

## LEGISLATIVE UPDATE JULY 2015

The list below is not intended to be exhaustive of all the issues we are monitoring, rather a snapshot of what is on NACo's radar. We continue to monitor issues in elections administration, county and tribal government relations, and other fiscal matters such as standards proposed by the Governmental Accounting Standards Board (GASB). If there are any questions, please don't hesitate to contact me at [mbelarmino@naco.org](mailto:mbelarmino@naco.org) or at 202-942-4254.

1. **Digital Goods and Services Tax Fairness Act (H.R. 1643, S. 851)** – This bill has resurfaced once again, and it's nearly identical to what we've seen in the past. It prohibits state or local governments from imposing any new discriminatory tax on mobile services, mobile providers, or mobile services property. NACo continues its opposition to the bill as a preemption of state and local tax authority. In the House, efforts are being led by Rep. Lamar Smith (R-Texas). Unfortunately, this bill has seen quite a bit of action this year as the House Judiciary Committee has taken it up along with two other bills that impact state and local tax authority. The first bill is the Business Activity Tax Simplification Act (discussed below) and the second is the Mobile Workforce Tax Simplification Act. The Mobile workforce bill is more impactful on state authority due to its effect on income taxes. Unfortunately, all three bills were marked up and ultimately adopted by the Judiciary Committee. They now await floor action by the full House.

On the Senate side, Sen. John Thune (R-SD) is leading the efforts and it remains unclear when or if the Senate will take up the measure.

2. **Permanent Internet Tax Freedom Act (H.R. 235, S.431)** –We are still fighting efforts to permanently extend the Internet Tax Freedom Act (ITFA). ITFA was first enacted in 1998 to prohibit state and local taxation of Internet Access. The law was originally intended to be temporary to allow the Internet to grow. If you think about it, in 1998, Internet access meant dial-up through America Online (AOL). The law has been extended several times and the most recent extension expires at the end of September 2015. NACo is not taking the position that state and local governments should tax Internet access; rather they should have the ability to decide whether they should or should not. Additionally, we are calling on Congress to revisit the need to even have this law given the tremendous growth of the Internet. The Internet of 2015 is far above and beyond what anyone probably imagined it would be in 1998 as it is now ingrained in every aspect of our lives.

Some of you may recall that last year, there was an attempt to tie a 10-year extension of ITFA with the Marketplace Fairness Act. We may see that effort again given the ITFA is set to expire; this may provide Congress with some motivation to act on the legislation.

3. **Remote Transactions Parity Act/Marketplace Fairness Act (H.R. 2775, S. 698)** – A long-standing priority for NACo, we hope there is momentum building now that we have a bill in the House that enjoys bipartisan support. In the Senate, the same bill the chamber passed in 2013 has been reintroduced. Unless something happens in relation to the ITFA (discussed earlier), the Senate is

more inclined to wait to see what the House does since the MFA champions are convinced they have enough votes to pass the bill again.

In the House, we have a bill that has been introduced by Rep. Jason Chaffetz (R-Utah), the Remote Transactions Parity Act (RTPA). For the most part, it is similar to the Senate bill but contains some provisions that give us heartburn. We are appreciative that it adopts origin-based sourcing for taxing and that it eliminates the small-seller exception 3 years after enactment.

We have concerns for a few reasons. First, there is language that includes additional compensation to both certified software providers and remote sellers that was not provided in the Senate bill. Without knowing what that amounts to, there is the risk that any revenue collected could be diminished as a result.

Second and the most notable provision we are troubled by is language included for the definition of a remote seller. The language actually comes from the Business Activity Tax Simplification Act (BATSA), which NACo has opposed as a preemption of state and local tax authority. Thus, under the RTPA a seller has a physical presence in a state if it: has employees assigned to the state, uses the service of an agent to establish or maintain a market in the state and the agent does not provide services for anyone else during the taxable year, or leases property in the state. Further, the RTPA establishes an exception for any seller that has an in-state presence for less than 15 days to conduct limited or transient business activity. This essentially creates a potential loophole that does not currently exist under many states' laws. NACo will continue to work with Congressman Chaffetz as the bill progresses.

4. **Business Activity Tax Simplification Act (H.R. 2584)** – The Business Activity Tax Simplification Act (BATSA) would represent an unwarranted federal intrusion into state and local tax authority as it would mandate the use of a physical presence standard for determining whether a state can tax a company for doing business in its borders. Essentially, the law would require that businesses could only be subject to taxes in states where they have property and employees for at least fifteen days in a year. This would be contrary to current practice where nexus is generally defined in the first instance by state law. The various state tax laws have established the types of activities conducted by a business within its borders that would create nexus with the state. BATSA seeks to invalidate those state laws by establishing the physical presence standard. Altering current state business tax laws would impact state revenue and ultimately the funding assistance transferred to local governments. As noted earlier, this bill has been advanced to the full House by the House Judiciary Committee. There is no Senate companion bill.
5. **Tax reform and the Highway Bill** – There is some good news in that it appears our work over the past few years to maintain the tax exemption for municipal bonds has paid off. We've heard from countless offices that the message has been clearly received – don't mess with municipal bonds. However, until tax reform is complete and signed into law, which is likely a few years away, we need to maintain our vigilance and discipline on this message.

What has been interesting recently is that the discussion of tax reform has increasingly been included in the debate on finding solutions for the next transportation reauthorization. Some of the ideas have been more focused on business tax reform but it's hard to gauge at this point what ideas will gain traction, much less support from both sides of the aisle. What makes this even more interesting is that Congress is likely facing yet another short term extension of transportation funding as it is currently set to expire at the end of July. When you combine this with a deteriorating state of infrastructure in our country, Congress is facing significant pressure to develop a long-term solution. We are certainly monitoring this debate as it unfolds.

6. **Municipal Advisor Rule** – In September of 2013 the Securities and Exchange Commission (SEC) gave final approval to the definition of municipal advisor (MA), and in January of 2014 the SEC released guidance to assist municipal market participants prepare for implementation of the new MA Rule. The Rule, which took effect on July 1, 2014, specifies which activities will be covered by the Dodd-Frank Act imposed fiduciary duty of a municipal advisor to its government client, may result in the need for new written representations by issuers, and may limit the manner in which the underwriters and other professionals interact with issuers. While the Rule does not regulate issuers directly, there are numerous indirect implications.

The practical effect of the MA Rule on issuers is to limit the ability of underwriters to provide advice to issuers. However, a few exemptions to the Rule may apply, thus allowing underwriters to continue to provide such advice. We continue to monitor this because the Municipal Securities Rulemaking Board (MSRB) is currently in the process of developing a regulatory framework for municipal advisors. Again, while it does not necessarily regulate issuers, there may be an indirect impact.

7. **ACA Excise Tax (H.R. 2050, H.R. 879)** – NACo generally supported many components of the Affordable Care Act (ACA) because it enhanced the ability of counties to build healthy, safe and resilient communities, especially since counties play such an integral role in our country's health system. One provision, however, that NACo has not supported and seeks to improve in the law is the 40 percent excise tax on employer-provided health benefits. Set for implementation in 2018, the excise tax would have a negative impact on county budgets because one of the primary methods counties utilize to attract and retain a quality workforce is to offer competitive health benefits.

Due to the two Supreme Court decisions on the ACA, we know that attempts to repeal the law have a high hurdle to get over which could improve the chances of enacting more focused changes to the law. NACo will continue to monitor as it remains uncertain if either bill will be acted upon. H.R. 2050 enjoys significant bipartisan support.