



Executive Committee Task Force on State and Local Taxation

November 21-22, 2013

Aventura, Florida

Meeting Summary

Attendance

Chair: Delegate Shelia Hixson, Maryland; Senator Pamela Althoff, Illinois

Vice Chair: Senator Deb Peters, South Dakota

Members: Representative Susan Almy, New Hampshire; Representative Joe Atkins, Minnesota; Senator Curt Bramble, Utah; Assemblywoman Irene Bustamante Adams, Nevada; Senator Dwight Cook, North Dakota; Representative Justin Cronin, South Dakota; Representative Dan Eaton, New Hampshire; Senator Wayne Harper, Utah; Representative Jay Kaufman, Massachusetts; Senator Luke Kenley, Indiana; Representative Gary Knight, Maine; Senator Gwen Margolis, Florida; Assemblyman Felix Ortiz, New York; Senator Deb Peters, South Dakota; Delegate Don Purdue, West Virginia; Senator Ann Rest, Minnesota; Senator Ryan Silvey, Missouri; Representative Eric Turner, Indiana; Esther Van Mourik, Colorado; Dan Schmidt, Wisconsin

Task Force Business Meeting

For the new members of the task force, Chairwoman Althoff began the task force meeting by asking Neal Osten, NCSL, to give a history and overview of the task force. He began by saying that the NCSL Executive Committee created the task force in 1999 to solve the issue of how states were unable to collect sales taxes they were owed from remote purchases. He said that as a result of numerous meetings and discussions, the task force was instrumental in the creation of the Streamlined Sales and Use Tax Agreement and has since been at the forefront of e-fairness on Capitol Hill. He went on to say that with time, the scope of the issues the task force considered expanded; beginning with a charge from the NCSL Executive Committee to review corporate income tax. The task force also began addressing communications taxation and, in 2012, the task force changed its name and mission to now focus on other state and local taxation issues.

Senator Althoff then led a discussion on the scope of the issues the task force addresses compared to the NCSL Standing Committees. Senator Peters commented that “. . . co-chair of the standing committees of NCSL and as I also am on the Executive Board of NCSL, I have heard discussion that the Task Force has kind of overstepped its boundaries.” She went on to state that “We’ve got our Budgets and Revenue Committee which deals with Budgets and Revenue. So in this task force, we have to be cognizant that when we bring a topic up for discussion, we have to make sure it is a complicated issue that involves in-depth study or that it is a topic that the Budgets and Revenue Committee is not already taking a look at.” When asked about the role of task forces compared to standing committees, Neal stated that the task forces address issues that involve more in-depth consideration through multiple meetings throughout the year. He said that the State and Local Taxation Task Force addresses tax policy more than any standing committee because the standing committees simply do not have the time to do so.

Senator Cook remarked that he receives a greater benefit from the task force than any other organization he has ever attended. He said that, “To end this task force would be a real loss for NCSL.”

Utah State Tax Commissioner Bruce Johnson said that it is definitely important when developing tax policy to have legislators that understand and delve into the issues. He said that he appreciates the opportunity to be invited to task force meetings and he “hopes [the task force] continues [its] good work because it is tremendously helpful for us as tax administrators when we go back to our states to have your perspective on these issues.”

Real-Time Sales Tax Collection: Reality or Myth?

Kathy Neggers, General Electric; Fred Nicely, Council on State Taxation; and Pat Reynolds, JCPenney, discussed the emerging issue of real-time sales tax collection. They commented that proposals have recently been put forward in several states that would require sales taxes to be remitted by a third party, rather than the retailer or its designee, at the time of the transaction, which they said has raised concerns regarding the accuracy of the tax collected, how such collection would be implemented and how it would benefit a state. They said that whether you agree with the concept or not, the technology does not currently exist which would accurately separate the correct sales tax from the product price at the time of the transaction. As a result, they said that implementing policy that would require retailers to do so would create a heavy administrative burden for retailers and the state for relatively little benefit. After discussion, the task force approved a motion to send a letter to legislative leaders and tax chairs around the country informing them of the issue and asking states to provide their input.

Expansion of Sales Tax to Services

Karl Frieden, Council on State Taxation, and Joe Henschman, Tax Foundation, discussed the concept of expanding sales taxes to services and the challenges that face states considering such expansion. Mr. Henschman remarked that no state has really moved into the full taxation of services because of its complexity. But states continue to find alternative sources of revenue because they are unable to collect the taxes they are owed due to the changing economy. Nonetheless, when referring to expanding sales taxes to services, he said that “states have tried this every which way but none of them have succeeded”. Karl Frieden noted that the states that have done this have repealed the legislation almost immediately. He said that while it is thought by economists that expanding sales tax to services is the best policy, it is nearly impossible to do so for a myriad of reasons, including the political landscape. He went on to say that as all efforts failed in 2013 to expand the sales tax to services, it is unclear if states will try again during 2014 legislative sessions.

Understanding Economic and Revenue Volatility

Rob Zahradnik, Pew Center on the States, noted that understanding revenue volatility is important for tax policy. He said that as states move through a slow and uneven economic recovery, policymakers are considering how to better weather the ups and downs of the economic cycle. He said that Pew’s research studied the revenue volatility of all of the state economies and compared individual states to the trend nationwide. He said that states have similar patterns; however, some states have different patterns compared to the national trend. For instance, he said that states that have highly concentrated economies in certain industries, such as natural resources or tourism, have much different trends than the country as a whole. Pew also found that state revenues are more volatile than the growth and contraction of the economy. As a result, when determining how to address the issue of volatility, a one size fits all approach does not work. He said that in order to address the issue, you have to understand the causes of why a state has volatility, such as economic diversity, tax structure and its economy, before you can determine solutions.

