Resolution 2014-1
Consider State and Local Tax Systems
When Making Federal Policy Changes

Background

Under the U.S. Constitution both federal and state governments have the right to establish their own, separate systems of taxation. State and local governments rely on two primary revenue sources — income and consumption taxes. State and local income tax systems have generally been developed in coordination with the federal income tax system, and fundamental aspects of the state and local income taxes, including the definition of income, allowable deductions, third-party reporting, and compliance — among others — are heavily dependent on federal income rules.

This system of income tax conformity has effectively created a tax base and tax system that is in many ways integrated and is effectively shared between the federal, state and local governments. This both eases the burden of compliance on taxpayers and simplifies administration for all parties.

Additionally, it is the state and local governments in this country that impose consumption taxes most often in the form of a retail sales or gross receipts tax, which have no direct federal counterpart.

A number of factors, including the fiscal condition of the federal government, the broadening reach of the alternative minimum tax and the expiration of earlier tax reductions, may occasion a policy debate in the U.S. about fundamental reform of the federal tax system. Alternatives mentioned in the past include elimination or substantial revision of the corporate income tax, adoption of a value added or other national consumption tax, and substantial simplification and "flattening" of the personal income tax. The nature of the current income tax system means that changes to federal laws will often have a substantial fiscal and administrative impact at the state and local level.

The interaction of federal and sub-national tax systems and the impacts on states and localities is evident in some of the federal policy changes in years past, including the phase-out of the federal estate tax, broadening of allowable deductions for retirement contributions and broadening the depreciation allowance for businesses.

Failure to take into account the fiscal, administrative and policy implications for states and localities of federal income tax changes leads to nonconformity and considerable new complexities and recordkeeping burdens for taxpayers and tax professionals. Failure to involve the states in proposed federal laws affecting state and local consumption taxes means that any resulting law may fail to achieve its goals or interfere with the functioning of that tax base, so important to many governmental programs. Such failure also affects the state and local tax structure as a whole, compliance programs, and levels of service to taxpayers. They can also lead to the effective preemption of state and local tax bases and the loss of opportunities to leverage improvements in the overall tax system. There are often alternative ways to achieve desired changes to federal policy that minimize or

eliminate any need for states and localities to make adjustments to their own tax systems and thus keep the federal, state and local systems in harmony.

Resolution

The Federation of Tax Administrators (FTA) supports Congressional efforts to formally and carefully consider the positive and negative impact of potential federal tax measures on state and local income tax systems, including generation of revenue estimates. Congress is encouraged to identify federal tax actions that can lead to nonconformity and to estimate the impact of those actions. States and local governments with income and consumption taxes and taxpayers should work in concert to educate Congress on the effects of federal changes that force states and localities to reduce conformity and to jointly seek the creation of procedures that will reduce or eliminate the need for such state and local action.

The FTA also supports Congress's commitment to consult with state and local governments on consumption tax issues since it is the state and local policymakers who have extensive experience in the administration of these consumption taxes.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. This resolution was approved by voice vote of the full FTA membership on June 11, 2014.

Resolution 2014-2
Opposing Digital Goods and Services Tax Fairness Act

Background

The taxation of digital goods and services (or goods and services delivered electronically) is an emerging issue. The latest version of the Digital Goods and Services Tax Fairness Act (H.R. 3724 and S. 1364) would mandate which state is permitted to tax a sale of a digital good or service based on sourcing rules set out in the bill, and would also prohibit states from taxing digital goods and services differently from or to a greater extent than "similar" non-digital goods and services.

Because the bill's requirements permit a sale of a digital good or service to be taxed by only one particular state, generally the state where the customer takes delivery, but the bill does not grant to that state the authority to collect the tax from remote sellers, there is substantial support for the position that states will not be able to collect any tax at all on these sales. This is due to a Supreme Court's ruling from 1992 that states can only impose sales type taxes or collection duties on catalog and mail order sellers of tangible personal property who have some kind of physical presence in the state (see *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)). While Congress has the power to remove this potential barrier, there is no provision in the proposed Digital Goods legislation to do so. Because digital goods and services, by nature, can easily be sold remotely, the bill would allow a substantial number of sellers to take advantage of the fact that the states' "hands are tied," and avoid taxes completely.

Further, the bill preempts taxes on digital goods and services that might apply differently or to a greater extent than taxes on "similar" non-digital goods and services. In addition to the problems that such a rule is likely to cause administratively — since there is no clear indication of what the term "similar" is intended to include — this is also a provision that is completely unwarranted. First, the Internet Tax Freedom Act already provides protection for goods and services sold through the Internet versus those same goods and services sold through some other means. Second, states may have sound policy reasons to treat what might be considered "similar" goods and services differently, depending on various factors including who is the seller, who is the buyer, what the good or service will be used for, etc., and the bill does not allow states to consider these factors. Third, there is absolutely no evidence that digital goods and services have been taxed in a discriminatory manner — in fact, they are generally taxed less than other goods and services. Fourth, this provision would give sellers of digital goods and services "most-favored taxpayer" status that may provide them with unwarranted advantages over other businesses.

