Testimony of
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On Behalf Of

National League of Cities
National Association of Counties
U.S. Conference of Mayors
Government Finance Officers Association

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

"End Discriminatory State Taxes for Automobile Renters Act of 2009"
(H.R. 4175)
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2141 Rayburn House Office Building
Washington, DC

Good morning, Chairman Cohen, Ranking Member Franks and other members of the Subcommittee on Commercial and Administrative Law. On behalf of the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors and the Government Finance Officers Association, we are pleased to submit testimony concerning H.R. 4175.

We respectfully oppose H.R. 4175. Its preemption of the ability of states and localities to make their own determinations regarding the appropriate taxation of businesses within communities and throughout the state represents an unwarranted federal intrusion into the long-recognized authority of local and state governments to make tax classifications and opens the door to unprecedented federal control and oversight of local and state tax authority.

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. Our associations 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. 4175 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.

The requirements of H.R. 4175 would, if enacted, open the door to unchecked federal oversight, and rewriting of, all state and local tax laws and classifications. Since state and local governments must balance their budgets, such a federalization of state and local tax classifications would not lower total taxes paid by state and local taxpayers, but rather just shift

the tax burden to other types of taxes. Moreover, the ability to tailor taxing authority at the local level is extremely important. For example, Washington State permits all counties to impose a 1% tax on car rentals, yet only four counties in the state currently impose such a tax.

The Supreme Court has long recognized that state and local governments have broad discretion in the field of taxation, where they possess "the greatest freedom in classification."[1] The reason should be obvious: "It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments,"[2] and our system of federalism therefore requires "scrupulous regard for the rightful independence of state governments" in matters of tax classification.[3]

H.R. 4175 departs radically from longstanding principles of federalism. First, it would single out one industry for preferential federal preemptive protection from state and local tax classifications.

Second, and more generally, the bill would set an unprecedented and dangerous new standard for federal intervention into state and local government tax classifications. Under the bill, "discrimination" is defined in several ways, but includes imposing a tax on the business of renting motor vehicles, "at a tax rate that exceeds the tax rate generally applicable to the business of more than 51 percent of the other commercial and industrial taxpayers within the State or Local jurisdiction."

If the standard for federal intervention into supposedly "discriminatory" state and local taxation becomes that every economic sector and every service has to be taxed at the same rate when measured against other sectors, then there would be no limit at all to federal intervention in

[1] *Madden v. Kentucky*, 309 U.S. 83, 87-88 (1940).
[2] *Dows v. City of Chicago*, 78 U.S. (11 Wall) 108, 110 (1871) (quoted in *DirecTV, Inc. v. Tolson*, 513 F.3d 119, 123 (4th Cir. 2008)).
[3] *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 108 (1981) (quoted in *Tolson*, 513 F.3d at 123).

state and local tax classifications. And, as we are currently witnessing, other industries subject to different state and local tax classifications would be expected to seek from Congress preemptive relief from state and local taxes. Indeed, such a standard for "discriminatory" state and local taxes would mean, contrary to long-established precedent, that the federal government has the power to preempt *all* state and local tax classifications and to impose a federally-mandated state and local tax code of only a single tax rate for all businesses.

That would mean the end of state and local tax classification authority.

The power of the federal government to preempt state and local taxes is ultimately the power to destroy state and local governments – a power that cannot be reconciled with our basic system of federalism. The remarkable and unprecedented intrusion into state and local tax classification H.R. 4175 would represent far outweighs any plausible benefit the bill would offer. This bill is nothing more than a self-interested plea by one industry for its own special federal protection from state and local tax classifications.

The federal preemption approach in H.R. 4175 violates all principles of political accountability. It would enable the federal government to place a preemptive ceiling on state and local taxing authority, while leaving to state and local elected officials the difficult task of deciding which other taxes to raise or services to cut to compensate for the federal limitation. For political accountability to exist, the same governmental body that cuts or limits taxes must also be responsible for raising other taxes or cutting government services to pay for the tax cut. That principle of political accountability is a foundation on which the federal government's longstanding historical respect for state and local government tax classifications rests. And it is a foundation H.R. 4175 would upset.

The preemption issues discussed above will always be in the forefront of our associations' objections to this legislation, as well as preemption measures advocated by other industries. However, Congress adds insult to injury by entertaining any such measures during today's difficult economic times, where states continue to struggle to balance their budgets, and often do so by decreasing dramatically the assistance they provide to local governments. It is arguable that the worst recession since the Great Depression is not the time for Congress to limit any local or state tax receipts. The municipal sector –if all city budgets were totaled together – faces a combined, estimated shortfall of anywhere from $56 billion to $83 billion from 2010-2012. In most places, the local response to shrinking revenue has consisted of a predictable round of unfortunate but unavoidable layoffs, service cutbacks, and, in some cases, increasing fees and taxes. The vast majority of city and county fiscal officers report spending cuts in 2009 and expect further reductions in 2010 that will result in layoffs, delayed or canceled infrastructure projects, or cuts to public safety, libraries, parks and other municipal services.

It is clear that Congress recognizes the struggles of states and localities, which have included a surge in unemployment, as well as an increase in individuals' and families' dependency on municipal services. These increased needs are coming at a time when such essential services are being cut, and Congress has responded by enacting various measures like the American Recovery and Reinvestment Act to provide assistance to states and local communities to help our mutual constituents.

It is ironic, however, that at the same time Congress supports such measures, it would be considering legislation such as H.R. 4175, which would provide states and localities far less flexibility to make decisions to enable our leaders to confront the economic crisis and ultimately

assist in providing services such as police, fire, education, housing and job training. We urge Congress not to give with one hand and take away with the other.

Finally, I would like to discuss briefly what is done with the tax dollars state and local governments collect from the rental car companies and how they are used to enhance the quality of life in hometowns large and small.

First, it is important to recognize that additional 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. For example, the Hawaii state legislature was considering a bill that would increase daily rental car fees from $1.00 to $4.50. The additional income was to be used for various purposes, including the construction of a rental car facility at the Honolulu International Airport. Michigan recently considered legislation that would add a new daily rental car charge that would be used to fund the state's tourism campaign Pure Michigan.

Rental car taxes are imposed throughout the United States by cities, counties and states, with the proceeds also 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 place their tax dollars to their general fund to assist with a host of operating expenses and funding of essential services. Nine states, including Michigan, Florida, Pennsylvania, Virginia and Maryland use these taxes for overall transit funding in their state. For Montgomery County, this translates into funding for important road and other transportation projects in our community.

For all of these reasons, our associations and the city and county elected and appointed leaders they represent urge you to oppose H.R. 4175 and to speak out against all measures that seek to undermine essential state and local taxing authority.

Thank you for this opportunity to appear before you, and I am pleased to answer any questions you have.