



FEDERATION OF TAX ADMINISTRATORS
The Association of Tax Agencies of the 50 States, District of Columbia and New York City

Resolution 2009-1
State Sales Tax Administration Simplification

WHEREAS, forty-five states, the District of Columbia and New York City impose a sales and use tax, and

WHEREAS, there is a clear need for simplification of state and local sales tax administration and greater uniformity among states in the administration of the sales and use tax, and

WHEREAS, simplification of the sales and use tax will reduce any undue burden imposed on those now collecting the tax, and

WHEREAS, the Streamlined Sales Tax Project, through the efforts of more than 40 states and substantial segments of the business community, became operational on October 1, 2005, when 13 states representing 20.3 percent of the population of all states with a sales tax were determined to be in “substantial compliance” with the terms of the Agreement, and

WHEREAS, the Streamlined Sales Tax Project now has 22 full Member states and three Associate Member States and a full-time staff, now, therefore, be it

Resolved, that the Federation of Tax Administrators recognizes the value of the Streamlined Sales Tax Project to state tax systems and to the state tax structure as a whole, and be it further

Resolved, that the Federation of Tax Administrators commends those who are working on the project for their efforts and applauds those states that have adopted legislation to conform to the Interstate Agreement, and be it further

Resolved, that states be encouraged to consider active participation in the project, in the Governing Board and in the State and Local Government Advisory Council, and be it further

Resolved, that the Federation of Tax Administrators will continue to provide support to the Streamlined Sales and Use Tax Agreement, the Governing Board, and the State and Local Advisory Council as well as other state efforts to simplify state and local sales and use taxes and their administration.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process.



FEDERATION OF TAX ADMINISTRATORS
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Resolution 2009-2
Sales Tax Collection by Remote Sellers

WHEREAS, the continuing growth of interstate sales by mail order, electronic commerce and other direct marketing methods is eroding state and local revenue, and

WHEREAS, the current pattern in which tax collection responsibilities differ based on the manner in which the transaction is conducted may distort economic choices, and

WHEREAS, collection of sales and use tax at the time of the transaction will facilitate compliance among consumers and alleviate artificial competitive distortions among vendors, and

WHEREAS, the U.S. Supreme Court held in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992) that physical presence is not required to establish state jurisdiction under the Due Process Clause, but that "substantial nexus" is required under the Commerce Clause to require an interstate seller to collect tax, and

WHEREAS, the Court further held that Congress may authorize states to require interstate sellers to collect appropriate sales and use taxes, and

WHEREAS, states, the business community and the Congress have all recognized the need for greater simplification and uniformity in the administration of sales and use taxes as a prelude to a federal grant of authority to states to require remote sellers to collect tax, and

WHEREAS, the Streamlined Sales and Use Tax Agreement became operational on October 1, 2005, the Streamlined Governing Board is fully functional with officers and committees, a fulltime staff, and a process established to facilitate operations, and

WHEREAS, states are moving aggressively, with the support of the business community, to conform their sales tax laws to the provisions of the Interstate Sales and Use Tax Agreement, and

WHEREAS, the Project has implemented a centralized registration system, through which a volunteer, non-nexus seller can meet its registration requirements with all member states, and

WHEREAS, the Project has approved Certified Service Providers, and sellers who use one of these providers will be subject to limited-scope audits and will enjoy safe harbors for certain errors, and

WHEREAS, this work will substantially reduce the burden involved in collecting sales and use taxes for remote sellers as well as other types of retailers, now, therefore, be it

Resolved, that the Federation of Tax Administrators urges Congress to enact legislation that would authorize those states conforming to, and accepted as members of, the Streamlined Sales and Use Tax Agreement to require interstate sellers that do not have substantial nexus in the state, but do have an annual national sales volume above some reasonable threshold, to collect tax in the states into which they sell, and be it further

Resolved, that the authority to require remote sellers to collect tax should not require adoption of specified standards of nexus for other types of state and local taxes.

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FEDERATION OF TAX ADMINISTRATORS

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Resolution 2009-3

Federal Preemption of State Authority to Tax

Background

The power to define the state tax system is a core element of state sovereignty, and the United States Constitution establishes the bounds to the sovereignty of the states in the tax arena. The system of federalism that is defined by the United States Constitution further assigns to state and local governments the responsibility for supplying the majority of the daily services due to its citizens and residents. A vibrant state and local tax system is essential to meeting those needs, and the United States government has traditionally shown substantial deference to the tax sovereignty of the states.

An increasing number of groups seek to preempt state taxation authority in particular areas. In some cases, these preemption efforts are driven by a desire to establish a preferred tax position for a specific industry, while in other cases preemption is driven by a desire for greater uniformity or simplification of state and local tax systems. In still other cases, federal preemption is pursued as a means of rectifying perceived discrimination or differential tax treatment at the state and local level.