In general, FTA opposes action by Congress and federal agencies that would abrogate, disrupt or otherwise restrict states from imposing taxes that are otherwise lawful under the U.S. Constitution or from effectively administering those taxes. Congress should undertake an active program of consultation with states whenever it considers measures that would preempt state tax authority. States should be allowed to actively pursue

uniformity and simplification measures as are necessary and would be effective in addressing the administrative burden in complying with the tax laws of multiple states.

While federal preemption of state taxing authority is an extreme action, preemptive legislation can, at times, promote simplification, uniformity, and taxpayer compliance, albeit at some cost to state sovereignty. FTA will evaluate proposed federal legislation that preempts state taxing authority against several criteria:

(1) Recognizing that the benefits of federalism will impose administrative burdens on commerce, is there disinterested evidence that the administrative burden and complexity posed by current state and local practices is impeding the growth of commerce?
(2) Does the proposed preemption address issues of simplification and complexity?
(3) Can meaningful simplifications and uniformity be achieved through state action without preemption?
(4) Would preemption disrupt state and local revenue flows and tax systems?
(5) Would preemption cause similarly situated taxpayers to be taxed differently; specifically, does the proposal create advantages for multistate and multinational businesses over local business?
(6) Does the preemption support sound tax policy?
(7) Does the preemption create unknown or potential unintended consequences?
(8) Have state tax authorities and taxpayer representatives together agreed to a beneficial change in federal law?

So long as the Digital Goods legislation does not provide authority to states to collect tax from remote sellers, and also contains an unwarranted tax preferences for digital goods and services, the bill violates the principles above.

Resolution

The FTA opposes The Digital Goods and Services Tax Fairness Act. The bill would limit state taxation of digital goods and services and allow sellers who provide those goods and services remotely to effectively escape any tax or collection duty. The bill would also provide an unwarranted preference to digital goods and services vis-à-vis non-digital goods and services. Specific problems with the bills include:

- States are not granted any collection authority over sellers of digital products;
- The preemption extends beyond sales and use taxes;
- There are few tools or protections for the states and local jurisdictions to reduce the risk of tax avoidance;
- Despite its purported purpose, the bill is not limited to rate discrimination between specified digital products (e.g. digital movies, music, books) and their tangible equivalents;
- There is no recognition of the general use tax credit mechanism and federal constitutional tax-crediting principles to avoid multiple taxation; and
- There is no ability for state administrative agencies to issue binding regulations to implement the bill’s provisions.

Any discussions of desired uniformity or model rules or definitions should take place

either through existing channels such as the Multistate Tax Commission's uniformity projects or through cooperative and inclusive meetings of representatives of both state governments and all affected taxpayers.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. . This resolution was approved by voice vote of the full FTA membership on June 11, 2014.

FEDERATION OF TAX ADMINISTRATORS
RESOLUTIONS 2013

Resolution 2013-1
Supporting Expansion of Federal Refund Offset for State Tax Debts

Background

The U.S. Treasury Department's Financial Management Service offsets federal tax refunds and other government payments for a variety of debts owed the federal government, including child support, student loans and federal tax delinquencies. The IRS Restructuring Act of 1998 (P.L. 105-206) authorized states to join the federal Tax Offset Program. Current law allows states to use the federal offset program to collect their delinquent income tax debts, but from resident taxpayers only (defined as a taxpayer whose address on the federal return is in that state). The restriction was intended to give the program time to prove itself to be effective and non-controversial. Each year states collect more than $500 million in delinquent tax debts from this program.

The program contains a series of safeguards to insure that residents and nonresidents alike receive adequate notice of the debt that is due and that further inaction will result in the debt being referred to offset. Financial Management Service estimates that states should be able to collect more than $80 million each year if offsets are allowed from nonresident debtors. Provisions that would have expanded the federal refund offset program to include the debts of nonresident state taxpayers were included in bills in previous sessions of Congress but did not make it to final passage. The provision is not considered controversial.

The Financial Management Service and Treasury Department support expansion of the tax offset program. Increasing the volume of debt the federal government collects permits greater administrative efficiencies through economies of scale. Also, the states pay a fee for each successful offset, which covers the federal government's fully loaded share of the cost of the federal offset program.

The current statute also specifies that taxpayers be notified that their state tax debt is eligible for a federal income tax refund offset via a certified mailing. Congress has recently recognized that certified mailings are expensive and do not offer any assurance that the taxpayer has actually received a notice. Recent offset authorizations have not contained the certified mailing requirement.

Resolution

The Federation of Tax Administrators supports expanding the federal Tax Offset Program to include income tax debts owed by all taxpayers, not just state residents, and encourages Congress to recognize that the requirement that notifications be sent by certified mail is outdated, does not assist debtor taxpayers and should be eliminated.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. Passed by the membership by unanimous voice vote during the Annual Meeting of the membership June 12, 2013.

