

Resolution 2016-2
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 since the Act became law 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 “nondiscriminatory” 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 15, 2016.