

American Rescue Plan Act's “Tax Mandate”

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What Does ARPA Say? (And Why?)

“A State or territory shall not use the funds...to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.”

What Does That Mean?

“Treasury will issue comprehensive guidance to implement the statutory framework. In the meantime, however, Treasury has decided to address a question that has arisen frequently: whether income tax changes that simply conform a State or territory’s tax law with recent changes in federal income tax law are subject to the offset provision... Regardless of the particular method of conformity and the effect on net tax revenue, Treasury views such changes as permissible...” (April 7, 2021)

Can Congress Really Do This?

- Three Lawsuits, 21 States Total
- 10th Amendment: Five-Point Rule (*South Dakota v. Dole*)
 - The federal spending must promote “the general welfare”
 - The condition under which funds will be withheld must be unambiguous
 - The condition should relate “to the federal interest in particular national projects or programs”
 - The condition imposed on the states must not itself be unconstitutional
 - The condition must not be coercive

What's Next?

- Formal Treasury Guidance (Today?)
- Continued Litigation
- State Special Sessions



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