Resolution 2013-2
Opposing Federal Preemption of State Tax Authority Creating Preferred Taxpayer Status

Background

In 1976, Congress passed the Railroad Revitalization and Regulatory Reform Act (the "4-R Act"), which grants railroads "most-favored-taxpayer" status by prohibiting state and local governments from taxing railroad property at higher rates or ratios of value than those for other commercial and industrial property, and prohibits "another tax that discriminates against a rail carrier" (referred to as the "catch-all" provision). It also provides that railroads may pursue equitable claims under the Act in federal court. Similar, but not identical, protections have been accorded the interstate airline and motor carrier industries.

The 4-R Act and its progeny have had a number of undesirable effects on state and local property tax and other tax systems. Litigation over thirty years still has not fully defined the contours of the 4-R Act. That litigation, repeated in many states, questioned issues not addressed in the statute including: which commercial and industrial property constituted the comparison class for railroads, the jurisdiction and role of the federal courts, what taxes besides property taxes were included in the "catch-all" provision, and how to deal with exempt property.

Beyond the litigation, 4-R Act-like protections have disrupted state property tax systems. This is particularly true in states where citizens have ratified constitutional provisions allowing for different classes of property. Federal law has, in effect, established a preferred class of taxpayer and has led to requests for similar treatment by additional industries. Moreover, the scope of the 4-R Act preemption vastly exceeds the original stated Congressional intent because the catch-all provision has been construed to apply to other taxes not imposed in lieu of property taxes.

There have been a variety of state tax restrictions proposed for different types of property or activities that are similar to the 4-R Act "non discriminatory" prohibitions. Proposals have been made for wireless communications companies, telecommunications companies, interstate natural gas pipeline companies, hotel reservation businesses, auto rental companies, Internet sellers and sellers of digital goods and services. Extending preferred taxpayer status to other industries could cause serious and widespread revenue consequences to the states and localities and put non-preferred taxpayers at a competitive disadvantage. A particularly dramatic impact will be felt in those states where the voters have approved constitutional provisions authorizing differential treatment of certain types of taxpayers. In effect, Congress would be establishing state tax policies by substituting its judgment for the judgment of state voters and elected officials.

Resolution

The Federation of Tax Administrators strongly opposes action by Congress and federal agencies that would abrogate, disrupt or otherwise restrict states from imposing taxes that are otherwise lawful under the U.S. Constitution or from effectively administering those taxes. The FTA believes Congress should undertake an active program of consultation with states as it considers measures that would preempt state tax authority.

The FTA strongly opposes prohibitions of state taxing authority on the types or level of taxes that states can impose, especially where the purpose is to give one group of businesses or industries preferred status, including the establishment of property tax rates and classes. Decisions about property tax assessments, rates and policies and property tax administration as well as state and local tax policy generally should be left to state and local elected officials and the citizens they represent.

Furthermore, the FTA opposes giving federal courts jurisdiction to hear state tax disputes. Abrogating state sovereign immunity raises serious constitutional questions and Congress should respect the states' administrative and judicial processes for dealing with tax appeals, which are the appropriate means to protect taxpayers from unconstitutional discrimination.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. Passed by the membership by unanimous voice vote during the Annual Meeting of the membership June 12, 2013.

Resolution 2013-3
Opposing Business Activity Tax Nexus Legislation

Background

Business activity taxes are levied by states for the privilege of doing business in the state and are generally measured by the portion of gross or net income derived from the state. These include state corporate income taxes, gross receipts taxes, business license taxes, franchise taxes, business and occupation taxes, and insurance premiums taxes.

The U.S. Supreme Court has found that the U.S. Constitution allows a state to tax a portion of business income if there is a substantial nexus between the business and the taxing state. The Supreme Court has also acknowledged that, outside the sales tax area, it has never ruled that a business must have physical presence, and has declined numerous opportunities to review decisions of state courts that have held that a business need not have a physical presence in a state in order to be subject to a business activity tax.

In recent years, Congress has considered the Business Activity Tax Simplification Act (BATSA). The bill would eliminate state jurisdiction to tax business income derived from the state unless the business had a substantial amount of physical presence in the state, and would provide that certain types of physical presence could not be considered for purposes of determining the jurisdiction to impose business activity taxes. The bill also would expand the limitations of P.L. 86-272 to all forms of business activity taxes (instead of just net income taxes) and to the solicitation of sales of all types of property and services instead of just tangible personal property.

BATSA would cause the following disruptions in state and local tax systems:

- As a departure from existing U.S. Supreme Court precedent, the legislation would allow some businesses and industries to easily avoid paying state taxes.
- The legislation would also provide an incentive for other companies to engage in aggressive tax planning and structuring in order to avoid substantial amounts of tax in the states in which they do business essentially changing their business form, but not the nature of the income-producing activities. In particular, larger companies would be able to transfer intangible assets to holding companies incorporated in no-tax or low-tax states.
- The legislation would impose a $2 billion unfunded tax preemption mandate in the first full year as estimated by the U.S. Congressional Budget Office. State governors and tax administrators believe the impact would be greater as more and more companies plan around having to pay state taxes.
- The legislation favors large multi-national and multi-state businesses over in-state businesses. It would allow large corporations that can conduct business online to solicit business and compete with locally-based companies and exploit the market in that state without being subjected to the same taxes that in-state businesses are required to pay.
- The expansion of P.L. 86-272 is unwarranted and runs counter to the direction that business operations are taking.

