END DISCRIMINATORY STATE TAXES FOR AUTOMOBILE RENTERS ACT OF 2009

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON

H.R. 4175

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JUNE 15, 2010

END DISCRIMINATORY STATE TAXES FOR AUTOMOBILE RENTERS ACT OF 2009

TUESDAY, JUNE 15, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:13 a.m., in room 2141, Rayburn House Office Building, the Honorable Steve Cohen (Chairman of the Subcommittee) presiding.

Present: Representatives Cohen, Johnson, Scott, Chu, Franks, and Jordan.

Staff present: (Majority) Norberto Salinas, Counsel; Adam Russell, Professional Staff Member; and (Minority) Stewart Jeffries, Counsel.

Mr. COHEN. This hearing of the Committee of Judiciary Subcommittee on Commercial and Administrative Law will now come to order. Without objection the Chair will be authorized to declare a recess of the hearing. I will now recognize myself for a short statement.

The Congress is well aware of the plight of state and local governments caused by the current recession. And because state and local governments need more revenue, consumers may see an increase in taxes to help balance budgets.

Only in certain states they will see that and some states that will see their budgets slashed. With this in mind though, many witnesses have urged us not to pass legislation which may restrict state's abilities to tax. However, we have also written that some state and local taxes unduly burden a single industry and its consumers.

Taxes on the rental of cars and trucks are one such discriminatory tax which hits consumers' pocketbooks. Some consumers may be shocked when the quoted price of renting a car is nowhere near what they pay. I am one of those consumers.

The shock stems not from the price charged by the rental company, oftentimes sounding inviting and low, but because of the added taxes and fees which can increase the total rental price 15 to 25 percent or more and makes one look at their receipt and say, "What happened to the rate they quoted me when I called them on the 800 number?"

The rate of these taxes is often far higher than the local tax rate placed on goods services. No matter the reasoning behind these

higher tax rates, the taxation of the rental cars and trucks is a familiar form of discriminatory taxation which may burden interstate commerce.

These taxes also chill car rental companies from investing and expanding. Conventional wisdom tells us that tourists and business travelers feel the primary impact of car rental taxes and fees and that local governments target these taxes at visitors and not their residents.

It also tells us the local governments adhere to the old adage that as I understand Senator Russell Long first coined and then a dear colleague, a Republican conservative from Millington, Tennessee, Senator Leonard Dunavant of blessed memory used to say, "Don't tax me, don't tax thee, tax that person behind that tree." So this is perfectly in accord with Senator Dunavant's warnings.

According to a recent report that assumption is incorrect, though, statistics reveal that more motor vehicles are rented from neighborhood locations than from airport facilities. Thus, car rental taxes and fees disproportionately fall on local residents who often rent cars while their own vehicles are being repaired or vans to ferry little league teams to baseball tournaments or other heart-rending activities that we could have listed here in this opening statement.

Today we hold a hearing on H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009." H.R. 4175 would impose a moratorium on any new taxes, discriminatory that they may be or not, with respect to the rental of motor vehicles, businesses who rent motor vehicles or the property of those businesses. The legislation would prevent increasing taxes imposed solely on the rental of cars and trucks.

[The bill, H.R. 4175, follows:]

I

111TH CONGRESS
1ST SESSION

H. R. 4175

To protect consumers from discriminatory State taxes on motor vehicle rentals.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 2, 2009

Mr. BOUCHER (for himself, Mr. AKIN, Mr. CARNAHAN, Mr. GRAVES, Mr. BOREN, Mr. SULLIVAN, Mr. ISRAEL, Mr. WILSON of South Carolina, and Mr. CARTER) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To protect consumers from discriminatory State taxes on motor vehicle rentals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "End Discriminatory State Taxes for Automobile Renters Act of 2009".

SEC. 2. PURPOSE.

The purpose of this Act is to prohibit prospectively, and provide a remedy for tax discrimination by a State or Locality against the rental of motor vehicles.

SEC. 3. DEFINITIONS.

(a) ASSESSMENT AND ASSESSMENT JURISDICTION.—The term "assessment" means valuation for a property tax levied by a taxing district. The term "assessment jurisdiction" means a geographical area in a State or Locality used in determining the assessed value of property for ad valorem taxation.

(b) COMMERCIAL AND INDUSTRIAL PROPERTY.—The term "commercial and industrial property" means property, other than motor vehicle rental property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use, and subject to a property tax levy.

(c) DISCRIMINATORY TAX.—The term "discriminatory tax" includes the following:

(1) A tax discriminates against the rental of motor vehicles if a State or Locality imposes the tax on, or with respect to—

(A) the rental of motor vehicles but not on, or with respect to, the rental of more than 51 percent of the rentals of other tangible personal property rented within the State or Locality, or

(B) the rental of motor vehicles at a tax rate that exceeds the tax rate generally applicable to at least 51 percent of the rentals of other

tangible personal property within the same State or Locality.

(2) A tax discriminates against the business of renting motor vehicles if a State or Locality imposes the tax on, or with respect to—

(A) the business of renting motor vehicles but not on, or with respect to, the business of more than 51 percent of the other commercial and industrial taxpayers within the State or Locality, on the same tax base as the State or Locality employs with respect to the business of renting motor vehicles, or

(B) 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.

(3) A tax discriminates against motor vehicle rental property if a State or Locality—

(A) assesses motor vehicle rental property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market

value of the other commercial and industrial property,

(B) levies or collects a tax on an assessment that may not be made under subparagraph (A), or

(C) levies or collects an ad valorem property tax on motor vehicle rental property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(d) LOCAL OR LOCALITY.—The terms "Local" and "Locality" mean a political subdivision of any State, or any governmental entity or person acting on behalf of such Locality, and with the authority to impose, levy or collect taxes.

(e) MOTOR VEHICLE.—The term "motor vehicle" has the same meaning as in section 13102(16) of title 49 of the United States Code.

(f) OTHER COMMERCIAL AND INDUSTRIAL TAXPAYERS.—The term "other commercial and industrial taxpayers" means persons or entities who are engaged in trade or business within a State or Locality and who are subject to some form of taxation by a State or Locality.

(g) RENTAL OF MOTOR VEHICLES.—The term "rental of motor vehicles" means the rental of a motor vehicle

that is given by the owner of the motor vehicle for exclusive use to another for not longer than 180 days for valuable consideration and only includes the rental of motor vehicles with a pre-arranged driver or motor vehicles without a driver, but shall not include taxi cab service as defined by section 13102(20) of title 49 of the United States Code.

(h) STATE.—The term "State" means any of the several States, the District of Columbia or any territory or possession of the United States, or any governmental entity or person acting on behalf of such State, and with the authority to impose, levy or collect taxes.

(i) TAX.—Except as otherwise specifically provided below, the term "tax" means any type of charge required by statute, regulation or agreement to be paid or furnished to a State or Locality, regardless of whether such charge is denominated as a tax, a fee, or any other type of exaction. The term "tax" does not include any charge imposed by a State or Locality with respect to a concession agreement at a federally assisted airport (provided the agreement does not violate the revenue diversion provisions of section 40116(d) of title 49 of the United States Code, or the registration, licensing, or inspection of motor vehicles, if the charge is imposed generally with respect to motor vehicles, without regard to whether such vehicles

are used in the business of renting motor vehicles within the State or Locality.

(j) TAX BASE.—The term "tax base" means the receipts, income, value, weight, or other measure of a tax to which the rate is applied. The "tax base" of a tax imposed on a per unit basis is the unit.

(k) TAX RATE GENERALLY APPLICABLE TO OTHER COMMERCIAL AND INDUSTRIAL TAXPAYERS.—The term "tax rate generally applicable to other commercial and industrial taxpayers" means the lower of—

(1) the tax rate imposed on the greatest number of other commercial and industrial taxpayers or their customers, or

(2) the unweighted average rate at which the tax is imposed.

SEC. 4. PROHIBITED ACTS.

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.

SEC. 5. REMEDIES.

(a) JURISDICTION.—Notwithstanding any provision of section 1341 of title 28, United States Code, or the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to

grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain or terminate any acts in violation of this Act, except that such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this section.

(b) BURDEN OF PROOF.—The burden of proof in any proceeding brought under this Act shall be upon the party seeking relief and shall be by a preponderance of the evidence on all issues of fact.

(c) RELIEF.—In granting relief against a tax which is imposed in violation of section 4, the court shall strike the tax in its entirety, unless the court finds the tax—

(1) is the equivalent of a specific tax imposed on at least 51 percent of other commercial and industrial taxpayers, and

(2) is not discriminatory in effect. If such tax is discriminatory in effect with respect to tax rate or amount only, the court shall strike only the discriminatory or excessive portion of the tax as determined by the court. Notwithstanding subsection (b) of this section, the burden of proof on the issue of whether a tax is the equivalent of a tax imposed on other commercial and industrial taxpayers shall be on the State or Locality that imposes the tax.

(d) CAUSE OF ACTION.—

(1) An action to enforce the provisions of this Act may be brought only by a person who—

(A) rents motor vehicles to another person,

(B) is engaged in the business of renting motor vehicles,

(C) owns motor vehicle rental property, or

(D) rents a motor vehicle from another person.

(2) A person who rents a motor vehicle from another person and is seeking relief under this Act may only bring a cause of action against the State or Locality imposing the discriminatory tax as defined by this Act.

SEC. 6. LIMITATIONS.

This Act shall not be construed to constitute the consent of Congress to State or Local taxation that would be prohibited in the absence of this Act.

SEC. 7. EFFECTIVE DATE.

(a) EFFECTIVE DATE.—The provisions of this Act shall become effective on December 2, 2009.

(b) EXCLUSION.—Discriminatory taxes as defined by this Act are not prohibited under this Act if—

(1) State or Local legislative authorization for a discriminatory tax that is in effect as of December

2, 2009, does not lapse, the tax rate does not increase and the tax base for such tax does not change; or

(2) a State enacts legislation by December 2, 2009;

(A) that specifically authorizes a Locality to impose a discriminatory tax;

(B) the Locality imposes the authorized tax within five years from the date the State enacted the authorization for the Local tax; and

(C) the tax rate imposed by the Locality is not increased and the tax base for such tax does not change.

○

Mr. COHEN. Similar to other tax bills before this Committee, the moratorium on new discriminatory taxes should encourage the motor vehicle rental industry and local governments to come together and work on reforming the current tax structure.

For example, the state and local governments and the car rental industry could work together to broaden the tax base rather than have state and local governments over rely on a few hundred taxpayers. Of course, that would require enlightened legislators and local officials. But we will see what happens.

Such reform would maintain a steady stream of revenue for state and local governments while ensuring a fair tax burden for consumers such as those who rent cars and trucks. This hearing will provide Members of the Subcommittee the opportunity to hear testimony about local government's reliance on taxes and fees on the rental of motor vehicles.

Members will also hear testimony about how those taxes and fees impact consumers and the car rental industry, and the testimony should help determine whether or not Congress should intercede with this legislation.

As you may be aware, 2 months ago this Subcommittee held a hearing on the current plight of state and local governments that they are experiencing in this recession. I can certainly sympathize with their concerns as they receive lower revenues, but they are still expected to provide these services that they have done over the years.

However, we need fair tax policies which do not act as another regressive tax on consumers, and we need fair tax policies which encourage capital investment rather that discourage it. Fortunately, to the rescue, comes Representative Boucher, who introduced this legislation, drafted it so as to not affect current government revenues.

H.R. 4175 will not prevent taxing authorities from continuing to tax the rentals of motor vehicles or the rental companies and so that will allow them to continue to fund the stadia and arenas and whatever other assorted goods and services and products that they have and facilities that they fund. Instead, this will impose a moratorium on new discriminatory taxes.

So I thank Mr. Boucher for his work. Accordingly, I look forward to receiving today's testimony and I now recognize my colleague Mr. Franks, the distinguished Ranking Member of the Subcommittee, for his opening remarks.

Mr. FRANKS. Well, thank you, Mr. Chairman. I am going to get you to introduce me at my next speech somewhere. Just want to thank you for the effort to hold this hearing, and I know that the Subcommittee has held many hearings on discriminatory taxation over the years, but I believe today's hearing is—on H.R. 4175, the "End Discriminatory Taxes for Automobile Renters Act," I think that it is a first.

And while the subject of today's hearing, namely rental cars, may be new, the general topic of discriminatory taxes—I will get that word—is not new. Supporters of H.R. 4175 claim that states and localities target rental car companies and consumers for unusually high and discriminatory taxes. And I think the research is certainly in their favor.

They claim that these discriminatory taxes are often used to pay for new stadiums or other municipal improvements. And in other words, while the citizens get to enjoy the benefits of a new ballpark, the costs are passed on to tourists and business travelers who had no say in the financing decisions behind those projects.

And such exportation of tax burdens, if true, Mr. Chairman, of course troubles me. And of course I am also concerned that discriminatory taxes are a job killer fundamentally.

Supporters of H.R. 4175 also point to the economic impact that these discriminatory taxes have on our Nation's auto industry. Rental car companies purchased over 1 million autos from General Motors, Chrysler and Ford in 2008. That constituted more than 15 percent of the Big 3 car sales last year.

Given the financial interest the Federal Government has in those companies and with no fault in mind, just for the record and hence American taxpayers have taken in General Motors and Chrysler, we should be aware of state taxation regimes that threaten the viability of those entities.

Now that said, I know that discrimination, at least in this context, can be in the eye of the beholder. So to that end, we will hear from the states and localities that they are hurting. My own state, of course, is currently trying to close a $3 billion deficit, so I understandably sympathize with their plight as well.

And as I have said repeatedly at these hearings, I am a strong supporter of state's traditional powers in this area. I mean, I am somebody that has read the 10th Amendment. But even when I support legislation like this, state to curb the tax authority such as the Cell Tax Fairness Act, I want to make sure we do it right and that the relief is targeted in a way that it should be.

So therefore I look forward to hearing from all of the witnesses today to determine the scope of the problem and whether H.R. 4175, which I have some concerns about, the approach that it takes, but I am open to hearing a better approach, but I believe it is a sufficiently limited remedy to the problem to warrant my support.

And so I yield back the balance of my time, Mr. Chairman.

Mr. COHEN. Thank you, Mr. Franks. Isn't the 10th Amendment, is that the one "Thou shalt honor thy state and local government?"

Mr. FRANKS. That is close enough for a Democrat. [Laughter.]

Mr. COHEN. Yes, I think I am getting them—somehow I am getting them confused, yes. And now—thank you for your statement.

I am now pleased to introduce the first panel for today's hearing. First thanks to all the witnesses who are willing to participate in today's hearing. If Mr. Scott has a statement we will enter it in the record without objection.

Without objection written statements will be placed in the record. We ask that you limit your remarks to 5 minutes. We have the lighting system which Mr. Boucher is most familiar with, and then we will have the questioning period.

Our first witness is Congressman Rich Boucher of Virginia's 9th Congressional District. Representative Boucher is in his 14th term in the United States House of Representatives. He is a Member of the House Judiciary Committee, serving on the Courts and Competition Policy Subcommittee.

He sits on House Energy and Commerce Committee, serving on two Subcommittees, Communications, Technology and the Internet of which he is the Chairman, as well as the Energy and Environment Committee.

He is the author of H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009" which he introduced on December 2, 2009. He is one of the most cerebral Members of our Congress, and his district touches Tennessee. And for all those good reasons, I thank him for his testimony and recognize him now for his statement.

TESTIMONY OF THE HONORABLE RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BOUCHER. Well, thank you very much Chairman Cohen. I also intend to invite you to come campaign for me this fall. I appreciate those very kind remarks. And I thank you and Ranking Member Franks and other Members of the Subcommittee for your attention today to H.R. 4175, which is designed to prohibit prospectively discriminatory car rental taxes imposed by state and local governments.

I am joined in the co-sponsorship of the bill by 10 Members of the House, including Mr. Jordan and Mr. Issa, who are Members of this Subcommittee. Today, special car rental taxes have been enacted by 43 states and by the District of Columbia. In 1976 there was one such tax. Today there are 115.

Localities have found that car rental taxes are an attractive means of financing projects that have no direct relation to the rental of automobiles. For example, 35 sports stadiums have been funded with these discriminatory taxes, a performing arts center and a culinary institute have been funded by car rental taxes.

And these taxes carry a huge social cost. They fall disproportionately on minority households. Nationwide, minority households bear 52 percent of the burden of these taxes. In the state of Georgia, for example, minority households constitute 12 percent of the population, but they bear 27 percent of the car rental tax burden.

And these are not taxes that are simply imposed on non-residents who are traveling through the state, as the Chairman indicated during his opening statement. The bulk of car rentals come from neighborhood rental facilities, not from the airport located in the various communities.

These taxes also drive up insurance costs. Since a large portion of car rentals are temporary replacement vehicles that are rented by insurance companies while an automobile that was involved in an accident is being repaired.

A recent study has shown that these taxes also significantly depress new car sales, perhaps by as much as 12 percent. These social costs are simply far too high. The taxes frequently fund projects that are unrelated to car renting. And they are discriminatory, since similar taxes are not imposed upon the leasing of other tangible personal property in the various locality.

Our legislation prohibits the imposition of new discriminatory car rental taxes by states and localities, while allowing to remain in effect those taxes that had been enacted prior to December the 2nd, 2009. That was the date upon which our legislation was introduced,

serving notice to localities nationwide, that Congress would now be considering respectively prohibiting these taxes.

The taxes that were in effect on December 2, 2009 can remain in effect as long as they are not changed, they do not lapse, and the rate of those taxes does not increase. We inserted the grandfathering provision to acknowledge that localities have financed projects in anticipation of these tax receipts, and we are carefully avoiding disrupting the financing flows that enable those projects to be paid for.

I would note that the Congress has previously adopted similar kinds of legislation that prohibit the imposition of local taxes on bus, airplane and train transportation. This is very much a corollary and an analogy to those previous congressional enactments, and I think very appropriate as a complement to them.

I would note, Mr. Chairman, and Members, that our legislation has been endorsed by a large number of organizations, including The National Consumers League, The National Urban League, The United Autoworkers and the major United States auto manufacturing companies.

I want to thank all of these endorsing organizations and the 10 individual Members of the House, who have co-sponsored the bill. And I thank you, Chairman Cohen, Mr. Franks and other Members of the Subcommittee, for your attention to the merits of our legislation today. Thank you for having me here as your witness.

