



**Testimony of Tarrant County, Texas Judge B. Glen Whitley
President-elect, National Association of Counties**

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

**“State Taxation – The Impact of Congressional Legislation on
State and Local Government Revenues”**

April 15, 2010

Chairman Cohen, Ranking Member Franks, and members of the House Subcommittee on Commercial and Administrative Law:

My name is B. Glen Whitley. I am the Tarrant County, Texas Judge and President-elect of the National Association of Counties (NACo). NACo is the only national organization that represents county governments in the United States. Founded in 1935 – and celebrating its 75th Anniversary this year – NACo provides essential services to the nation’s 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public’s understanding of county government, assists counties in finding and sharing innovative solutions through education and research, and provides value-added services to save counties and taxpayers money.

I am pleased to provide testimony today on behalf of America’s counties and thank you for holding this hearing to discuss the impact of federal legislation on local government revenues.

No one can seriously question the impact that federal legislation can have on the financial health of local governments. For example, consider the passage of the American Recovery and Reinvestment Act (ARRA) in early 2009. With its combination of federal tax cuts, expansion of unemployment and other benefits, and increased spending for education, health care, and infrastructure, the \$787 billion bill surely helped to lessen the devastating impact on local governments caused by the worse economic downturn since the Great Depression.

I would be remiss not to mention the Build America Bonds programs, which was part of ARRA. These bonds have proven to be an effective financing option for local governments. The program has increased the market for local government debt by expanding the pool of potential market investors, including pension funds. To date, there have been over 1,000 issuances of Build America Bonds worth over \$90 billion. According to a Treasury Department analysis, state and local governments stand to save \$12.3 billion from bonds issued during the program’s first year. If you’re looking for an example of how federal legislation impacts state and local government revenues, this is it.

County Budgets

But while federal legislation can have a positive impact on local government revenue streams, it can also cause just the opposite. Unlike the federal government, local governments must balance their budgets, which is not an easy thing to do in today’s financial climate. According to an October 2009 NACo survey, 56% of counties report that they will start their fiscal year with projected shortfalls of up to \$10 million; 47% of counties report that those shortfalls will increase after the start of the fiscal year. And a whopping 82% of counties state that they anticipate shortfalls into the next fiscal year.

In balancing their budgets, county officials must have every available option on the table. Budgeting flexibility and the ability to respond to constituent needs are of paramount importance in the budgeting process. According to our survey, counties are responding to budget shortfalls in various ways. Sixty percent of counties report they are delaying purchases and repairs; 49%

report imposing hiring freezes; 54% of the counties are delaying capital investments; and 44% are using their rainy day/reserve funds.

This is why the imposition of unfunded mandates and the preemption of local taxing authority can have such a negative impact on local government finances. And this is why we strongly urge Congress, as it takes further action to spur our economy and create badly needed jobs, that it carefully considers the role that local governments play in our economic rebirth and not take actions that would further adversely affect county budgets and revenue streams.

Traditionally, counties performed state-mandated duties, which included assessment of property, record keeping (e.g., property and vital statistics), maintenance of rural roads, administration of election and judicial functions, and poor relief. Today, counties are moving rapidly into other areas, undertaking programs relating to child welfare, consumer protection, economic development, employment/training, planning and zoning, and water quality, to name just a few.

Service delivery responsibilities, however, vary widely among counties. For most, construction and maintaining local roads is one of their prime duties. North Carolina counties, however, have no responsibilities in this area. Wide variations also exist in the social service responsibilities and the types of utility services (e.g., water supply) provided by county governments.

That disparity is clearly demonstrated by a review of individual states and the percentage (of total expenditures) their counties spent on various services. For instance, according to the most recent census data, counties in Virginia spent 55% of their total expenditures on educational services (including library services) in FY 2001-02. New Hampshire counties spent 67% on public welfare services in the same fiscal year. South Dakota counties spent 35% of their budget on transportation services for FY 2001-02, and Maine spent 56% of its budget on public safety that year.

It is important that Congress recognize that not all counties tax and spend in identical fashions and that Congress creates a “slippery slope” when it removes the linkage between tax flexibility and services delivered.

Preemption

Preemption of local taxing authority is a major concern of local governments. Preemption works to dictate policy implementation of traditional county responsibilities and functions, undermines the concept of federalism, and is contrary to the constitutional framework underlying federal, state, and local relations. Federal preemption of local taxing authority should not be initiated unless there is an overriding issue of national importance. Furthermore, preemption must not be undertaken until its fiscal impact on local governments has been evaluated closely and openly in a public forum.

For example, hotel taxing authority is under attack by online hotel operators, such as Expedia and Travelocity. Local governments use hotel taxes in various ways. In some localities, the revenues are funneled into the general fund to help provide badly needed community services to our residents. Some localities use the revenues to promote tourism. And some municipalities

use these funds to pay for voter-approved convention centers, sports arenas, and other public buildings. It would be unconscionable during this current financial crisis for Congress to even consider the possibility of granting the online travel companies preferential tax treatment at the expense of county budgets.

Unfunded Mandates

Fifteen years ago last month, Congress passed and President Clinton signed the Unfunded Mandates Act of 1995. Strongly supported by NACo, the purpose of the Act was to curb the practice of imposing federal mandates on state and local governments without adequate funding and without full Congressional consideration that such mandates could displace other essential governmental priorities. But despite the good intentions of the Act, opposition to unfunded mandates remains a key legislative priority of NACo. The federal government must fully fund all costs incurred by county governments with complying with federal mandates.

Streamlined Sales and Use Tax

State and local governments lose billions of dollars annually because of the inability of taxing authorities to collect taxes from remote sellers. Federal legislation, which would permit the collection of these taxes, has not been introduced in the 111th Congress. Although NACo supports efforts to reduce the complexity of state and local sales and use tax laws, tax simplification should not be used as a means by the federal government to undermine county government taxing authority and revenue streams. Of major concern to local governments is the proposed inclusion of telecommunications taxes in federal streamlined tax legislation. NACo opposes any efforts to preempt or modify local government taxing authority over telecommunications taxes without our express agreement. Further, any changes must be revenue neutral and technology agnostic.

Telecom Tax Reform

NACo has long supported communications tax reform and simplification. But any changes must be revenue neutral to the locality, must treat like services alike, and must allow for an increase in tax revenues as the service or industry grows. Tax simplification vehicles, such as any legislation that would implement the Streamlined Sales and Use Tax Agreement, should not be used as a means to undermine local government finances, while at the same time granting preferential tax treatment to special interests.

This is why NACo is concerned with the Cell Tax Fairness Act (H.R. 1521 and S. 1192), which would impose a 5-year moratorium on new “discriminatory” taxes on mobile services, providers, and property. Moratoriums harm local governments’ ability to reform their tax systems, and are especially troubling for local jurisdictions that rely on wireless taxes.

Conclusion

It is inescapable that federal legislation can have both a positive and negative impact on local government revenues. County governments urge Congress, when it considers tax and revenue related legislation, to: 1) avoid preempting local taxing authority; 2) preserve local budgeting flexibility; and 3) resist imposing unfunded federal mandates.

On behalf of NACo and our nation's counties, I would like to thank you for the opportunity to testify before you today. I look forward to working with you and would be happy to answer any questions.