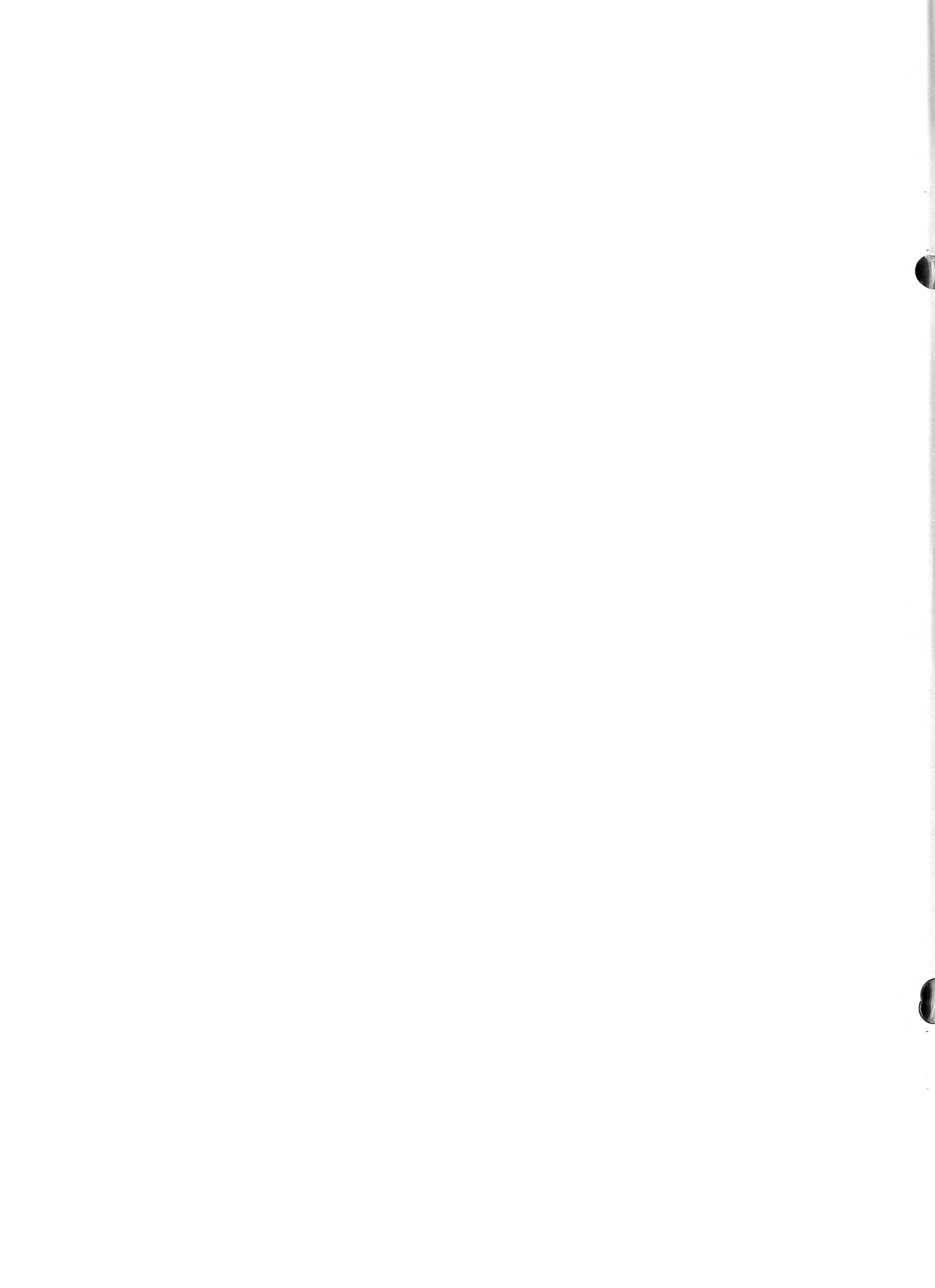
College of Commerce and Business Administration

University of Illinois at Urbana-Champaign

June 1981

State Control of Sales-Tax-Delinquent Vendors

John F. Due, Professor
Department of Economics



Summary

A key element in the operation of a retail sales tax is the control and prevention of delinquency - failure on the part of vendors to file sales tax returns and pay by the due date. Filing dates in most states are now between the 20th and last day of the month. In virtually all states, nonfilers are ascertained by EDP equipment, which identifies those firms for which no return and payment entry has been made for the period. In all except three states, the first step is to send a computer-addressed notice to the vendor, and this typically clears about half of the delinquents. The second action may involve an additional notice, but more commonly a phone call or visit from a compliance officer. Subsequent final action, normally involving no more than 1 percent of the accounts, varies among the states. The two most common approaches are the use of a warrant, which authorizes seizure of property, and notice of a hearing to revoke the sales tax permit. Rarely is it necessary actually to seize property or to revoke.

On the average, almost 10 percent of the firms do not file on time; this is a worse record than a decade ago. Most states fall in the range from 6 to 12 percent, but the overall range is from 5 to 26 percent.

Penalty and interest are normally applied to delinquents; the penalty, a percentage of tax due, is automatic and application requires no court action. Ten states make extensive use of the requirement that vendors file a surety or other bond to ensure payment, but the majority of states do not find this worthwhile.



STATE CONTROL OF SALES-TAX-DELINQUENT VENDORS

Enforcement of sales and use taxes involves two basic problems: the control and prevention of delinquency, in the sense of failure to file returns and pay tax, and the ascertainment of the correctness of the reported tax. This paper is concerned with delinquency; a second paper will deal with audit--the examination of returns and records to ascertain accuracy.

Delinquency Procedure

Filing Requirements

All states require vendors to file returns and pay tax at specified dates for each period, as shown in Table 1. Requirements are listed below. Dates, except as indicated, are for the month following the period for which the return is due:

Table 1. Filing Dates for Sales Tax Returns

15th:	Arizona ¹	North Carolina
	Maine	Oklahoma
	Michigan	West Virginia
20th:	Alabama	Missouri
	Arkansas	New Jersey
	Colorado	New York
	Georgia	Rhode Island
	Kentucky	South Carolina
	Louisiana	Tennessee
	Maryland (21st)	Virginia
	Massachusetts	Wisconsin (large accounts)
	Mississippi	District of Columbia

¹Delinquent 20th.

25th: Idaho
Minnesota
New Mexico

30th, 31st, or last day of the month:

California	Nevada
Connecticut	North Dakota (30th)
Florida	Ohio
Hawaii	South Dakota (30th)
Illinois	Texas
Indiana (30th)	Utah (30th)
Iowa (30th) ¹	Vermont (30th)
Kansas	Washington
Missouri (quarterly returns)	Wisconsin (except large accounts)
Nebraska	Wyoming

15th of the second succeeding month:

Pennsylvania (monthly returns)²

¹Deposits due 20th.

²Quarterly returns are due on the 15th of some months and the 20th of others (there are actually five periods); semi-annual on the 20th of the succeeding months.

End-of-the-month states are concentrated primarily in the Midwest, plus a few others that initially had solely quarterly return periods. Not a single southern state east of Texas except Florida has a filing date beyond the 20th.

The noticeable tendency in the last decade is to provide later dates. The number of states using the 15th or the 20th has fallen from 12 in 1970 to six currently, and one of these, Arizona, in fact requires payment by the 20th whereas the end-of-month or later group has grown from eight in 1960 to sixteen in 1970 and to 20 in 1981. The earlier the date, the less is the lapse of time before the state gets its money, interest is gained,

and the danger of default lessened. But the 15th is too early for many firms, especially chains or ones whose accounting is done outside the state, and the states with this date are under great pressure to grant extensions. Some firms simply cannot meet the deadline. The end of the month date is more satisfactory from the vendor standpoint. Some states now require an earlier date for large firms or a deposit. While most states use the postmark date, several, including Connecticut and New Jersey, require receipt of the return by the specified date.

Granting of Extensions

Most states will grant, upon prior request, some extension of time, either for individual requests during a particular return interval, or more permanently for firms which cannot easily meet the deadline. The policies, however, vary substantially. Some, including Connecticut, Florida (to avoid paying a charge), and Georgia, require payment of estimated tax by the due date. Permanent extensions, to a specified date, are permitted in Arizona, Colorado, Florida, Kentucky, Michigan, New Mexico, Ohio, Texas, Utah, Virginia, and Washington. At the other extreme, one group will either grant no extensions, or only rarely: Arkansas, Hawaii, Illinois, and Nebraska. Extensions are rare in Idaho, South Dakota, Vermont (the firm must pay estimated amount), and Wisconsin.

When an extension is granted, penalty is of course waived, and usually interest is waived for an extension of a few days, except where required by law. For more than a few days, however, and in some states even for any period, interest is applied because the vendor has had use of the money for a longer period. In most states, the vendor loses his discount (payment for collecting the tax) if he gets an extension.