[The prepared statement of Mr. Boucher follows:]

PREPARED STATEMENT OF THE HONORABLE RICK BOUCHER,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

STATEMENT OF CONGRESSMAN RICK BOUCHER

Judiciary Commercial and Administrative Law Subcommittee Hearing:
End Discriminatory State Taxes for Automobile Renters Act

June 15, 2010

Thank you, Chairman Cohen.

I appreciate your Subcommittee's hearing on H.R. 4175, which is designed to protect car rental consumers from discriminatory taxes on car rentals.

I am joined in the cosponsorship of the legislation by ten House members, including Mr. Jordan and Mr. Issa, who are members of this Subcommittee.

Today, special car rental taxes have been enacted in 43 states and D.C. In 1976 there was one such tax. Today, there are 115. Localities have found the car rental tax to be attractive as a means of financing projects that have no direct connection to the rental of cars.

For example, 35 sports stadiums have been funded by these taxes. A performing arts center and a culinary institute have been funded with car rental taxes.

And these taxes carry a tremendous cost. They fall disproportionately on minority households. Nationwide, minority households bear 52 percent of these taxes.

In Georgia, minority households constitute 12 percent of the population, but they bear 27 percent of the car rental tax burden.

These taxes drive up auto insurance costs since a large portion of car rentals are temporary replacement vehicles rented by insurance companies while vehicles involved in accidents are being repaired.

A recent study has shown that these taxes are significantly suppressing the demand for new cars, perhaps by as much as 12 percent.

These social costs are too high. The taxes frequently fund projects that are completely unrelated to car rentals.

And they are discriminatory since similar taxes do not fall on the rental of other kinds of tangible personal property.

Our legislation prohibits the imposition of new discriminatory car rental taxes by states and localities while allowing to remain in effect taxes that were enacted prior to December 2, 2009, the date this bill was introduced, as long as the taxes in effect on that day are not changed, lapsed or raised.

Previously, Congress has prohibited the imposition of local taxes on bus, airline and train transportation. This legislation is an entirely appropriate complement to those existing laws.

The grandfathering provision acknowledges that localities have financed projects in anticipation of tax receipts, and we are avoiding disrupting the

financing of the projects. Congress previously has barred local taxes on bus, plane and train transportation.

The bill has been endorsed by numerous organizations including the National Consumers League, the National Urban League, the UAW and the major U.S. auto manufacturers.

I thank all of the endorsing organizations for their support, and I thank the 10 cosponsors, and I thank you Chairman Cohen for drawing the Subcommittee's attention to the bill this morning.

Mr. COHEN. Thank you for your testimony, and for introducing the bill, Mr. Boucher. I didn't realize that I was not a sponsor of it.

And maybe, I don't know, maybe it was because of the idea of being impartial for the hearing, but we have since the hearing has started, we are going to become a sponsor. I think it is good legisla-

tion, and I appreciate you for bringing it to the Committee. I do not have questions for Mr. Boucher.

Mr. Franks, do you have questions?

Mr. FRANKS. Not for Mr. Boucher. We are going to let him off the hook.

Mr. COHEN. Mr. Scott, though, has been waiting to grill you. [Laughter.]

Mr. Scott, you are recognized.

Mr. SCOTT. I would like to thank Mr. Boucher for his testimony.

Mr. BOUCHER. Thank you very much

Mr. COHEN. The Virginia gentleman that he is. We thank you for your testimony and—excuse me, Mr. Jordan, would you like to grill?

Mr. JORDAN. No, I am——

Mr. COHEN. You are a sponsor.

Mr. JORDAN. [Off mike.]

Mr. COHEN. Well, that ends Congressman Boucher's day on the Hill. [Laughter.]

Mr. BOUCHER. Thank you very much, Mr. Chairman.

Mr. COHEN. We thank you for your testimony and for bringing the bill.

Our next panel, are we ready for the next panel? Will the next panel of witnesses be seated? Thanks to each of you for participating in today's hearing. We had the instructions. We didn't do them when Mr. Boucher was there.

We have got a 5-minute system, lighting system up front, and when the light is green that means you have started or at least it means that counsel has turned on your light. And it means you have got 4 minutes until it turns to yellow. And when it turns to yellow that means you have got 1 minute left. And when it turns to red that means you should be finished.

After you finish your statements, each Member of the Committee will have five minutes to ask you questions, and we will have the same lighting system and can submit the questions to you later to ask you to respond to. But we ask you for that.

First witness will be Mr. Ray Wagner, vice president of Enterprise Holdings. He oversees Enterprise's government and legislative agenda. Prior to joining Enterprise in 1995, he served in the cabinet of two governors, as director of revenue in Illinois and Missouri, conflicted in St. Louis on a certain football game, that occurs there annually.

In 2003, Mr. Wagner was unanimously confirmed by the United States Senate to serve as a member of the IRS Oversight Board. On March 17, 2005, he was unanimously confirmed for his second term to the board and served as the chairman of that board for 2 years.

He was a municipal judge in the city of Ballwin, Missouri, a position he held from April 1999 to May of 2005. And an attorney in private practice, in the areas of securities, municipal finance, banking, corporate and tax law. Thank you Mr. Wagner, you may begin your testimony. And are you in the Big 10, the Big 12 or——

TESTIMONY OF RAYMOND T. WAGNER, JR., VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, ENTERPRISE HOLDINGS, INC.

Mr. WAGNER. I haven't read this morning's newspaper, so I don't know—— [Laughter.]

Mr. COHEN. Moving around. Thank you, sir.

Mr. WAGNER. Mr. Chairman, Ranking Member Franks, Members of the Subcommittee. Again, my name is Ray Wagner——

Mr. COHEN. I think it might be. I didn't tell you about the microphone. You have got to punch it, is the light on?

Mr. WAGNER. Is it on? Right? Better?

Mr. COHEN. Better, better, I guess it is.

Mr. WAGNER. Can you hear me?

Mr. COHEN. Yes, I can.

Mr. WAGNER. Now it seems to be working, okay. Mr. Chairman, Ranking Member Franks, Members of the Subcommittee, again, my name is Ray Wagner, and I am the vice president of government and public affairs for Enterprise Holdings.

As the Chairman suggested, I served as director of revenue of two states, Missouri and Illinois. I believe in a fair system of taxes, and in the Federal system of government.

I am testifying in support of the bipartisan bill, that serves both of these American ideals of fairness and federalism on behalf of a coalition that spans in spectrum from Grover Norquist to the UAW.

The End Discriminatory State Taxes on Automobile Act, EDSTAR, seeks to address an increasing propensity of state and local governments to target, or in other words discriminate against rental car consumers.

Prohibiting such taxation, which burns interstate commerce, is a valid use of congressional power under the commerce clause. With the 4R Act and similar laws, Congress, as our sponsor suggested, has prevented discriminatory taxes on railroads, trucks, buses and airlines.

Rental cars equally cross state lines and when they don't, renters drive on federally funded highways, roads, bridges and tunnels. Make no mistake, rental cars are a part of interstate commerce.

Yes, the rental car industry accepts fair taxation, but that doesn't mean our consumers should pay at a higher rate. These taxes are simply wrong and millions of Americans understand why. Have you ever rented a car that you thought would be at a great rate of $35 a day only to find out that the bill wound up being close to $45 or greater?

Part of that increase may be the result of the discriminatory taxes imposed by state and local governments. These extra taxes come on top of the broad base of general taxes, registration fees, personal property taxes, gasoline taxes, airport user fees—every other tax already imposed on all car owners and users.

We don't object to the broad base of taxes. EDSTAR will not affect these. We do, however, object to taxes that specifically target, unfairly discriminate and single out rental car customers. Let me be clear. The coalition is not asking for any sort of handout.

We are merely asking local governments to take their hands out of our customer's pockets. Let me explain what else EDSTAR will

and will not do. It will only prohibit state and local governments from enacting future discriminatory rental car taxes.

It will not affect any of the 118 existing rental car taxes or the projects they fund, including the sport stadiums. Local officials find these taxes so seductive because many believe car rental taxes export the tax burden to non-resident voters.

They also believe that all car renters can afford these extra taxes. Rental cars do, indeed, affect airport renters, but there is a whole segment of renters who go largely unnoticed. Contrary to popular belief, as has been suggested, most rental car companies are not business travelers.

The majority rent cars as individuals. Some are renting to replace their own car while it is repaired, while others rent because they don't own a car at all. And of course, many rent cars for vacation or other special occasions.

Singling out renters is unfair because there is rarely a connection between renting a car and the purpose for which the tax was enacted. Not only that, but these taxes are regressive. They have proportionally greater impact upon people of modest means than they do on the wealthy, many of whom are reimbursed for business expense.

They also impact minorities disproportionately. As the respected economics firm The Brattle Group reported in a recent study, minorities are approximately 75 percent more likely to rent than Whites.

The African Americans are 12 percent of the population. They account for 27 percent of the rentals, car demand, and pay 28 percent of rental car taxes. That is one reason why the National Urban League is concerned with this issue.

Finally, these taxes even impact those who don't rent cars at all. As Congressman Boucher indicated, auto insurance companies are forced to pay rental taxes through the claims process, and these costs are passed along to all policyholders whether they have ever rented a car or not.

These taxes are not only unfair to consumers they are bad for the economy. They suppress the demand for rental cars. That leads to slower growth and fewer job opportunities in the industry. That also results in reduced purchases of new cars by the rental car companies that ordinarily account for 1.2 million vehicles or 12 to 15 percent of all vehicles sold in the country.

And that means fewer jobs for the American autoworkers at a time when their industry is struggling in this recession. Unfair and harmful as these taxes are, many public officials like them because they are so easy to impose.

While aimed at those from out of town who don't vote, these taxes are more likely to hurt economically vulnerable households with little political influence. This is a modern day version of taxation without representation or maybe again, as Senator Russell Long said it best, "Don't tax me, don't tax thee, tax that fellow behind the tree."

Well, let me close by adding working families depend upon the health of the auto industry and the entire economy. Working families deserve the opportunity to rent cars for special occasions and

urgent emergencies. And finally, working families demand and deserve fairness in our tax system.

Thank you for the opportunity to speak for those families and for that fellow behind the tree.

[The prepared statement of Mr. Wagner follows:]

PREPARED STATEMENT OF RAYMOND T. WAGNER, JR.

Testimony of

Raymond T. Wagner, Jr.

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)

June 15, 2010

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.[1]

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)

[1] 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")[2], 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

[2]

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.[3][4]

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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[3] *United States v. Bishop*, 66 F.3d 569, 588; Motor vehicles are "the quintessential instrumentalities of modern interstate commerce."

[4] *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)

Mr. COHEN. Thank you for remembering Senator Long's quote, which you might hear again today. Our next witness is Mr. Timothy Firestine, chief CAO from Montgomery County, Maryland, appointed to that position November 2006.

Prior to that, he was the county's director of Finance for 15 years. Twelve years of management positions in the Office of Management Budget and before coming to Montgomery County, he was in Allegheny County, Pennsylvania in the Comptroller's office, currently a member of the Executive Board of the National Government Finance Officers Association and vice chair of its Committee on Debt Management.

He is a member of District of Columbia Water and Sewer Authority—excuse me—where he currently serves as vice chair, plus an adjunct professor at the University of Maryland Graduate School of Public Policy where he taught public finance.

Thank you, Mr. Firestine.

TESTIMONY OF TIMOTHY FIRESTINE, CHIEF ADMINISTRATIVE OFFICER, MONTGOMERY COUNTY, MARYLAND, 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

Mr. FIRESTINE. Good morning, Chairman Cohen, Ranking Member Franks, and other Members of the Subcommittee on Commercial and Administrative Law. I am Tim Firestine, Chief Administrative Officer of Montgomery County, Maryland.

On behalf of the National League of Cities, the National Association of Counties, U.S. Conference for Mayors and the Government Finance Officers Association, I am pleased to testify on H.R. 4175. As our organizations have noted in the past, we respectfully oppose H.R. 4175.

This legislation would preempt the ability of states and localities to make their own determinations regarding the appropriate taxation of businesses within their communities. It also 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 authorities.

Over the past year, states and local governments have witnesses 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 for protections from state and local taxing authorities.

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 authorities and 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 percent tax on car rentals, yet only four counties in the state impose such tax.

H.R. 4175 departs radically from long standing principles of federalism, and sets an unprecedented and dangerous new standard of Federal intervention into state and local government tax classifications.

If the standard for Federal intervention into supposedly discriminatory state and local taxation becomes that every economic sector in 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 state and local tax classifications.

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.

Furthermore, Congress adds insult to injury by entertaining any such measures during today's difficult economic times, for states continue to struggle to balance their budgets and often do so by dramatically decreasing the assistance they provide to local government.

It is arguable that the worst recession since the Great Depression is not time for Congress to limit any local or state tax receipts. State and local government budgets face billions of budgetary shortfalls over the next couple of years.

In most places, the local response to shrinking revenue has consisted of a round of unfortunate, but unavoidable, layoffs, service cut backs, and in some cases, increasing fees and taxes.

It is clear that Congress recognizes the struggle of states and localities, which have included a surge in unemployment as well as an increase in individuals and families dependencies on municipal services and responded with the adoption of the American Recovery and Reinvestment Act.

But it is ironic that at the same time Congress supports and enacted such measures, that 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 briefly discuss briefly what is done with the tax dollars state and local governments collect from rental car companies and how they are used to enhance the quality of life in hometowns, small and large.

As noted in the written testimony, communities across the country depend on these taxes to provide a variety of improvements in their state, counties and cities, including ones that help the rental

car companies through capital improvements to airport facilities and tourism initiatives that serve to bring more customers to them.

There are other examples of the funds being used for a variety of government services and programs including public safety programs and road and transit improvements. In Maryland, the state collects an 11-1/2 percent tax on rental cars, which is estimated to bring in $52 million in fiscal year 2011.

Our statutes dictate that these funds go into the state's Chesapeake Bay Trust Fund and the Transportation Trust Fund. Montgomery County benefits from both of these initiatives. The Bay Trust Fund pays for projects that control storm water run-off.

And monies from the Transportation Trust Fund helps fund a variety of projects in the county including resurfacing and maintaining roads, replacing and installing streetlights, implementing pedestrian safety measures, snow removal and various transit initiatives throughout our community. Thank you.

[The prepared statement of Mr. Firestine follows:]

PREPARED STATEMENT OF TIMOTHY FIRESTINE

Testimony of
Timothy Firestine
Chief Administrative Officer, Montgomery County, Maryland

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)
June 15, 2010

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

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[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.

Mr. COHEN. Thank you, Mr. Firestine.

Ms. Sally Greenberg, Executive Director of the National Consumers League—not to be confused with the National Football League—her focus in NCL, four key priorities, fraud, child labor, health care and the NCL's Team Consumer Education and Financial Literacy Program.

She came to the National Consumers League from the Consumers Union, where she worked from 1997 until 2007 on auto safety, product safety, civil justice reform, including keeping the justice system open, accessible and accountable for all consumers, advocated for enhanced auto and product safety, intellectual property, securities reform and investor protections and civil justice reform.

She had worked at the U.S. Department of Justice Foreign Claims Settlement Commission and first served as a time as Eastern States Civil Rights Counsel for the Anti-Defamation League in Boston.

Ms. Greenberg, thank you, and we begin your testimony.

TESTIMONY OF SALLY GREENBERG, EXECUTIVE DIRECTOR, NATIONAL CONSUMERS LEAGUE

Ms. GREENBERG. Thank you so much, Chairman Cohen, Ranking Member Franks, Members of the Subcommittee. Thanks for the opportunity to appear before you today in support of H.R. 4175, a bill entitled the "End Discriminatory State Taxes for Automobile Renters Act of 2009."

I am, indeed, an Executive Director of the National Consumers League. We are the Nation's oldest consumer organization founded in 1899 with a mission of protecting the interest of both workers and consumers in creating a more fair marketplace for both.

Mr. Chairman, today's consumers feel that many of their transactions they are nickeled and dimed, whether it is on their cell phone bills, late fees and finance charges on credit and debit cards, bogus convenience fees slapped on the tickets for live entertainment performances or extra fees imposed on just about everything else we consumers do when purchasing goods and services.

Indeed, a good example is the recent survey from "Consumer Reports" that finds that travelers hate—the fees that travelers hate most are the extra fees they have to pay for luggage and airline ticket fees.

The National Consumers League feels consumer's pain and unfortunately most of the time we have little power to change these fees. However, today we are here to support legislation that says enough. Consumers need to fight back and H.R. 4175 will prospectively bar discriminatory car rental taxes which are really added fees imposed by states and localities.

As of February 2010, 43 states and the District of Columbia have imposed 118 excise taxes on car rentals. This is eight times the number of these taxes that existed in 1990. My grandmother would have said the word goniff comes to mind.

Rental car taxes tend to pay for entertainment items like stadiums, performing art centers, culinary institutes, and not for vital services like schools, libraries, hospitals or services to the elderly.

Industry research indicates that rental car consumers spent more than $7.5 billion in taxes to fund pet projects of elected officials. A perfect example is the situation unfolding right now in my hometown of Minneapolis.

The Minnesota Vikings already have the Metrodome. It is a beautiful indoor stadium right in the middle of downtown Min-

neapolis. But Zygmunt Wilf, the Vikings billionaire owner, he wants another one.

He wants one with a retractable roof, and he wants consumers who rent cars to help pay for it. So the state is now considering levying a 2.5 percent tax on rental cars to finance a new billion dollar stadium.

More than half of those who rent cars in Minnesota are residents of the state. But to add insult to injury, Minnesota residents are already paying a special 6.2 percent excise tax on car rentals, a tax that was adopted to pay for the cost to the state of trying to attract the Super Bowl. That tax was supposed to expire in 2005 but it was extended even though the revenue it raised far exceeded its original purpose.

Tourists are also affected by these pervasive fees. Tourists may be easier to tax as non-constituents but fees on tourists are also spiraling out of control. According to the New York Times, taxes and other fees such as vehicle licensing fees or high levels of excise taxes raise the average rental bill 28 percent at airport locations.

In addition, from my professional vantage point as head of a nonprofit overseeing a staff of 14, when we travel or have meetings locally and don't have access to a car, we have to rent cars. I see the bills come in and often the excise fees and the sales taxes together represent a hefty percentage of the entire bill.

