

Testimony of

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On Behalf of

Enterprise Holdings, Inc.,  
The Coalition Against Discriminatory Car Rental Excise Taxes

Before the  
U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on Commercial and Administrative Law

On  
“The End Discriminatory State Taxes on Automobile Renters Act of 2009 (EDSTAR)”  
(H.R. 4175)

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2141 Rayburn House Office Building  
Washington, D.C.

Good morning, Chairman Cohen and Ranking Member Franks, and members of the Subcommittee on Commercial and Administrative Law.

My name is Ray Wagner. I am the Vice President of Government & Public Affairs for Enterprise Holdings, Inc. By training, I am a tax and business lawyer. Before joining Enterprise Holdings, I served as Director of Revenue of Missouri and as the Director of Revenue in Illinois. Since 1993, I have also served as an adjunct professor of law at Washington University in St. Louis where I co-teach a class in state and local taxation. I also served for almost six years as the municipal judge of my hometown in St. Louis County. I have tremendous respect for state and local government and the critical role each plays in our federal system.

Enterprise Holdings operates the Enterprise, Alamo and National Car Rental brands. Headquartered in St. Louis, our company began as the dream of our founder, Jack Taylor, in the lower level of an automobile dealership in 1957. The company is named for the aircraft carrier Jack served upon in World War II - the USS Enterprise. We have proudly served our customers for 53 years; and I am proud to speak on behalf of those customers today, as well as the entire Coalition Against Discriminatory Car Rental Excise Taxes.<sup>1</sup>

Chairman Cohen, thank you for holding this hearing on H.R. 4175, the End Discriminatory State Taxes on Automobile Renters Act. I would also like to thank Mr. Boucher and Mr. Akin – as well as the other original co-sponsors for introducing this truly bi-partisan bill.

### **I Represent a Broad Coalition in Support of H.R.4175**

I appear before you in support of H.R. 4175; and I am representing a diverse coalition that extends well beyond the car rental industry proper. It includes, among others:

- American Car Rental Association
- American International Automobile Dealers Association
- American Society of Travel Agents
- American Automotive Policy Council
- National Association of Minority Automobile Dealers
- National Business Travel Association
- National Consumers League
- National Urban League
- Property & Casualty Insurers of Association of America
- Truck Renting and Leasing Association
- International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)

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<sup>1</sup> Complete list of Coalition Members Available in Exhibit A

## **There is An Alarming Trend of Discriminatory Car Rental Taxes**

This legislation addresses the increasing propensity of state and local governments to target – in other words “discriminate” against – rental customers by imposing special taxes on car rentals often for purposes wholly unrelated to renting a car.

By discriminatory taxes, I mean taxes that are layered on top of the base rental rate, in addition to the regularly applied, broad-based taxes such as property taxes or general sales taxes. To date, governments in 43 states and the District of Columbia have imposed 118 different excise taxes on car rentals in various jurisdictions—representing more than an eight-fold increase in the number of such taxes since 1990. Many additional excise tax proposals are currently pending across the country.

As you may have experienced, all too often you rent a vehicle these days and what you thought was going to be a great rate of \$25.00 per day winds up being closer to \$35-\$40.00 per day. That increase – in large part – is due to the discriminatory taxes customers are mandated to pay by state and local governments.

## **H.R. 4175 Would Prevent Future Discriminatory Taxes on Car Rental**

H.R. 4715 would only prevent state and local governments from imposing future discriminatory taxes on car rentals. In other words, if H.R. 4175 becomes law, state and local governments can and will continue to tax car rentals – just not at a higher rate than the generally applicable taxes in a given jurisdiction. The rental car industry is not seeking a handout. We simply want local governments to take their hands out of our customers’ pockets, and treat our customers like those of most other industries.

Let me be clear. Because, H.R. 4175 is “prospective” only, it will *not* affect any of the 118 existing rental car taxes, which currently exist at the state or local level. Nor will it disrupt the current financial dealings of any existing projects.

## **Car Rental Taxes Are Bad Tax Policy**

### **Taxation without Representation**

Many state and local lawmakers believe car rental taxes export the tax burden to non-voters. To a large extent this is true; although a more accurate portrayal of exactly who rents cars will come later in my comments. There is typically no one on the local city council or state government to defend the out-of-town traveler who is being targeted. Council members and legislators often do not want to feel the political repercussions; therefore many see the attractiveness of assigning a tax burden on people from outside the taxing jurisdiction. Here are some quotes from actual public officials describing car rental excise taxes:

*“It has the obvious attraction, in that it [the tax] essentially attacks those people out of state,” - Florida state representative.*

*“If you can tax a visitor instead of one of your own, then we should look at it,” - County Judge candidate in Texas.*

*“Out-of-town guests are great taxpayers”, - Washington, DC City Councilman.*

This is a modern day version of “Taxation without Representation.” Senator Russell Long may have stated it best: “Don’t tax you, don’t tax me, tax that fellow behind the tree.” Rental consumers are that fellow behind the tree.