Ascertainment of Nonfilers

The system of ascertainment of nonfilers has undergone drastic change over the last several decades. Initially and even many as late as 1960, states ascertained nonfilers manually, by checking the ledger cards on which payments were recorded; addressograph plates were then pulled to mail delinquency notices. This gave way to punch card systems; data from returns were punched onto cards and the return cards were run against the master cards. The master cards with no accompanying return card were those of nonfilers; these were then run through the printer to address the delinquency notices.

With minor exceptions, all states are now determining delinquents from the computer memory. Data of payments are entered into the computer system as the returns come in; at the cutoff data the computer determines those firms that have not filed, addresses the delinquency notices, and, in most states, provides a printout listing of the nonfilers. This can be done very quickly and thus delinquency notices prepared much sooner past. As of 1979, Massachusetts was the only state not to use this type of system because of inadequacy of the computer system.

Date for Ascertaining Delinquents

The states vary somewhat in the time allowed to elapse between the due date and the date on which delinquents are ascertained,^{as shown} in Table 2. The variation partly reflects differences in techniques employed and availability of computer time but partly deliberate policy.

Table 2. Days Elapsing Between Due Date and Ascertainment of Delinquents

<u>Days</u>	<u>States</u>
10	Florida, Maryland, Nebraska, Nevada, North Dakota, South Dakota, Utah (all 10)
18-20	Idaho (18), Kansas, Mississippi, Rhode Island, South Carolina, Washington (all 20)
21-25	Alabama (20-24), Arkansas (2nd-3rd week), California (21), Colorado (25), Louisiana (25), Maine (21), Michigan (18-25), Minnesota (21), Vermont (3rd week), Virginia (25)
26-31	Georgia (25-30), Indiana (30), Iowa (30), Ohio (30), Pennsylvania (25-30), Wisconsin (30), Wyoming (30)
35	Kentucky
40	Tennessee
45	Arizona, Hawaii, Illinois ¹ , North Carolina, Oklahoma
60	Connecticut, New York
75	New Mexico
30-40 from end of quarter	Missouri, New Jersey

¹45 day cycle; actual time depends on time in cycle.

Some states seek to determine the delinquents as quickly as possible in the belief that revenue loss is minimized. Others emphasize the large number of returns filed shortly after the due date. Listing of these returns as delinquents is wasteful and a source of ill will and unnecessary correspondence.

Definition of the optimum is difficult. Any time lapse in excess of roughly a month appears excessive. But short of a month, the optimum is impossible to define with current information and likely varies among the states. California, which has given this question more study than any other state, used a seven-working-day rule in 1970 but later shifted to a 3-week period. Virginia experimented with a 10 day interval but shifted to 25 because of the number of returns that came in during that interval.

In all states, a number of vendors file in the period between the due date and the delinquency cut off date. These vendors do not appear on the delinquency lists, but are legally subject to interest, penalty, and loss of vendor discount, if any. Several states, without publicly announcing it, give two or three days grace before applying interest or penalty, and several states did apply no penalty up to the end of the month--thus in fact granting general extensions of filing time, but only Minnesota appears to do so currently.

Initial Action

In all states except three (Illinois, Iowa, Mississippi), initial action consists of a notice to the vendor to file a return. This notice may be a form notice or copy of the return, as shown below for Nebraska and Virginia; or a computer prepared notice, or letter (Fig. 3).

NEBRASKA NONFILER NOTICE FOR SALES AND USE TAX

Nebraska
Department
of Revenue

Our records show that your Nebraska and City Sales and Use Tax Return, Form 10, for the tax period indicated in block 2 below has not been timely filed with this office.

Returns must be filed every tax period even though there have been no sales. Returns not timely filed are subject to a penalty of five dollars or loss of collection fee, whichever is greater. Interest on the tax due at the rate of one half of

one percent per month or fraction thereof is due from the original due date until paid.

If you have filed your return after the due date and paid the tax due for the delinquent tax period shown, please disregard this notice. If you do not have a Nebraska and City Sales and Use Tax Return for the tax period shown, contact in writing or by telephone one of the offices of the Nebraska Department of Revenue.

NAME AND LOCATION ADDRESS

NAME AND MAILING ADDRESS

SAMPLE 1

(1) Nebraska I.D. Number	(2) Tax Period	(3) Tax Category	(4) Date of Notice

Figure 1

THIS RETURN COVERS AND MUST BE FILED AND TAX PAID IMMEDIATELY.	REGISTRATION NUMBER	DO NOT USE THIS SPACE			
	LOCATION				
FORM ST-90 COMPLETE FORM ST-9A FIRST AND TRANSFER ITEMS TO THIS RETURN I declare that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.	A. ITEM	B. STATE	C. LOCAL		
	4. TOTAL OF ITEMS 1, 2 AND 3 ON ST-9A				
	5h. TOTAL DEDUCTIONS				
	6. AMOUNT ON WHICH TAX MUST BE COMPUTED				
	7. TAX (STATE-3%; LOCAL-1%)				
	8. DEALERS 3% DISCOUNT				
	9. ITEM 7 LESS ITEM 8				
	10. PENALTY FOR LATE FILING AND PAYMENT				
	11. INTEREST FOR LATE FILING AND PAYMENT				
	12. TOTAL TAX, PENALTY AND INTEREST				
	13. COMBINED STATE & LOCAL TAX, PEN. & INT. DUE AND PAYABLE				
	<input type="checkbox"/> FINAL RETURN --Indicate the date your business was terminated or sold here → SIGNATURE: _____ DATE: _____				

Figure 2

In Georgia, Hawaii, Ohio, Pennsylvania, Texas, and Virginia, copy of the return form is sent (to facilitate filing). In Missouri, Utah, Colorado, the notice includes an assessment of tax, based on experience of recent months. In several states, such as Idaho, Nevada, New Mexico, North Dakota, and Virginia, among others, the field district office is sent either a copy of the notice or a listing, and in Nevada and New Mexico the compliance officer is expected to contact the firm, usually by phone, immediately. In Maryland, Massachusetts, and Tennessee, the taxpayer is phoned from headquarters at the same time the notice is mailed. In Maine, the taxpayer is contacted by phone if the tax liability exceeds \$500.

Three states do not mail a notice. Illinois notifies the district office for contact (often by phone) by a compliance officer. In Mississippi the procedure is the same, the compliance person in the area being required to contact the firm immediately by personal visit. In Iowa, by contrast, the taxpayer is contacted by phone from headquarters.



OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

2501 LINCOLN BLVD.

OKLAHOMA CITY, OKLAHOMA 73194

September 21, 1976

D. M. BERRY, Chairman
L. L. LEININGER, Vice-Chairman
J. L. MERRILL, Sec'y-Member

Sales/Use Tax

DIVISION
307992

SAMPLE

Mr. John Doe
1521 Smith Street
Oklahoma City, Oklahoma 73106

Dear Mr. Doe:

Records in this Division indicate you are delinquent in the payment of sales tax for the period January 1, 1976 through June 30, 1976.

This is to advise that we shall expect you to prepare and mail to this Division immediately, a sales tax report, together with a remittance in payment of the tax, interest and penalty due. Should we not receive such report and remittance within a period of ten (10) days from date of this letter, the Commission will issue a notice directing you to appear before them and to show cause why your sales tax permit should not be cancelled and revoked.

Of this you will take due notice and be governed accordingly.

Yours very truly,

OKLAHOMA TAX COMMISSION

Everett Watkins, Director
Sales and Use Tax Division

EW:mbe

The widespread use of the mailed notice and the relatively good response to it confirm the desirability of using it initially rather than taking the time of compliance personnel. Increasingly, however, states are relying on "phone power."

Nature of the Second Action

The states differ widely in the choice of techniques for follow up, the choice influenced to some extent by the nature of the initial action.

Second Notice. One group sends a second notice, usually worded in a much more demanding fashion than the first, before any additional action is taken:

Connecticut: A citation, with notice to appear, is mailed; if this is ignored, compliance officer contacts by phone or visit.

Louisiana: A proposed assessment, based on previous returns, is sent; if there is no response within 30 days, a final assessment is sent.

Minnesota: A second notice is sent; after four weeks a compliance officer checks.

New Jersey: second notice, to field after 30 days.

North Dakota: second notice; phone call from headquarters if no response in 10 days.

Ohio: A notice is mailed requiring the vendor to appear at the local field office; if this is not done, a compliance officer contacts.

Oklahoma: A 10-day letter is mailed, followed by a 30 day notice of assessment (Fig. 4).

Rhode Island: A notice is mailed, followed if no response by a phone call and then a visit.

Wisconsin: A demand notice is sent, followed in 15 days by an assessment.



OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

2501 LINCOLN BLVD.

OKLAHOMA CITY, OKLAHOMA 73194

September 21, 1976

SAMPLE

D. M. BERRY, Chairman
L. L. LEININGER, Vice-Chairman
J. L. MERRILL, Sec'y-Member

Sales/Use Tax
DIVISION
307992

CERTIFIED MAIL

Mr. John Doe
1521 Smith Street
Oklahoma City, Oklahoma 73106

Re: 30-Day Proposal to Assess Delinquent Sales Tax
Period: 1-1-76 through 6-30-76
Amount: \$1,150.00

Dear Mr. Doe:

Records in this Division indicate you are delinquent in the payment of sales tax for the period January 1, 1976 through June 30, 1976. The estimated amount of tax due for the delinquent period is \$1,000.00, plus interest of \$50.00 and penalty of \$100.00, which totals \$1,150.00.

The Commission hereby proposes to assess sales tax against you, along with interest and penalty, as outlined. Please attach your remittance in the amount of \$1,150.00 to the enclosed copy of this letter and mail to the Oklahoma Tax Commission at once.

If you do not agree to this proposed assessment, you must file reports and payment in full for all delinquent sales tax, including interest and penalties, subject to audit; or you must file a verified written protest, in triplicate, with the Oklahoma Tax Commission within thirty (30) days from the date of mailing of this letter. If you fail to file a verified written protest within the thirty day period, this proposed assessment will become final and absolute and a tax warrant will be filed with the Court Clerk and Sheriff of Oklahoma County as a lien against any property owned by you. The lien will remain on file accruing interest at the rate of twelve per cent (12%) per annum until paid in full.

This proposed assessment is made in accordance with the terms and provisions of House Bill 701 of the 30th Session of the Legislature, which Act now appears as Section 221 of Title 68, O. S. 1971, known as the Uniform Tax Procedure Act.

Very truly yours,

OKLAHOMA TAX COMMISSION

Everett Watkins, Director
Sales and Use Tax Division

EW:mbe

Second Notice and Field Visit. A second group sends a second notice, accompanied by a notice to the field to contact:

Arizona

Maryland

New York

Tennessee: The second notice is followed by a 10 day demand to pay, followed by a levy.

Field Visit without Second Notice. In the third group of states the field is notified for immediate contact:

Alabama

Florida (phone contact)

Georgia

Illinois

Indiana

Iowa

Kansas (phone contact)

Kentucky

Michigan

Nebraska: followed by notice from field, as illustrated in Fig. 5.

New Mexico

North Carolina

Pennsylvania, phone or visit, followed by assessment.

South Carolina

South Dakota: phone or visit.

Texas: phone or visit, then collection letter sent.

Washington: the compliance officer is provided with a detailed record of the firm via computer printout.

West Virginia: contact followed by assessment.



STATE OF NEBRASKA DEPARTMENT OF REVENUE

Box 94818
Lincoln, NE 68509
Tel. (402) 471-2971

Charles Thone, Governor

Fred A. Herrington, Tax Commissioner

Name _____
 Street or Office Address _____
 City _____

Date:

If You Inquire About Your Account
Refer To These Numbers

SAMPLE

Dear Nebraska Taxpayer:

NOTICE OF DELINQUENCY

The records of the Nebraska Department of Revenue indicate your Nebraska tax account is delinquent as shown below. Failure to comply with this notice before the due date referenced above may result in tax assessments being made for nonfiled tax periods, tax liens being filed against your property rights for the balance(s) due, and other legal-action which may include seizure of property. Nebraska tax returns must be filed even if there is no tax due to report.

NONFILED NEBRASKA TAX RETURNS	
Type of Tax	Nonfiled Tax Periods

BALANCE(S) OF NEBRASKA TAX DUE	
Type of Tax	Balance Due
	\$
TOTAL	\$

If the above tax return(s) have been filed or the payment(s) remitted, send copies of the tax return(s) and both sides of your cancelled check(s) to this Department. A copy of this letter should accompany the information requested and be returned in the enclosed envelope.

This matter deserves your immediate attention.

FOR THE STATE TAX COMMISSIONER

Sincerely,

Revenue Agent
Field Services Division

Enclosure

Phone Call from Headquarters without Contacting Field:

Arkansas

Hawaii

Idaho

Maine

Vermont

Phone Call from Headquarters and Notice to Field:

Virginia: This is followed by a summons to appear at the field office.

Two sets of states use much more direct and demanding techniques:

California: The second notice is a notice to appear at a hearing to revoke the firm's sales tax permit.

Colorado and Mississippi: The second step is the issuance of a distraint warrant, a step taken in other states only as a final action.

Timing of the Second Action

Table 3 shows the typical elapsed time between the first action and the second. The interval is affected somewhat by the nature of the first action. States relying primarily on phone power initially tend to go to the second action sooner than the others.

There has been a definite tendency to lengthen the time interval; whereas 22 states waited less than a month in 1970, only sixteen states now do so.

The Iowa pattern follows from the initial phone contact system; if this brings no results, the state proceeds immediately to the next step. The philosophy still differs sharply among states; one group of states believes

Table 3. Days Elapsing Between First Notice and Second Action, 1980-81

<u>Under One Month</u>	<u>Approximately One Month</u>	<u>Over One Month</u>
<u>7 days or less</u>	Arizona	<u>60 days</u>
Iowa	Arkansas	Georgia
<u>10-12 days</u>	Colorado	Illinois
Maryland	Connecticut (25-35)	Maine
Nebraska	Florida	Oklahoma
North Carolina	Indiana	<u>90 days</u>
Rhode Island	Kentucky	Ohio
South Carolina	Louisiana	<u>Twice a year</u>
Utah	Michigan	West Virginia
	Minnesota	
<u>14-15 days</u>	Missouri (30-90)	
Alabama	Nevada (30-90)	
Hawaii	New Jersey	
Idaho	New York (3-12 wks)	
<u>20-21 days</u>	Pennsylvania (35)	
California	Tennessee	
Kansas	Texas	
Mississippi	Vermont	
North Dakota	Virginia (25-30)	
Wisconsin	Washington	
	Wyoming	

that losses of revenue are minimized by speedy action; the other is convinced that money is saved by delaying before more expensive action is undertaken, as many of the returns will come in anyway.

It is impossible to assess empirically the relative advantages of the alternative systems or the time intervals. Some states clearly allow unnecessarily long intervals, partly because of computer difficulties and lack of field personnel. Others have discovered that the use of too short an interval results in wasted effort. A number of firms will pay on the basis of the notice if given adequate time, and premature field visits waste time and money. But on the other hand, immediate visits do bring in some money more quickly and lessen the danger of loss through bankruptcy or disappearance of the vendor. California for example has concluded that an interval of seventy days from due date to actual revocation of permit is the optimum. When a shorter interval was used, there was substantial wasted effort from communications crossing in the mails and the like. An optimal cycle might be roughly as follows:

Due date: 30th

First notice mailed: 15th

Refer to field: 10th of the following month

Final Action

The methods described in the sections above result in collection of tax from most of the initially-delinquent vendors. But in all states, a hard core fail to pay even after notices and field visits. Typically they will be fewer than 1% of the vendors. With this figure at any particular time in a state with 50,000 vendors, there will be nearly 500 delinquent vendors. The states vary somewhat in their approach, depending upon the legislation and property laws of the state and their experience with various approaches.

Warrants. In twenty-six states, primary but not necessarily sole reliance is placed on use of a warrant, variously called a tax warrant or distraint warrant, based upon an assessment (see figure 6). The warrant is typically prepared in the revenue department, and then is transmitted to the sheriff of the county for execution through the seizure of property or other means. Thus the sheriff can close the business and take possession of the assets. In Tennessee, he can seize only tangible personal property. In some states, he can attach real property as well. A number of states report difficulties in obtaining the full cooperation of local sheriffs. In a few, Connecticut, Colorado, Georgia, Idaho, Kansas, Michigan, Minnesota, Mississippi, Nebraska, the revenue department has been given authority to execute warrants with their own personnel. Colorado has a reputation for being very strict. If payment is not made after the initial steps, a distraint warrant is prepared and turned over to the field division. If it cannot collect, the compliance officer padlocks the business and attaches the property. States emphasizing the warrant approach include Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, Wisconsin, and Wyoming.

The District of Columbia uses a jeopardy assessment in much the same manner. A somewhat similar process is followed in Ohio and Pennsylvania. The revenue department obtains from a county court a judgment against the vendor, which is then enforced in the same fashion as the warrants with the previous approach. This process is somewhat slower, but the courts normally cooperate.

Figure 6 Warrant For Distrain

DR 97
Rev. 11-68

WARRANT FOR DISTRAIN

TO _____ DISTRICT SUPERVISOR, REVENUE COLLECTOR OR AGENT
of the Department of Revenue, State of Colorado, or Sheriff of _____ County.

Whereas, in pursuance of the provisions of the laws of the State of Colorado, relating to revenue, the person or persons named below is or are liable to pay the license fees, tax or taxes assessed against him or them in the amount or amounts named herein below, together with penalties and interest prescribed by law for failure to pay said license fees, tax or taxes when the same became due, and whereas, the time provided by law for payment of the amount due has elapsed since notice was served and demand made upon said person or persons for payment of said license fees, tax or taxes, and whereas, said person or persons still neglect or refuse to pay the same. You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects or other property or rights to property, including stocks, securities and evidences of debt of the person or persons liable for the payment of license fees, tax or taxes assessed against them as set forth in the statement below, upon which a lien exists for license fees, tax or taxes, as may be necessary to satisfy the license fees, tax or taxes, with such additional amounts of interest, penalties, fees, costs and expenses of this levy.