These added costs hurt nonprofit organizations like mine that operate on modest bills but are vitally important to civil society. Unfortunately, politicians who pass these taxes are operating on several false assumptions.

First, there is the misconception that the vast majority of people who rent cars are from outside the state or locality. Second, there is the misperception that most consumers who rent cars are either businesses who won't feel the extra charge or affluent consumers who won't notice an extra $10 or $15 on a car rental.

First, the first myth is that people who rent cars are from out of state. If local officials gave some thought to the idea, they would understand that many people who don't own a car because they can't afford one might rent when they have a special need.

And the other misperception is that consumers that rent cars for these reasons are not affluent out-of-town business people that state and local legislators seem to believe rent most of the cars. Far from it, and they need affordable rental car options.

There have been several studies mentioned. One is the Brattle Group Study that Ray Wagner mentioned. It shows the revenues in 2004 from car rentals were about $17.6 billion. Half of that was from home-city rentals.

Another study that was commissioned by the Brookings Institution analyzed the impact of a $4 per day rental car tax in Kansas City. The researchers found that piling taxes onto car rental customers is both inefficient because it distorts choices about modes of transportation, and it is inequitable. Communities that are already taxing car rental customers might want to take a look at their long-term strategy.

So in conclusion, Mr. Chairman, with an eight-fold increase in taxes on rental cars since 1990, it seems clear that the piling on of these excise taxes has gotten out of hand. NCL understands the

importance of citizens paying his or her share of taxes for schools, libraries, roadways, and for clean water and other very worthy projects.

But when rental car customers are asked to pay for stadiums or art centers and taxes imposed seem to have no limits, it is time to say enough.

I appreciate the opportunity to testify and look forward to your questions.

[The prepared statement of Ms. Greenberg follows:]

PREPARED STATEMENT OF SALLY GREENBERG

Testimony of the National Consumers League Before the House Judiciary Subcommittee on Administrative and Commercial Law of the House
June 15, 2010
Sally Greenberg, Executive Director

Good morning, Chairman Cohen, Ranking Member Franks and Members of the Subcommittee. Thank you for the opportunity to appear before you in support of H.R.4175, a bill entitled the "End Discriminatory State Taxes for Automobile Renters Act of 2009."

My name is Sally Greenberg and I am executive Director of the National Consumers League, the nation's oldest consumer organization, founded in 1899 with the mission of protecting the interests of workers[1] and consumers and creating a more fair marketplace for both.

Mr. Chairman, consumers today feel that in many of their transactions they are nickel and dimed, whether it is their cell phone bill, late fees and finance charges on credit and debit cards, bogus convenience fees slapped on tickets for live performances or extra fees imposed on just about everything else we consumers do when purchasing goods and services. Indeed, a good example is the recent survey from *Consumer Reports,* which finds that what travelers hate most are the extra fees they have to pay for luggage and airline ticket fees. (http://pressroom.consumerreports.org/pressroom/2010/05/luggage-charges-top-consumer-reports-survey-of-travel-gripes.html)

The National Consumers League feels consumers' pain – and unfortunately most of the time consumers have little power to challenge these fees. However, today we are here to support legislation that says: Enough! HR 4175 will prospectively bar discriminatory car rental taxes – which are really added fees – imposed by states and localities. The fees we refer to are those taxes that state and local governments have increasingly piled on consumers who rent cars in order to fund pet projects. This bill will grandfather in existing taxes and not affect the ability of states and localities to impose general taxes that are levied on all citizens or businesses. But NCL believes that states and localities should not impose fees on consumers who rent cars when those fees have nothing to do with improving the services they receive. Politicians also operate under some misperceptions when adopting such taxes on car rentals, which we believe make the taxes hard to justify.

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[1] We wish to bring to the Subcommittee's attention to a June 10, 2010 letter endorsing the legislation from the United Auto Workers (UAW). The UAW is one of five union representatives that sit on the National Consumers League Board of Directors.

The former NCL President and my predecessor, Linda Golodner, discussed the issue of fees and their impact on consumers in an op-ed that appeared in the *Pittsburgh Post-Gazette*.[2] Golodner's piece noted how Congress has prohibited practices by state and local governments that unreasonably burden or discriminate against interstate commerce and transportation. Examples include the Railroad Revitalization and Regulatory Reform Act (1976), Airports and Airways Improvement Act (1978), Motor Carrier Act (1980) and Bus Regulatory Reform Act (1982).

The Problem

As of February of 2010, 43 states and the District of Columbia have imposed 118 excise taxes on car rentals. This is eight times the number of these taxes that existed in 1990. Rental car taxes tend to pay for entertainment items like stadiums, performing arts centers, or culinary institutes and not for vital services like schools, libraries, hospitals or services to the elderly. Industry research indicates that rental car customers have spent more than $7.5 billion in taxes to fund the pet projects of elected officials.

A perfect example is the situation unfolding right now in my hometown of Minneapolis. The Minnesota Vikings already have the Metrodome, a beautiful indoor stadium right in the middle of downtown Minneapolis. But Zygmunt Wilf, the Vikings' billionaire owner, wants another one -- with a retractable roof! – and he wants consumers who rent cars to help pay for it. So, the state is now considering levying a 2.5% tax on rental cars to finance a new billion-dollar stadium.

More than half of those who rent cars in Minnesota are residents of the state. To add insult to injury, Minnesota residents are already paying a special 6.2% excise tax on car rentals, a tax that was adopted to pay for the cost to the state of trying to attract the Super Bowl. That tax was supposed to expire in 2005, but it was extended, even though the revenue it raised has far exceeded its original purpose!

Tourists are also affected by these pervasive fees. Tourists might be easier to tax as non-constituents, but fees on tourists are also spiraling out of control. According to the *New York Times*, taxes and other fees such as vehicle licensing fees or high levels of excise taxes raise the average rental bill 28 percent at airport locations.[3]

Excise Taxes on Car Rentals Hurt Non-Profits

[2] Linda Golodner and Bill Connors. "Private Sector: Pain, No Gain." *Pittsburgh Post-Gazette* (2007).

[3] Susan Stellin. "Tax Bites on Travelers Go Deeper." *The New York Times* [New York] 10 Apr. 2007.

In addition, from my professional vantage point as head of a non-profit, overseeing a staff of 14, when we travel – or even have meetings locally and don't have access to a car - we often have to rent cars. I see the bills come in, and often the excise fees and sales taxes together represent a hefty percentage of the entire rental. These added costs hurt non-profit organizations like mine that operate on modest budgets but are vitally important to civil society.

In addition to hurting nonprofits, this tax hurts the millions of families who are tourists visiting cities and towns across the country. These taxes mean that these tourists are being asked to fund projects for which they likely will derive no benefit at all.

It is easy to see why local elected officials have increasingly turned to car rental transactions to raise fees for stadiums and impose fees. They undoubtedly want to escape the wrath of their own constituents and taxpayers who have the power to vote them out of office. So why not shift the tax burden onto someone else? Who better than out-of-towners who come to their cities and towns to do business or visit friends and family?

Correcting Misconceptions about Who Rents Cars in America

Unfortunately, politicians who pass these laws taxing rental car transactions are operating on several false assumptions. First, there is the misconception that the vast majority of people who rent cars live outside of the state or locality. Second, there is the misconception that most consumers who rent cars are either businesses who won't feel the extra charges or affluent consumers who won't notice an extra $10 or $15 fee on a car rental.

Let me address each of these issues in turn:

First, the myth that most people who rent cars are from out of state. If local officials gave some thought to this idea, they would come to understand that many people who don't own a car *because they can't afford one* might rent when they have a specific need – like taking an elderly relative to a doctor's appointment or a child to a tournament or to visit a college, or for a special occasion like a wedding or graduation, or perhaps moving a relative from one residence to another.

Frequently consumers who rent cars for these reasons are not the affluent out-of-town businesspeople that state and local legislators seem to believe rent most of the cars– far from it. And they need affordable car rental options.

A June 2010 study conducted by the Brattle Group[4] (a study commissioned by the rental car industry) - a Cambridge, MA based consulting group that looks at economic impacts, found that the estimated total revenue for rental cars in the US for 2004 was around $17.6 billion, with home city rentals accounting for $9.5 billion or 54% of the industry's annual revenues. This, of course, flies in the face of what politicians say when they argue for imposing rental car excise taxes. The mayor of a suburb north of Atlanta is a case in point: *"We're not raising any tax. I didn't think it would be a big deal as most rentals are visitors anyway."* The record is replete with such statements.

A second misconception is that affluent consumers and businesses rent most of the cars. The same Brattle Group study found that this is not the case. In fact, 19% of these car rental excise taxes are paid by working families that earn less than $50,000 a year and 7% of the total was paid by households earning less than $25,000. Enterprise Rent-a-Car estimates that 25% of its customers have incomes below $40,000.

The Brattle study also found that African-Americans generate 26% of the rental car revenues and pay 27% of the excise taxes, despite accounting for only 12% of the US population. Members of other minority groups pay 13% of the total car rental excise taxes, despite being only 7% of the population, while high-income households –defined as households earning over $100,000 pay only half of these excise taxes, which means the rental car excise taxes are a very regressive tax.

In a similar study, two leading tax policy experts, William Gale of the Brookings Institution and Kim Rueben of the Urban Institute, analyzed the impact of a $4-per-day rental car tax in Kansas City, Mo. (http://www.nbta.org/NR/rdonlyres/50F55B2B-16BB-4458-9D94-7AB4F976959D/0/GaleRueben_Fulltext.pdf).

Gale and Rueben found that piling taxes onto car rental customers is both inefficient, because it can distort choices about modes of transportation, and inequitable. Communities that already are taxing car rental customers might want to take another look at their long term strategy.[5]

Conclusion

With an eight-fold increase in taxes on rental cars since 1990, it seems clear that the piling on of these excise fees has gotten out of hand. NCL understands the importance of citizens paying her or his share of taxes to provide critical services that we all rely on – for our schools, hospitals, libraries, roadways, and for clean

[4] Dr. Kevin Neels. "Effects of Discriminatory Excise Taxes on Car Rentals: Unintentional Impacts on Minorities, Low Income Households, and Auto Purchases." (June, 10 2010).
[5] Linda Golodner and Bill Connors. "Private Sector: Pain, No Gain." *Pittsburgh Post-Gazette* (2007).

water and safe roadways. But when rental car customers are asked to pay for stadiums or arts centers and the taxes imposed seem to have no limit, its time to say, enough is enough! Consumers are tired of taxes and fees without any understanding of where that funding is going or why they are being asked to pay it. The Minneapolis stadium example is a case in point.

For the reasons stated above, NCL is pleased to offer our support for H.R.4175, which will help put the brakes on discriminatory taxes on consumers who rent cars. We thank you for inviting NCL to share our views with you today and urge you to support this important legislation.

Mr. COHEN. Thank you, Ms. Greenberg, and we will now have the questioning session, and I will recognize myself for 5 minutes of questioning. Mr. Firestine, you have got the government perspective. Taxes—if you have a property tax, everybody pays at the same rate. Sales tax, pay at the same rate.

Why do people that rent cars pay higher taxes than those people proportionately than those that own cars? Why should there be a special tax on folks that rent the car and use it for a week or short term than those who have it for a year? There is not such a tax on renters of apartments per month or necessarily. Why is that? Is that fair?

Mr. FIRESTINE. Okay, I am glad to respond to that. And again, our emphasis here is that state, you know, tax policy is a decision made at the local and state level by elected officials. There is a whole combination of factors that go into deciding what is the right portfolio of taxes to have to support services.

Once you have decided what you are going to offer whether it is education, all the community needs that are trying to be met through these local governments, let us start with the property tax.

Even though everybody may pay the same rate, the burden is going to be different from taxpayer to taxpayer. There are tax credits that are included. It is based on the assessment of the house. Likewise with——

Mr. COHEN. But the assessment, there is a correlation in your ability to pay because there is ability to purchase. So if you can purchase a $100,000 house, your assessment is at that rate or if you purchase a million dollar house your assessment is at that rate. There is some correlation.

What is the correlation with having a car for a week that you rent as distinct from having a car for a year that you own?

Mr. FIRESTINE. Well, again, I would——

Mr. COHEN. And I am not asking—and I appreciate your knowledge, and your acumen and your professorial experience, but I am asking you this question not as a government witness, to give me a government answer, because obviously I know that. I am asking you as a person who considers justice and fairness and the philosophy professor to give me the answer.

Mr. FIRESTINE. And that is what I am saying. I would say, you know, from a tax policy perspective, you know, since it is a consumption tax like the sales tax that you mentioned earlier, you can choose whether or not you want to participate in that service, whether you——

Mr. COHEN. You can choose—if you travel to Los Angeles, you can say I am going to be in Los Angeles and instead of renting a car I am going to walk?

Mr. FIRESTINE. No, you could——

Mr. COHEN. You could. You would have a very weird trip.

Mr. FIRESTINE. You have other alternatives. You could take——

Mr. COHEN. What are your alternatives? A cab?

Mr. FIRESTINE. A cab.

Mr. COHEN. That is insane in Los Angeles. Nobody takes the cab. I tried to find one last week. They don't have cabs. It is not New York.

Mr. FIRESTINE. But again, I—my point is these are local taxes decisions. There are other taxes out there that are very similar to the rental car taxes. I mean, cell phone taxes were mentioned. They are a primary source of funds for Montgomery County. We tax cell phones. There are tobacco taxes in the state of Maryland——

Mr. COHEN. But you tax cell phones based on having a cell phone, not on having it for a week. You are really not getting to the point that I think is germane. You discriminate and charge people that rent cars a large tax, and what is the basis?

What is the rational connection? What is the nexus? Is there one or is it just we trust and put in our elected officials total discretion?

Mr. FIRESTINE. Again, I think that is my point is that, you know, that is a local elected official's decision to make in terms of how much to tax.

Mr. COHEN. I got you. I got you.

Ms. Greenberg, your grandmother's philosophy, we have heard from people that want to have us protect them from Internet access taxes, from—from hotel industry wants us to talk about taxes, and satellite television. They all claim that these taxes are goniff taxes, too. To paraphrase your grandmother, why should this goniff be different from all other goniffs?

Ms. GREENBERG. Well, you know, I said in my statement that consumers feel like they are getting nickel and dimed, and they are. This bill is an opportunity to say no and say enough with regard to this particular tax.

I mean, I would be right there fighting a lot of the taxes and fees that are imposed on consumers which we as consumers don't have any understanding where that money goes. So here we have a bill that gives us an opportunity——

Mr. COHEN. So you have got a forum?

Ms. GREENBERG [continuing]. To articulate some of the——

Mr. COHEN. Right.

Ms. GREENBERG [continuing]. Concerns we have about this fee but I don't love the fees that I have to pay on my cell phone bill either.

Mr. COHEN. I got you. Ms. Greenberg or Mr. Wagner, do you see any connection, any nexus, logical nexus other than this is an opportunity to grab some money on having this extra tax on rental car users? Nobody sees a nexus?

Mr. WAGNER. Chairman, I will speak to that. On the—I think you have captured the essence of the issue here about fairness. There truly is no nexus typically between the taxes imposed and the purpose for which the rental itself.

The issue here is generally that the taxpayer or the taxing entity sees these as easy targets; that these people are non-voting residents who typically live out of town. They are taxes have the end impact of discouraging travel, punishing the low and moderate income individuals and throwing a wrench into the American auto industry.

Mr. COHEN. Thank you, Mr. Wagner.

My 5 minutes have expired, and I will now recognize Mr. Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman. You know, it is always a challenge when you are dealing with competing interests

like this. I think it was Fred Bastiat said that, you know, "Government is that great fiction through which everyone endeavors to live at the expense of everyone else."

And one of the challenges we are having to deal with here is one that some of the founders had to deal with as well. You know, when they had the Articles of Incorporation they needed some kind of a mechanism to create interstate commerce. And they knew that if they just let, you know, it would be a free-for-all. That it would end up being kind of a disaster.

And yet I am afraid that some of my liberal colleagues would, if they decided to mandate that all Members of Congress had flying saucers, that they would reference the commerce clause in the Constitution as a basis for giving them that authority.

So it is kind of a, you know, kind of a tug-of-war here between the commerce clause rightfully interpreted and the second—I am sorry, the 10th Amendment.

And so, you know, I am convinced here that the real issue is discriminatory. What is a discriminatory tax? And if there is a discriminatory tax, then it seems to be something that needs to be addressed. And that is my own position that there is evidence that there is a discriminatory tax burden here and that that is why we should address it.

Now I am not sure, as I said in my opening statement, that this bill is the best way to do that. And I am hoping that somehow it will catalyze a discussion that will make sense to everyone, you know, at least every reasonable person and that we can deal with that.

So I guess with that, Mr. Wagner, I would like to start with you. What is the dollar burden on rental car companies and consumers of these discriminatory taxes? Just give us a little kind of a picture of it.

Mr. WAGNER. The collective amount of dollars that have been raised is typically over $7 billion a year. That is the amount of revenue that is being collected from the travelers that fly into a particular town to rent cars or from in-state, in-community renters.

Mr. FRANKS. Well, I know the big challenge is distinguishing between an ordinary taxation and a discriminatory taxation regime. How would you make an effort to make that distinction between ordinary taxation and discriminatory taxation?

Mr. WAGNER. Well, I think when the tax that is applied to a single group of individuals that is not generally based upon or imposed upon a broad base of taxpayers, a tax that is disproportionate and falls upon a segment of the community would be discriminatory.

And I think these rental taxes are very clearly discriminatory when you look at the other modes of transportation in interstate commerce which have been regulated and addressed already by Congress. With the 4R Act, the railroads were protected, the buses were protected, trains.

And I think at one point in time states targeted bus tickets and interstate bus travelers and Congress stepped in to protect them because those taxes were discriminatory in that mode of transportation.

And I think this is a similar situation where a particular group of taxpayers has been identified and has been targeted and discriminated against with a specific tax that the rest of the population and the rest of the community does not need to pay.

Mr. FRANKS. Well, Mr. Firestine, I might ask you the same question. How would you distinguish between a discriminatory tax and—and an ordinary tax? Or would you make that distinction given some of your fundamental predicate?

Mr. FIRESTINE. Well, I think it is a good question because, you know, I think discrimination, trying to define that, would be a challenge. And I guess my point is those are issues that are best left to local elected officials to try to come up with a group of taxes on—and where the burden falls relative to thinking about this issue of discrimination.

