FEDERATION OF TAX ADMINISTRATORS - UPDATE

WSATA 2014 Annual Conference

Boise, ID

September 7-10, 2014

History of Federation of Tax Administrators

- 1926 – North American Gasoline Tax Conference (NAGTC) organized by motor fuel tax administrators.

History of FTA

- 1927 – National Tobacco Tax Association (NTTA) organized by tobacco tax administrators.

History of FTA

- 1934 – National Association of Tax Administrators (NATA) organized by state tax administrators.
- Mission: To communicate and cooperate with each other to promote more effective tax administration.

History of FTA

History of FTA

- At the December, 1934 meeting, topics of major concern included:
  - Taxation of retail sales in interstate commerce.
  - Establishing opportunities for the exchange of information to assist tax administrators in their efforts to increase revenues and cut costs.

History of FTA

- All three organizations recognized value of a common clearing house to deal with day-to-day issues.
- 1937 – Federation of Tax Administrators (FTA) created by representatives of NAGTC, NTTA and NATA to serve as “common secretariat,” or staff.

History of FTA

- 1984 – NAGTC and NTTA became sections of NATA, which then became the only organization served by FTA.
- 1988 – NATA merged with FTA, assumed name of Federation of Tax Administrators.

History of FTA

- Today – FTA's purpose remains unchanged -- to improve quality of state tax administration by providing services to state tax authorities:
  - Information Exchange
  - Research
  - Training
  - Intergovernmental Coordination

Differences Between MTC and FTA

MTC	FTA
Intergovernmental state agency est. in 1967 to preserve state taxing authority.	Membership organization est. in 1937 to improve state tax administration by providing clearinghouse for information exchange.

Differences

MTC	FTA
Website is www.mtc.gov (a public entity).	Website is www.taxadmin.org (a private organization).
Emphasis on tax policy and enforcement.	Emphasis on information sharing and communication.

Differences

MTC	FTA
Tax Policy:	
- Recommends uniform laws, regulations and guidelines.	N/A
Enforcement:	
- Amicus briefs	
- Audit program	N/A
- Nexus program	

Differences

MTC

Information sharing:

- One annual conference.
- Through specific tax compliance programs and committees.

FTA

Information sharing:

- Seven national conferences annually.
- Weekly Tax ExPRESS.
- Bi-weekly State Tax Highlights.
- Listserve email system.
- IRS coordination with states.

Current Activities

- Conference Calls:
  - Bi-weekly calls with eFile coordinators.
  - Monthly suspicious filers call.
  - Bi-monthly calls with chief information officers.
  - Quarterly calls with tobacco tax administrators.

Current Activities

- FTA Listservs – Active email service allowing states to ask questions and receive answers from other states, including:
  - Does your state impose sales tax on admissions to performing arts events?
  - Do you have a statute establishing a minimum price for cigarette sales?
  - Does your state have an internal audit program?

Current Activities

- Motor Fuel Advanced Training Class – Planning for late 2014 or early 2015.
- Tobacco Tax Section – Partnering with tobacco industry to develop uniformity regarding forms, reporting guidelines, eFile requirements, other issues.
- Tobacco Tax Basic Training Class – Scheduled for November 3-6, 2014, in Winston-Salem, NC.

Current Activities

- Tobacco Tax Audit Workshop - New training class on auditing tobacco products, to include information on exercise of due diligence. Planning for early 2015.
- FTA/IRS Safeguard Security Workshop – To assist implementation of recent changes to IRS Publication 1075. Scheduled for October 14-16, 2014, in Denver, CO.

Current Activities

- Sales Suppression (Zappers) Workshop – California BOE will host a Training-for-Trainers workshop on September 17-18, 2014, in Culver City, CA. Another identical workshop is scheduled for November 4-5, 2014.
- FTA Website Upgrade – Thorough review of internal technology to identify new tools and approaches that better support FTA's needs.

Federal Legislation

Marketplace Fairness Act (S. 743)

- Authorizes each member state under the Streamlined Sales and Use Tax Agreement to require remote sellers to collect and remit sales and use taxes.
- Provides same authority to non-SSUTA states if minimum simplification requirements are implemented.
- Small seller exception – sellers with annual gross receipts in total U.S. remote sales not exceeding $1 million.
- Passed Senate on May 6, 2013, 69-27.

