

Resolution 2016-4
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. 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?

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.