Certainly local and state officials don't want to tax a business out existence and to the extent a business is needed for—I mean, rental car companies do provide jobs in our community so certainly we are not going to do something that would jeopardize the ability to have those jobs continue in our community.

Likewise, it is instrumental because people won't take a cab, they would rather have a rental car, and it is critical to people coming to the state of Maryland because they want to be able to drive around and see the Bay and certainly you are going to set your tax policy so that it doesn't preclude those rental car companies from doing business in the state of Maryland.

But again, you know, those are local decisions that are made in that context. You know, in terms of nexus too, if I could just make a point about that, I have heard several times the comment that, you know, they are being used for stadiums and other things.

First of all, it is a tax. It is not a fee, so it—to me, since it is a tax, it can be utilized for various purposes. Tobacco taxes, for example, go to the general fund and aren't necessarily used for smoking cessation programs. Cell phone taxes aren't used to build cell phone towers, things like that. So I do think those, again, are local decisions for local elected officials to make.

Mr. FRANKS. Well thank you. The Chairman is indulging me here very briefly. Mr. Wagner, assuming the Congress agrees with you and passes H.R. 4175, how do you distinguish between rental cars and other businesses that may come looking for what might be considered preferential tax treatment from Congress?

Mr. WAGNER. Well, again, rental car companies, the rental car industry, is uniquely a form of interstate commerce transportation very similar to buses, trains, automobiles. We, by virtue of the fact that the automobiles are transported and drive across state lines, that they use and travel upon federally-funded highways, I think that does set them apart. And much the way that buses, trains, and airplanes were taken care of.

Mr. FRANKS. Mr. Chairman, it seems like one of the key problems here is that much of the tax burden falls on those without a local vote and that is one of the challenges. So thank you for the extra time.

Mr. COHEN. Thank you. Since I gave you an extra minute, I will take the privilege to distinguish your last remark. I think that it falls on those that have the appearance of not having a vote but

the reality from the testimony which we found which was news to me is it really falls on the people who have a vote. It is just they don't realize it or think about it.

And so that is—when I voted for those taxes, I thought about, well, they use the stadium. They go to the convention center. But when I realized that most of the people in fact were local residents who would have a fender bender or some other problem with their car, then it does fall and you just don't think about it per se.

With that, Mr. Scott of Virginia is recognized.

Mr. SCOTT. Thank you. Mr. Wagner, can you respond to the question I think Mr. Franks raised the question on what the Federal role in all this is. Can you respond to that?

Mr. WAGNER. Well, I think under the commerce clause, Representative, Congress is charged to regulate interstate commerce. And I think with respect to this notion that Congress at this very moment is considering stimulus packages and relief for local governments, this bill in no way conflicts with that but in essence complements that.

The stimulus money, the other revenues that are provided to local governments generally are from broad-based taxes. These particular rental car taxes are not from broad-based imposition of——

Mr. SCOTT. Well, the question was what the Federal role is in all of this because in stimulus package a lot of, I mean, states tax a lot of things and I mean we have had other hearings on that various question because they start crossing state lines and every state whose line is crossed wants to get a little piece of it. Where is the Federal role for deciding how the tax would be imposed?

Mr. WAGNER. Well the authority for Congress to become involved centers around the commerce clause of the Constitution, interstate commerce. And I think again that the rental car tax is this Congress or Congress has already suggested and incorporated into legislation in the past that the rental car industry is a part of the interstate commerce system. And so that is the authority by which the courts have been——

Mr. SCOTT. Well, yes, I know we have the authority but I mean what is the rationale to dip into this tax and not every other local decision?

Ms. Greenberg, do you want to have a comment on that?

Ms. GREENBERG. Well, I think I—in terms of——

Mr. SCOTT. Not the policy——

Ms. GREENBERG. Right.

Mr. SCOTT [continuing]. Whether it is a good idea or bad idea but——

Ms. GREENBERG. Why this?

Mr. SCOTT [continuing]. Why—why should the Federal Government dip into this decision?

Ms. GREENBERG. Partly I think it is there has been this explosion in rental car taxes beyond what you see in other areas. And the bill does a pretty good job, I think, of defining what discriminatory means. We have really seen an explosion, and as we have said in our testimony and other witnesses——

Mr. SCOTT. Well, is that not a local decision rather than a Federal decision?

Ms. GREENBERG. Well, there comes a point at which they are really gouging consumers, so I am speaking from a consumer perspective and——

Mr. SCOTT. That is the policy.

Ms. GREENBERG. Right and we, you know, I see this as an opportunity for consumers to fight back because there is, you know, there is misperceptions that were really taxing out-of-staters.

We are doing that with these taxes but we are also taxing primarily people who live within the state. Many of those people are lower income people who can't afford to own a car.

Mr. SCOTT. Mr. Firestine mentioned the question—I think somebody mentioned the idea that the taxes have nothing to do with the purpose to which the revenues are put. And I think Mr. Firestine said that that is irrelevant. Anyone want comment on that?

Mr. FIRESTINE. Well, I—a couple things. I am saying that some cases it is relevant but it is a local policy decision. I mentioned in Maryland——

Mr. SCOTT. Well I mean there is no—what you are saying there is no requirement that you—that the taxes——

Mr. FIRESTINE. There is no——

Mr. SCOTT [continuing]. Go to any particular use.

Mr. FIRESTINE. No.

Mr. SCOTT. Sometimes it is convenient and sometimes it is easier to raise the tax. But from a Federal perspective what difference does that make? That they are not using it for something related to rent a car?

Mr. FIRESTINE. And I guess that is my point, I don't think it has to be used even though for example in Maryland it is.

Mr. SCOTT. Well let us let the others comment on that.

Mr. FIRESTINE. I am sorry.

Mr. SCOTT. Okay.

Ms. Greenberg, is that a relevant factor from the Federal perspective?

Ms. GREENBERG. I think for consumers who see their bills almost double, and I have been in that position. I have been thinking about this issue since I was at Consumers Union, and now I am in the National Consumers League.

You know, you go in and rent a car and it—you might get a great deal but you have got, you know, 30 or 40 percent added on to the rate of the car. You feel like you are—okay, well if you are paying for something related to this rental, that is one thing, if it is going to build the stadium for a billionaire in Minneapolis because he needs a new toy, those are the kinds of things that drive consumers crazy.

Mr. SCOTT. Okay. Well that is the policy question and let me—we have taxes at airports like we charge taxes, a little fee to pick somebody up at the airport, parking fees and things like that. Why would this be different if we add on a little fee at the airport?

Mr. WAGNER. Well, I will speak to that, Representative. First of all, I think this is an appropriate place for Congress to steer the course. You know, these taxes are proliferating at a rapid rate, eightfold rate since 1990 as was stated earlier.

So it is appropriate for Congress to get involved in here. State and local governments are not acting in the best interest of inter-

state travelers and out-of-state travelers or for that matter, the other individuals who are saddled with these taxes, nickeled and dimed with these taxes at the local level.

The industry is suffering a death by a thousand nicks in many respects with respect to the taxes that are being imposed.

Your question about concession fees that are paid at the airport, those in essence are user fees. Those in essence constitute the taxes that are—or fees that are levied upon rental car companies for the privilege of operating at an airport, which are entirely different from a tax imposed on a rental car company that goes into some other purpose, completely unrelated to the rental car industry or as was suggested perhaps into some general revenue account.

So a user fee, a personal property tax fee, a gasoline tax, a vehicle licensing fee, a registration fee, all of those are appropriate fees that relate to the rental car business and to the cost of—of that car operating in the community.

Mr. SCOTT. So if a locality called it a fee rather than a tax, it would be different?

Mr. WAGNER. No, I don't think it would necessarily be different because many of the fees that I outlined are indeed taxes, personal property taxes, that sort of thing.

But if it is a tax which is aimed to generate revenues for a purpose wholly unrelated to the car rental business, then it would be a discriminatory tax, and it would be appropriate for Congress to step in to intervene in protection of the interstate commerce system, like it has done with the buses and the airplanes and the railroads.

Mr. SCOTT. I think Mr. Firestine wanted to comment on——

Mr. COHEN. You may go on if you would like, Mr. Scott.

Mr. FIRESTINE. Let me comment, just——

Mr. COHEN. You are recognized.

Mr. FIRESTINE. Generally a fee does require an access to some service being provided, whereas the tax doesn't. And second, just to comment about, if I may, on the discrimination issue, it does appear there are legal remedies that somebody could pursue if they feel they are being discriminated relative to a tax.

Montgomery County just instituted a new carbon tax on a facility in the county. The power plant and certainly the owner of the plant is going to seek whatever legal remedy they can get and then the courts will help to decide. So in addition to elected officials making decisions, there certainly are other mechanisms in place if it truly is a discriminatory tax.

Mr. COHEN. Thank you.

Ms. Chu?

Mr. Johnson, I don't how to really—Ms. Chu is recognized, the lady from California, very knowledgeable about these taxes.

Ms. CHU. Thank you so much, Mr. Chair.

I was a city council member and mayor of a city near Los Angeles for a period of 13 years. And it was a city that was popular with tourists, so I know what extra impacts tourists have on a city. We did not have a car rental tax, but I could see why our city would impose such a thing.

And in fact I have a situation at the LAX airport, who have raised concerns with your bill as it is currently written because it

would prohibit a customer facility charge, which is clearly an airport and travel-related fee.

Currently LAX is using these fees to finance the design, consolidation and maintenance of a consolidated rental car facility. Currently, the rental car facilities are decentralized and they are spread out within a three mile radius of the airport.

And LAX passengers wishing to rent or return a car must use one of several car shuttles to reach their destination. And as a result, there are 800,000 shuttle trips during the year causing significant traffic congestion.

So the city of Los Angeles is seeking to address these concerns through the construction of a consolidated rental car facility, which would be the largest such facility in the United States, and it would significantly reduce the numbers of shuttle trips and their impact on nearby communities.

But is dependent on this fee and this charge and without this charge, LAX and dozens of other airports throughout the country would not be able to build these facilities.

So Mr. Wagner, you argue that these taxes and fees are often used to pay for unrelated services. However, a number of airports including my hometown airport, LAX, uses customer facility charges to pay for the construction of these consolidated rental car facilities.

And as it is currently written, I understand that this bill would eliminate these fees as well. So are you saying that these fees are inappropriate and should be forbidden by Congress?

Mr. WAGNER. Thank you, Representative Chu. I respectfully suggest that perhaps the LAX officials misread the bill, too, because in—the bill intend to carve out and protect consolidated facility type fees.

In my remarks and in my comments a few moments ago, I suggested that user fees, taxes, fees that related directly to the automobile industry or the airport are indeed protective of the industry and the coalition has no objection to those.

In fact, I think if you look at H.R. 4175 on page five, it expressly says the term "tax" does not include any charge imposed by state or locality with respect to a concession agreement at a federally assisted airport.

And so we would have no objection to those types of taxes, nor do we have any objections to the other taxes and fees which are imposed on all owners of cars and all users of cars.

Ms. CHU. Well as the former mayor of a city that had a lot of tourism, which had tourists drive through the streets and use our facilities, I would wonder if local government might be in a better position to determine these things? And therefore I would like to ask Mr. Firestine why is it that local government could be in a better position to make such a determination?

Mr. FIRESTINE. Well, I think for the reasons you just stated. And that has been the point of our testimony is these are local decisions, state decisions that should be left up to local officials.

You know, balancing the tax burden within the communities to take into account factors such as if it is something that you want to do to promote tourism and you feel that a high tax would discourage that, then certainly that is a local decision.

And if the local community doesn't feel that you are making the right decision, they can elect somebody else to do that. But I do think that those are local matters.

Ms. CHU. In fact, the money might not be used directly for a rental car facility consolidation such as the example, I used but it could be for other impacts and are there examples where it is used for other types of impact?

Mr. FIRESTINE. Yes, in my testimony I noted in Maryland for example, there is an 11-1/2 percent tax on rental cars. It is split. Basically it goes into the Transportation Trust Fund and into the Chesapeake Bay Trust Fund.

So part of the initiative is—part of the money is distributed to the counties in the state of Maryland to pay for road maintenance, replacing and installing street lights, pedestrian safety initiative, things like that.

But it also goes to help support Bay initiatives, reducing run-offs into the Bay. You know, the Bay is related to tourism in the state of Maryland and certainly people come there to participate in Bay activities.

These monies would help clean up the Bay, although I don't believe, as I said earlier, it necessarily is required that there be a nexus between the tax and the services provided.

Ms. CHU. And what impact would this legislation have on state and local revenues?

Mr. FIRESTINE. Well, again, at a time when we are scrambling to identify any revenues possible to keep our budgets balanced because we do have to stay balanced, as I indicated this is another tool in the toolbox, and it is another place to go to manage that.

Property taxes at the local level are the primary source of revenue. We all know what has happened to—home values have declined, therefore, you know, making that a difficult tax to be a productive tax. So we do look to other taxes.

I did indicate in Montgomery County for example, we have instituted a higher cell phone tax. We instituted a carbon tax on a power plant, so we do look at other options that are out there relative to the total burden within the community.

Ms. CHU. Thank you. I yield back.

Mr. COHEN. Ms. Chu.

And now Mr. Johnson, the distinguished Subcommittee Chairman recognized from Georgia.

Mr. JOHNSON. Thank you, Mr. Chairman.

I don't know I am suspicious about the statistics that I have heard that would lend credence to the theory that car rental taxes are primarily born by minority consumers. Take a place like Miami for instance, heavily—a tourist haven. I would suppose that you would have more car rental facilities there than you would in another part of Florida that did not see a lot of tourists.

A place like Atlanta, convention industry being a major source of car rental demand, so I question the stats that have been cited. And I have not been here for the full hearing but I have kind of read over the hearing materials.

The statistics that have been cited to support the notion that these car rental taxes are borne primarily by minorities, distinguish between locations where tourism and business activities were

the primary source of the revenues? Did they cut out those kinds of locations in compiling the statistics?

Mr. WAGNER. Well, Representative, the study was conducted by the Brattle Group, and it did take a number of communities and analyzed the rental revenues and——

Mr. JOHNSON. So it did not take all 16,000 car rental locations into effect?

Mr. WAGNER. No, sir it did not study the entire country and 16,000, you know, offices across the country, but rather took a representative sample in Georgia and other communities, looked at industry statistics, applied a number of other data points, census data and so on to it and engaged in a statistical analysis.

I would be very happy to share with you that study and meet with you about it to talk further about the particulars if you would be interested.

Mr. JOHNSON. What group commissioned the study?

Mr. WAGNER. The study was commissioned by Enterprise Holdings in consultation with members of the coalition that existed at the time that the study was undertaken.

Mr. JOHNSON. Is that connected to Enterprise Leasing at all?

Mr. WAGNER. Yes. Yes, sir. Yes, sir, Enterprise Holdings is the holding company for Enterprise Rent-A-Car and Alamo and National.

Mr. JOHNSON. Yes, is there any—does anyone think that if the local and state abilities to apply a tax to car rental activity would result in a reduction of the price of car rentals to consumers?

Ms. GREENBERG. If I can respond to that. I think consumers would be greatly relieved to get a quote on a car rental and have the final bill be far closer than it is today.

When you rent a car, you can, you know, you can get a car for $25 or $35 a day and end up with a $60 bill. And that added amount is not anticipated by many consumers, and it ends up being taxes and fees and things that you have, you know, no real ability to predict.

Mr. JOHNSON. So are you saying that there are some car rental taxes that are 100 percent or, you know 75 percent on the tax—I mean on the rental cars?

Ms. GREENBERG. When you add up the local tax, the state tax, various fees for delivery, there is sometimes convenience fees. I may be getting the names of the fees wrong, but I rent cars all the time and I am absolutely astounded by how much those fees add up onto the actual, you know, the base price of the car.

Mr. JOHNSON. But you are not going to suggest or you are not suggesting that local and state taxes would cause a 100 percent jump in the amount of the car rental?

Ms. GREENBERG. Well, I have rented a car for as low as $25 and seen $15 worth of taxes added on, so it is not 100 percent but it can get up there to a hefty percentage. And that is I think something that is distressing to consumers.

Mr. WAGNER. Representative, I might also add from our information and our studies and our practice in the industry, it is clear to us that rental car prices are very price sensitive, very tax sensitive. And with the continued piling on of these sorts of taxes, again as

I said earlier, the industry in essence is suffering a death by a thousand nicks.

These taxes do pile up. Most recently in the State of Wisconsin, an $18 transaction tax was passed and authorized. In Kansas City there is a $4 per day tax, and I can go on and on with a list of taxes that really do reach that point where the consumer says, "I will take a cab." as was suggested earlier, at which point that eliminates choices, reduces choices.

And is—really discourages travel in particular, and punishes the low and moderate income renters, who maybe don't have that extra $18, who don't have that $4 a day. They don't have that $10 a day.

So a tax in and of itself may—is a significant factor. But the taxes that we are talking about are the discriminatory taxes that are added on top of all of the other broad base of taxes which the industry and the rental car company pays, which include personal property taxes, certainly general sales taxes, local sales and use type taxes, registration fees and so on and so forth.

So in essence, it is the same rationale that prompted Congress into saying enough is enough with additional discriminatory taxes being placed on bus tickets in 1995 when Oklahoma in that particular case that led to the congressional activity imposed a tax on bus tickets.

And consumers were already burdened with other taxes that existed on those tickets and Congress said it was the proper place for Congress to step in and regulate interstate commerce.

There is the rental car industry I think by all accounts through the court cases, through congressional action and so on is clearly a part of the interstate commerce system. And it is appropriate for Congress to take a good look at this issue and say enough is enough with respect to the piling on of these taxes on behalf of consumers, which again adversely impact the entire automobile industry.

Mr. JOHNSON. Well, I certainly agree that Congress maintains and in fact should do exactly what we are doing today, which is to take a look at these rates. I am just kind of seeking addition information.

The majority of cars rented in America are to business and tourist travelers or to people who have had an accident and need temporary rental or somebody who just wants to rent a car for the weekend or something like that?

You know, what makes up the most significant share of the market, business and tourism or consumers, just regular, every day Joe Blow consumers?

Mr. WAGNER. If you group business and tourism together that would be the largest segment. The notion that rentals happen for business purposes predominantly or exclusively that is not true, business rentals comprise of less than half of the overall rental business by 46 percent.

