

# Federal Legislation Affecting the States

FTA Annual Meeting  
Providence, Rhode Island  
June 9, 2004

## Purpose

- Review key issues in legislation affecting states
  - Internet Tax Freedom Act
  - Business Activity Tax Nexus
  - Remote Sales Collection
- Provide some thoughts/musings on ‘lessons learned’

## Internet Tax Freedom Act

- House Bill
  - Permanent extension
  - No grandfather
  - Telecommunications expansion
  - VoIP issue

## ITFA - Cont.

- Senate Bill
  - 4-year extension
  - Telecommunications expansion
    - DSL, wireless, middle mile, backbone services
  - Dual grandfather clauses
  - VoIP clarification
- Likely outcome - Senate version

## Business Activity Tax

- Expansion of P.L. 86-272
- Physical presence + carve-outs standard
  - 21 days
  - Protected activities
- Independent and dependent contractor exclusion

## BAT - Cont.

- Issues for states
  - Nexus standards in federal law
  - Incentives for planning/sheltering
  - Federalism issues
  - Revenue impacts

## Remote Sales

- Authority to require remote sellers to collect
  - If Agreement is operational
  - If Member of the Agreement
  - If Agreement meets simplification standards in legislation
  - If seller is above “Small Business Exception” -- effectively \$5 million

## Remote Sales -- Cont.

- Issues for States
  - Vendor compensation
  - Telecommunications simplification
  - Federal court review
  - Workability
- State of Play
  - Review and discussion
  - Focus on workability
  - Addressing policy issues

## Lessons Learned

- Increased efforts at preemption should be expected
  - ‘New’ industries/technologies
  - Globalization
  - Desire for “one set of rules”
- Lack of context
  - No partnership
  - No sense of intergovernmental fiscal system
  - Differential impacts of one set of rules

## Lessons -- Cont.

- Lack of institutions
  - Committees of jurisdiction
  - Executive agencies
  - CBO, CRS
- Congress sees itself as referee or protector
  - Choose among ‘friends’
  - Restrict states to pursue ‘national priorities’
  - Trade-off issues

## Lessons -- Cont.

- Federal action:
  - Creates winners/losers/preferred players
  - Breeds claims for 'equitable' treatment
  - Breeds 'bad' tax policy

## What We Need

- Problem solving at home
- Best offense
  - Solid knowledge of state practices
  - State-assessed evaluation of impacts
  - Revenue impacts are essential
  - Contact with delegation if critical
- Need strategy for awareness and context

