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# Federal Legislation and State Taxes

**2006 FTA Annual Meeting  
Little Rock, Arkansas**

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## **Purpose**

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- **Review federal legislation affecting state taxation**
  - What is going on
  - What's likely to happen
- **Lessons learned (hard way) over time**
- **Overview of federal reform**
- **Issues for the states**
- **Common themes**

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## **Business Activity Tax**

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- **Expansion of P.L. 86-272**
- **Physical presence + carve-outs standard**
  - 21 days, protected activities, software carve-out, and independent/dependent contractor exclusion
- **Introduced in Senate, before full Judiciary Committee**
- **Issues for states**
  - Revenue impacts
  - Opportunities for planning/sheltering
  - Impact on in-state businesses

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## **Remote Sales**

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- **Authority to require remote sellers to collect**
  - If SST Agreement is operational
  - If Member of the Agreement
  - If Agreement meets standards in legislation
  - If seller is above “Small Business Exception”
- **Legislation introduced in Senate**
  - Bills identical but for “Small Business” exception

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## **Remote Sales: Issues for States**

- **Vendor compensation**
- **Telecommunications simplification**
- **Federal court review**
- **Small seller exception**

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## **Cuno Legislation**

- **Authoring tax incentives for economic development**
- **Tests for incentives**
- **Issues for states**
  - **Clarity and certainty**
  - **Avoid unintended consequences/litigation**
  - **Protect commonly used incentives**
- **What to do in wake of S. Ct. decision**

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## **Internet Tax Nondiscrimination**

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- **“Battle” will be joined in 2007**
- **Issues include:**
  - **Period of extension**
  - **Definition of “Internet access”**
  - **Existence/coverage of any grandfathers**
  - **Any necessary clarifications of 2004 enactments**

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## **Telecommunications Act Rewrite**

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- **Accommodate new services and new providers**
  - **Broadband transmission, video, VoIP**
- **Establish “loose” federal regulatory structure for new services**
- **Work on parity among providers**
- **Related issues -- net neutrality**
- **Issue is to avoid advertent or inadvertent impact on state taxation**

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## **Other Legislation**

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- **Nonresident taxation**
  - Retired partners
  - Telecommuting
- **4-R Act for interstate pipelines**
- **4-R Act for telecommunications firms**

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## **Prognosis**

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- **Short session, crowded calendar argues against final action**
  - Informational hearings possible
  - Possible House action
- **Efforts to bundle items and push trade-offs**

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## **Lessons Learned**

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- **Increased preemption efforts**
  - ‘New’ industries/technologies
  - Win many “battles” at one level
  - Desire for “one set of rules”
  - Accommodating new services and providers
- **Lack of context**
  - No partnership
  - No sense of intergovernmental fiscal system

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## **Lessons -- Cont.**

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- **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

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## **Challenges for States**

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- **Saying “No” ain’t good enough**
- **Need to ID what is important and what we want**
- **How can we get to “one set of rules”**
  - **Multi-state, action**
  - **Federal/state coordination**
  - **Federal framework**