Local, the home city market that I think you are alluding to is generally 54 percent, but part of that same 54 percent is indeed business travel but otherwise it is leisure, replacement business, renting a car to replace another car because your car is in the garage, having warranty work, that sort of thing done.

So a significant portion, a dominant portion is indeed home city, local, non-business, non-vacation type rentals.

Mr. JOHNSON. Okay, and my last question, Mr. Chairman, if I may. Gosh, and I had it right there on the tip of my tongue. Yes, what are state and local governments to do when all of the fingers of revenue raising for purposes such as the police, fire, ambulance, roads and drainage, parks and rec, just all of the things that local government is responsible for.

And if we cut off all of the fingers on both hands of local and state governments to address those concerns through things like car rental taxes, what happens to—what is the impact on state and local governments, local governments in particular?

Mr. FIRESTINE. If I could answer that, as I indicated in my testimony, you know, times have gotten tough, and we have started to run out of options. We do look for wherever we can to create diversification in our tax structure. But as property tax revenues have declined across the country, as income tax revenues have declined, we have looked for other alternatives.

I would also like to comment if I can for a minute, on the issue of minority and low income participation in rental car usage. You know, coming from a diverse county in this region, I have to say that if 54 percent of the use of rental cars is local, home city usage.

Quite frankly minorities and low income folks in Montgomery County are not using rental cars, they are using mass transit. If they drop their car off for a repair, if they have a car, they hop on the bus to go to work.

So if the majority of it is home city, then it seems to me, you know, to make this argument that has a disproportionate impact on minorities than low income is not appropriate.

Second, in an urban area, again from a policy perspective, the local elected officials might be trying to encourage the use of mass transit. And to that extent, how they tax automobile rentals may play into that local policy decision, to discourage use of vehicles to the extent they are available.

Mr. JOHNSON. Thank you.

Mr. WAGNER. Representative, if I might——

Mr. COHEN. Thank you, Mr. Johnson.

Let me ask you this, if—Mr. Firestine, what is the tax in, say, Baltimore. I go to rent a car in Baltimore, how much is the rental car tax?

Mr. FIRESTINE. Eleven and a half percent.

Mr. COHEN. Eleven and a half percent.

Mr. FIRESTINE. That is the state tax, yes on——

Mr. COHEN. And that is on the total commercial transaction, and it is in addition to any other fees and taxes, right?

Mr. FIRESTINE. That is correct.

Mr. COHEN. All right. So let us ask—then I got there and the car is give or take 50 bucks, and I am there for 3 days, so my contribution to Baltimore is—and what is the county?

Mr. FIRESTINE. It would either be Baltimore City or Baltimore County but——

Mr. COHEN. It is the same county, so my——

Mr. FIRESTINE [continuing]. It would go into the state trust fund and then be distributed to the counties. But you are talking what 15, 16 bucks over that 3-day period.

Mr. COHEN. Right. How does—but again and I know you—basically you said that other fees are supposed to have a nexus and taxes and don't have to. But logically shouldn't they?

I mean do I really cause $16 more cost to the state of Maryland than somebody who is driving their car 365, 52 weeks a year, in which case you could raise taxes on the registration fees to deter people from owning cars and going to mass transit too. But do I really contribute $16 more use of the roads than somebody else or anything else?

Mr. FIRESTINE. And again, that is my point about the relationship between a tax and a fee. I mean if you are a property taxpayer in Montgomery County but you don't have kids in the school system, you are going to complain that why do I pay property taxes? So to the extent you are collecting more than you actually——

Mr. COHEN. You could, but of course having kids in school helps everybody. An educated society is going to have more productivity, create more jobs, less crime. I am a single guy. I benefit from public schools because if we didn't have public schools, I am more likely to be the victim of crime.

I am more likely to have a community that doesn't have educated, trained people to have jobs and productivity and culture and blah, blah, blah. I don't buy that, but I cannot see that—I don't think works——

Mr. FIRESTINE. But again——

Mr. COHEN [continuing]. With the rental car situation. I don't—the 16 bucks, where does that cost?

Mr. FIRESTINE [continuing]. And if that $16 bucks goes toward transit initiatives, that helps everybody. It——

Mr. COHEN. Right but why should I pay for it? Why should the person who rents a car pay for it and not the person who just drives the car?

Mr. FIRESTINE. Again, I think those are all questions we have about how taxes and what the impact is of this.

Mr. COHEN. So what you are basically saying is we—in our system we allow the local governments, the state governments to do things that we can't explain rationally. It couldn't be fees because there is no nexus, but that they do because they think it is for the good of their constituencies.

Mr. FIRESTINE. Well, I think there is a rationale behind all of our tax policy and as I said earlier, you get elected to make those decisions at the local level. And if folks don't like the way you made those decisions, they can un-elect you.

Mr. COHEN. But what if the people who are affected by it are the people that are from out of town?

Mr. FIRESTINE. But we just heard——

Mr. COHEN. That you can't vote.

Mr. FIRESTINE [continuing]. Fifty-four percent of rental car usage in the home city.

Mr. COHEN. Yes, but those people don't expect to have to rent a car. Nobody expects to have an automobile accident. Those are the

lotteries of life and those are the people that have to go rent the car.

Some people plan on it and go, "Oh, I am going to drive to Philly and I am—"

But for most people it is something they don't foresee. So when that tax comes about they don't think "I am going to be renting a car because I am going to have a wreck in 2 weeks."

Mr. FIRESTINE. And I would offer up in that case most likely your rental car costs are paid for by your insurance company. That is what you have insurance for.

Mr. COHEN. So and because of that all your rates go up and you pay more, and so as long as you pass along it is okay. You have got a tough job. You have done a good job. I am not going to grill you any longer.

Mr. Wagner, what if these taxes were all required to go to things like airport fees, facilities that Ms. Chu mentioned or toward convention and visitor's centers and/or stadia that do attract people that would oftentimes need rental cars and even though if we have the 54 percent argument, would that make it more palatable or still outside the——

Mr. WAGNER. Well, to the extent that they did go to those types of facilities, or consolidated facilities, airport terminals and so and so forth then the need to raise taxes higher would go down because the cost of those facilities would be considerably less.

It would be the industry has no problem with paying a fair amount of taxes for a consolidated facility or airport rental car purposes. But the notion is the tax is above and beyond that the taxes needed to underwrite those facilities to pay for purposes or projects unrelated to the taxes is where the problem lies.

Mr. COHEN. And you said that there is an exemption in the bill for the type of facility at LAX that they are coming up with. Is there exemptions for any other type of facility or is it just the ones that become the major homes of rental cars?

Mr. WAGNER. The bill is not intended to apply to any project related to rental cars, operation rental facility operations. Again it would not in any way touch personal property tax assessed against rental cars or all car owners, consolidated facility type fees, registration fees and so on. So the bill only applies to those taxes that are levied for unrelated purposes.

Mr. COHEN. Thank you.

Ms. Greenberg, do you have any last things for consumers? I will give you the last statement.

Ms. GREENBERG. Well one thing that I think needs to be said is that these taxes are regressive taxes. And if the statistics from the Brattle Group study is that 26 percent of the car rentals and 27 percent of excise taxes are generated by African Americans and 13 percent generated by Hispanics, these are regressive taxes.

And if, you know, our thinking is if local governments need to raise revenue, we understand they do. And I said in my testimony I believe in tax policy and I think it is perfectly legitimate to pay for hospitals, schools, playgrounds and things that benefit the general public.

But if you want to raise taxes, you should do so in a progressive tax system that doesn't fall so heavily on those who can least afford it.

And also consumers don't want to pay for stadiums that billionaires want to build because they want another additional toy when they already have—the Minneapolis example, when they, you know, why should people who rent cars be paying for things that ought to be paid for by people who can well afford to do so?

And we see a lot of that in these taxes, so thank you for the opportunity to share my thoughts on those issues.

Mr. COHEN. I want to thank all of the panelists. And I want to thank the Committee Members who attended and participated. The witnesses all did a good job defending their positions and advocating.

Without objection, Members will have 5 legislative days to submit any additional written questions which we will forward to the witnesses and ask you to answer as promptly as possible, and it will be part of the record.

Without objection, the record will remain open for 5 legislative days for the submission of any other additional materials. Thank you everyone for their time and patience. The hearing on the Subcommittee on Commercial and Administrative law is adjourned.

[Whereupon, at 12:35 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND MEMBER, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

Statement of the Honorable John Conyers, Jr.
for the Hearing on

H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009"

Before the Subcommittee on Commercial and Administrative Law

Tuesday, June 15, 2010, at 11:00 a.m.
2141 Rayburn House Office Building

Today's hearing focuses on legislation that would restrict certain types of state taxation policy.

Introduced by my colleague, Representative Rick Boucher, H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009," would institute a moratorium on new discriminatory taxes on the rental of motor vehicles.

Understandably, many state and local governments are cutting spending programs and imposing new taxes in response to the current economic downturn.

It does appear, however, that oftentimes the taxes imposed on car and truck rentals are not dedicated to replace lost governmental revenues, but to finance new sports stadiums and convention centers.

Although we should be concerned about how the revenues from such taxes are utilized, this Subcommittee should also focus on whether these taxes are discriminatory and whether they impact interstate commerce.

Today's hearing is part of the Subcommittee's on-going concern with respect to how taxes affect interstate commerce.

At a hearing earlier this year the Subcommittee considered how the current economic climate has impacted state and local government revenues.

At a hearing last year, the Subcommittee examined issues presented by a moratorium on discriminatory taxes on wireless services.

As we hear testimony from the witnesses at today's hearing, we should consider the following three points.

First, I want to be perfectly clear: I disfavor discriminatory taxes. For example, I have introduced legislation this Congress to prohibit new discriminatory taxes in the video programming industry.

Similarly, I successfully pushed for legislation in the last Congress ensuring that commerce over the Internet would not be singled out for discriminatory tax treatment.

State and local governments together with Congress should be cognizant of the consequences of such tax policies.

For example, state and local discriminatory taxes on the rentals of cars and trucks impact not just consumers and the rental car industry, but also the auto manufacturers in my home state of Michigan that build the cars and the small businesses who rely on tourists who rent the cars during a vacation.

This hearing should serve as a reminder that there are those in Congress, such as myself, who frown upon State and local discriminatory tax policies.

Second, notwithstanding our opposition to discriminatory taxes, we must acknowledge how the current economic situation affects state and local governments across the Nation.

For that reason, I will examine carefully any proposal, including the focus of today's hearing, that could further negatively impact state and local revenues and

the ability of state and local governments to provide essential services to their citizens.

State and local governments depend on tax revenues to support programs, fund education and essential emergency services, and enhance transportation infrastructure.

Many states have laws that require them to balance their budgets. When tax revenues decline, as they continue to do so now in most states because of lower employee payrolls, sales receipts, or property values, state governments must adapt. They must cut funding to programs, or raise taxes.

The current economic environment requires state officials to make tough decisions to spur economic growth while balancing their budgets. We should be aware that state legislators and governors, local councils and mayors, have to decide where to cut spending and how much to raise taxes.

Third, we should encourage state and local governments – together with the relevant taxpayers – to work jointly to establish competitively neutral tax policies, while not further limiting State tax authority or revenue. And we should be actively involved in these deliberations.

Competitively neutral tax policies do not burden interstate commerce or consumers. Instead, they serve to provide certainty and fairness as well as foster business development.

I thank Chairman Cohen for holding this hearing and I look forward to receiving the testimony from our witnesses.

RESPONSE TO POST-HEARING QUESTIONS FROM RAYMOND T. WAGNER, JR., VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, ENTERPRISE HOLDINGS, INC.

Questions for the Record
Subcommittee on Commercial and Administrative Law
Hearing on H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009"
June 15, 2010

Raymond T. Wagner, Jr., Vice President, Government & Public Affairs, Enterprise Holdings, Inc.

Questions from the Honorable Steve Cohen, Chairman

1. **If Congress passes this legislation, what impact would it have specifically on the car rental industry itself?**

   First and foremost, the most direct impact will be a positive one on our customers. The taxes that HR 4175 will prospectively prohibit are paid directly by our customers; therefore the immediate impact will be on them. That is why we are proud to have the very active and public support of the National Consumers League. The rental industry feels the impact of these taxes when the taxes impact our customers' financial decisions as to where and often to rent. According to Dr. William Gale and Dr. Kim Reuben of the Brookings Institution and the Urban Institute, respectively, customer sensitivity to these taxes is substantial and negatively impacts demand for our services. In looking at a discriminatory tax in one municipality, Gale and Reuben found that "people who lived in ZIP codes that are close to taxed branches changed their behavior dramatically, reducing demand for rentals by between 41 percent and 50 percent and the demand for rental car days by between 69 percent and 86 percent." (Taken for a Ride: Economic Effects of Car Rental Excise Taxes, Gale and Rueben, July 2006). As these taxes reduce demand for our industry services, the result will be slower growth of jobs and opportunities for our employees and reduced demand for new vehicles purchases from the auto manufacturers.

2. **H.R. 4175 provides for a permanent moratorium on new taxes and fees on the rentals of cars and trucks. Most of the other state taxation bills which come before the Committee have a temporary moratorium on new discriminatory taxes and fees. Why should state and local governments be prohibited permanently from levying new taxes and fees on car rentals and the car rental industry?**

HR 4175 is modeled after current federal law that protects the railroad, airline, trucking and interstate bussing industries from similar discriminatory excise taxes. Those laws, modeled after the Railroad Revitalization Regulatory and Reform Act prohibit state and local governments from imposing discriminatory taxes on the railroad industry. None of those examples of Congress protecting interstate transportation from discriminatory taxation contained a sunset when enacted. These same principles are well settled in current law with respect to these other related industries, and we see no reason why the discriminatory taxes on rental car customers should be any different. These taxes interfere with interstate commerce today and will in the future - certainly beyond any sunset limitation. Simply put, if the taxes are wrong today, they will be wrong five years from now. From a practical standpoint, in order for the legislation to have its intended effect, certainty and predictability is a must. A lack of certainty reduces opportunities to plan for future growth; therefore, passage with a sunset would be an empty victory.

3. **During the hearing, in response to a question from Representative Bobby Scott, you stated that "if it is a tax which is aimed to generate revenues for a purpose wholly unrelated to the car rental business, then it would be a discriminatory tax." Opponents of H.R. 4175 would contend that your definition of a discriminatory tax would restrict state and local governments from imposing taxes which would fund education, police and fire departments, and build infrastructure because there are no taxes related to those activities or governmental functions. How do you respond to the contention that taxes do not have to be related to the source of the tax?**

   The intent of HR 4175 is to prohibit discriminatory taxes on rental car customers regardless of the purpose of the tax (i.e., sports stadium, general revenue, or an arts facility). Airport related fees and other recoupment fees are not impacted by the legislation. HR 4175 specifically defines a discriminatory tax as one that is imposed upon the car rental customer, car rental company or its property that is not also imposed upon at least 51 percent of other rental services or property in the taxing jurisdiction. The purpose or the related nature of the tax is not the issue. The issue addressed by HR 4175 is prohibiting those taxes that are specifically target car rental customers in a discriminatory fashion as defined by the legislation, regardless of the stated purpose of the tax. The industry has no opposition to broad-based taxes that would fund education, police and fire departments.

4. Opponents of H.R. 4175 suggest that the car rental industry supports H.R. 4175 simply to avoid paying its share of taxes to maintain the roads and bridges which car renters utilize, to support the fire and police departments which respond to safety issues and accidents involving car renters and rental facilities, and to fund the judicial system which provides for legal redress and security for the car rental industry. How do you respond to the contention that car renters and the car rental industry pay their appropriate share of taxes for the services that they use?

I would respectfully disagree that the goal of HR 4175 is to permit car rental companies to avoid paying our "fair share" of taxes. On the contrary, both our customers and our industry pay a number of general taxes that other ordinary consumers and businesses pay. These taxes include state and local sales taxes, property taxes, vehicle registration and titling fees, inspection fees, payroll taxes, gasoline taxes, income taxes, energy taxes, and many more. These general taxes paid already help fund the necessary services of state and local government, such as roads and infrastructure, police and fire departments, the judicial system, etc. Our customers and our industry do not disproportionately utilize these essential services, so why should our customers be taxed disproportionately to pay for them? We have often stated that our customers and our industry recognize that we have an obligation to pay our share of taxes. And we do. HR 4175 simply prohibits state and local governments from imposing additional layers of taxes specifically targeted at our customers to pay an even higher level of taxes.

RESPONSE TO POST-HEARING QUESTIONS FROM MR. TIMOTHY FIRESTINE, CHIEF ADMINISTRATIVE OFFICER, MONTGOMERY COUNTY, MARYLAND, 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

Questions for the Record
Subcommittee on Commercial and Administrative Law
Hearing on H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009"
June 15, 2010

Timothy Firestine, Chief Administrative Officer, Montgomery County

Questions from the Honorable Steve Cohen, Chairman

1. **In his written statement, Mr. Raymond Wagner suggests that car rental taxes are regressive and that 19% of all car rental taxes are paid by families earning less than $50,000 per year. He cites a study which supports his contention. Please respond.**

   Economists would define "regressive" as taxation of purchases of "necessities' that account for an overly significant percentage of disposable income. Such an assertion must be examined first to see if the rental of an automobile is a "necessity" and such an examination is individually fact specific. Intuitively, some of the rentals are probably necessary, but some probably are for convenience not "necessary". It is unclear from the study commissioned by the industry that it accounts for such individually specific facts. Further, the impact of the alleged regressivity must be examined in light of programs that may be in place by a taxing jurisdiction to ameliorate the impact of possibly regressive taxes, such as low income tax rates or tax credits/rebates or sales tax exemptions for necessities such as food and medicine. Thus, the study, which examines one sliver of commerce, can be misleading at worst and inconclusive at best.

   Finally, using the statistic from the study that says 19% of rental car taxes are paid by those earning less than $50,000 a year, it is probably worth mentioning that 81% of the taxes, a vast majority, are paid by those making more than $50,000 a year. Such a lopsided figure tends to discredit Mr. Wagner's testimony that a majority of taxes are paid by lower income individuals.

   It is also important to note that the study used by Mr. Wagner was paid by a subsidiary of Mr. Wagner's employer.

