



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

**RESOLUTION CONCERNING THE USE OF CONTINGENT FEE ARRANGEMENTS
IN TAX AUDITS AND APPEALS**

**NCSL EXECUTIVE COMMITTEE TASK FORCE ON STATE & LOCAL TAXATION OF
COMMUNICATIONS AND ELECTRONIC COMMERCE**

WHEREAS, taxes are one of the most sensitive points of contact between citizens and their government, and there is a delicate balance between efforts to effectuate revenue collection and freedom from government harassment; and

WHEREAS, although compliance with state tax statutes and regulations is subject to audit scrutiny, the percentage of taxpayers actually audited is small, and as a result, our federal and state tax systems are premised, to a great degree, on voluntary compliance; and

WHEREAS, the implementation of tax statutes must be transparent in order to improve voluntary compliance, reduce the costs to states of administration of those taxes, and improve the relationship between taxpayers and their government representatives; and

WHEREAS, it is incumbent upon governments to ensure that the rights, privacy and property of our taxpayers are adequately protected during the process of the assessment and collection of taxes; and

WHEREAS, the purpose of any audit of a taxpayer or proceeding between government and a taxpayer is the determination of the taxpayer's correct amount of tax liability, and correspondingly, whether the return as filed was accurate; and

WHEREAS, a properly conducted audit should serve three purposes: to determine the accuracy of a particular tax return, to create an incentive for all taxpayers to comply with the tax law, and to educate taxpayers about their future tax compliance obligations; and

WHEREAS, to conduct an audit that accomplishes these goals, the audit should be based on an actual review of the taxpayer's books and records, designed to determine whether the taxpayer has over or under paid, or has reported the correct amount of tax.

WHEREAS, by contracting with third parties to conduct taxpayer audits on a contingent fee basis, governments may provide an incentive to the third-party auditor to arbitrarily inflate a taxpayer's liability because a larger audit assessment results in a larger payment to the auditor; and

WHEREAS, contingent fee arrangements may encourage auditors to be overly aggressive, to interpret tax statutes to their own monetary advantage rather than in a fair and just manner, to "cherry pick" taxpayers as audit targets and to ignore taxpayer errors that would result in lower assessments; and

WHEREAS, government use of contingent fee arrangements in tax audits and appeals denies the transparency that taxpayers are owed and demand, creates a perception of unfairness that undermines taxpayers' relationships with tax administrators and fosters an atmosphere of mistrust that hinders voluntary compliance.

THEREFORE, LET IT BE RESOLVED, that the National Conference of State Legislatures opposes the use of contingency fee arrangements for the conduct of taxpayer audits as well as arrangements with firms or organizations that rely on economic assumptions rather than on an actual or statistical review of a taxpayer's books and records, in tax audits and appeals and encourages governments to end such contingency fee practices where they exist.

Adopted Unanimously by the NCSL Executive Committee Task Force on State and Local Taxation of Communications and Electronic Commerce, September 30, 2011