

**Opposition to Federal Legislation That Abrogates,
Disrupts or Restricts States from Imposing Lawful Taxes
RESOLUTION 2019-5**

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. Under the U.S. Constitution both federal and state governments have the right to establish their own, separate systems of taxation. 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.

There are two circumstances under which Congress will, on occasion, consider passing federal laws that would significantly affect state tax administration and state and local tax revenues.

State and local income tax systems have generally been developed in coordination with the federal income tax system, and fundamental aspects of the state and local income taxes, including the definition of income, allowable deductions, third-party reporting, and compliance — among others — are heavily dependent on federal income rules.

This system of income tax conformity has effectively created a tax base and tax system that is in many ways integrated and is effectively shared between the federal, state and local governments. This both eases the burden of compliance on taxpayers and simplifies administration for all parties.

State and local governments also rely on consumption taxes as their other primary source of revenue. They impose consumption taxes most often in the form of a retail sales tax or a gross receipts tax, which have no direct federal counterpart.

The nature of the current income tax system means that changes to federal laws will often have a substantial fiscal and administrative impact at the state and local level.

In the second circumstance, an increasing number of groups will ask Congress to preempt state taxation authority in particular areas, citing 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.

Similarly, failure to take into account the fiscal, administrative and policy implications for states and localities of federal income tax changes leads to nonconformity and considerable new complexities and recordkeeping burdens for taxpayers and tax professionals. Failure to involve the states in proposed federal laws affecting state and local consumption taxes means that any resulting law may fail to achieve its goals or interfere with the functioning of that tax base, so important to many governmental programs. Such failure also affects the state and local tax structure as a whole, compliance programs, and levels of service to taxpayers. They can also lead to the effective preemption of state and local tax bases and the loss of opportunities to leverage improvements in the overall tax system. There are often alternative ways to achieve desired changes to federal policy that minimize or eliminate any need for states and localities to make adjustments to their own tax systems and thus keep the federal, state and local systems in harmony.

Resolution

The Federation of Tax Administrators (FTA) supports Congressional efforts to formally and carefully consider the positive and negative impact of potential federal tax measures on state and local income tax systems, including generation of revenue estimates. Congress is encouraged to identify federal tax actions that can lead to nonconformity and to estimate the impact of those actions. States and local governments with income and consumption taxes and taxpayers should work in concert to educate Congress on the effects of federal changes that force states and localities to reduce conformity and to jointly seek the creation of procedures that will reduce or eliminate the need for such state and local action.

FTA also supports Congress's commitment to consult with state and local governments on consumption tax issues since it is the state and local policymakers who have extensive experience in the administration of these consumption taxes.

FTA strongly opposes action by Congress and federal agencies that would abrogate, disrupt, or restrict states from imposing taxes that are 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 or replaced in the normal policy process. To be voted on by the membership at the June 26, 2019 Annual Business Meeting.