Resolution

The Federation of Tax Administrators strongly opposes any legislation that would restrict a state's constitutional authority to impose tax on the portion of a businesses' income derived from that state. The FTA opposes any legislation that would require physical presence for the imposition of state business activity taxes.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. Passed by the membership by unanimous voice vote during the Annual Meeting of the membership June 12, 2013.

Resolution 2013-4
General Resolution on Congressional Preemption of State and Local Taxing Authority

Background

The authority of state lawmakers to set state tax policy is a core element of state sovereignty under the federalist system created by the United States Constitution. The system of federalism that is defined by the Constitution further assigns to state and local governments the responsibility for supplying the majority of the daily services due to their citizens and residents. A functioning state and local tax system is essential to meeting those needs, and Congress has traditionally shown substantial deference to the tax sovereignty of the states, recognizing that federal intervention in state tax systems may do more harm than good.

An increasing number of groups, however, seek congressional aid in preempting state taxation authority in particular areas for a variety of reasons. Beyond the opposition to the incursion on state sovereignty, states have also generally resisted federal preemption

efforts because preemption of state tax authority has the effect of establishing a preferred class of taxpayers and shifting the tax burden to other non-preferred taxpayers. Moreover, such preemptions often have unintended consequences that work significant disruptions of state and local tax systems.

While our federalist system can impose additional compliance burdens on taxpayers, those burdens can often be relieved without resorting to federal preemption legislation and its negative impacts. Many of the legitimate goals that might be pursued in preemptive legislation can be effectively achieved through cooperative state efforts, improved uniformity among the states, increased information provided by states and technology solutions. States have an obligation to pursue such efforts.

Resolution

The Federation of Tax Administrators strongly opposes action by Congress and federal agencies that would abrogate, disrupt or restrict states from imposing taxes that are otherwise lawful under the U.S. Constitution or from effectively administering those taxes. Congress should undertake an active program of consultation with states when considering measures that would preempt state tax authority. Congress should defer to states as they actively pursue such solutions, including uniformity and simplification measures, as are necessary and effective to address concerns of administrative burden in complying with the tax laws of multiple states.

Congress should not act to preempt state tax policy unless it is the only viable option for achieving the legitimate purpose of reducing unreasonable compliance burdens or achieving some other essential goal and then it should do so only when states agree that such action will not create significant negative consequences.

The FTA will evaluate proposed federal legislation that preempts state taxing authority against several criteria. (1) Recognizing that the benefits of federalism will impose administrative burdens on commerce, is there disinterested evidence that the administrative burden and complexity posed by current state and local practices is impeding the growth of commerce? (2) Does the proposed preemption address legitimate issues of simplification and complexity? (3) Can a meaningful reduction in compliance burdens be achieved through state action without preemption? (4) Would preemption disrupt state and local revenues or the administration of tax systems? (5) Would preemption cause similarly situated taxpayers to be taxed differently; that is, does the proposal create advantages for large multistate and multinational businesses over local business? (6) Does the preemption support sound tax policy? (7) Does the preemption threaten to create unknown or potential unintended consequences? (8) Have state tax authorities and taxpayer representatives together agreed that the federal law would be beneficial?

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. Passed by the membership by unanimous voice vote during the Annual Meeting of the membership June 12, 2013.

Resolution 2013-5
Opposing Extending or Making the Internet Tax Freedom Act Permanent

Background

In 1998 Congress enacted the Internet Tax Freedom Act, which placed a moratorium on new or increased state and local taxes on charges for Internet access and prohibited "multiple and discriminatory" taxes on electronic commerce.

The temporary moratorium has been extended three times. In 2004, the Act was expanded to preempt state and local taxation of purchases of telecommunications services that are "purchased, used, or sold by a provider of Internet access to provide Internet access." In 2007, the Act was extended again until November 1, 2014. Nine states that imposed transaction taxes on charges for Internet access prior to 1998 are permitted to continue until the bill sunsets in 2014 under a "grandfather" clause.

The "grandfather" provision covers all "taxes on Internet access" which is a defined term that means any tax on Internet access services or providers of Internet access – other than net income, property, and franchise taxes. The 2007 Act clarified that a "tax on Internet access" did not include a "State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business enacted under specified terms." That said, the grandfather provision may still apply to an unknown number of state and local gross receipts or other general purpose transaction taxes that are levied against Internet service providers that are not covered by the 2007 Act's clarification. If the moratorium is made permanent without a grandfathering clause it is possible that taxpayers will challenge the imposition of many indirect taxes that apply to Internet Access. Bills are pending before the 113th Congress (H.R. 434 and S. 31) to make the Act permanent while allowing the grandfather clause to sunset.