### **Misconceptions about who rents cars**

While it is indeed true car rental taxes indeed affect deplaning air travelers that tend to be out-of-state residents, there’s a whole segment of renters who go largely unnoticed. Often times these same renters are systemically under-represented in our political system. Contrary to popular belief, most rental car customers are not business travelers; not all car rentals occur at airports; and certainly not all car rental customers are wealthy enough to absorb extra taxation. The majority rent cars as individuals for a variety of purposes. For example:

- There is a significant market of renters who work with insurance companies for “replacement rentals” for the occasions when a customer has been in an accident or has had a car stolen.
- There is a significant market of renters who rent cars while their vehicles are being serviced at auto dealers and mechanical repair facilities.
- A number of families rent a larger vehicle to take a family vacation or to take a child to college.
- The rental industry also serves individuals who do not own vehicles, generally for financial reasons.

These are among the casts of thousands who may not be wealthy individuals or business travelers who are being reimbursed. All of them appropriately pay their share of the same taxes that every other car owner or car driver pays, such as personal property taxes, sales taxes, licensing and registration fees and taxes, gasoline taxes to name a few.

### **Taxes aren’t related to any specific benefit**

To my knowledge, there has never been any evidence set forth by proponents of car rental taxes demonstrating the link between a car rental tax and the purpose of the tax.

The most prevalent use of these taxes has been for the building of multi-million dollar professional sports stadiums. From the NBA to the NFL and Major League Baseball, consumers have been saddled with these discriminatory taxes so that these wealthy team owners can supplant their costs.

## **Car rental taxes are regressive**

Car rental taxes are regressive; and therefore have a much greater negative impact on renters of lesser means. For instance, many of these taxes are a flat dollar per day. Therefore, a renter who rents a car for \$30 per day and must pay the \$4 per day stadium tax is paying more than 13% more. Compare that to a perhaps wealthier customer who rents a more expensive car for \$75 per day, where the additional \$4 tax is only 5%. This has an unfair *and* regressive impact on the individual renting the less expensive car – most often the individual of lesser means. To add insult to injury, the renter of lesser means may not even be able to afford a seat to a game held in the stadium that he/she is helping finance.

Many rental car customers are working Americans whose cars have broken down. They rent replacement cars to meet their transportation needs while their primary car is being repaired. Still others don't own cars at all and are renting vehicles for their vacations or other special occasions.

According to a study conducted by The Brattle Group, (“Brattle Study”)<sup>2</sup>, 19% of all car rental excise taxes are paid by working families earning less than \$50,000 per year. And 7% of all car rental taxes are paid by households earning less than \$25,000 per year - right near the poverty level.

## **Minorities are disproportionately affected by car rental taxes**

According to the Brattle Study, African Americans generate 26 percent of rental car revenues and pay 27 percent of the excise taxes, despite the fact that they account only for about 12 percent of the population. Members of other minority groups pay 13 percent of the total such taxes nationwide, despite the fact that they represent only about 7 percent of the population. Hispanics account for another 12 percent of all excise taxes paid on retail car rentals. Caucasian households, despite the fact that they account for roughly two-thirds of the population, account for less than half of all such excise tax payments.

## **Car rental taxes even affect non-car renters**

Car rental taxes even impact those who don't rent cars at all. Auto insurance companies are forced to pay rental car taxes through the claims process, and these costs are passed along to all policy-holders – whether they've ever rented a car or not.

## **Car rental taxes negatively impact the auto manufacturing industry**

The connection between the auto manufacturing industry and the auto rental industry is very strong, and mutually dependent. For example, in 2009, an economically

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*Effects of Discriminatory Excise Taxes on Car Rentals: Unintentional Impacts on Minorities, Low Income Households, and Auto Purchases*, Dr. Kevin Neels - The Brattle Group

challenged year, 1,135,612 rental units were purchased collectively by rental car industry from manufacturers. Of the roughly 1.1 million rental units purchased – nearly 700,000 were purchased from the Big 3. Therefore, if total car sales were 10.4 million, that means that rental car companies purchased 11% of all cars sold in 2009. The steady stream of purchases from rental car companies is critical to ensure a baseline of volume, keep factories open (and workers on the job) and maintain reasonable cash flow levels for the companies.

As the Brattle Study details, car rental taxes suppress demand, which leads to slower growth, fewer job opportunities and fewer vehicles purchased by the rental companies. For example, a 10% rise in car rental excise taxes results in an approximate 11% reduction of auto purchases. Assuming everything remained constant; this would translate into 75,350 fewer vehicles purchased by rental car companies from the Big 3 in 2009 as a result of the existing car rental taxes.