Federal Legislation

Permanent Internet Tax Freedom Act (H.R. 3086)

- Amends the Internet Tax Freedom Act to make permanent the ban on state and local taxation of Internet access.
- CBO estimates that cost to states and local governments would probably total more than several hundred million dollars annually.
- Passed the House on July 15, 2014.

Federal Legislation

<u>Marketplace and Internet Tax Fairness Act (S. 2609)</u>

- Introduced July 15, 2014, combining Marketplace and Internet Tax Freedom Act(MITFA).
- Extends Internet Tax Freedom Act 10 years to 2024.
- Extends grandfather clause 10 years to 2024.

Federal Legislation

<u>Internet Tax Freedom Act Extension (S. 2735)</u>

- Introduced July 31, 2014.
- Extends the ITFA ban on Internet access taxes and retains the grandfather clause through December 31, 2014.
- Introduced to give Congress time to consider S. 2609 (MITFA).

Federal Legislation

<u>Mobile Workforce State Income Tax Simplification Act (H.R. 1129)</u>

- Limits state taxation of wages or other remuneration of any employee who performs duties in more than one state to: (1) the state of the employee's residence; and (2) the state in which the employee is present and performing employment duties for more than 30 days.
- Hearing held by House Subcommittee on April 29, 2014. No votes taken.

Federal Legislation

<u>Digital Goods and Services Tax Fairness Act (H.R. 3724 and S. 1364)</u>

- Prohibits a state or local jurisdiction from imposing “multiple or discriminatory” taxes on or with respect to the sale or use of digital goods or services delivered or transferred electronically to a customer.
- No hearings held.

Federal Legislation

<u>Business Activity Tax Simplification Act</u>

<u>(H.R. 2992)</u>

- Establishes a new "physical presence" nexus standard for income and other business activity taxes.
- Expands the scope of existing federal limitations on state income tax jurisdiction set forth in P.L. 86-272.
- CBO estimates fiscal impact on the states to be $2 billion annually.
- Hearing held by House Subcommittee on February 26, 2014. No votes taken.

Litigation

<u>Direct Marketing Association v. Brohl</u>

- Colorado law provides out-of-state retailers the option to either collect tax or comply with certain informational reporting requirements.
- The Direct Marketing Association challenged constitutionality of this law in federal district court.
- Tenth Circuit ruled that the Tax Injunction Act deprived the district court of jurisdiction to enjoin Colorado's tax collection effort.
- Does the TIA bar federal district courts from hearing suits that seek to enjoin a state's chosen method of collecting an undisputedly lawful tax when there exists a plain, speedy, and efficient state court remedy?

Litigation

<u>Maryland State Comptroller v. Wynne</u>

- Maryland's income tax has two components – a state tax and a county tax.
- A credit for taxes paid to other states applies only to the State tax component; not to the County tax obligation.
- Taxpayers' earned income and paid taxes in other states and argued that Maryland's failure to apply the credit to their County tax was unconstitutional. Maryland Court of Appeals agreed.
- Does the United States Constitution prohibit a state from taxing all the income of its residents—wherever earned—by mandating a credit for taxes paid on income earned in other states?

Litigation

Alabama Department of Revenue v. CSX Transportation, Inc.

- Alabama imposes a sales tax of 4% on diesel fuel used off-road; e.g. farm equipment, trains.
- Alabama imposes a motor fuels tax of $0.19 a gallon for diesel fuel used on roads; e.g. motor carriers. This fuel is exempt from the sales tax.
- CSX, a rail carrier, alleged discrimination under the 4-R Act because rail carriers pay the sales tax but motor vehicles and water carriers do not. Eleventh Circuit agreed.
- Whether a State "discriminates against a rail carrier" in violation of the 4-R Act when the State generally requires commercial and industrial businesses, including rail carriers, to pay a sales-and-use tax but grants exemptions from the tax to the railroads' competitors.

QUESTIONS?

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