2. **H.R. 4175 imposes a moratorium on new discriminatory taxes on the rental of motor vehicles. State and local governments will still be able to tax such rentals as long as they are not discriminatorily applied. Why should Congress not impose such a moratorium when it would not be banning all taxes on the rental of motor vehicles?**

   "Discriminatory" in this matter is being defined as different than most other taxes, yet no credence is being given for the judgment being made by elected policy makers as to that difference. Rental cars are being driven on the streets and highways of a jurisdiction. Police and other public safety agencies are available to those using those highways. In many instances the users are not residents of the jurisdiction and are only being asked to make the same contribution to the cost of those public services as residents of the taxing jurisdiction. No one would seriously argue in favor of discrimination if you accept that as the appropriate pejorative term. But because something is different does not mean it is per se bad. One must examine the rationale and such a determination is appropriately made by locally elected officials who are charged with the financing and providing of public services.

   Efforts by Congress to pre-empt state and local taxation of various types (including rental care fees/taxes, hotel/lodging taxes and telecommunication taxes) by stating that they are 'discriminatory' is an unfair challenge to the rights of states and local governments to set their own taxation policy, especially in areas that are different than other types of business taxes.

3. **In his written statement, Mr. Raymond Wagner states that he is not aware of there being "any evidence set forth by proponents of car rental taxes demonstrating the link between a car rental tax and the purpose of the tax." Is he correct? Please respond.**

   The assertion by Mr. Wagner that he is unaware of a link between the tax and its purpose seems strange given his experience as a director of revenue in Missouri and Illinois. Is he aware of a stated link between most taxes and the revenue they produce other than to raise that revenue for a public purpose? The link between taxes and their purpose is reflected in the spending of the revenue raised. Is Mr. Wagner suggesting that there needs to be a direct statement of purpose for the tax measures enacted by the Congress and every elected legislative body in

the United States and every expenditure of public funds? That is what the appropriations process is for and reflects the collective wisdom of Congress and every other legislative body in this country.

4. **Supporters of H.R. 4175 contend that state and local authorities which impose discriminatory taxes and fees on the rentals of motor vehicles and the rental industry do so because they mistakenly believe that the burden falls on non-local persons, who cannot vote for the locally elected officials. Please respond.**

   This seems to be a charge without much evidence to support it. The industry study itself demonstrated that a large percentage of rentals are by residents of the taxing jurisdiction, i.e., voters. If voters are aggrieved by a tax they perceive as "discriminatory" they have opportunities every two to four years to make known their preferences and effectuate policy changes. Indeed, the industry study suggests that such a large percentage of rentals are local that the evidence undermines the connection to interstate commerce, which would be the rationale for the Congress imposing its judgment over that of locally elected officials.

5. **Are all taxes and fees imposed on the rental of motor vehicles imposed solely by locally elected officials? How much input do local residents have in the imposition of such taxes and fees? Do local voters approve of such taxes and fees?**

   Certainly some tax levies are voted on directly by the people, but elected officials at the state and local level enact most taxes. As noted above, voters have an opportunity at every election to express their opinion and the ultimate judgment on what their elected officials are doing.

RESPONSE TO POST-HEARING QUESTIONS FROM SALLY GREENBERG, EXECUTIVE DIRECTOR, NATIONAL CONSUMERS LEAGUE

Questions for the Record
Subcommittee on Commercial and Administrative Law
Hearing on H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009"
June 15, 2010

Sally Greenberg, Executive Director, National Consumers League

Questions from the Honorable Steve Cohen, Chairman

1. **As we know, the current economic climate has hit our state and local governments harshly. Many have had to cut spending on essential services or raise taxes to pay for such services. Many state and local governments have done both, and even dipped into their rainy day funds. If they were prohibited from raising taxes, what do you suggest state and local jurisdictions do to fill that revenue void?**

   I don't think it should be the obligation of consumers to cover the cost of local services when they rent a car. Let lawmakers either reduce expenses or tax the citizens using the services, not consumers who are simply trying to rent a car and are hammered by extra costs.

2. **If Congress passes H.R. 4175, what impact would it have on consumers?**

   HR 4175 would put a lid on the ever growing surcharges and fees being imposed on consumers who rent cars – right now, there's seemingly no limit on how high these fees will go or for what purpose they will be directed.

3. **From your written testimony, it seems that you oppose taxes and fees on car rentals because the revenue pays for stadiums or art centers or has no limit. Would consumers still oppose the taxes and fees if they were directed to purposes related to the rental of cars?**

   If fees were very targeted to improve the area where cars are rented or defray some of the costs that are passed onto consumers for renting cars, that would be a more acceptable approach.

4. **How should local governments finance police and fire departments if we limit particular taxes to related activities? Let the taxes be imposed directly on those who benefit from the police and fire department's activities.**

   Not on those who might – or might not – benefit and who are innocently renting vehicles for a vacation or their daily needs.

5. **Do consumers support a system where all tax revenues be directed solely to activities related to the source of the tax?**

   I'm not qualified to answer this question, I don't believe, on behalf of all consumers.

6. **Instead of locally elected officials imposing certain taxes and fees, local taxpayers approve of such taxes, such as on car rentals and hotel rentals to support a sports stadium or convention center. For example, in 2005, the taxpayers of Arlington, Texas voted in favor of taxes on car rentals to fund the bonds to pay for the building of the Cowboys Stadium in Arlington. Do you oppose such taxes or fees when the local taxpayers, and not the locally elected officials, directly approve the taxes or fees?**

   As a matter of public policy, I find it hard to justify asking consumers to take on payment of hundreds of millions of dollars – some are over 1 billion – for stadiums and sports arenas when often those who stand to benefit most are multimillionaires or billionaires who, instead of spending their own money to build an arena, expect taxpayers to pick up the cost. These sports franchise owners can then sell the team for millions more than they paid, having benefited from taxpayer-funded venues, without having to return any of the profit to taxpayers or consumers. In addition to the taxes and bonds used to pay for these venues, fans of teams are doubly gouged by being asked to pay outlandish prices for food, drink and novelty items when they attend a game or event.

7. **In his written statement, Mr. Timothy Firestine indicates that the additional taxes and fees on the rentals of motor vehicles support capital improvements and tourism campaigns which directly benefit the rental car companies, and by extension, car renters. He offers Honolulu International Airport and the State of Michigan as**

examples. Why would consumers oppose such taxes and fees which may benefit them by providing improved car rental facilities or tourism information?

If car rental facilities are improved, or tourist services are improved, that makes it a little easier to justify fees or surcharges. Nevertheless, there must be some limit on the amount that taxes, even for these services, can be increased. Consumers are getting gouged by these fees, and someone has to say "enough!"

PREPARED STATEMENT OF DR. KEVIN NEELS, THE BATTLE GROUP

Effects of Discriminatory Excise Taxes on Car Rentals

Unintentional Impacts on Minorities, Low Income Households, and Auto Purchases

Dr. Kevin Neels

The Brattle Group

June 10, 2010

We have been asked to evaluate the effects of discriminatory car rental excise taxes on specific groups of customers; and on certain forms of economic activity related to the car rental industry. Our study focuses on short term rentals rather than long term leases. We describe excise taxes as discriminatory because they are not broad based levies (like a sales tax or income tax), but rather specifically target rental car customers.

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.

These taxes have proliferated because of the perception that (1) car renters are from out-of-town, (2) car renters can afford the extra tax; and (3) car rental excise taxes will only be paid by those renting a car.

We were asked by Enterprise Rent-A-Car to test the validity of these perceptions. Our findings show conclusively that each assertion is false, undercutting the primary rationale for imposing

such taxes. In addition, our research indicates that car rental excise taxes have many unintended consequences, including:

- A significant impact on low income populations
- A disproportionate impact on minority households
- A measurable reduction in the number of vehicles purchased by rental car companies.

More Car Rentals Occur at Neighborhood Locations than at Airport Locations

Whether it's a luxury car for a special occasion, a pick-up truck or cargo van for a project or a move, a larger car for a road trip, a replacement for a car that's being repaired, or a rental for one who chooses not to own a car for financial or environmental reasons, people rely on car rental or car sharing in their hometown every day. Yet, despite the number of car rentals taking place away from the airport, many assume most car rentals occur at the airport.

However, according to the January-February 2006 edition of *Auto Rental News*, the truth is that in the $18 billion U.S. rental-car industry, more revenue is generated by neighborhood-based locations than by airport locations. According to the report, the estimated total market revenue for 2004 was $17.6 billion, with home-city rental accounting for $9.5 billion (or 54 percent of the market) and airport approximately $8.1 billion (or 46 percent).

Yet this fact is lost on those promoting car rental taxes. For example, the former Mayor of Atlanta said of the proposed 3% per rental transaction tax, *"This financing plan is ideal. It allows us to keep the Hawks downtown without any burden on Atlanta residents."* It's not just Atlanta. When asked about its proposed rental car tax in 2006, the Mayor of Sandy Springs, a suburb North of Atlanta, said *"We're not raising any tax. I didn't think it would be a big deal most rentals are to visitors anyway."(sic)* In fact, using transactional data from the nation's largest provider of off-airport car rentals, we've found that in calendar year 2008 alone, Georgia residents renting a car in their hometown accounted for $1,870,866 in extra rental car taxes. The $1,870,866 in rental car taxes is in addition to the $4,591,490 in sales tax (average rate of 7% state & local combined) that was paid by these renters. This means local resident paid $6,462,356 in Georgia taxes on their car rentals in 2008 alone.

Lower Income Populations Pay a Large Share of Car Rental Excise Tax Payments

There is a commonly held misconception that car rental is a luxury reserved for the wealthiest individuals, and therefore the burden of discriminatory excise taxes does not impact lower income individuals. The data do not support this conclusion. In fact, results of our analysis of actual rental car transactions—summarized in Table 1—indicate that lower income households pay a significant share of rental car excise taxes. 19% of all such levies on retail rental transactions were paid by members of households earning under $50,000 per year—roughly the median income in 2008, the year in which these transactions occurred. Surprisingly, 7% of the total, or roughly three and a half million dollars was paid by households earning less than $25,000 per year—roughly the poverty line for a family of four. High income households—defined here as households earning more than $100,000 per year—pay only about half of all excise taxes.

Table 1

2008 Discriminatory Tax Payments
Associated With Home Based Retail Rentals
By Household Income Level and Census Region

Census Region	Less than $25,000	$25,000 to $49,999	$50,000 to $99,999	$100,000 or more	All Households
New England	$114,865	$178,978	$438,782	$1,066,259	$1,798,885
Middle Atlantic	$930,651	$1,332,927	$3,064,013	$7,852,357	$13,179,948
East North Central	$214,183	$318,597	$677,330	$1,293,874	$2,503,983
West North Central	$104,027	$181,835	$408,324	$749,550	$1,443,737
South Atlantic	$1,216,743	$1,967,267	$4,187,987	$8,926,658	$16,298,656
East South Central	$18,858	$27,107	$53,310	$87,995	$187,269
West South Central	$420,319	$611,010	$1,141,356	$2,092,645	$4,265,330
Mountain	$284,303	$513,709	$1,100,436	$1,996,239	$3,894,687
Pacific	$230,218	$404,573	$939,756	$2,006,017	$3,580,565
All Regions	$3,534,168	$5,536,003	$12,011,295	$26,071,595	$47,153,061
Percent of Total	7%	12%	25%	55%	
Cumulative Percent of Total	7%	19%	45%	100%	

These results are based upon a statistical analysis of the relative propensity to rent by income category. We related the number of rentals and rental days generated by residents of a ZIP code

area to data such as the demographic and socioeconomic makeup of the area; the level of discriminatory taxes in effect at rental locations serving the area; and other factors. Our analysis focused on rental transactions conducted at Enterprise locations near the renter's residence in which the renter pays the cost of the rental out-of-pocket. We computed discriminatory tax payments by low income households using a regression analysis that provided estimates of propensity to rent by income category. Details of this analysis are presented in the Appendix in Table A-1.

Using socioeconomic data provided by Claritas, we allocated the proportion of excise taxes paid by residents in a ZIP code area to households of various income categories residing in the ZIP code. This allocation was based upon the prevalence of each income category in the population of that ZIP code; and upon their propensity to rent, as measured by the regression model. We thus allocate to higher income households a share of discriminatory tax payments that appropriately reflect their greater propensity to rent.

Car Rental Excise Taxes Fall to a Disproportionate Extent on Minority Households

In analyzing the data about the impact of car rental excise taxes on low income populations, we also gained some important insights about how such taxes disproportionately affect minority households.

According to our analysis—summarized in Table 2— African Americans generate 26 percent of rental car revenues and pay 27 percent of the excise taxes assessed on retail car rentals, despite the fact that they account only for about 12 percent of the population.[1] 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.

[1] In our study we included all individuals, regardless of race, who identified themselves as Hispanic within the Hispanic category. Thus, when we refer to African Americans, Caucasians and members of other minority groups, we are speaking only of the non-Hispanic members of these racial groups.

Table 2

Distribution of Population, Rental Demand and Discriminatory Tax Payments by Race/Ethnicity

	Race/Ethnic Group			
	Caucasian	African American	Hispanic	Other Minorities
Population	65%	12%	15%	7%
Rental Days	47%	26%	13%	14%
Rental Revenues	48%	26%	13%	14%
Discriminatory Tax Payments	48%	27%	12%	13%

In terms of actual dollars, the impact of these payments is significant. Total payments are summarized in Table 3. In 2008, African Americans paid approximately $13 million in excise taxes on their retail car rentals; Hispanics and members of other minority groups each paid about $6 million during that same period.

Table 3

2008 Discriminatory Tax Payments Associated With Home Based Retail Rentals By Race/Ethnicity

	Race/Ethnicity				
	Caucasian	African American	Hispanic	Other Minorities	Total
New England	$ 1,204,361	$ 243,749	$ 139,557	$ 211,420	$ 1,799,087
Middle Atlantic	$ 6,817,463	$ 3,173,148	$ 1,329,601	$ 1,859,970	$ 13,180,181
East North Central	$ 1,193,823	$ 773,713	$ 254,040	$ 282,441	$ 2,504,017
West North Central	$ 940,170	$ 249,016	$ 85,711	$ 168,864	$ 1,443,762
South Atlantic	$ 6,819,027	$ 5,988,879	$ 1,908,128	$ 1,583,001	$ 16,299,035
East South Central	$ 89,547	$ 80,886	$ 5,710	$ 11,127	$ 187,269
West South Central	$ 1,623,789	$ 1,432,801	$ 809,897	$ 398,907	$ 4,265,395
Mountain	$ 2,046,661	$ 467,519	$ 805,152	$ 575,364	$ 3,894,696
Pacific	$ 1,834,515	$ 409,365	$ 288,757	$ 1,048,067	$ 3,580,703
All Regions	$ 22,569,356	$ 12,819,075	$ 5,626,554	$ 6,139,161	$ 47,154,146
Percent of Total	48%	27%	12%	13%	

Using the example cited earlier in this report of the rental car taxes paid by local residents in Georgia, consider that $1,166,629 of the rental car taxes are paid by minorities, compared to only $704,237 paid by Caucasian residents. This is particularly significant because, in Georgia, minorities only comprise 34.6% of the population yet they are paying 62.4% of the taxes.

These figures were derived from the same statistical analysis described above. For the purposes of this analysis, we distinguished four racial/ethnic groups: Caucasian, African American, Hispanics and members of other races. (This "other" category includes Non-Hispanic individuals of Asian ancestry, Native Americans, and members of mixed races.) We then measured the propensity to rent for the latter three groups relative to Caucasian.

Working from these results, we used a two-step process to calculate the share of discriminatory excise taxes paid by members of minority households. First, we totaled the amount of excise tax payments made by residents in a ZIP code area. Second, we apportioned those payments among the four racial/ethnic groups, based on their share of overall rental car demand.

As summarized in Table 4, we learned that African Americans generate over four times as many retail rental transactions as otherwise comparable Caucasian. Hispanics and members of other races are substantially more likely to rent than Caucasian.[2] There are a variety of potential explanations for these results, including cultural differences, differences in household wealth, differences in auto ownership rates, or differences in the physical characteristics of the neighborhoods within which minority households reside. Regardless of the explanation, the association between the presence of minority households and the level of retail rental demand is strong and statistically significant.

[2] These results are based upon a statistical analysis of rental days.

Table 4

Relative Propensity to Rent by Race/Ethnicity

Race/Ethnicity	Propensity to Rent (Relative to Caucasians)
Caucasian	1.00
African American	4.29
Hispanic	1.37
Other Minorities	2.63

Source: Calculations based upon results shown in Table A-1.

Car Rental Excise Taxes Affect Auto Purchases

As we have seen, excise taxes inevitably increase the cost to consumers of renting automobiles. In turn, these increased costs decrease the demand for such rentals, reducing both the number of rental transactions completed, and the total number of rental days per transaction.

Companies such as Enterprise base their business models on achieving a certain amount of rental revenue to cover the cost of maintaining a vehicle in the rental fleet. As overall rental demand decreases, car rental companies must make a corresponding reduction in the size of their rental fleet, ultimately reducing the number of auto purchases these companies make each year.[3]

To quantify the effects of discriminatory excise taxes on new auto purchases, we relied on a variation of the regression analysis used for other parts of this study. We focused our analysis on home-city rentals, but in this case included all transaction types – not just retail rentals – in order to assess tax effects on total rental demand (and by extension, the impact on the overall rental car fleet). Detailed results of these analyses are shown in the Appendix in Table A-2.

[3] We recognize that the auto acquisition process for rental car companies is complex, and that a variety of different factors can influence the timing of decisions either to retire vehicle from the fleet or to purchase batches of new vehicles. Quite apart from these timing questions, however, it remains true that autos will be added to the fleet only if there is enough demand to support them.

Our analysis of home-city rentals identified a very specific correlation: a ten percent increase in excise taxes (relative to the base rental rate) reduced actual rental demand by approximately 11.5 percent. When we examined overall rental demand, ignoring the proximity of the rental location to the residence of the renter, we learned that demand is much more sensitive to the level of discriminatory excise taxes.[4] Based on our analysis, we believe that home-city rental transactions provide a more reliable depiction of the factors driving rental demand, so we based our conclusions on that set of results. In effect, we believe that results based on home-city rental transactions provide a conservative estimate of the impact on auto purchases for rental fleets.

By calculating the sensitivity of rental demand to discriminatory excise taxes, it is possible to compute how much additional demand would be generated if those taxes were eliminated. We developed this estimate by setting taxes to zero at all locations, and then recalculating the level of rental demand for all residential ZIP codes. Results of this calculation are shown in Table 6. Using this formula, we estimate that removal of discriminatory excise taxes would have increased rental demand by almost 8 million rental days—or 3.9 percent—at Enterprise in 2008.

