RESOLUTION 2018-1
Federal Mobile Workforce Legislation

Background

The fundamental principle of individual income taxation is that income is taxable where it is earned or where the services giving rise to the income are performed. In addition, the state of a taxpayer's residence may tax all income regardless of where earned, but is generally required to offer a credit for taxes paid to other states to assure that income is not subject to multiple taxation. This is the same tax policy embraced by the U.S. government and by all other income-taxing governments.

As United States work patterns shift to increasingly include interstate commuting, telecommuting and multistate travel, more workers find themselves with tax obligations to more than one jurisdiction. Likewise, employers are faced with an increased responsibility for withholding income taxes for multiple jurisdictions. State and local laws and practices vary with respect to de minimis thresholds for withholding. There also is variance in enforcement programs aimed at compliance among persons (and their employers) that are temporarily in the jurisdiction.

In response to bills introduced in previous Congresses, the Multistate Tax Commission developed a state model mobile workforce statute. The work product reflects input from industry and employer representatives.

Each Congress there is introduced in each chamber a bill that has been named the Mobile Workforce State Income Tax Simplification Act, which would authorize a state or locality to impose an income tax liability and a withholding requirement only when a nonresident has performed services for an employer in the jurisdiction for at least 30 days in a calendar year. The bills contain an exception for professional athletes and entertainers. At times Congress may consider attaching a Mobile Workforce Act to other legislation that is being prepared for a floor vote.

Resolution

The ability to tax income where it is earned is fundamental to state tax sovereignty and state and local income tax systems. Moreover, this ability is absolutely necessary under our constitutional framework, where a state may choose to not employ an income tax. The Federation of Tax Administrators (FTA) finds that a Mobile Workforce State Income Tax Simplification preemption (a Mobile Workforce Act) is not an appropriate balance between administrative simplification and adherence to fundamental state tax policies and inappropriately disrupts state and local revenue flows.

FTA does not support such an Act for the following reasons:

- The Act represents a substantial preemption and intrusion into state tax authority;
- The 30-day threshold remains beyond a level necessary to deal with the vast majority of individuals who would be temporarily in a jurisdiction;
- The Act would substantially disrupt the current tax system in favor of a system based on taxation by the resident jurisdiction;

- The Act would substantially disrupt the revenue flows in certain states, particularly New York State;
- A simple "days threshold" will expose some jurisdictions to substantial revenue disruptions, so the addition of a "dollar threshold" that would limit the exposure of the states should also be applied.
- Independent state action is a viable and preferred substitute for federal legislation.

Congress should refrain from enacting measures, taking actions or making decisions 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. Congress should undertake an active program of consultation with states as it considers measures that would preempt state tax authority. In addition, states should actively pursue such uniformity and simplification measures as are necessary and effective to address concerns of administrative burden in complying with the tax laws of multiple states. FTA will encourage and support uniform actions by states as the preferred solution to issues that prompt federal preemption.

While federal preemption generally undermines states' sovereignty and is to be resisted, preemptive legislation can, at times, promote administrative issues such as simplification, uniformity, and taxpayer compliance, albeit at some cost to that sovereignty. 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?

In addition, FTA makes the following specific comments recent versions of the Act and similar legislation.

1. Coordinated state action should be pursued and exhausted.
2. If Congress elects to take action in this area, any resolution of the issue should, at a minimum, meet the following criteria:
    a. The action should be clearly limited to wages and related remuneration earned by nonresident employees. The legislation must also be clear that it is not intended to impair the ability of states and localities to tax non-wage income earned from the conduct of other economic activities in the taxing jurisdiction.

b. The action should provide that a state or locality may impose income tax liability on and a withholding obligation with respect to the wage and related remuneration of a nonresident if 1) the nonresident is present and performing services exceeding a de minimis threshold in a calendar year; and 2) the nonresident's earnings exceed a de minimis threshold in wages and related remuneration in the prior year.
c. The action should provide that all persons paid on a "per event basis" are excluded from the coverage of the bill.
d. The action should provide for the allocation of a day to a nonresident jurisdiction when services are performed in the resident jurisdiction and another jurisdiction in a single day.
e. The action should cover wages and remuneration earned within a jurisdiction in a calendar year so as to not disrupt taxation of any deferred amounts. It should not, however, impair the ability of states and localities to tax income arising from the conduct of other economic activities in the taxing jurisdiction.
f. The effective date of any action should be delayed until the beginning of the second calendar year following enactment to allow sufficient time for implementation by state and local governments and affected employers.

This resolution should not be interpreted to imply that FTA considers that a physical presence standard is in any way an appropriate standard for establishing jurisdiction to tax in other contexts, particularly for the imposition of business activity taxes on entities doing business in a state. FTA is firmly opposed to federal legislation that would establish a physical presence nexus standard for the imposition of business activity taxes.

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.