If the taxpayer named herein is the owner of real property and election is made to proceed against the said real property in lieu of distraint upon personal property of the said taxpayer, you are hereby commanded to demand of the sheriff of the county wherein such real property is situated, and this shall be by warrant, to secure judgment and make proper filings as required by law, and to levy upon, distraint and sell in the manner prescribed by law, such real property of the taxpayer and to apply the proceeds from said sale to the payment of the amounts set forth herein and to the cost of such levy, execution and sale.

You will do all things necessary to be done in the premises and strictly comply with all requirements of law and for so doing this shall be your warrant and therefore to make due return to me at this office forthwith.

NAME _____

ADDRESS _____

KIND OF DELINQUENT TAX _____

TAXABLE PERIOD OR PERIODS _____

UNPAID TAX DUE _____ \$ _____

LICENSE FEE _____ \$ _____

PENALTY _____ \$ _____

INTEREST _____ \$ _____

COSTS AND/OR OTHER CHARGES _____ \$ _____

TOTAL SUM DUE _____ \$ _____

WITNES MY HAND AT DENVER, COLORADO, THIS _____ DAY OF _____ 19 _____

EXECUTIVE DIRECTOR, DEPARTMENT OF REVENUE, STATE OF COLORADO

Liens. In virtually all states, a lien is filed against the delinquent taxpayer. In some states, for example Indiana, Minnesota, South Dakota, Utah, Virginia, Washington, Wisconsin, the warrant automatically becomes a lien against the property. In others, such as Mississippi, Nebraska (Fig. 7), and Tennessee, a lien is prepared separately from the warrant and filed in the county. Revocation states usually prepare liens to protect revenue at the same time that they revoke or threaten to revoke.

Four states, Arizona, Nebraska, Pennsylvania, South Carolina, rely almost entirely on the lien to bring about payment. When the taxpayer does not file or pay, an assessment is made and a lien prepared and filed with the county. Typically the firm finds that the lien so hampers its operation that it takes action to clear it, even without action to seize property.

Revocation. A major group of states, now sixteen in number, stress the revocation of the sales tax permit--or in practice the threat of revocation--as the primary approach, although using the other techniques, particularly liens. These states include Arkansas, California, which pioneered this approach, Connecticut, Iowa, Kansas, Kentucky, Louisiana, Nevada, North Dakota, Oklahoma (Fig. 8), Rhode Island, South Carolina, South Dakota, Vermont, Wisconsin and Wyoming. Threat of revocation is also used in Idaho, Illinois, Maryland, Minnesota, Missouri, Virginia, and Washington. Several of these states find revocation unsatisfactory, as firms continue to operate and local law enforcement officers and the courts do not cooperate. In California, if the vendor does not respond to the first notice within three weeks, the department prepares a citation to show cause why the permit should not be revoked and establishes a date

Figure 8

NOTICE TO SHOW CAUSE WHY SALES TAX
PERMIT SHOULD NOT BE CANCELLED

SAMPLE

STATE OF OKLAHOMA:

TO: JOHN DOE
1521 SMITH STREET
OKLAHOMA CITY, OKLAHOMA 73106

GREETINGS: You will please take notice that the files and records of the Oklahoma Tax Commission show that you have violated the Oklahoma Sales Tax Law in this to-wit.

You have failed, neglected or refused to pay sales tax, interest and penalty due as required by Law for the following period:

January 1, 1976 through June 30, 1976.

You are therefore notified that on the _____ day of _____, 1976, at 9:00 a. m., a hearing will be had before the Oklahoma Tax Commission in its office in the M. C. Connors Building, 2501 Lincoln Boulevard, Oklahoma City, Oklahoma, at which time you may appear and show cause why your Sales Tax Permit #307992 should not be cancelled and revoked.

You may govern yourself accordingly.

DATED this 21st day of September, 1976.

(SEAL)

ATTEST:

OKLAHOMA TAX COMMISSION

Secretary

Chairman

APPROVED AS TO FORM:

Attorney

APPROVED:

Director, Sales Tax Division

RAE:mbe

and place of a hearing on revocation. After the notice is mailed, a compliance officer visits the vendor to see if he is still in operation and, if he is, to try to collect. Twenty-eight days after the citation notice, the permit is revoked if payment has not been made. The taxpayer may of course then seek reinstatement, which may be granted upon payment of a penalty. If the firm continues to operate after revocation, criminal charges are brought through the local district attorney. In several other states, criminal prosecution for operating without a permit is brought if the firm continues to operate after revocation: Arkansas, South Carolina, South Dakota. In Vermont and Kansas, a court injunction is obtained after revocation, and continue operation is held in contempt of court. Nevada and Oklahoma, however, do not use criminal prosecution, but bring court action to close the business.

On the whole, the states that use the revocation system like it, despite the less than satisfactory experience of several states. The number of states emphasizing the system has increased since 1962, when only five states made significant use of it, and 1970. In these states, the threat of revocation, thus putting the firm out of business, appears to be more effective than merely threatening legal action to enforce payment. If revocation actually becomes necessary, the success of the revenue department depends upon the ability to obtain cooperation of the local prosecutor.

Criminal Prosecution. In all states, the sales tax legislation provides for criminal action for violation of the law. But only one state, Maine, relies on this approach as the primary instrument of enforcement. The District of Columbia uses it extensively. In Maine any firm not filing after the initial letters is summoned into court on a misdemeanor charge

and upon conviction is fined for failure to file. The courts cooperate and the state finds this to be an effective approach. If the vendor files but does not pay, this method is not successful because of the courts' reluctance to become money collectors. Virginia, which at first used the prosecution approach, abandoned it as the courts did not cooperate adequately.

Criminal prosecution in other states is very limited. Alabama, Arkansas, and Connecticut make some use. In Alabama the compliance officer can arrest the vendor. Some, such as California, Arkansas, South Carolina, South Dakota, stressing the revocation technique, prosecute for operation after revocation, but even these cases are not numerous. Most states never prosecute on criminal grounds. A few do in the event of deliberate fraud.

The limited use of the criminal approach in part reflects the reluctance of prosecuting officers and local courts to be concerned with questions of money collection, in part the fear by revenue commissioners of political repercussions. Commonly it is felt that other methods are sufficiently effective to obviate the need to go to the trouble of prosecution in court. When outright fraud is suspected, to generate proof to the satisfaction of the courts is difficult, and the severe penalties for fraud are of little significance.

Other Methods. Several states, particularly Illinois and Texas, obtain cooperation from the liquor control agencies to revoke the liquor licenses of delinquents having such licenses--a very effective weapon.

In summary, several methods work satisfactorily with hard core delinquents: the traditional warrant method for enforcing legal obligations, revocation of permits, and court orders to suspend operations for failure to file and pay. At least two states, however, Missouri and Oklahoma, lack power to close the business and seize property.

Some Examples

More detailed information for four states serve to illustrate the procedures.

Connecticut:

1. Two mail notices are sent, the second two weeks after the first.
2. The second notice, coming after the account is 60 days overdue, warns the taxpayer that enforcement action is pending.
3. The account is then referred to a revenue agent, who contacts the taxpayer by phone or letter.
4. If the vendor still does not file and pay, the following steps are taken:
 - a. A tax warrant is prepared, which enables a serving officer to seize real or personal property, or garnish savings accounts or salaries.

The tax warrants may be served by an employee of the department or a deputy sheriff.
 - b. A lien is placed on the property.
 - c. The taxpayer may be ordered to appear at a hearing to show cause why sales tax and other permits should not be revoked.

Texas:

1. One notice is sent to taxpayer, a second copy of the return form.
2. Account is then referred to the field. An enforcement officer will follow these steps, not all being used in any particular case:
 - a. Phone the taxpayer.
 - b. Send a collection letter, and seek to track down the taxpayer if letter is returned.
 - c. Visit the taxpayer's place of business.

- d. Freeze liquid assets--bank accounts, accounts receivable or other assets held by others, by personal service or certified mail.
- e. Notify the Alcoholic Beverage Commission, which will send the firm a notice of a hearing to cancel its liquor permit.
- f. Seize the money in the vendor's cash register.
- g. Upon approval from headquarters, seize the taxpayer's business and padlock it.
- h. Sell the assets at public auction.
- i. If there are no assets to seize, the Enforcement Officer will certify the account to the Attorney General, who will take legal action to ensure payment.

Washington:

Delinquents are divided into two classes, nonproductive and productive. The former, the smaller accounts, are handled in headquarters, with notices sent, and ultimately phone contact. About 60% of these are cleared by the notices and most of the rest by phone. Often these are out of business, address is wrong, etc.