The Government Accountability Office has reported that there is no statistically significant relationship between state taxation of charges for Internet access and the adoption of broadband by users or the deployment of broadband by providers. This means the moratorium is not effective in achieving its purported purpose of expanding the availability of Internet access to the American public. A study by economists at the University of Tennessee produced similar results, finding that other issues (e.g., household income and educational levels) were more important in the proportion of a state's population that had access to the Internet than whether the state imposed tax on access charges.

In 2010, class action suits were filed in a number of jurisdictions challenging taxes collected by AT&T Mobility Wireless Data Services as being prohibited by the Act. That litigation is ongoing and has had substantial negative effects on state and local governments.

In testimony before the Senate Finance Committee in 2012, Professor Walter Hellerstein characterized ITFA as federal legislation that "works poorly," describing it as "technically complex if not incomprehensible." Professor Hellerstein went on to describe

in detail the problems with the "discriminatory" and multiple tax provisions.

In previous discussions of the legislation, states have argued that: (a) the current definition of Internet access should be narrowed to remove the possibility that Internet Service Providers could bundle a wide range of digital products and services with access and claim exemption for the entire bundle; (b) any extension should be temporary to insure that Congress periodically evaluates the impact of the Act; and (c) the grandfather protection for pre-1998 taxes should be retained to avoid a disruption of the revenue flows of the states involved and to avoid unintended preemptions of taxes covered by the current definition of "tax on Internet access."

Resolution

The Federation of Tax Administrators supports allowing ITFA to sunset. If the Act is not allowed to sunset, the definition of "Internet access" should be rewritten so as to eliminate the possibility that certain products and services could be bundled with Internet access and claimed as exempt Internet access. The definitions of "discriminatory" and multiple taxes should also be clarified to address concerns raised by Professor Hellerstein and others.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. Passed by the membership by unanimous voice vote during the Annual Meeting of the membership June 12, 2013.

Resolution 2013-6
Opposition to Federal Legislation Preempting Tax on Online Travel Company Mark-Ups

Background

Online Travel Companies (OTCs) such as Expedia, Travelocity, Orbitz, Priceline, and Hotels.com have adopted similar business operating models. They contract with hotels to facilitate the sale of hotel rooms over the telephone and Internet. OTCs pay discounted rates to hotels that are not disclosed to consumers. The OTCs charge consumers a marked-up retail rate for the accommodations. They also typically charge consumers a processing fee. OTCs collect hotel taxes based on the discounted rate for remittance to state and local taxing authorities.

Hotel taxes have been imposed for more than 30 years. They are collected from consumers and paid over to local and state governments, regardless of how the hotel room is rented, whether over the phone, in person at a hotel, by a travel agent, or on the Internet.

The OTCs' failure to collect hotel taxes on the retail rate hurts tourism in many state and local jurisdictions. Many local hotel taxes are dedicated to funding tourism costs such as hotel to convention center transportation, convention centers, visitor centers and historic restoration projects. Education, fire, police and health care budgets also could be reduced.

State and local governments have initiated collection actions against OTCs to compel the remittance of hotel occupancy taxes on the room rate charged to the consumer (the retail price, not the discounted rate). Dozens of court cases are pending nationwide. The number of administrative collection efforts is not known because of confidentiality rules.

OTCs have made several attempts to secure special federal legislation preempting state and local jurisdictions' taxing authority. This could significantly reduce the hotel occupancy taxes collected when a consumer books a room through an OTC or travel agency. If successful, this legislation could cause hotels to set up similar affiliated booking companies to substantially minimize their taxes.

Resolution
The Federation of Tax Administrators opposes any federal legislation that would restrict the ability of state and local governments to collect hotel taxes of any kind and to determine the base on which those taxes should be paid.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. Passed by the membership by unanimous voice vote during the Annual Meeting of the membership June 12, 2013.

Resolution 2013-7
Approving Actions of the Tobacco Tax Section

Background
The FTA Tobacco Tax Section advances efficiencies of tax administration and improvements in compliance by promulgating uniformity of forms, coordinating reporting schemes, developing cooperative enforcement programs, providing technical expertise to respond to Congressional inquiries and related efforts.

The delegates to the 86th annual meeting of the FTA Tobacco Tax Section approved a resolution to support all legislative efforts to amend and/or expand federal statutes to incorporate cigars and pipe tobacco into the PACT Act or for the creation of an equivalent statute.

Resolution
The Federation of Tax Administrators supports the FTA Tobacco Tax Section efforts to maximize compliance with cigarette and tobacco products tax laws and approves the approaches and strategies that the Section adopted at its 86th Annual Meeting.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. Passed by the membership by unanimous voice vote during the Annual Meeting of the membership June 12, 2013.

State Sales Tax Simplification and Fairness Policy

RESOLUTION 2012-1

Background

The U.S. Supreme Court held in *National Bellas Hess, Inc. v. Illinois Dep't of Revenue,* 386 U.S. 753 (1967) and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) that a state may not require a seller that does not have a physical presence in the state to collect sales or use tax on sales into the state. The decision was based in part on the complexity of the sales tax system for remote sellers (nonresident sellers without a physical presence in the state of purchase). The Court also said clearly in the *Quill* decision that Congress could authorize states to require remote sellers to collect tax.