### **Congressional Precedent for Protecting Transportation Industry from Excessive Taxation**

Prohibiting discriminatory taxation which burdens interstate commerce is a valid use of Congressional power under the Constitution's Commerce Clause. Preliminarily, it is important to note the rental industry has been determined by Congress to be a part of the federal system of interstate commerce. For example, in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act of 2005 (SAFETEA-LU), Congress made such a determination. Federal and state courts have also agreed.<sup>34</sup>

In 1976, Congress passed the Railroad Revitalization Regulatory and Reform Act for the purpose of improving the quality of rail services in the United States through regulatory reform and rehabilitation of rail services, facilities, and financing. In doing so, Congress eradicated discriminatory state and local taxing schemes for the industry. The 4-R Act has been re-codified several times since 1976. On its face, the pertinent section, 49 U.S.C. § 11501, appears to apply only to discriminatory property taxation of the railroads as an unreasonable burden on interstate commerce. However, courts have interpreted the statute to include all types of tax discrimination. The Fourth Circuit Court of Appeals reasoned that the section would be “ineffective in fulfilling Congress’ intent to revitalize the rail industry if states could discriminate against rail carriers through non-property taxes.” *Richmond F & P R.R. v. Department of Taxation*; 762 F.2d 375 (4th Cir.1985).

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<sup>3</sup>*United States v. Bishop*, 66 F.3d 569, 588; Motor vehicles are “the quintessential instrumentalities of modern interstate commerce.”

<sup>4</sup>*Graham v. Dunkley*, 50 A.D.3d 55, 852; “Rational basis existed to conclude that rented or leased motor vehicle safety and responsibility, as regulated by Graves Amendment, had substantial effect on interstate commerce, even in purely intrastate instances, and thus court had to defer to congressional finding that such activity affected interstate commerce and conclude that Graves Amendment was valid exercise of Congressional power pursuant to Commerce Clause.”

The 4R Act is not the only federal legislation of its kind. Pursuant to its powers under the Commerce Clause, Congress has also established statutory protection against discriminatory state and local taxation in other transportation industry related legislation. These include the Motor Carrier Regulatory Reform and Modernization Act of 1980 (49 U.S.C § 14502), the Airport and Airway Improvement Act of 1982 (49 USC § 40116), and the Bus Regulatory Reform Act of 1982, re-codified in 1995 as 49 U.S.C. §14505.

Unrelated to the transportation industry, Congress has used its Commerce Clause authority to limit state and local taxes to prohibit discriminatory taxation on the generation and transmission of electricity in the Tax Reform Act of 1976 (15 U.S.C. § 391). In addition, 1998, Congress passed the Internet Tax Freedom Act (47 U.S.C. § 151) to protect Internet commerce from discriminatory state and local taxes. The testimony submitted to the Committee this day by Mr. Jeffrey Freidman contains the full text of the applicable provisions cited.

Therefore, Congress has demonstrated its compelling interests to preempt harmful and discriminatory taxation within the transportation industry and outside it. Rental car customers are the last vestige of the proverbial trains, planes and automobiles that do not currently enjoy federal protection from such discriminatory taxation. Moreover, even if car renters don't fly across borders or drive across state lines, they do drive on federally funded roads, highways, bridges, and tunnels.

### **Conclusion**

Especially during this downturn, it is essential that Americans continue to travel and rent cars. It is essential that rental car companies and the entire travel industry continue to create and preserve jobs. And it is essential that the rental car industry continues to buy new cars from the American auto industry, which has been hit so hard by the recession, so that American autoworkers can continue to build the world's best cars and earn middle class incomes.

At this crucial moment for the American economy, I urge Congress to do what is right for fairness, for federalism, and for families who are anxious about making their livings and making ends meet.

Thank you for the opportunity to speak for all these families and for "the fellow behind the tree."

## **EXHIBIT A**

### **Coalition Against Discriminatory Rental Car Excise Taxes**

Advantage Rent A Car  
Alamo Rent A Car  
American Automotive Policy Council  
American Car Rental Association  
American International Automobile Dealers Association  
American Society of Travel Agents  
Americans for Tax Reform  
Associated Industries of Florida  
Avis Rent A Car  
Budget Car Rental  
Chrysler Corporation  
Dollar Rent A Car  
Enterprise Rent-A-Car  
Ford Motor Company  
General Motors Corporation  
The Hertz Corporation  
National Car Rental  
National Association of Minority Automobile Dealers  
National Business Travel Association  
National Consumers League  
National Limousine Association  
National Urban League  
Rent A Toll  
Thrifty Car Rental  
Truck Renting and Leasing Association  
United Auto Workers  
WeCar (Car Sharing by Enterprise)