The productive accounts in turn are grouped according to estimated tax liability. Immediate phone contact is made; this clears about 85% of the delinquents. Then follows a series of steps if they are still not cleared:

1. Field visit.
2. Summons to appear at the district office with records.
3. Notice of hearing to revoke. This is not widely used, but some certificates are revoked.

4. A warrant is issued for the estimated amount of tax; this constitutes a lien. The compliance officer holds the lien for thirty days; he can then file it, and it becomes the basis for withholding amounts due the vendor. The compliance officer can also file a warrant, obtain a judgment and seize the taxpayer's property.
5. If the permit is revoked and the firm operates, criminal action can be brought, but this is rare; local prosecutors often will not cooperate.

Nebraska:

Figure 9 outlines the steps in the Nebraska procedure.

The Time Lapse Before Final Action is Commenced

In most states there is no precise interval of time before final action is started. Table 4 gives some indication of general patterns:

Table 4. Time Lapse Before Final Action

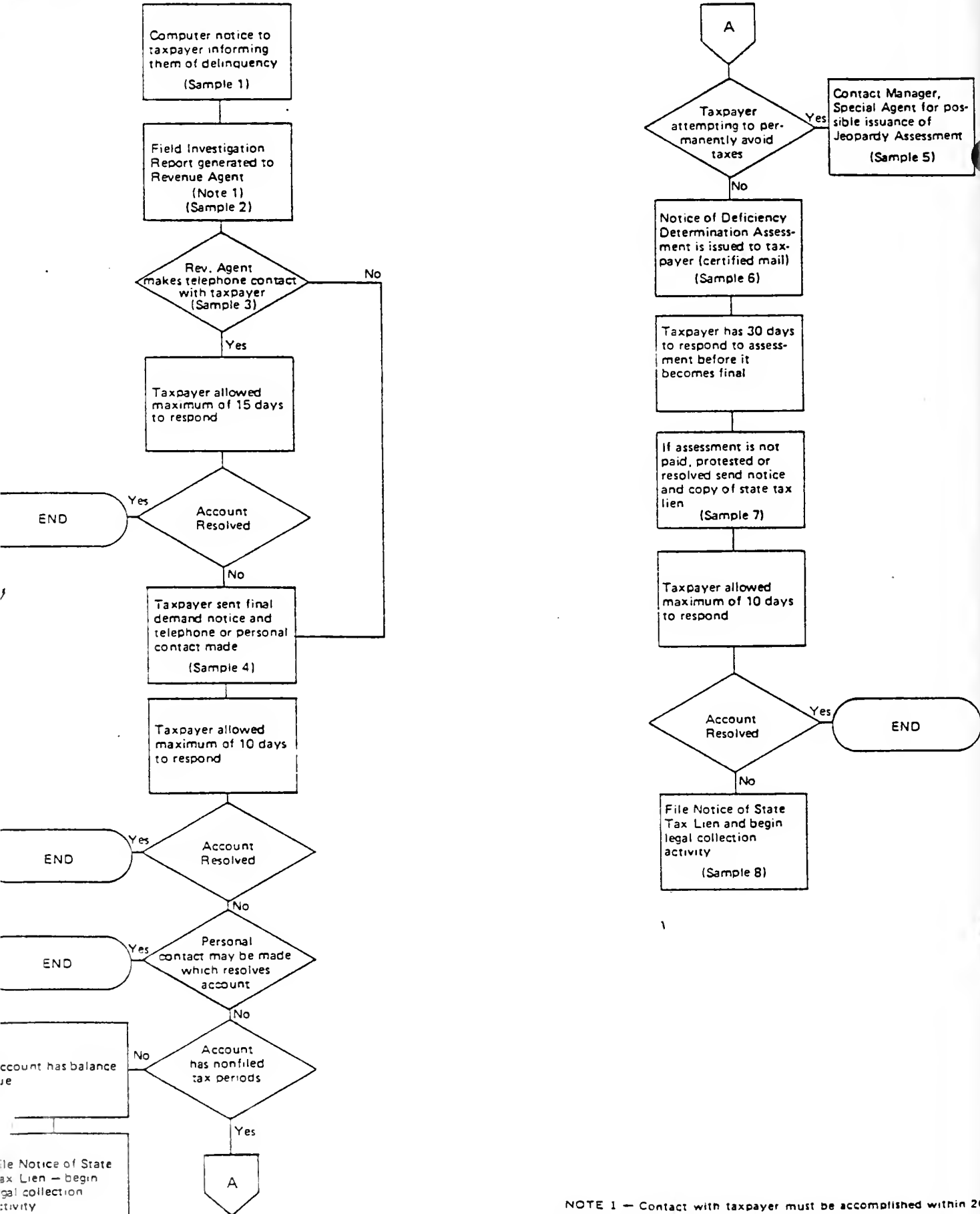
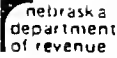
<u>Under 3 months</u>	<u>3 to 4 months</u>	<u>Other</u>
California 1½-2	Georgia 4	Kentucky: 3 monthly delinquencies; 2 quarterly delinquencies
Colorado 2	Indiana 3	
Connecticut 2	Louisiana 3	
Mississippi 2	Michigan 4	
Rhode Island 2	Nebraska 3	
Utah 2	New Jersey 4	
Wyoming 2		

The Wisconsin schedule is more specifically defined than many:

	<u>days lapsed</u> (from due date)
First notice	30
Second notice	20
Assessment to taxpayer	15
Officially listed as delinquent	30

Field Services Division Generalized Collection Process

For Sales and Use Tax



NOTE 1 - Contact with taxpayer must be accomplished within 20 days from office's receipt of Field Investigation Reports.

days lapsed (from due date)

Notice of warrant sent to taxpayer	30
Recording of warrant	45
Total	<u>170</u>

The California cycle is as follows:

1. Notice of delinquency: 3 weeks after due date.
2. Notice of hearing to revoke: 3 weeks after notice of delinquency.
3. Date of revocation: day following hearing.
4. Notice of revocation: 2 weeks after revocation date.

Delinquency Experience

Experience with delinquency of forty of the forty-five states is shown in table 5. Information is not available from Colorado, Massachusetts, New Mexico, Tennessee and Texas. The average for the forty-one states is 9.9%; that is, of the returns mailed each period, 9.9% of the returns are not filed at the time the delinquency is determined and the notices sent. The figures are by no means entirely comparable among the states for several reasons. The time lapse between the due date and the date of ascertainment of delinquency varies, although there is little correlation between the time interval and the delinquency rate. Firms filing in the interval between the due date and the delinquency date are not included in the list of delinquents, but in most states are billed for interest and penalty. Few states keep a record of the number of such firms.

Another source of variation is the extent to which states purge their files of nonactive accounts. States failing to do so will have high percentages of delinquencies because the firms that have become inactive or quit business will often not file returns. If the master file is kept carefully purged but those firms coded as inactive are included in the total, the percentage of delinquency will appear artificially low because the base upon which the percentage is figured is higher than in states calculating it on returns actually mailed. Another difference is in the treatment of multiple unit vendors. These firms are less likely to be delinquent than others. The states counting each unit in the chain as a vendor will have, other things being equal, a lower percentage of delinquency than those listing the chain as one vendor. Complications have also been created by the transfer of some firms to longer return intervals. The larger-account monthly payment vendors will show less delinquency than the firms placed on the longer intervals. Transferring the small firms to longer intervals reduces the number of opportunities

for them to be delinquent during the year.

Table 5. Delinquency Record by State, 1979-81

Percentage of vendors delinquent					Percentage of vendors delinquent				
State	First Notice	Second Action	Third	Final	State	First Notice	Second Action	Third	Final
Alabama	8-11	5-7			Nevada	5-8	3		
Arizona	11	7		.3	New Jersey	10		1 ¹⁰	
Arkansas	13	8		.1	New Mexico	na			
California-mo	8	3-4	1.2 ¹		New York	15-16			
q	13	5-6	2-3	.2	North Carolina	9			
a	19	9-10	4-5		North Dakota	5.7	3.3	1.5 ¹¹	neg. ⁸
Colorado					Ohio	17	8-10	3-6 ⁵	
Connecticut	10	6	3	.2	Oklahoma	26			
Florida	13-18	11	4		Pennsylvania	10	7		1.5 ¹²
Georgia	7-9	5	.5	.3	Rhode Island	13	6	1 ⁵	
Hawaii	20 est				South Carolina	5	2	.1 ⁵	.02 ⁶
Idaho	8 ³				South Dakota	8	2	.5	.5 ¹² ; .2 ⁷ ;
Illinois	10			.2	Tennessee	na	2.7		
Indiana	9	7	2 ⁴		Texas	na	14		1
Iowa	10	7	3 ⁵		Utah	7.5	6	3	.5 ¹³
Kansas	4-6	3	.1 ⁵	.01 ⁶	Vermont-mo	5-8	3-5		
Kentucky	12	4	.4 ⁶		q	10	6		
Louisiana	11	8-9		3-4 ⁷	Virginia	7.3	3.6	3 ⁵	
Maine	10		1-2	.03 ⁸	Washington-mo	11		.004 ⁶	
Maryland	9	4		.2	q	18			
Massachusetts					a	26			
Michigan	5-7	2.5-3 ⁵			West Virginia	18			1
Minnesota	6	4	3		Wisconsin-mo	5	3	1.5	.1 ⁵
Mississippi	14 est				m+q	6			.06 ⁶
Missouri	5		1 ⁹		m+a	9			
Nebraska	8	6			Wyoming	5	2		.2 ¹⁴

1. Notice of hearing to revoke.
2. Revocation--annual.
3. No exact data; 8% of accounts delinquent at end of each month.
4. To collection division.
5. Notices of hearing to revoke.
6. Revoke.
7. Issued warrants.
8. Criminal action.
9. To assessment.
10. Five day letter.
11. To phone.
12. To lien.
13. Act to close.
14. Seize property.