Since the *Quill* decision, online retailing and remote sales have exploded as the Internet has become the preferred way of doing business for many U.S. individuals and companies.

To address the issue of complexity for multistate sellers, states worked closely with the business community for almost a dozen years to simplify administration of sales and use taxes for fixed-base retailers as well as for remote sellers. A major goal of the Streamlined Sales Tax Project was to reduce the compliance burden for multistate sellers.

The Project created the Streamlined Sales and Use Tax Agreement. The Agreement sets out sales tax simplifications states must adopt in order to be members of the Streamlined Sales Tax Governing Board. The Agreement was created in November 2003 and became effective on October 1, 2005, when the requisite number of states simplified their sales and use taxes in accordance with the requirements of the Agreement. More than 1,700 sellers have voluntarily registered to collect tax under the Agreement. Key simplifications addressed by the Agreement include state-level administration of all local sales taxes, greater use of technology, safe harbors for sellers, and uniform definitions.

Policy

The Federation of Tax Administrators (FTA) finds the ability to require remote sellers to collect sales and use taxes on goods and services sold into a state to be of the highest importance. As such, FTA supports the enactment of federal legislation that would authorize states to require remote sellers to collect sales and use taxes on goods and services sold into the state. A significant number of states have simplified their sales taxes and it is time for Congress to act on remote sales legislation. Remote sales legislation should be self-activating and not require additional federal authorizations or rulemaking, and it should respect the authority of the states to govern their own laws, requirements and regulations.

Federal legislation should not incorporate any language that limits state taxing authority.

The most important elements of a bill that would assure the participation of the greatest number of states under the Act are:

- Authority granted to states that are either members of the Streamlined Sales and Use Tax Agreement or that choose to conform their laws to federal statutory standards;
- Authority for states to continue to impose origin sourcing for intrastate sales or sales by non-remote sellers;
- Recognition that states may have additional ways of lowering burdens on remote sellers and the retention of authority for states to use these approaches as well;
- Ability for states to designate the specific taxes covered by the generic phrase "sales and use taxes;"
- Flexibility to recognize exceptions from uniform rate and base requirements that have already been agreed to between states and industry groups under Streamlined Agreement;
- A related recognition of the need for a state to have the flexibility to structure its taxes in a simplified system that reflects the needs of its citizens;
- Preservation of state authority to require sellers to maintain necessary records; and
- Exclusion of any mandatory vendor compensation provision.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed or replaced in the normal policy process. Passage of this resolution revokes 2010-1. Passed by unanimous voice vote by a meeting of FTA members, June 20, 2012

Taxation and Withholding of Wages Earned in Multiple States

RESOLUTION 2012-2

Background

The fundamental principle of individual income taxation is that income is taxable where it is earned or where the services giving rise to the income are performed. In addition, the state of a taxpayer's residence may tax all income regardless of where earned, but is generally required to offer a credit for taxes paid to other states to assure that income is not subject to multiple taxation. This is the same tax policy embraced by the U.S. government and by all other income-taxing governments.

As United States work patterns shift to increasingly include interstate commuting, telecommuting and multistate travel, more workers find themselves with tax obligations to more than one jurisdiction. Likewise, employers are faced with an increased responsibility for withholding income taxes for multiple jurisdictions. State and local laws and practices vary with respect to de minimis thresholds for withholding. There also is variance in enforcement programs aimed at compliance among persons (and their employers) that are temporarily in the jurisdiction.

H.R. 1864, the Mobile Workforce State Income Tax Fairness and Simplification Act, passed in May 2012 by the House of Representatives, would authorize a state or locality to impose an income tax liability and a withholding requirement only when a nonresident has performed services in the jurisdiction for at least 30 days in a calendar year. The bill contains an exception for professional athletes and entertainers.

In response to bills introduced in previous Congresses, the Multistate Tax Commission developed a state model mobile workforce statute. The work product reflects input from industry and employer representatives.

In its review of H.R. 1864 and in various discussions with proponents of the bill, FTA made several points:

- H.R. 1864 represents a substantial preemption and intrusion into state tax authority;
- While FTA recognizes concerns regarding the administrative burdens imposed by current practices, the 30-day threshold remains beyond a level necessary to deal with the vast majority of individuals who would be temporarily in a jurisdiction;
- H.R. 1864 would substantially disrupt the current tax system in favor of a system based on taxation by the resident jurisdiction;
- H.R. 1864 would substantially disrupt the revenue flows in certain states, particularly New York State;
- A simple "days threshold" will expose some jurisdictions to substantial revenue disruptions, so a "dollar threshold" that would limit the exposure of the states should also be applied.
- Independent state action is a viable and preferred substitute for federal legislation.