Table 6

2008 Effects of Estimated Excise Taxes on Enterprise RAC Auto Purchases

2008 Enterprise RAC Rental Days	200,864,879	[1]
2008 Lost Rental Days Due to Effect of Rental Excise Taxes	7,912,812	[2]
Percetage Lost Days due to Rental Excise Taxes	3.9%	[3]
2008 Average fleet size	560,246	[4]
Annual loss in Enterprise RAC Auto Purchases	**22,070**	[5]

Notes:
[1]: Enterprise Holdings rental transaction data. (Transaction Types "Insurance" and "Body Shop" are included.)
[2]: *The Brattle Group* analysis.
[3] = [2] / [1]
[4]: 09/15/2009 Email from Client, RE: 2008 Fleet Info.
[5] = [3] x [4]

To support this 4.4 percent increase in demand would have required a corresponding increase in the size of the rental fleet – or the addition of 22,070 vehicles, based on the company's average domestic fleet size of 560,246 vehicles in 2008.

[4] See Appendix Table A-4.

To calculate the implications of this increase in rental demand for auto purchase, we first note that the company's average domestic fleet size in 2008 included 560,246 vehicles. On average, Enterprise expects to keep a vehicle in its fleet for about one year. This means that in order to maintain a fleet of 560,246 vehicles, Enterprise has to purchase 560,246 vehicles per year. We have assumed that in order to accommodate a 3.9 percent increase in rental days Enterprise would have to expand the size of its fleet by 3.9 percent, or 22,070 vehicles. To maintain this larger fleet Enterprise would therefore have to purchase an additional 22,070 vehicles per year.

The net impact: Discriminatory excise taxes on car rentals cause the loss of about 22,000 new vehicle sales into the Enterprise fleet every year.

Appendix

Technical Approach

Information We Relied Upon

We used empirical methods to statically analyze data on rental car demand; discriminatory tax levies; and other factors that contributed to our conclusions. Therefore, these results are based not just upon economic theory or opinion, but also upon a careful examination of the data from reliable sources.

ERAC rental car data

Rental car demand data for this analysis were provided by Enterprise Holdings, which also provided funding for this research. Specifically, Enterprise provided a computer file listing every car rental transaction conducted at one of the U.S. locations in calendar year 2008, the most recent year for which complete data were available.[5] Each transaction in this file listed the ZIP code for the residence of the renter, the Enterprise location at which the rental transaction took place, the starting and ending dates of the car rental, the base rental rate, the gross rental rate (including all surcharges and excise taxes), and the nature of the transaction.

Enterprise also provided a list of all of its rental locations. Among the information provided for each rental location were its geographic coordinates and an indication of whether it was associated with an airport. Using these geographic coordinates and information about ZIP code locations, we were able to compute the approximate distance from the renter's residence to the Enterprise location at which the rental was made.

[5] This file included only rental car transactions involving the Enterprise brand.

Claritas socioeconomic data

Our study also relied upon ZIP code level demographic data obtained from Claritas. These data described the population in each of the ZIP code regions in the United States as of 2008, providing detail about the households in each ZIP code – including race and household income.[6]

Discriminatory Excise Tax Data

Enterprise provided a listing of all excise taxes targeting car rentals currently in effect across the nation. This listing described the structure of each tax (e.g., fixed dollar charge per day, percentage of base rental amount, etc.), the transactions to which it applied (e.g., all rental transactions, all rental transactions except replacement transportation for autos undergoing repair, etc.), the political jurisdiction levying the tax (e.g., city, county, state or special authority), and the date on which the tax went into effect.

Careful analysis of the excise tax data allowed us to determine which taxes applied to each of the transactions in the Enterprise dataset. Using information on the effective date for each tax, we were able determine which taxes were in effect in 2008 – or, for those that took effect during that year, the portion of the year during which the tax was in effect.

Methodology

The Enterprise rental data did not include information about the race or income of the company's customers. To discern these attributes of the Enterprise customer base, we turned to the Claritas data, which described the income and the racial/ethnic composition of the neighborhoods from which Enterprise customers were drawn.

In using this Claritas data, we had to address the issue of differences across households in their propensity to rent. If members of all racial/ethnic groups in a neighborhood were equally likely to rent, one could simply "assign" to each customer the average racial/ethnic makeup of the ZIP code area in which he or she resided. In addition, any excise taxes paid by rental car customers

[6] The Claritas data were available only for residential zip codes. Some valid zip codes may contain no residents because of the makeup of the geographic area to which they apply. Others correspond to no specific geographic area, but rather to buildings or institutions. For example, the U.S. Postal Service assigns six zip codes to the Pentagon.

could be similarly assigned based on the proportion of the racial/ethnic groups residing in that ZIP code area. A similar assumption regarding the propensity to rent among households of different income levels would have provided a way to allocate excise tax payments by income level. However, there was no reason to expect that the relative propensity to rent would be the same across racial/ethnic groups or across income levels. (Indeed, we would expect households at different income levels to exhibit markedly different propensities to rent.) Failure to take such differences into account could lead to seriously distorted results.[7] Therefore, in order to use the Claritas data effectively, we needed to test differences across racial/ethnic groups and across income categories with respect to the propensity to rent.

To measure the impact of excise tax payments on rental transactions, we focused exclusively on transactions paid for by the renter (without reimbursement). This limited our analysis to two transaction types: "retail" and "other". For each transaction, we knew the Enterprise location at which the transaction took place and thus could identify which excise taxes (if any) were in effect at the location on the date of the transaction. We could also identify the form of the tax (i.e., flat fee or percent of base fee), the base rental rate, and what exclusions or caps might have been in effect. This provided the data needed to calculate the excise taxes associated with each transaction. We then added these payments together, to compute total excise tax payments by ZIP code area.

To allocate excise taxes paid by racial/ethnic group, we used the Claritas data to determine their prevalence in the population of that ZIP code; and applied the results of the regression model – summarized in Table 4 to reflect their greater propensity to rent.

To quantify the impact of discriminatory excise taxes on auto premiums, we needed a way to compute the total taxes levied on replacement transportation auto rentals. In the Enterprise data files, these rentals appear under two different transaction types: "insurance" and "body shop." In computing taxes associated with such transactions, care had to be taken to account for exemptions, since a number of jurisdictions exclude replacement transportation rentals from

[7] If, for example, high income households were much more likely to rent than low income households, the former would account for a much larger fraction of the rental coming out of an area than their share of the population taken by itself would suggest.

excise taxes they impose. Where such exemptions existed, we accounted for them in computing the total tax bill.

In order to measure the effects of discriminatory excise taxes on car purchases by rental companies, we needed to measure the extent to which such taxes suppressed rental car demand. This required more than a simple comparison between areas with such taxes and areas without them. Such areas might differ in any number of ways, including racial composition or income levels. To isolate the impact of discriminatory excise taxes, we must control for the effects of other demand factors.

To address all these various requirements in our study, we employed a regression analysis, a widely used technique for separating and measuring the individual effects of multiple causal factors. For this research, the causal factors of primary interest included the racial/ethnic composition of a ZIP code area, the household incomes in that area, and any applicable excise taxes (expressed as a percentage of the base rental rate). Our analysis also included a number of other causal factors, including population density,[8] and the season of the year in which the rental took pace. Using regression analysis, we were able to assign appropriate weights to all of these factors so that our formula would accurately predict the actual pattern of rental car demand.

For portions of the study, our analysis focused on home-city rentals, and in particular, on rental transactions conducted at non-airport locations located within twenty-five miles of the center of the ZIP code location within which the renter resided.[9] We focused on this subset of transactions in order to assure that we have a strong set of explanatory variables with which to explain variations in the basic level of rental car demand.

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[8] Population density is strongly associated with auto ownership rates, and with the availability of other travel options such as buses, cabs or subways. It can thus be expected to influence auto rental demand in a variety of different ways.

[9] We defined this distance threshold based upon examination of the frequency distribution the distances from renter zip code centroids to Enterprise rental locations. There are many transactions for which the distance was less than twenty-five miles. Beyond that distance, the number of transactions tends to drop to a relatively low level. Our understanding based upon conversations with Enterprise personnel is that it is relatively uncommon for a home based renter to travel twenty-five miles to rent a car. We believe that the prevalence of such long-distance home-based transactions in the data is an artifact created by the fact that zip codes sometimes cover a large geographic area, and hence that a renter may be located much closer to the Enterprise location in question than the center of the zip code area.

Home-city rentals accounted for a large portion of overall rental car demand—totaling 80 percent of all U.S. Enterprise rental transactions conducted at non-airport locations, and 71 percent of all U.S. Enterprise transactions.

The results of our regression analysis of these "renter-pays" transactions is shown in Table A-1. The regression models take as their dependent variables the natural logarithm of rentals per capita and rental days per capita.

Although this table is fairly complex, several points about its contents are worth noting. First, it summarizes an analysis of a very large body of data. The line labeled "degrees of freedom" is roughly equivalent to the number of data points feeding into the analysis.[10] The data set used in the analysis includes over 80,000 observations, reflecting the rental demand observed in over 20,000 ZIP codes in each of four quarters. Second, the relatively small set of variables included in the analysis explains a significant amount of the overall variation in rental demand. The line labeled "R-Squared" represents the percentage of overall rental demand that can be explained by the variables included in the analysis. This value is equal to 32 percent for the model focusing on rental transactions, and approximately 31 percent for the analysis focusing on rental days. For a model of this nature, these figures reflect a high degree of explanatory power. Finally, the causal effects shown in Table A-1 are measured with a high degree of statistical reliability. The column labeled "T Statistic" contains measures of statistical reliability for each of the coefficients in the regression model. A value of two is generally regarded as representing an acceptable degree of statistical reliability. Most of the T statistics shown in Table A-1 are well in excess of this threshold value, indicating an extremely high degree of reliability.

For this study, we classified the population into four racial categories: Caucasian, African American, Hispanic and "other." The "other" category consists largely of individuals of Asian ancestry. It also includes Non-Hispanic Native Americans and individuals of mixed race. These results indicate that, all else equal, African Americans have a significantly greater propensity to rent than Caucasians. Individuals from other races are somewhat less likely to rent than African Americans, but are still more likely to rent than Caucasians.

[10] Technically, "degrees of freedom" is defined as the difference between the total number of data points used in the analysis, and the number of coefficients whose values the analysis is attempting to estimate. In the analyses summarize din Table 2 seventeen coefficients are being estimated.

Our results also indicate that there is a strong relationship between propensity to rent and household income. Not surprisingly, higher income households are generally more likely to rent than lower income households.

These results also indicate that discriminatory excise taxes significantly reduce rental car demand. As noted above, a ten percent increase in discriminatory taxes relative to the base rental rate will results in an 11.5 percent decline in the total number of rental days. See Table A-2 below. Focusing on "renter pays" transactions produces an even stronger effect. Specifically, our results imply that a ten percent increase in discriminatory taxes relative will results in a 19 percent decrease in the number of "renter pays" rentals and a 28 percent decline in the number of associated rental days. See Table A-1. These results have a high degree of statistical reliability.

Because the model takes the natural logarithm of rental demand as the dependent variable, we must exponentiate the estimated coefficients for the race and household income variables. Specifically, we calculate the relative propensity to rent by raising "e" (the base of the natural numbers – a mathematical constant roughly equal to 2.8) to a power equal to the estimated coefficients. There are no estimated coefficients for Caucasians. The implied coefficient for this demographic category is zero. Raising "e" to that power, we obtain 1.00, the value shown for the corresponding category in Table 4.

In order to calculate the effects of discriminatory excise taxes on overall rental demand, we need to consider their impact on all transactions types. For this purpose, we ran a regression analysis of home-city rental demand on a dataset that included all home-city rentals involving non-airport rental locations. Results of this analysis are shows in Table A-2. These results are broadly similar to those shown in Table A-1. Overall rental demand is somewhat less sensitive to excise taxes than retail demand.

Table A-3 shows the results of a regression analysis of all rental transactions conducted at non-airport locations, regardless of the distance between the rental location and the residence of the renter. Once again, these results are broadly similar to those discussed above. The estimated sensitivity of demand to taxes, however, is significantly greater.

Table A-4 summarizes our results on the effects that discriminatory excise taxes have on rental car demand. The numbers shown in this table represent the price elasticity of rental car demand, which is defined as the percentage change in demand associated with a one percent increase in discriminatory taxes, holding base rental rates constant. The table shows effects both on the number of rental transactions and the number of rental days. These results show that increases in discriminatory taxes not only reduce the number of rental transactions, but also reduce the number of days per transaction. The top panel shows results for home-based rentals, while the bottom panel shows results for all rentals at non-airport locations. Within each panel separate estimates are show for "renter pays" transactions and for all transactions. As one might expect, renter pays transactions are far more sensitive to tax increases than rental transactions in general.

Table A-1

Regression Results
Retail and Other Transactions
Non Airport Locations
Home Based Rentals

Degrees of Freedom	82,368		82,368	
Adjusted R-Squared	32.0%		30.7%	
Dependent Variable	**Log of Rentals per Capita**		**Log of Rental Days per Capita**	
Independent Variables				
Intercept	-7.5510	-130.4300	-6.2986	-6.2986
Propensity to Rent Relative to Caucasians				
African American	1.2718	67.4900	1.4560	67.0700
Hispanic	0.2208	11.4900	0.3159	14.2700
Other Minorities	0.8937	21.5500	0.9673	20.2500
Propensity to Rent Relative to Households Earning Less Than $15,000 per Year				
Household Income Level:				
$15,000 to $24,999	0.3838	2.4200	0.6827	3.7400
$25,000 to $34,999	0.5502	4.1100	0.7949	5.1600
$35,000 to $49,999	0.5264	4.9300	0.7600	6.1800
$50,000 to $74,999	1.0219	11.4600	1.1887	11.5700
$75,000 to $99,999	1.3456	10.9700	1.6348	11.5700
$100,000 to $149,999	1.6150	14.0700	2.1696	16.4100
$150,000 to $249,999	3.3059	22.4700	3.3014	19.4800
$250,000 to $499,999	3.1239	8.0200	3.2688	7.2900
$500,000 or more	0.5668	1.5800	1.7364	4.2100
Other Independent Variables				
Log of Population Density	0.1452	88.6000	0.1657	87.8100
Quarter Indicators				
Q1 relative to Q4	0.0119	1.5700	-0.0299	-3.4300
Q2 relative to Q4	0.1930	25.6500	0.1385	15.9800
Q3 relative to Q4	0.1367	18.1600	0.1087	12.5300
Log of Gross Daily Rental Rate Relative to Rate Net of Discriminatory taxes	**-1.9300**	**-21.0200**	**-2.7826**	**-26.3000**

Table A-2

Regression Results
All Transaction Types
Non Airport Locations
Home Based Rentals

Degrees of Freedom	88,620	
Adjusted R-Squared	29.3%	
Dependent Variable	**Log of Rental Days per Capita**	
Independent Variables		
Intercept	-4.2376	-74.3700
Propensity to Rent Relative to Caucasians		
African American	1.1279	58.7300
Hispanic	0.1835	9.2300
Other Minorities	-0.0193	-0.4500
Propensity to Rent Relative to Households Earning Less Than $15,000 per Year		
Household Income Level:		
$15,000 to $24,999	0.5854	3.8100
$25,000 to $34,999	-0.0559	-0.4300
$35,000 to $49,999	0.1219	1.1700
$50,000 to $74,999	0.7306	8.4000
$75,000 to $99,999	1.1239	9.3500
$100,000 to $149,999	2.4627	21.8300
$150,000 to $249,999	3.0218	21.0400
$250,000 to $499,999	1.0222	2.7500
$500,000 or more	2.3008	6.4300
Other Independent Variables		
Log of Population Density	0.1418	87.5400
Quarter Indicators		
Q1 relative to Q4	0.0418	5.4600
Q2 relative to Q4	-0.0147	-1.9100
Q3 relative to Q4	-0.0453	-5.9100
Log of Gross Daily Rental Rate Relative to Rate Net of Discriminatory taxes	**-1.1484**	**-14.8500**

Table A-3

Regression Results
All Transaction Types
Non Airport Locations

Degrees of Freedom	111,429	
Adjusted R-Squared	31.8%	
Dependent Variable	**Log of Rental Days per Capita**	
Independent Variables		
Intercept	-3.9960	-72.8200
Propensity to Rent Relative to Caucasians		
African American	1.3284	65.6200
Hispanic	0.3020	15.0700
Other Minorities	-0.7664	-24.0000
Propensity to Rent Relative to Households Earning Less Than $15,000 per Year		
Household Income Level:		
$15,000 to $24,999	0.3482	2.5000
$25,000 to $34,999	-0.4747	-3.8100
$35,000 to $49,999	-0.3612	-3.6100
$50,000 to $74,999	0.4688	5.6100
$75,000 to $99,999	1.2618	11.0000
$100,000 to $149,999	3.1561	28.5100
$150,000 to $249,999	2.4951	16.7800
$250,000 to $499,999	1.1203	2.9400
$500,000 or more	2.7145	7.1500
Other Independent Variables		
Log of Population Density	0.1514	105.9800
Quarter Indicators		
Q1 relative to Q4	0.0584	7.5300
Q2 relative to Q4	0.0098	1.2600
Q3 relative to Q4	-0.0151	-1.9500
Log of Gross Daily Rental Rate Relative to Rate Net of Discriminatory taxes	**-3.4203**	**-32.0900**

Table A-4

Price Elasticity of Rental Car Demand with Respect to Discriminatory Excise Taxes

Home-Based Rentals		
	# of Rentals	**# of Rental Days**
Customer Pay Transactions	-1.9300	-2.7826
All Transactions	-1.0355	-1.1484

All Rentals at Non-Airport Location		
	# of Rentals	**# of Rental Days**
Customer Pay Transactions	-2.0790	-3.2273
All Transactions	-2.5812	-3.4203

PREPARED STATEMENT OF THE FEDERATION OF TAX ADMINISTRATOR

Statement Of
The Federation of Tax Administrators
On
Taxation of Car Rentals
Before the
Subcommittee on Commercial and Administrative Law
Of the
Committee on the Judiciary
June 15, 2008

The Federation of Tax Administrators (FTA) is an association of the tax agencies in all of the 50 states, the District of Columbia, and New York City. We are pleased to have the opportunity to present our views on this proposed legislation that would, in the name of prohibiting "discriminatory taxes", preempt the authority of state and local governments to impose taxes on automobile rentals and property related to renting automobiles. We believe Congress should not undermine the ability of state and local governments to determine their own fiscal soundness, based on their own assessment of their needs and their abilities to meet them.