Table 6. Ranking of States by Delinquency Record, 1979-80

	1979-80	1969-70
<u>High</u>		
Oklahoma	26	12.5
Hawaii	20 est	na
West Virginia	18	10
Ohio	17	6.5
Florida	15	2
New York	15	10
Mississippi	14 est	10
Arkansas	13	5
<u>Typical</u>		
Rhode Island	13	10
Kentucky	12	na
Arizona	11	12
Louisiana	11	12
Washington (m)	11	10
Connecticut	10	5
Illinois	10	7.5
Iowa	10	11
Maine	10	3.5
New Jersey	10	10
Pennsylvania	10	10.5
Alabama	9	10
Indiana	9	na
Maryland	9	8
North Carolina	9	7
California (m)	8	6
Georgia	8	4.5
Idaho	8	na
Nebraska	8	3
South Dakota	8	5
Utah	8	7
<u>Low</u>		
Nevada	7	10
Vermont (m)	7	7
Virginia	7	7.5
Michigan	6	5
Minnesota	6	7
North Dakota	6	5
Wisconsin (m+q)	6	na
Kansas	5	5
Missouri	5	10
South Carolina	5	7
Wyoming	5	7.5

m: monthly; q: quarterly

Initial Delinquency Record

Table 6 shows the ranking of states by delinquency record. It must be stressed that small differences are not significant. Despite the problems of comparisons, approximately half of the states (22) are in the range between 7 and 11 percent. The median is 10. All but seven states are in the range from 5 to 15 percent. One group of states stands out at the high end, for reasons by no means clear. Another group, with 5 and 6 percent, do noticeably better than the majority of the states. None of these states are east of Michigan, and South Carolina is the only southern state.

When comparison is made with a decade earlier, the average has increased, from 7.7 percent in 1960-61 to 8.0 in 1970 to 9.9 currently. There is no obvious explanation for this increase. Fourteen states show a poorer record than a decade ago, the 1980 figure being more than 2 percentage points above the 1970 figure. Only Nevada, Missouri, and Wyoming improved their record by more than 2 points. There were a few very surprising changes. Florida went from the best record to fifth from the worst; the 1970 record was suspect at the time. West Virginia, Ohio, Oklahoma, New York, Arkansas, Maine, Georgia, and Nebraska all showed substantial percentage worsening of their positions. Some of these differences undoubtedly reflect changes in reporting of delinquencies, but some inevitably show the effect of inadequate enforcement programs.

Table 5 shows the delinquency rate after the first action has been taken; on the average, the first action clears 43 percent of the delinquencies (many would clear themselves even if no action were taken).

Final Action Experience

Data on the extent to which final action is taken are not kept by many states, but as shown in Table 5, the percentages are low. Limited as

the data are, they show that for the returns for any month, rarely over one-tenth of one percent of the accounts will be subject to the final action--revocation, seizure, etc. A few states have detailed information available, as indicated in table 7.

Table 7. Details of Final Action on Sales Tax Delinquents

State	Approximate Number of Vendors	Final Action
Connecticut	100,000	200 warrants a month, 5 or 6 arrests per year
Kansas	75,000	80 to 90 notices of hearings to revoke monthly; revoke about 6 a month
Maine	40,000	10-12 criminal prosecutions a month
North Dakota	26,000	200 a quarter--notice of hearing to revoke; 5 or 6 a year to criminal prosecution
Rhode Island	23,000	about 1% a month to hearing to revoke; revoke about 20 a year
South Carolina	72,000	80 a month to show cause why license should not be revoked; revoke 15 a month
South Dakota	30,000	per quarter, 30 criminal actions (including NSF checks), 160 liens filed, 55 distress warrants
Washington	136,000	In a typical year: 78 revocations of licenses; 20 seizures of property
Wisconsin	108,000	2 criminal prosecutions 1978: for the year, 1200 hearings to revoke; revoked 788

Despite all the possible sources of difference, one is led inevitably to conclude that the great difference between the high and the low states can be explained largely by enforcement policies over the years, which have led firms to be more careful in some states than in others. No significant difference occurs in penalties in the high and low states. Difference appears to be a product of the extent to which penalties are applied, and applied

quickly, though the results cannot easily be measured. In Canada, a very sharp difference occurs between those provinces that have effective penalty systems and those that do not. With the ineffective systems, the figures run to 20%.¹ But no such difference appears in the United States.

Analysis of Delinquency

Rarely have the states made any scientific study of delinquency to pinpoint frequency by type of business, size of business, location, and other elements in order to facilitate improved methods of control and reduced cost.

Type of Business

No state currently has data of delinquencies by type of business, though administrators are well aware that the problem concentrates in certain fields. Small cafes, beer parlors and taverns, small grocery stores and service stations are universally the worst offenders. These businesses are typically small, with inadequate bookkeeping help, inadequate capital, a high rate of store mortality, and low profit margins. In some lines the firms have been squeezed by competition of larger firms: chain stores and supermarkets, fast food franchise restaurants. Fortunately, the amount of tax due is not great.

States reporting substantial concentration of delinquency in these fields include:

Beer-parlors, taverns, and liquor stores: Alabama, Connecticut, Georgia, Idaho, Louisiana, Maine, Michigan, Minnesota, Missouri, North Dakota, Oklahoma, Ohio, South Dakota, Tennessee, Washington, Wisconsin.

Cafes, restaurants (usually small ones): Idaho, Louisiana, Michigan, Minnesota, Nebraska, Nevada, North Dakota, South Dakota, Vermont.

1. J.F. Due, Provincial Sales Tax, rev. ed. (Toronto: Canadian Tax Foundation, 1964).

Small grocery stores: Georgia, Louisiana, Washington.

Service stations: Georgia, Idaho, Iowa, Michigan, North Dakota,
Tennessee.

Mississippi and Louisiana have solved the service station problem in large part by collecting the tax, or most of it, from the wholesale suppliers of the stations.

Several states, Connecticut, Maine, and Nevada, report trouble with used car dealers. In this field the possible revenue loss is very much greater. Other fields mentioned include repair shops, services, and recreation (Iowa, Nevada, Washington), door to door sellers (North Dakota), hobby shops (Nebraska), contractors (Vermont), motels (Wisconsin).

A few states note substantial geographical concentrations of delinquency, Las Vegas in Nevada, for example.

In general the delinquents are small firms owing relatively small sums of money, but there are exceptions. Most states have had the experience of a large vendor suddenly going bankrupt with little or nothing in assets, with substantial loss of tax money.¹ Used car dealers sometimes simply vanish, owing the state considerable money.

1. For example, a large department store in San Francisco a decade ago.

Causes of Delinquency

Little study has been made of the question,¹ but several causes are obvious:

Carelessness. Many small shopkeepers are hard pressed for time, have no regular bookkeeping help, and are not careful about records and deadlines generally. They do not bother to get the returns in promptly, postponing the work until they have more time, or they fail to file because they are ill, away on vacation, and the like. A number believe it is cheaper to pay penalties than to hire bookkeeping help to get reports ready on time.

Shortage of Funds. Many small operators are constantly at the margin. They use sales tax money to meet other obligations and do not have the money when the returns are due.

Use of Funds. Some firms delay paying simply to have the funds for a longer period, even though they are in good financial condition. Delay is especially appealing when capital is difficult to raise. Current high interest rates aggravate this problem.

No-tax firms. Such studies as have been made show that a substantial number of nonfilers owe no tax. They are closed down temporarily or for the season, or they make no taxable sales during the period even though they are operating. Tracking these firms down of course yields no revenue.

1. Two earlier studies are still of some significance. A Kentucky study of the December 1960 returns showed that over one-third (34%) of all delinquent accounts showed no tax due, primarily because no operations or no taxable operations were carried on during the month. One-fifth (21%) paid in full; 3% paid in part or were unable to pay. Over one-third (37%) claimed that a return had been filed. The remaining 5% could not be found or refused to cooperate or give information. Average collections on delinquent accounts were only \$9.81 per assignment. Obviously it is uneconomical to send fieldmen to visit firms that owe no tax if this fact can be ascertained by other means. The Kentucky department concluded that 63% of the field assignments might be eliminated by a prior mail notice (which the state did not then use).

