

Committee on Resources

Witness Statement

Statement of
Raymond Scheppach
before the
Committee on Resources
U.S. House of Representatives
on
Collection of Transactional Taxes on Indian Trust Lands
on behalf of
The National Governors' Association
October 12, 1999

Thank you, Mr. Chairman, for this opportunity to present the views of the nation's Governors on this important topic.

My name is Ray Scheppach, and I serve as the executive director of the National Governors' Association.

At the annual meeting of the National Governors' Association in St. Louis this past summer, the Governors adopted amendments to our policy regarding Indian tribes to specifically address problems regarding taxes. The policy directly addresses the problems states face in collecting taxes from retail establishments on Indian tribal lands when the retailer refuses either to collect or to remit these taxes to the state tax administrator. While the hearing today is focused on gasoline and tobacco taxes, states face a similar situation with regard to their sales taxes.

The approach the Governors have endorsed is consistent with the provisions of H.R. 1814. The Governors wish to thank the authors of this bill for responding to problems in a number of states that have resulted in serious harm to individual merchants, a loss of millions of dollars of revenue for states and localities, and increased cynicism among taxpayers from continued blatant and unpunished tax evasion.

I know the time today is short, so I intend to be brief. I will describe the importance of this issue to Governors and why the Governors believe the provisions of H.R. 1814 are the best solution to the problem.

Fairness in Taxation

The United States as a free and educated society depends primarily on the voluntary compliance of its citizens to collect the revenues necessary to fund government services. No federal, state, or local revenue agency has the policy or the resources to examine each of the forms and returns filed by individuals and businesses during a given tax year. These agencies certainly cannot audit every transaction that occurs that is subject to taxation. Yet this voluntary compliance is tested when similar transactions are treated differently

because of the location of the seller or the means of the sale.

The failure of retail establishments on Indian trust lands to collect sales taxes and excise taxes on tobacco and gasoline places merchants who comply with the law at unfair price disadvantages. On products like gasoline and tobacco, the tax is a very large percentage of the cost of the good. Failing to collect the tax provides a merchant with a significant price advantage. Consumers who are willing to pay the cost of taxes as a means of ensuring better quality schools or public services or roads unwittingly avoid taxes as a result of the logical desire to purchase products at lower costs. The consumer is often not aware that the price advantage offered by stores on tribal lands is created by the failure of these stores to collect taxes.

The taxes we are discussing are taxes on non-tribal members, individuals who are dependent on the local community government and the state for their public services, including the roads they drive on, the schools their children attend, the hospitals they need in emergencies, and the public safety officials who keep their towns safe. As recipients of these services, they have a responsibility to pay taxes, and the Governors ask that the federal government pass the legislation needed to give states the opportunity to enforce the collection of these taxes.

Government Impacts

Currently, transactional taxes provide almost 50 percent of state revenues. This form of taxation is more popular, if one can call a tax popular, than income taxes or property taxes, the other leading revenue tools available to states and local governments. We know it's popular because citizens have been electing public officials who pledge to use this tool to provide essential public services. The success of our most important institutions, our schools, hospitals, our criminal justice systems, all hinge on the ability to collect these taxes in a fair manner.

States have been successful in the courts in many instances in retaining the right to assess transactional taxes on retail establishments on Indian trust lands. However, states have not been as successful in forcing collection of those taxes. It is difficult to gather precise estimates of the actual dollars at risk in each state. The problem is widespread as the following examples will clearly illustrate. Just a few examples can show the potential size of this problem. In Connecticut, the Pequot Tribe in late 1998 announced to the state that it would no longer collect the state's sales tax on meals sold in its casino. This casino is very successful, and the lost revenues here alone amount to millions of dollars. Fortunately, the Mohawk tribe, which also operates a large casino in Connecticut, has continued to collect the tax. Near Albuquerque, New Mexico, the Taos Pueblo is building a hotel and casino and have informed the state that this establishment is being built on "Indian Country" and that New Mexico taxes will not be collected. The potential tax loss for such a retail establishment will be significant.

Governor John Engler has prepared a statement about the impact of these uncollected taxes in the state of Michigan. I ask that his statement be placed in the record of this hearing.

For local governments, the impact of the loss of sales tax revenue can be more devastating because the township or the county has a much narrower tax base and fewer options for making up the difference in resources. And for local merchants and the surrounding community, that local government is the primary supplier of public services. When this happens, the quality of life of these communities is seriously jeopardized.

Unfair Competition

I have mentioned the injustice of permitting tax evasion and the revenue loss to the states, but the most immediate impact is on the competing merchants who collect the taxes owed and suffer the business loss when customers purchase their gas or cigarettes or meals from the store across the road because it is not collecting taxes. These small businesses are often the mainstay of their communities, providing convenient necessities for years long before a competing tribal merchant uses tax evasion to achieve an unfair competitive advantage. The law-abiding merchants' belief in the American system of justice is seriously harmed when our system of federalism fails to enforce tax policy evenhandedly. I'm pleased the committee has provided time to hear from these affected taxpayers who not only contribute to our national economy, but who also provide many of the entry-level jobs that help high-school youth get a start in the job market and help families move off welfare.

H.R. 1814

The Governors have endorsed federal legislation that would provide for a remedy that does not stretch the capacity of either the states or the federal government. Given the proper authority, state revenue departments are capable of the required enforcement action. The first step that H.R. 1814 requires is to provide evidence that taxes are not being collected and remitted to the appropriate government. Once there is evidence of tax evasion for more than one year, the state notifies the federal government, which in turn reviews the evidence to ensure there is tax evasion. An affirmative finding leads the Department of the Interior to take that particular parcel of land out of trust land status temporarily, permitting the state justice system to enforce the tax laws. There is no significant burden on the federal government, and no new authority is required by states.

This solution leaves the state as the responsible party for tax collection and law enforcement. The tribal lands are within that state, and the neighboring non-Indian communities are as well. This process gives the retailer a local tax agent to respond to, and it provides the competing retailers a better chance to influence the timeliness of state intervention. The temporary removal of trust status affects only the tax authority, not the education or public safety or other tribal authorities inherent in trust land status. While this solution is simple, it does require federal legislation, and the Governors support enactment of these provisions of H.R. 1814.

To lessen the chance of problems like this developing in the future, the Governors also support legislation that would require the Department of the Interior to ensure that before land is taken into trust, the state and the tribal government must reach a binding agreement regarding the application of state and local tax authority to the parcels of land. The department is in the process of developing a new proposed rule for taking lands into trust, and we hope they will include this in the final rule.

I have attached a copy of the NGA policy to my statement for your information. Thank you again for this opportunity to testify, and I would be glad to answer any questions you may have.

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