Effects of Illicit Trade on State and Local Governments

Jack Stohlman, Lilly, and Tom Lesnak, TPI Group, presented on the issue of how illicit trade impacts state and local governments. Illicit trade is defined as any practice or conduct prohibited by law which relates to or facilitates the production, shipment, receipt, possession, distribution, sale, or purchase of defined products. They said that such trade undermines policy objectives of federal and state governments and results in evasion of taxation and an increase in the availability of these products to consumers on the black market. Mr. Lesnak said that almost all organized crime is selling counterfeit products, including cigarettes, because the profit margin is so high with comparatively little risk. He said that the problem is left to the states because, unfortunately, there is very little federal enforcement and very few federal resources devoted to the issue. As an example, he said that as much as 60% of cigarettes in New York City are counterfeit, which costs the city \$1.5 billion per year in lost revenue. Nationwide, counterfeit products in illicit trade costs state and localities \$10 billion annually.

State Options With Regard to Tax Treatment of Federally Recognized Same Sex Marriages

Joe Henchman, Tax Foundation, discussed that since the U.S. Supreme Court issued two decisions that allowed same-sex couples to take advantage of several federal tax benefits, there is now uncertainty for the state tax treatment of same-sex couples. 24 states that do not recognize same-sex marriage but require taxpayers to reference the federal tax return when filling out their state tax form now need to issue guidance on how to prepare their state returns. As such, same sex couples that live in these states need to know how to file their returns.

Marketplace Fairness Act

Steve Kranz, McDermott, Will and Emery; Joe Crosby, Multistate Associates, Max Behlke, NCSL; and Joe Rinzel, Retail Industry Leaders Association, provided an update on the Marketplace Fairness Act in Congress, which would enable states the ability to collect the sales and use taxes they are owed on remote transactions. They said that the House Judiciary Committee, chaired by Bob Goodlatte, has yet to act on the principles that the committee released in September. However, they noted that the chairman is open to considering revisions to the Senate passed bill and they expect a hearing in the committee on the issue at some point in February. They also said that it is possible that the committee may wait to address the issue until after the 2014 congressional primaries.

Mr. Behlke commented that the Republican lobby day that NCSL held in November made a big impact in moving the issue forward. He said that 22 republican legislative leaders from 15 states met with 73 republican members of Congress. Overall, he noted that even very conservative members of congress, who have been reticent to support the legislation, are willing to consider passing the legislation and are following the lead of Chairman Goodlatte. In fact, one republican Congressman, who sits on the Judiciary Committee, commented that "If the House were to vote on the Marketplace Fairness Act today, it would pass overwhelmingly."

Max then gave an overview of the upcoming lobby day that will be held in conjunction with the NCSL Fall Forum the first week of December. He expects that the 200 state legislators attending the meeting will meet with 150 members of Congress, including leadership in the House.

Streamlined Sales Tax (SST) Governing Board Update

Senator Wayne Harper, the President of the Streamlined Sales Tax Governing Board, provided a report of the Governing Board meeting held in Madison, Wisconsin in October. He also gave a brief report on the Governing Board's discussion of implementing the Marketplace Fairness Act across the country as well as its lobbying activity on Capitol Hill. Deborah Bierbaum, AT&T, provided the update of the Business Advisory Council (BAC). She said that the BAC is focusing on compliance issues, and the sourcing of digital goods and services.

Multistate Tax Commission (MTC) Update

Utah State Tax Commissioner Bruce Johnson and Steve Kranz, McDermott, Will and Emery LLP, gave a brief report on the activity of the MTC. They also provided an update on the Uniform Division of Income for Tax Purposes Act (UDITPA) including the recent court cases around the country.

Equipment Exemptions for Communications

Ellen Berenholz, Comcast, and Roy Atkins, Centurylink, presented to the task force regarding exempting taxing equipment from sales taxes. They said that such exemptions encourage broadband adoption across the country. Ms. Berenholz commented that broadband adoption across the country is a priority “because it is how we deliver healthcare, education, etc.” She said that economists agree that good tax policy is to not tax business inputs. Moreover, she said that exempting communications equipment from the sales tax is akin to how states exempted manufacturing taxes in order to help that industry. After task force discussion, the task force adopted a resolution encouraging states that wish to encourage broadband adoption to exempt communications equipment from their sales taxes. One state voted against the resolution.

State Tax Expenditure Reports- Principles

Joe Crosby, Multistate Associates, continued the discussion from the Atlanta task force meeting on the best practices for state tax expenditure reports. He said that the primary goal of state tax expenditure reports is to provide information to the public and policymakers about preferential tax provisions that reduce overall tax revenue. However, he contends that often state tax expenditure reports provide inaccurate and misleading information, particularly with regard to business taxes. He said that the reports do not do what they should do because the laws that direct the creation of the reports are imprecise. Mr. Crosby commented that legislative staffs are told to prepare reports on a “normal tax” but no state defines what a normal tax is. After brief discussion, the task force agreed to create a working group to study the issue and possibly create principles for the task force to consider at the upcoming meeting in Alaska.