A South Carolina study of the results of the first-notice mailing showed that of 2,903 notices mailed in the sample month, 26% were cleared after the first notice. Of the 635 who filed returns after receiving the notice, many indicated the reason for not filing earlier, typically: "I forgot," "I thought it had been filed," "I was sick," or "I was away." The post office returned seventy notices marked "addressee unknown." Some twenty-three firms that owed no tax filed returns, and twenty-eight notified that the return had been filed. This experience suggests that notices will get "forgetful" taxpayers to file, but not those who owe no tax and obviously not those who are out of money or are deliberately delinquent.

Errors on the Part of the State. Errors are made in recording of address changes, or the vendor may not report the change so the return is mailed to an incorrect address. Mistakes are also made in crediting payments to accounts, and mail sometimes simply goes astray.

Out of Business. A significant percentage of the delinquents have gone out of business and failed to notify the revenue department.

Penalty and Interest

Penalties

All states use an automatic penalty system for failure to file on time, the penalty applying without the need for court action. This significant feature is rarely found in other countries. Most states also charge interest for each month or fraction thereof that the account remains unpaid. A few states combine the penalty and interest into a single charge. Likewise, delinquents lose their vendor compensation if one is provided.

The penalty systems fall into two general groups. The first is a flat percentage, several states also having dollar minimum figures, regardless of the period of delinquency:

- 5%-Florida (\$5 minimum), Illinois, New Jersey, North Dakota (\$5 minimum)
- 8%-West Virginia
- 10%-Arizona, California, Colorado, Indiana, Kansas, Missouri (5% failure to pay, plus 5% failure to file), Nevada, Oklahoma, Rhode Island, South Dakota (\$10 minimum), Utah, Wyoming
- 15%-Ohio
- 25%-Alabama (10% if failure to pay only)
- 50%-South Carolina.

In the second group, the penalty increases with the period of time of delinquency:

10% to 35% - 10 days after first notice: Maryland

5% per month to 25% - Arkansas, Georgia (\$5 minimum), Hawaii, Idaho (\$10 minimum), Iowa (plus 5% for failure to pay), Kentucky (\$10 minimum), Louisiana, Maine, Michigan, Rhode Island (\$2 minimum), Tennessee, Vermont (\$2; then 5% a month to 25% after 30 days), Virginia, Washington (to 20% maximum), Wisconsin (\$10 minimum)

5% month - North Carolina

10% plus 5% to 25% - Minnesota

\$2.50 plus 5% first period; 10% beyond - Connecticut

2% a month to 10% - New Mexico

\$5 or collection fee - Nebraska

There is some trend toward the use of the 5% a month to 25% figure, and a few states use much higher figures than a decade ago. But many are still very low, compared to current market interest rates. The flat 5% figure is particularly inadequate to encourage firms to pay on and file on time.

The use of a dollar minimum has great advantage, since many nonfilers owe no tax, yet cause the state substantial expense, and a percentage minimum is ineffective. Unfortunately inflation has eroded the significance of these figures, just as high interest rates have eroded the effectiveness of the percentage penalties.

In most states, the revenue department can waive the penalty for cause, and many do rather widely. Several states hold waiver down to

extreme cases, and thus in practice there are only a few. Four states, Hawaii, South Dakota, Washington and West Virginia, will not waive, and waiving is very rare in Georgia, Nevada and New Mexico. Florida will not waive the \$5 minimum.

Interest

The usual pattern for the states is to charge interest for failure to pay on time, in addition to the penalty for late filing and paying. The interest, however, does not always commence until the end of the first month after the due date. The interest rates charged, as of 1980-81, are as follows:

per month:

$\frac{1}{4}\%$ - Alabama, Arizona, Colorado, Idaho, Kansas, Nebraska, Nevada,
New Mexico, North Carolina, Tennessee

$\frac{7}{12}\%$ - Texas

$\frac{2}{3}\%$ - Arkansas, Hawaii, Indiana, Kentucky, Rhode Island, Virginia

$\frac{3}{4}\%$ - Georgia, Iowa, Maine, Maryland, Michigan, Pennsylvania

$\frac{5}{6}\%$ - Minnesota, Utah

1% - California, Connecticut, Florida, Illinois, Louisiana, Mississippi,
Missouri, New York, North Dakota, Oklahoma, South Carolina,
Vermont, Wyoming

$1\frac{1}{2}\%$ - New Jersey, Wisconsin

2% - South Dakota (minimum \$10)

Washington does not make an interest charge except on audit assessments; West Virginia uses a single 8% charge covering interest and penalty, and Ohio, \$1 a day.

There has been some tendency to raise the rates in view of higher market rates; for example, only ten states still use the $\frac{1}{2}$ percent rate, compared to 25 states in 1970. But given present rates, any figure below 1% a month is too low and encourages firms to delay payment, even if they file to have more cheap working capital. But legislators have been very slow to make the necessary change.

In most states interest cannot be waived, and quite appropriately so, since the firm has had the money for a longer period. In other states, as for example Arkansas, Idaho, Michigan, and Missouri, interest can be waived, but it is very rarely done. In New Jersey, New York, and South Carolina, the interest rate can be reduced.

Bond Requirements

The states differ widely in policy with respect to the requiring of bond from vendors.

Bonding Not Used. Fourteen states do not make use of a bond requirement. Arizona has no power under the law to do so. Most of the rest have the legal power but do not use it. These are Colorado, Hawaii, Idaho (not used because of lack of staff to handle bonding), Indiana, Louisiana, Minnesota, Nebraska, New York, Ohio, Utah, Vermont, and Washington. The usual reason given is that the firms for which bond is needed cannot obtain a bond. This was reported by Indiana, Nebraska, and Virginia, for example. Utah tried the system once and did not find it useful but is considering another attempt. Vermont tried with the room and meals tax but did not find it useful.

Limited Use. Seventeen states make limited use, under a variety of circumstances:

Direct Pay Permit holders only: North Carolina

Jeopardy or appeals situations only: Michigan (jeopardy), New Jersey
(appeals), West Virginia (jeopardy and appeals)

Special events, such as flea markets: Florida

Out of state contractors: Georgia, New Mexico, Rhode Island

No place of business in the state: Arkansas, Massachusetts, Mississippi
(plus mobile home dealers, larger contracts), Oklahoma, Tennessee,
Alabama (itinerant vendors--annual bond)

Use with Chronic Delinquents:

Iowa, vendors twice delinquent, bond three times quarterly tax, release
after two years

Kentucky, and transient vendors

Maine

Pennsylvania, if delinquent beyond 30 days three times

South Carolina, accounts with a bad history

Wyoming, also nonresidents, or no real property

Extensive Use. Ten states make extensive but varied use of the
bonding power and find that it contributes to effective enforcement:

California: Bond is required of about 65% of all new firms, when
there is any question about the adequacy of assets to cover any
tax liability. The amount required is 3 times the monthly
liability, two times the quarterly, or equal to the prepayment
amount. If the estimated amount is under \$500 (formerly \$100),
no bond is required; the maximum that can be required is \$10,000.
Vendors are usually released from bond after three or four years
of good records, except for corporations, since the officials of
the latter are not responsible for the corporate tax liability.
There is no complete uniformity among districts as to release from bonds.

The usual types of bond are accepted: surety bond, personal guarantees, treasury bond, TDCs, Savings and Loan certificates.

Connecticut: Bond required when there is question about ability to remit taxes, to the extent of the lower figure of \$10,000 or twice estimated tax liability.

Illinois: Bond required of all new firms, to the extent of 3 times estimated monthly tax to \$50,000. Firms are released after three years' good records. All usual forms are accepted.

Kansas: Bonds required of all corporations, unless net worth exceeds 12 months tax liability or record is good. Firms, however, are not usually released once they are bonded.

Maryland: Bond is required on recommendation of auditor or collections officer, of one-third of annual tax. Surety bond, passbook, or cash are accepted. Firms are usually released after one year if record is good.

Nevada: This is the only state to require permanent bond of all vendors. The amount is from \$30 to \$20,000, equal to three times the monthly estimated liability or twice the quarterly. An estimate is made by new firms; the figure is checked by compliance personnel. Various forms are accepted--TDCs, the most popular, cash, surety bond, savings deposits, pledges of real property or a lien thereon. Check is made four times a year by the computer (one-fourth of the firms each quarter) to see if the amount is still adequate and, if not, a notice is sent of the additional assessment.

North Dakota: An office auditor reviews each request for a permit and decides whether a bond is required, on the basis of real estate in North Dakota, sales, and type of business. The requirement is automatic for out

of state firms, and for some types of instate firms, such as bars. The amount is twice the estimated quarterly tax. Firms are released after one year if the record is good, but bond may be required of delinquents.

