FEDERATION OF TAX ADMINISTRATORS
RESOLUTIONS 2016

Resolution 2016-1
Supporting Expansion of Federal Refund Offset for State Tax Debts

Background

The U.S. Treasury Department's Bureau of the Fiscal Service (the Bureau) offsets federal tax refunds and other government payments for a variety of debts owed the federal government, including child support, student loans, and federal tax delinquencies. The IRS Restructuring Act of 1998 (P.L. 105-206) authorized states to join the federal Tax Offset Program. Current law allows states to use the federal offset program to collect their delinquent income tax debts, but from resident taxpayers only (defined as a taxpayer whose address on the federal return is in that state). The restriction was intended to give the program time to prove itself to be effective and non-controversial. Each year states collect almost $550 million in delinquent tax debts from this program.

The program contains a series of safeguards to insure that residents and nonresidents alike receive adequate notice of the debt that is due and that further inaction will result in the debt being referred to offset. The Bureau estimates that states should be able to collect more than $80 million each year if offsets are allowed from nonresident debtors. Provisions that would have expanded the federal refund offset program to include the debts of nonresident state taxpayers were included in bills in previous sessions of Congress but did not make it to final passage. The provision is not considered controversial.

The Bureau and Treasury Department support expansion of the tax offset program. Increasing the volume of debt the federal government collects permits greater administrative efficiencies through economies of scale. Also, the states pay a fee for each successful offset, which covers the federal government's fully loaded share of the cost of the federal offset program.

The current statute also specifies that taxpayers be notified that their state tax debt is eligible for a federal income tax refund offset via a certified mailing. Congress has recognized that certified mailings are expensive and do not offer any assurance that the taxpayer has actually received a notice. Recent offset authorizations have not contained the certified mailing requirement.

Resolution

The Federation of Tax Administrators supports expanding the federal Tax Offset Program to include income tax debts owed by all taxpayers, not just state residents, and encourages Congress to recognize that the requirement that notifications be sent by certified mail is outdated, does not assist debtor taxpayers and should be eliminated.

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.

Resolution 2016-2
Opposing Federal Preemption of
State Tax Authority Creating Preferred Taxpayer Status

Background

In 1976, Congress passed the Railroad Revitalization and Regulatory Reform Act (the "4-R Act"), which grants railroads "most-favored-taxpayer" status by prohibiting state and local governments from taxing railroad property at higher rates or ratios of value than those for other commercial and industrial property, and prohibits "another tax that discriminates against a rail carrier" (referred to as the "catch-all" provision). It also provides that railroads may pursue equitable claims under the Act in federal court. Similar, but not identical, protections have been accorded the interstate airline and motor carrier industries.

The 4-R Act and its progeny have had a number of undesirable effects on state and local property tax and other tax systems. Litigation since the Act became law still has not fully defined the contours of the 4-R Act. That litigation, repeated in many states, questioned issues not addressed in the statute including: which commercial and industrial property constituted the comparison class for railroads, the jurisdiction and role of the federal courts, what taxes besides property taxes were included in the "catch-all" provision, and how to deal with exempt property.

Beyond the litigation, 4-R Act-like protections have disrupted state property tax systems. This is particularly true in states where citizens have ratified constitutional provisions allowing for different classes of property. Federal law has, in effect, established a preferred class of taxpayer and has led to requests for similar treatment by additional industries. Moreover, the scope of the 4-R Act preemption vastly exceeds the original stated Congressional intent because the catch-all provision has been construed to apply to other taxes not imposed in lieu of property taxes.

There have been a variety of state tax restrictions proposed for different types of property or activities that are similar to the 4-R Act "nondiscriminatory" prohibitions. Proposals have been made for wireless communications companies, telecommunications companies, interstate natural gas pipeline companies, hotel reservation businesses, auto rental companies, Internet sellers and sellers of digital goods and services. Extending preferred taxpayer status to other industries could cause serious and widespread revenue consequences to the states and localities and put non-preferred taxpayers at a competitive disadvantage. A particularly dramatic impact will be felt in those states where the voters have approved constitutional provisions authorizing differential treatment of certain types of taxpayers. In effect, Congress would be establishing state tax policies by substituting its judgment for the judgment of state voters and elected officials.

Resolution

The Federation of Tax Administrators strongly opposes action by Congress and federal agencies that would abrogate, disrupt, or otherwise restrict states from imposing taxes that are otherwise lawful under the U.S. Constitution or from effectively administering those taxes. The FTA believes Congress should undertake an active program of consultation with states as it considers measures that would preempt state tax authority.

The FTA strongly opposes prohibitions of state taxing authority on the types or level of taxes that states can impose, especially where the purpose is to give one group of

businesses or industries preferred status, including the establishment of property tax rates and classes. Decisions about property tax assessments, rates and policies, and property tax administration, as well as state and local tax policy generally, should be left to state and local elected officials and the citizens they represent.

Furthermore, the FTA opposes giving federal courts jurisdiction to hear state tax disputes. Abrogating state sovereign immunity raises serious constitutional questions and Congress should respect the states' administrative and judicial processes for dealing with tax appeals, which are the appropriate means to protect taxpayers from unconstitutional discrimination.

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.