Policy

The ability to tax income where it is earned is fundamental to state tax sovereignty and state and local income tax systems. Moreover, this ability is absolutely necessary in under our constitutional framework, where a state may choose to not employ an income tax. FTA finds the Act is not an appropriate balance between administrative simplification and adherence to standard tax policies and it inappropriately disrupts state and local revenue flows. FTA does not support the Act as passed by the House.

Congress and the U.S. federal agencies should refrain from enacting measures, taking actions or making decisions that would abrogate, disrupt or otherwise restrict states from imposing taxes that are otherwise lawful under the U.S. Constitution or from effectively administering those taxes. Congress should undertake an active program of consultation with states as it considers measures that would preempt state tax authority. Finally, states should actively pursue such uniformity and simplification measures as are necessary and effective to address concerns of administrative burden in complying with the tax laws of multiple states. FTA will encourage and support uniform actions by states as the preferred solution to issues that prompt federal preemption.

While federal preemption is generally to be resisted, preemptive legislation can, at times, promote administrative issues such as simplification, uniformity, and taxpayer compliance, albeit at some cost to state sovereignty. FTA will evaluate proposed federal legislation that preempts state taxing authority against several criteria. (1) Has the preferred solution of uniform state action been pursued and exhausted? (2) Recognizing that the benefits of federalism will impose administrative burdens on commerce, is there disinterested evidence that the administrative burden and complexity posed by current state and local practices is impeding the growth of commerce? (3) Does the proposed preemption address administrative issues such as simplification, uniformity, and taxpayer compliance? (4) Can meaningful simplifications and uniformity be achieved through state action? (5) Would preemption disrupt state and local revenue flows and tax systems? (6) Would preemption cause similarly situated taxpayers to be taxed differently -- specifically, does the proposal create advantages for multistate and multinational businesses over local business? (7) Does the preemption support sound tax policy? (8) Does the preemption create unknown or potential unintended consequences? (9) Have state tax authorities and taxpayer representatives together agreed to a beneficial change in federal law? (10) Does the proposed preemption materially narrow the scope of state laws?

In addition, FTA makes the following specific comments on the Act and similar legislation.

- Coordinated state action should be pursued and exhausted.
- Federal legislation should not proceed until proponents of the Act have worked with New York State officials to resolve the fiscal impact on that state.
- If Congress elects to take action in this area, any resolution of the issue should, at a minimum, meet the following criteria:

- The action should be clearly limited to wages and related remuneration earned by nonresident employees. The legislation must also be clear that it is not intended to impair the ability of states and localities to tax non-wage income earned from the conduct of other economic activities in the taxing jurisdiction.
- The action should provide that a state or locality may impose income tax liability on and a withholding obligation with respect to the wage and related remuneration of a nonresident if the nonresident is present and performing services exceeding a de minimis threshold in a calendar year.
- Alternatively, the threshold could be formulated as limiting state and local income taxation (and withholding) to those nonresidents present and performing services in the jurisdiction whose earnings exceed a de minimis threshold in wages and related remuneration in the prior year.
- The action should provide that all persons paid on a "per event basis" are excluded from the coverage of the bill.
- The action should provide for the allocation of a day to a nonresident jurisdiction when services are performed in the resident jurisdiction and another jurisdiction in a single day.
- The action should cover wages and remuneration earned within a jurisdiction in a calendar year so as to not disrupt taxation of any deferred amounts. It should not, however, impair the ability of states and localities to tax income arising from the conduct of other economic activities in the taxing jurisdiction.
- The effective date of any action should be delayed until the beginning of the second calendar year following enactment to allow sufficient time for implementation by state and local governments and affected employers.

This discussion should not be interpreted to imply that FTA considers that a physical presence standard is in any way an appropriate standard for establishing jurisdiction to tax in other contexts, particularly for the imposition of business activity taxes on entities doing business in a state. FTA is firmly opposed to federal legislation that would establish a physical presence nexus standard for the imposition of business activity taxes.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed or replaced in the normal policy process. Passage of this resolution revokes 2009-6. Passed by unanimous voice vote by a meeting of FTA members, June 20, 2012

Digital Goods and Service Tax Prohibition

RESOLUTION 2012-3

Background

The taxation of digital goods and services (or goods and services delivered electronically) is an emerging issue. The Digital Goods and Services Tax Fairness Act of 2011 (H.R. 1860 and S. 971) have been introduced in Congress; these bills would preempt state and local taxation of numerous transactions.

This legislation is particularly objectionable in that it restricts a state's ability to impose tax on its own citizens on activity within its own borders. Also, states by and large do not tax digital goods and services (although they have long taxed software). States do not engage in discriminatory taxation that disfavors digital goods or subjects them to multiple tax burdens -- discriminatory taxes are already prohibited by federal legislation in the Internet Tax Moratorium Act and the courts enforce this prohibition. The rules in the bills differ from rules already established for these transactions in the Streamlined Sales Tax Agreement. The legislation grants advantages to large businesses over small in-state businesses.

Further, the bills contain numerous technical deficiencies that include:

- Sourcing rules have many terms that are either not defined or are insufficiently defined;
- No nexus rules are provided to establish state tax jurisdiction; and
- Rules exempting "intermediaries" from having to collect taxes open tax avoidance opportunities.