South Dakota: Bond is required of all new corporations, and for firms delinquent in two of the last four quarters. The corporations are never released, the delinquents after a good record is established.

Texas: Bond is required of every new applicant, and of any firm becoming delinquent; firms are released after two years of good record. Bond is two-thirds of estimated monthly tax or one and one-half times quarterly tax. No bond is required if the amount is less than \$100; minimum bond is \$100.

Wisconsin: Bond is required if assets are limited relative to quarterly liability and record is poor. Firms with good records are released after two years. Bond required is equal to quarterly tax liability figure raised to nearest \$100, with \$1,000 minimum on surety bond.

There has not been any great change in bond requirements over the last decade, and the shifts have been marginal. Florida, Iowa, and Michigan appear to make less use of bonding; Connecticut, Maryland, North Dakota, and Texas somewhat more.

Bad Checks

The states regard the bad check problem as a nuisance, but not a great deal of revenue is involved since the typical bad check is for a small amount. Issuance of bad checks by registered vendors rarely involves deliberate attempt to defraud; it is a product of carelessness or shortage of funds. The only exceptions are of firms going out of business or leaving the state. Table 8 shows the figures for a sample of states for

which information is available. The figures are not entirely comparable, since in some states the actual figure of remittances was not available, and an estimate was made based upon the number of monthly, quarterly and annual filers. Despite this problem, however the percentages are remarkably uniform; ten of the nineteen states had figures between three-tenths and five-tenths of one percent of the checks received; four had figures of six- or seven-tenths percent, and only two were over 1 percent. Three had two-tenths of a percent figure.

There is no noticeable change in the pattern over the last decade. A few states show higher figures, some lower, but most have stayed within the same narrow range.

The procedures followed with bad checks vary among the states. Most states redeposit the second time (Louisiana is an exception) and one or two even three times. Beyond this the typical pattern is to send a special notice and then, if the payment is not forthcoming, treat the firm as a delinquent, with usual procedures. But there is some variation. Louisiana, after a demand notice, goes directly to the warrant stage; New York to assessment; South Dakota to lien after 10 days; Maine, to the sheriff for action; Missouri, after a fifteen day notice, to criminal prosecution. New Mexico, North Carolina, and Texas refer the checks to the district offices for collection (Texas makes a jeopardy assessment), New Jersey to the field after a 10 day notice. If immediate payment is not made, Iowa and Kentucky move directly to revocation of the licenses.

Four states stress phone calls initially: Arizona (the calls clear about 90%), Florida, Georgia, and Iowa.

Table 8. Bad Checks as a Percentage of Total Remittances Per Return Period

State .	1969-70	1979-80
Alabama	1.0	1.0
Arizona	na	.5
Connecticut	na	.6
Georgia	.4	na
Iowa	.2	na
Kansas	.5	na
Kentucky	.5	na
Louisiana	.8	.4
Maine	.3	na
Maryland	.3	.5
Massachusetts	.3	na
Michigan	.4	.3
Mississippi	.9	na
Nevada	.3	1.7
New Jersey	.5	na
Ohio	na	.2
Oklahoma	.5	.5
Pennsylvania	na	.4
Rhode Island	.2	.2
South Carolina	na	.7
South Dakota	na	.4
Tennessee	na	.6
Texas	.3	.7
Virginia	.2	na
Washington	na	.3
West Virginia	na	.3
Wisconsin	na	.4

Summary

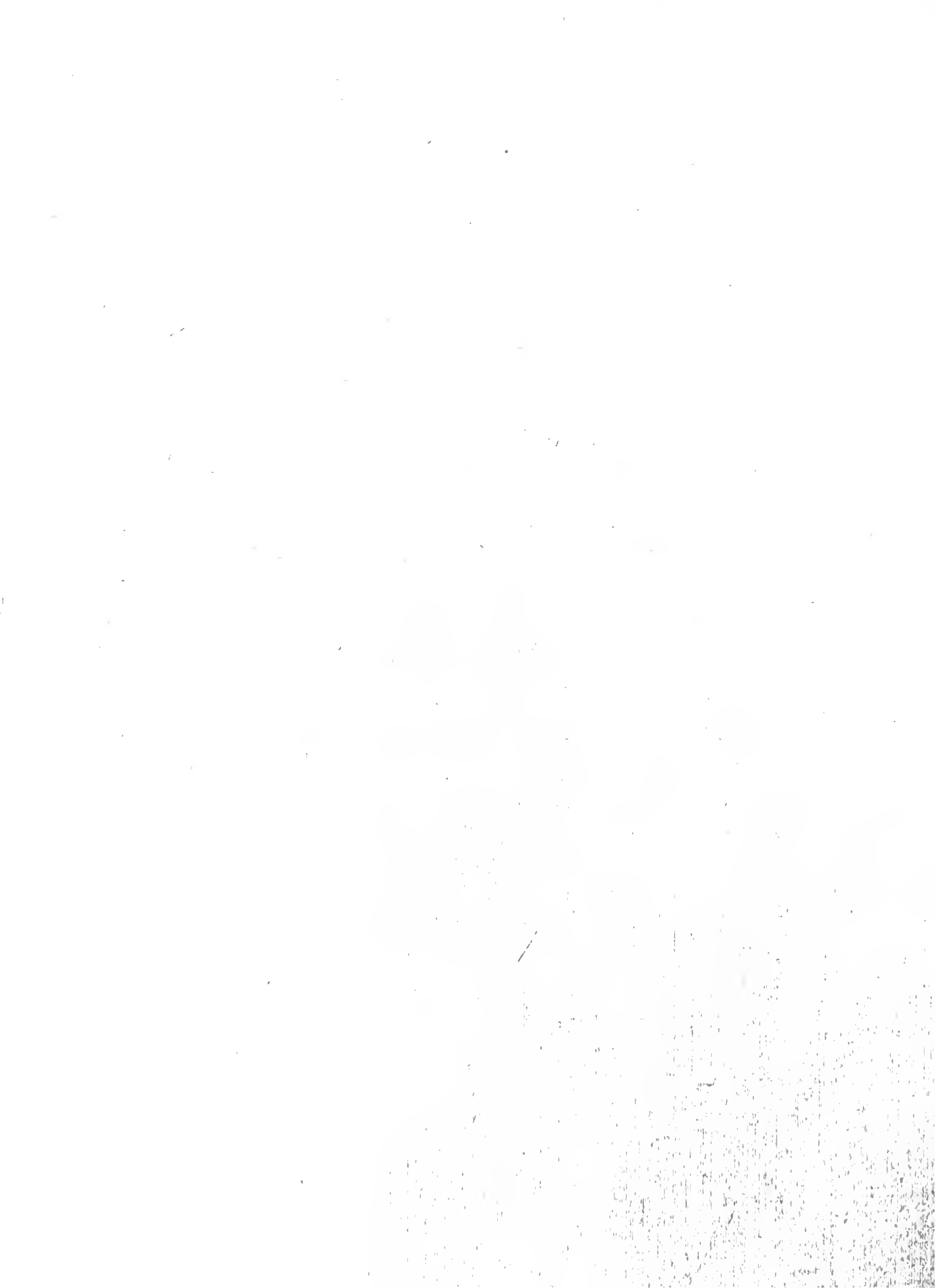
Delinquency in its various forms is a never-ending problem with no complete, ideal solution. The four classes of delinquents are: the small, struggling firm short of money and bookkeeping help; the deliberate chiselers, seeking to use the state's money or disappear with it; the large firm failures; and the pseudo delinquents, firms not filing but out of business, not currently operating or making taxable sales, etc.

With some justification, many states tend to be somewhat lenient with the first group in the interests of aiding small independent businessmen, often operating in low income urban or rural areas. Yet there are limits as to how long these firms should be allowed to survive on public money. Fortunately, the amount of tax involved is often small. The second and third groups are the ones for which drastic action is needed and for which bonding requirements are particularly helpful. The final group results primarily from inadequate reporting and processing.

Several suggestions are offered:

1. In a few states, powers to enforce tax are seriously inadequate, Oklahoma and Missouri being the worst.
2. A minimum dollar penalty is highly desirable to avoid the nuisance and cost of tracking firms owing little or no tax.
3. Progressive penalties for successive delinquencies and for added months of delinquency are useful in placing more pressure on the hard core delinquents and the chiselers.
4. A system of bonds for all selected new firms and chronic delinquents has proved useful in a number of states.

5. Placing small firms on quarterly or semi-annual filing intervals reduces the total number of delinquencies.
6. A faster cycle of operation is needed in some states. But if the cycle is too rapid, there will be extensive lost motion from contacting firms that have already paid.
7. Efforts should be made to eliminate pseudo delinquents by greater care in handling business closures and change of address and in recording tax payments, and in techniques for handling firms registered but typically owing no tax, and seasonal operators.
8. Greater analysis of delinquencies is desirable to ascertain the characteristics of the delinquents. Use of a variety of techniques to deal with different types may be warranted. Very little study of delinquency has been made, yet present day computer systems make study relatively simple.





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