

Testimony of

Ray Warren
Deputy Commissioner
Office of the Commissioner of Revenue, Arlington County, Virginia

On Behalf Of

National Association of Counties
National League of Cities
United States Conference of Mayors
Government Finance Officers Association

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

On
"End Discriminatory State Taxes for Automobile Renters Act of 2011"
(H.R. 2469)
February 1, 2012

2141 Rayburn House Office Building
Washington, DC

Good morning, Chairman Coble, Ranking Member Cohen and other members of the Subcommittee on Courts, Commercial and Administrative Law. My name is Ray Warren, Deputy Commissioner of Revenue and legal counsel to the elected Commissioner of Revenue in Arlington County, VA. I am pleased to submit testimony on behalf of the National Association of Counties, the National League of Cities, the United States Conference of Mayors and the Government Finance Officers Association.

The above organizations respectfully oppose H.R. 2469, *End Discriminatory State Taxes for Automobile Renters Act of 2011*, for several reasons. First, the operative part of the proposed legislation provides that “No State or locality may levy or collect a discriminatory tax on the rental of motor vehicles, the business of renting motor vehicles or motor vehicle rental property.” The determination that a tax is “*discriminatory*” is made without any reference to the factors that state and local policymakers use to evaluate local needs and the best manner to distribute the local tax burden. Nor does the determination that a tax is “*discriminatory*” take into account offsetting exemptions. For example, in Virginia, we exempt the inventory of rental vehicle companies from a fairly significant property tax, as well as the rental of vehicles from the state’s sales and use tax. But the bill makes no allowance for this trade off, which is actually rather favorable to the industry.

The Congressional mandate determines that discrimination exists by reference to other items or businesses subject to tax, without evidence of the differences that may exist in those items or businesses. For example, the bill attempts to compare taxes levied on all

“other commercial and industrial taxpayers” instead of other retailers. Yet common sense dictates that different taxes are imposed on retail sales than on manufacturing. Indeed, it is unclear if the ordinary sales tax, a mainstay of local finance, would be held discriminatory if a similar apples to oranges test was applied to it.

Secondly, the vague language of this preemption proposal and the lack of an administrative agency that can issue interpretative rulings leave the courts to determine what terms actually mean. This will lead to expensive litigation and result in fiscal and budgetary uncertainty at a significant cost to taxpayers. It is also a cumbersome process that may result in different definitions in different jurisdictions. It will be virtually impossible for a uniform set of rules to be developed in a reasonable period of time because of the nature of trial court and appellate litigation.

Thirdly, over the past year, states and local governments have witnessed a parade of various industries coming forward to request that Congress preempt state and local government taxing authority of their particular industry; first the telecommunications industry, then the hotel industry, and today the rental car industry. The members of the organizations for which I speak have always maintained that any industry’s plea for federally mandated tax favoritism would open the door to other industries asking Congress for similar special exemptions or protections from state and local taxing authority. That is what we are now witnessing. H.R. 2469 and other legislation of its kind pose a dire threat not merely to state and local tax revenues, but to the entire existence of independent state and local taxation authority in our system of federalism.

Finally, the fundamental principle of federalism vests states and local governments with the responsibility of providing services and raising funds needed to be able to pay for those services. Fees may be placed on cars rented from airport locations that are used for capital improvements and tourism campaigns that directly benefit the rental car companies themselves. Rental car taxes are also imposed throughout the United States by cities, counties and states, with the proceeds used to pay for a variety of government services and programs.

For example, Revere, Massachusetts used its revenue from rental car taxes to build police and fire stations; Cleveland, Ohio and Schaumburg, Illinois divert their tax dollars to their general fund to assist with a host of operating expenses and funding of essential services; Kenosha, Racine and Milwaukee counties in Wisconsin have used their revenue to expand their commuter rail system; King County, Washington uses its revenue to fund youth sport programs to keep young people focused on positive activities and off the streets; and finally, my own Arlington County, Virginia allocates its rental car tax revenue to the general fund. Among the services funded by the revenue are street maintenance and the provision of police, firefighter and emergency medical services to Reagan National Airport, the Pentagon, Arlington National Cemetery, and other venues frequented by rental vehicle users.

The above examples, again, are illustrative of the long-standing principle of federalism that allows all levels of governments to work in partnership to provide for all constituents. We urge Congress not to encroach on this important principle. The

implications of passing legislation like H.R. 2469, particularly in these tight budgetary times, would not necessarily be to lower the tax burden on consumers, but rather to shift the burden onto other taxpayers. Thus, while the tax burden on some consumers might be relieved, the burden on others would surely be exacerbated as states and localities find ways to recoup lost revenue to fund essential services maintained, in part, by rental car taxes. These are the circumstances created at the state and local level when Congress decides it is appropriate to confer special privileges on certain favored industries.

For these reasons, we once again urge the members of the subcommittee to oppose H.R. 2469. Thank you for your time today.