States have resisted federal preemption because of the incursion on state sovereignty and because preemption of state tax authority has the effect of establishing a preferred class of taxpayer and shifting the tax burden to other non-preferred taxpayers. Additionally, preemptions often have unintended consequences that work significant disruptions of state and local tax systems. FTA's preferred position on federal preemption will be resistance.

The Federation of Tax Administrators recognizes the utility of engaging in dialogue with interested parties about federal legislation with an impact on state or local taxes. FTA staff engaging in discussions with and providing information to advocates of federal preemption legislation, Congressional staff and members of Congress or the executive branch contributes to a better understanding of the issues presented. FTA staff's interactions regarding federal preemption will be guided by FTA resolutions and policy statements.

Policy

Our system of federalism can result in administrative compliance burdens for persons with tax responsibilities in multiple states. Legitimate goals that might be pursued in preemptive legislation can be effectively achieved through cooperative state efforts and improved uniformity among the states. States have an obligation to pursue such efforts.

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?

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FEDERATION OF TAX ADMINISTRATORS

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Resolution 2009-4

Expanding Federal Refund Offset for State Tax Debts

WHEREAS, 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, and

WHEREAS, the IRS Restructuring Act of 1998 (P.L. 105-206) authorized states to join the federal Tax Offset Program, and,

WHEREAS, current law allows states to use the federal offset program to collect their delinquent income tax debts, but only from resident taxpayers only (defined as a taxpayer whose address on the federal return is in that state), and

WHEREAS, Representative John Lewis of Georgia has introduced the *State Tax Administration Assistance Act of 2009*, to assist States in the collection of delinquent income taxes by removing the same-State requirement and allow States to collect unpaid State income taxes from nonresidents under the program, now therefore let it be

Resolved, that the Federation of Tax Administrators (FTA) supports expanding the federal Tax Offset Program to include income tax debts owed by all taxpayers, not just state residents, and be it further

Resolved that the FTA believes it is appropriate to maintain the current safeguards to insure taxpayers are aware of the potential for debts being referred to offset and recognizes the need to establish an "ordering rule" (to determine which debt is offset first if a taxpayer owes debts to more than one state) that is consistent with sound tax policy and recognizes the administrative capacity of Financial Management Service.

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FEDERATION OF TAX ADMINISTRATORS
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Resolution 2009-5
Federal Estate Tax Reform

WHEREAS, the Federal Estate Tax was temporarily “repealed” over a 10-year schedule in 2001, and

WHEREAS, after the expiration of the 10-year period, the estate tax is scheduled to come back into force essentially as it had been prior to repeal, and

WHEREAS, 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, and

WHEREAS, members of Congress and officers of the Executive Branch have indicated a desire to change the provisions of the federal estate tax, and,

WHEREAS, the federal estate tax credit has been part of the federal estate tax structure since its inception,

WHEREAS, several states have existing laws that base their estate tax on the Federal Estate Tax Credit, now therefore let it be

Resolved, that any legislation extending or enacting an estate tax at the federal level should include the credit for estate taxes paid to a state.

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FEDERATION OF TAX ADMINISTRATORS
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Resolution 2009-6
Taxation and Withholding of Wages Earned in Multiple States

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.

As introduced in the 110th Congress, H.R. 3359, the Mobile Workforce State Income Tax Fairness and Simplification Act, 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 60 days in a calendar year. The bill contains an exception for professional athletes and entertainers. A highly similar bill is pending in the 111th Congress, H.R. 2110, (the Act) differing primarily in that the threshold has been reduced to 30 days.

In its review of H.R. 3359 and in various discussions with proponents of the bill, FTA made several points:

- H.R. 3359 represents a substantial preemption and intrusion into state tax authority;
- While FTA recognizes concerns regarding the administrative burdens imposed by current practices, the 60-day threshold is well beyond a level necessary to deal with the vast majority of individuals who would be temporarily in a jurisdiction.
- H.R. 3359 would substantially disrupt the current tax system in favor of a system based on taxation by the resident jurisdiction.
- H.R. 3359 would substantially disrupt the revenue flows in certain states, particularly New York State because of its economy and its previous and current compliance programs in the area.
- A simple "days threshold" will expose some jurisdictions to substantial revenue disruptions; 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.

The impact of the Act will undoubtedly fall most heavily on New York State because of its economy and its tax compliance programs.

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 our federal system, 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 avoiding the disruption of state and local revenue flows. FTA does not support the Act as introduced.

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 issue at the state level.
- Congress should also await constructive action by other states on this issue before proceeding with legislation.
- The FTA will support coordinated state action as the appropriate solution to the issues that prompt H.R. 2110. The FTA will work with states and state organizations to address coordinated state action.
- As outlined in this resolution, FTA opposes this legislation in its current form and is taking definitive action to address this issue through coordinated state action. If, at a

future time, 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. As outlined in Resolution No. 3 (2008), FTA is firmly opposed to federal legislation that would establish a physical presence nexus standard for the imposition of business activity taxes.