FTA strongly opposes action by Congress and federal agencies that would abrogate, disrupt or otherwise restrict states from imposing taxes that are otherwise lawful under the U.S. Constitution or from effectively administering those taxes. FTA believes Congress should undertake an active program of consultation with states as it considers measures that would preempt state tax authority. Finally, states should actively pursue such uniformity and simplification measures as are necessary and effective to address concerns of administrative burden in complying with the tax laws of multiple states.

While federal preemption is generally to be resisted, preemptive legislation can, at times, promote simplification, uniformity, and taxpayer compliance, albeit at some cost to state sovereignty. FTA will evaluate proposed federal legislation that preempts state taxing authority against several criteria:

(1) Recognizing that the benefits of federalism will impose administrative burdens on commerce, is there disinterested evidence that the administrative burden and complexity posed by current state and local practices is impeding the growth of commerce?
(2) Does the proposed preemption address issues of simplification and complexity?
(3) Can meaningful simplifications and uniformity be achieved through state action without preemption?
(4) Would preemption disrupt state and local revenue flows and tax systems?

(5) Would preemption cause similarly situated taxpayers to be taxed differently; specifically, does the proposal create advantages for multistate and multinational businesses over local business?
(6) Does the preemption support sound tax policy?
(7) Does the preemption create unknown or potential unintended consequences?
(8) Have state tax authorities and taxpayer representatives together agreed to a beneficial change in federal law?

The Digital Goods and Services Tax Fairness Act of 2011 fails all eight of these principles.

Policy

The FTA opposes The Digital Goods and Services Tax Fairness Act of 2011. Specific problems with the bills include:

- States are not granted any collection authority over sellers of digital products;
- The preemption extends beyond sales and use taxes;
- Taxation of services is preempted;
- There are no tools or protections for the states and local jurisdictions to reduce the risk of tax avoidance;
- Despite its purported purpose, the bill is not limited to rate discrimination between specified digital products (e.g. digital movies, music, books) and their tangible equivalents;
- There is no recognition of the general use tax credit mechanism and federal constitutional tax-crediting principles to avoid multiple taxation;
- There is federal court jurisdiction over disputes; and
- There is no ability for state administrative agencies to issue binding regulations to implement the bill's provisions.

Any discussions of desired uniformity or model rules or definitions should take place either through existing channels such as the Multistate Tax Commission's uniformity projects or through cooperative and inclusive meetings of representatives of both state governments and all affected taxpayers.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. Passage of this resolution revokes 2011-1. Passed by unanimous voice vote by a meeting of FTA members, June 20, 2012

Preemption of State Authority to Tax a Variety of Industries

RESOLUTION 2012-4

Background

Industries that object to a specific type of taxation imposed by a state or local government sometimes ask Congress to preempt what is otherwise a Constitutional and lawful tax. Such bills commonly would grant a business advantage over a competitor.

These bills generally propose schemes that inhibit the proper role of local legislatures to determine their own taxes or would make the administration of tax statutes unworkable. The subject matter of the proposals may be local without any national implications that would justify federal interference in state and local government affairs. The revenue losses in annual state and local government's tax receipts are in the billions for some of these proposals.

Examples of these types of proposals are:

- The Wireless Tax Fairness Act of 2011 (H.R. 1002 and S. 543)
- End Discriminatory State Taxes for Automobile Renters Act of 2011 (H.R. 2469)
- State Video Fairness Act of 2011 (H.R. 1804)
- A bill … to repeal certain communications taxes, and for other purposes (S. 1934)
- The Telecommuter Tax Fairness Act (S. 1811)

Policy

For these and similar bills, the Federation of Tax Administrators strongly opposes action by Congress that would abrogate, disrupt or otherwise restrict states from imposing taxes that are otherwise lawful under the U.S. Constitution or from effectively administering those taxes. Congress should resist passing legislation that favors one industry or taxpayer classification over another. Congress is asked to recognize that certain taxes have been pledged long-term for the repayment of government bonds.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed or replaced in the normal policy process. Passed by unanimous voice vote by a meeting of FTA members, June 20, 2012

Federal Estate Tax Reform

Resolution 20012-5

Background

The federal estate tax was temporarily repealed over a 10-year schedule in 2001. After the expiration of the 10-year period, the estate tax ihas been temporarily extended. Should the extension ever be allowed to end, the Estate Tax is scheduled to come back into force essentially as it had been prior to repeal.

One provision that will come back into existence is the Federal Estate Tax Credit for State Estate Taxes, which had been phased out and turned into a deduction during the 10 year repeal period.

The federal estate tax credit has been part of the federal estate tax structure since its inception, and several states have existing laws that base their estate tax on the Federal Estate Tax Credit.

Policy

FTA position is that any federal legislation that extends or enacts an estate tax at the federal level should include the credit for estate taxes paid to a state.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed or replaced in the normal policy process. Passed by unanimous voice vote by a meeting of FTA members, June 20, 2012