FTA opposes the "End Discriminatory State Taxes for Automobile Renters Act of 2009 (H.R. 4175)" as a wholly unwarranted intrusion into state sovereignty. The bill would:

- Result in voluminous litigation,
- Result in preferential tax treatment of businesses renting automobiles without any sound evidence supporting the need for such preferential treatment,
- Increase taxes on individuals and other taxpayers to compensate for the Federally mandated reduced taxes paid by those that rent automobiles, and
- Violate the fundamental principles of Federalism by restricting state and local government authority to develop tax and fiscal structures that meet the needs of their own communities.

Background

The operative part of H.R. 4175 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 by Congress without any reference to the determinations that state and local policy makers have made based on their evaluations of the evidence of what the cost is of vehicles using their streets, highways and other state and local infrastructure and the appropriate methods of taxation to maintain that infrastructure. 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. Such an unsound and broad preemption of state and local government authority undermines the constitutional position of state and local governments in our Federal system, usurps state and local governments ability to solve their own fiscal problems and sends the wrong message in a time of economic turmoil.

Preemption Is Just Bad Policy

The preemption of state and local government authority over local tax matters does not recognize the role that these governments must exercise within their jurisdictions. Tax policy decisions must be made that reflect the needs and capability of the communities. For example, tourist communities have expenses related to non-residents that should be shouldered by those non-residents. There are limited methods by which that can be done. Taxes on automobile rentals is one such method that helps to fairly distribute tax liabilities to the parties that benefit from them, such as the development of a tourism infrastructure like convention centers, inner city transportation systems, and sports arenas. It is perfectly sound policy that automobile rentals should help offset these costs by having taxes raised from that activity. There is no reason why rentals of medical equipment, industrial equipment, or lawn mowers should be basis for determining the rate of tax that applies to automobile rentals.

The vague language of these types of preemption proposals and the lack of an administrative agency that can issue interpretative rulings leaves only the courts to determine what terms actually mean. In this legislation the Federal courts, relative strangers to state tax matters, are asked to decide the intricacies of this prohibition. This will add cost to the inevitable litigation and result in even greater punishment of the states and localities by the Congress. This is at best a cumbersome process that will inevitably result in different definitions in different jurisdictions. It will be virtually impossible to for a uniform set of rules to ever be developed because of the nature of trial court and appellate litigation.

Preserving Federalism

The fundamental principle of Federalism vests states and local governments with the responsibility of providing services and raising funds need to be able to pay for the services. Dictating a level of tax for automobile rentals and the property of the companies that rent automobiles, even if they are broadly based, undercuts the authority of state and local governments and creates a privileged class of taxpayer. We urge Congress from taking any steps in this direction. Taxpayers in general will have to shoulder the burdens that are created when special privileges are conferred on designated parties.

PREPARED STATEMENT OF STEPHEN J. COLLINS,
AMERICAN AUTOMOTIVE POLICY (AAPC) COUNCIL

AMERICAN AUTOMOTIVE POLICY COUNCIL

American Auto Policy Council
Stepheu J. Collius
President of the American Automotive Policy Council (AAPC)

Submission on the "End Discriminatory State Taxes for Automobile Renters Act of 2009"

House Judiciary Subcommittee on Commercial and Administrative Law
Hearing on H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009"

June 15, 2010 11:00 AM

(Written Submission)

The American Automotive Policy Council (AAPC), on behalf of its member companies – Chrysler Group LLC, Ford Motor Company and General Motors Company – wishes to express its support for H.R. 4175, the "End Discriminatory State Taxes for Automobile Renters Act of 2009." Thank you for this opportunity.

Discriminatory taxes[1] on rental car companies have a serious and damaging effect on auto company sales, production and ultimately, jobs. Since 1990, 118 special auto rental taxes have been enacted in 43 states and the District of Columbia, which in total imposed more than $7.5 billion worth of taxes on American consumers.

As these taxes accumulate and rental costs rise, fewer cars are rented. This in turn leads to rental car companies purchasing fewer cars to support the diminished demand,

[1] Defined as a tax not imposed on at least 50% of other transactions in the jurisdiction

and the result is a decrease in the number of vehicles sold, especially for the American auto companies, which have taken the lead in rebuilding the manufacturing sector of the U.S. economy and which supply many rental fleets.

In 2009, a total of 1,135,612 vehicles were purchased by rental car companies in U.S. from auto manufacturers. And 60% of those purchases were from America's automotive companies – Chrysler, Ford and General Motors. In the 2009 depressed auto market of 10.4 million U.S. auto sales, rental car companies purchased 11% of the total. Using an average vehicle cost of $23,300,[2] the sum is approximately $16 billion per year – a huge economic contribution to the American economy, GDP, and most importantly, maintaining American jobs during the worst recession in modern history.

The purchases of cars and truck by rental car companies have formed a sturdy baseline of sales during a very volatile period of the American auto market. They have literally kept factories open, kept workers from being laid off or furloughed, and maintained a flow of capital to the American auto manufacturers at a critical moment in their history.

The main argument used to support these special discriminatory taxes on rental cars is that tourists, who are incorrectly presumed to be affluent, are paying them. But this is not the case. The reality is that the annual household income of one in five car renters is less than $50,000, and about one in two is less than $100,000.[3] And not only tourists rent cars, as more than half of all cars rented are from neighborhood-based locations, not airport sites.[4]

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[2] Bureau of Economic Analysis, 2009, Auto and Truck Unit Sales, Production, Inventories, Expenditures, and Price

[3] The Brattle Group, February 23, 2010, Effects of Discriminatory Excise Taxes on Rental Cars, Table 1

[4] The Brattle Group, February 23, 2010, Effects of Discriminatory Excise Taxes on Rental Cars, Page 2

Finally, there is the clear adverse effect on jobs. According to a study by the Brattle Group entitled, "The Effects of Discriminatory Excise Taxes on Car Rentals", a 10% rise in car rental excise taxes results in an 11% reduction in auto purchases. In real terms, that means 75,000 fewer cars were purchased by rental companies last year, leading to an estimated direct employment loss of 5,000-6,000 jobs, up to 10 times more if indirect job losses are accounted for. An equitable resolution of this issue is available in H.R. 4175, "The End Discriminatory State Taxes for Automobile Renters Act." It provides that Congress should prohibit state and local governments from enacting future discriminatory taxes on rental vehicles. All existing rental car taxes will be grandfathered, ensuring that no existing state or local project dependent on revenue from existing car rental revenues compromised. The proposal will not impact standard state or local sale taxes or airport-related fees, nor does it apply to any car rental taxes enacted prior to the bill's effective date.

The American Automotive Policy Council, on behalf of its member companies – Chrysler Group LLC, Ford Motor Company and General Motors Company – offers our strong support for this legislation to both end a pattern of misdirected and clearly discriminatory taxation that hurts consumers of all income levels, negatively impacts jobs, and has no basis in fair tax principles. We ask the Committee to consider this matter seriously and favorably report out this important legislation for passage by the full Congress.

We thank you for the opportunity to provide comments.

PREPARED STATEMENT OF JEFFREY FRIEDMAN,
SUTHERLAND, ASBILL & BRENNAN LLP

I am Jeffrey Friedman and I am a partner at Sutherland, Asbill & Brennan LLP, where I practice state and local tax. I am writing in support of the proposed legislation entitled End Discriminatory State Taxes for Automobile Renters Act of 2009. States and localities have enacted numerous taxes on the rental of automobiles. These taxes often are discriminatory for two reasons: (1) they are imposed at rates higher than taxes imposed on general business transactions; and (2) the burden of these taxes are designed to be exported to out-of-state residents. States and localities have shown an unwillingness to resist the temptation to enact these taxes. Congress should preempt such future impositions.

I. Overview of the End Discriminatory State Taxes for Automobile Renters Act of 2009

This legislation would preempt states and localities from imposing discriminatory taxes on the rental of automobiles. The number of states and localities imposing taxes at rates that are two to three hundred percent higher than the general sales tax rate on the rental of automobiles has been growing in recent years. When justifying the imposition of these taxes to their constituents, legislators regularly acknowledge that the burden of the taxes will be borne primarily by out-of-state visitors to the jurisdiction. For instance, in 2006 the Mayor of Sandy Springs stated that a new car rental tax would primarily affect visitors, as the Atlanta-Journal Constitution reported on March 5, 2006: "We're not raising any tax . . . I didn't think it would be a big deal - most rentals are to visitors anyway."

Discriminatory taxes impede the flow of interstate commerce. In addition to all of the policy reasons that justify preempting discriminatory state and local taxes on automobile rentals, there

are legal issues as well. The dormant Commerce Clause has been consistently applied as a limit on states' and localities' taxing powers. A chief component of the dormant Commerce Clause set of protections is the ban on discriminatory taxes. The U.S. Supreme Court consistently has held that states and localities cannot favor in-state persons over out-of-state persons through tax policies. Discriminatory automobile rental taxes are targeted to do just that – foist a high tax burden on out-of-state persons. While the car rental industry, and its customers, have resisted costly litigation to challenge discriminatory taxes, constitutional challenges to discriminatory state and local taxes is inevitable without Congress' intervention.

The proposed bill would prevent states and localities from imposing discriminatory taxes on rentals of automobiles. The bill would ensure that automobile rental companies and their customers are treated fairly by states and localities.

II. Congress' Authority under the Commerce Clause

It is well established that Congress may use its authority under the Commerce Clause to prohibit discriminatory taxation that burdens interstate commerce. In fact, Congress has exercised its Commerce Clause authority to prohibit discriminatory and illegal taxes on several industries that were vulnerable to such exactions. Examples of Congressional preempting burdensome state and local taxes include prohibiting discriminatory taxes on the airline industry, the railroad industry, the interstate generation and transmission of electricity, and electronic commerce.

Transportation Industries: Prohibition on Discriminatory State Taxes

- The Railroad Revitalization and Regulatory Reform Act (4-R Act). In 1976, Congress enacted legislation to rehabilitate the railroad industry. Included in the 4-R Act is a section that prohibits discriminatory taxes on rail carriers, currently codified at 49 U.S.C. § 11501. Specifically, states and localities are prohibited from imposing a tax "that discriminates against a rail carrier providing transportation" because those taxes would "unreasonably burden and discriminate against interstate commerce."[1]

- The Motor Carrier Regulatory Reform and Modernization. In 1980, Congress prohibited discriminatory taxes on motor carriers, similar to the protection it had already extended to rail carriers. The statute, codified at 49 U.S.C. § 14502, prohibits states and political subdivision of states from taxing motor carriers using a property valuation method that has a higher ratio than the true market value of the property, or by imposing tax on motor carrier transportation property at a higher rate than on similar property.[2]

- The Bus Regulatory Reform Act. In 1982, Congress granted the Interstate Commerce Commission (ICC) the authority to prescribe a state's tax if the ICC determined that the tax "causes unreasonable discrimination against or imposes an

[1] The full text of the applicable provisions is appended in Exhibit A.

[2] The full text of the statute is appended in Exhibit B.

unreasonable burden on interstate or foreign commerce." Congress terminated the ICC and this provision in 1995, but preserved the protection against discriminatory taxes as described below.

Transportation Industries: Prohibition on All State Taxes

- Airport and Airway Improvement Act. In the 1970s, Congress passed legislation that would help states and localities develop and build a national infrastructure for air travel. As states' need grew for funding these projects, they imposed taxes on air travel. Some of these taxes were discriminatorily imposed against out-of-state passengers and cargo. In reaction to the discriminatory taxation, in 1982 Congress passed legislation preempting *all* state and local taxes imposed on the sale of air transportation or on the gross receipts derived from air transportation. The statute, amended in 1994 and currently codified at 49 U.S.C. § 40116, also prohibits states and localities from imposing taxes on property and commerce related to air carrier transportation because those taxes "unreasonably burden and discriminate against interstate commerce."[3]

- The Interstate Commerce Commission Termination Act (ICC Termination Act). In 1995 in *Oklahoma State Tax Commission v. Jefferson Lines, Inc.*, 115 S. Ct. 1331 (1995), the Supreme Court held that Oklahoma could impose a tax on the sale of a bus ticket used for interstate transportation. Eight months later,

[3] The full text of the applicable provisions is in attached Exhibit C.

Congress overturned the *Jefferson Lines* decision with a provision in the ICC Termination Act, currently codified at 49 U.S.C. § 14505. States and their political subdivisions may not impose taxes on passengers, transportation, the sale of transportation, or gross receipts from transportation of passengers in interstate commerce by motor carrier.[4]

Other Industries: Prohibition on Discriminatory State Taxes

- The Tax Reform Act of 1976. Congress has used its authority to limit state and local taxes under the Commerce Clause to prohibit discriminatory taxes on the generation or transmission of electricity, currently codified at 15 U.S.C. § 391. The Act prohibited states and localities from imposing "a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-State manufacturers, producers, wholesalers, retailers, or consumers of that electricity." The legislation was important to ensure that the nation's power grid was able to use energy from various states and localities without restriction from state governments.

- Internet Tax Freedom Act. In 1998, Congress passed the Internet Tax Freedom Act (ITFA). ITFA was enacted to ensure that the Internet was not encumbered by burdensome and discriminatory state and local taxes. ITFA is currently codified at 47 U.S.C. § 151. Among other provisions, ITFA prohibits states and their

[4] The full text of the applicable provisions is in attached Exhibit D.

> political subdivisions from imposing "multiple or discriminatory taxes on electronic commerce." Under ITFA, discriminatory taxes include taxes that are imposed on electronic or internet commerce but not generally imposed on similar transactions; taxes that are imposed at a different rate than taxes generally imposed on similar transactions; and taxes that are imposed on a different person or entity than in the case of similar transactions. ITFA was originally effective for three years, but has been extended several times, most recently in 2007. It is now effective through 2014.

Enactment of federal legislation to preempt harmful and discriminatory taxation is far from unprecedented. In fact, the United States Constitution rests this important role solely with the Congress. Travel is vital to the growth of the U.S. economy. Currently, discriminatory taxes imposed on automobile renters are enacted without consequence as these taxes are paid by out-of-state residents who cannot affect local policies. The End Discriminatory State Taxes for Automobile Renters Act of 2009 is a logical extension of Congress' pre-emption of other burdensome state and local taxes and is an appropriate exercise of Congress' authority under the Commerce Clause.

EXHIBIT A

- The Four R Act of 1976 was re-codified into the Revised Interstate Commerce Act in 1982, and re-codified again into the Interstate Commerce Commission Termination Act of 1995, codified at 49 U.S.C. § 11501:

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

EXHIBIT B

- The Motor Carrier Regulatory Reform and Modernization Act of 1980, codified at 49 U.S.C. § 14502:

(b) Acts burdening interstate commerce - The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

> *(1) Excessive valuation of property.— Assess motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.*
> *(2) Tax on assessment.— Levy or collect a tax on an assessment that may not be made under paragraph (1).*
> *(3) Ad valorem tax.— Levy or collect an ad valorem property tax on motor carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.*

(c) Jurisdiction - . . . .

> *(4) Violation.— If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—*
>
> > *(A) an assessment of the motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the assessment value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all such other property; and*
> > *(B) the collection of ad valorem property tax on the motor carrier transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.*

EXHIBIT C

- The Airport and Airway Improvement Act of 1982; amended by the Anti-Head Tax Act of 1994, codified at 49 USC § 40116:

(b) Prohibitions.--Except as provided in subsection (c) of this section and section 40117 of this title, a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title, may not levy or collect a tax, fee, head charge, or other charge on--

(1) an individual traveling in air commerce;
(2) the transportation of an individual traveling in air commerce;
(3) the sale of air transportation; or
(4) the gross receipts from that air commerce or transportation.

(d)(2)(A) A State, political subdivision of a State, or authority acting for a State or political subdivision may not do any of the following acts because those acts unreasonably burden and discriminate against interstate commerce:

(i) assess air carrier transportation property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
(ii) levy or collect a tax on an assessment that may not be made under clause (i) of this subparagraph.
(iii) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate greater than the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.
(iv) levy or collect a tax, fee, or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee, or charge wholly utilized for airport or aeronautical purposes.

EXHIBIT D

- The Interstate Commerce Commission Termination Act, codified at 49 U.S.C. § 14505:

A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—

(1) a passenger traveling in interstate commerce by motor carrier;
(2) the transportation of a passenger traveling in interstate commerce by motor carrier;
(3) the sale of passenger transportation in interstate commerce by motor carrier; or
(4) the gross receipts derived from such transportation

LETTER FROM GROVER NORQUIST, PRESIDENT, AMERICANS FOR TAX REFORM

AMERICANS for TAX REFORM

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June 10, 2010

The Honorable Steve Cohen
1005 Longworth House Office Building
Washington, DC 20515

Dear Chairman Cohen,

We write in support of H.R. 4175, the End Discriminatory State Taxes on Automobile Renters Act. Passage of this bill will end the discriminatory and burdensome taxes currently suffered by the car rental industry and its customers.

The practice of taxing rental car companies has seen a steep increase since the first rental car tax was introduced in 1976. Since then, more than 115 special rental car taxes have been enacted in 43 states and the District of Columbia.

This practice has become a codified discrimination of one portion of the transportation industry. Car renters are unfairly targeted to raise funds for public projects, such as sports stadiums, which can hardly be viewed as a germane concern for the industry. Other industries, such as railroads and airlines, are not subject to the subjective tax regimes of state and local governments.

What's more, these taxes hurt local economies. As the recession lingers on and unemployment teeters around 10 percent, policies that stunt growth and inhibit recovery should be repealed immediately. H.R. 4175 offers such an opportunity.

Supporters of rental car taxes propose these taxes presuming they are an easy way to increase revenues for local projects since they affect visitors and not residents. This assumption is wrong. Research shows over half of rental car customers are actually local residents. **Lawmakers should be concerned about continuing policies that promote targeted taxes on constituents.**

H.R. 4175 provides Congress with the means to rectify the unjust practice of taxing rental car companies. Thus, we urge you to support The End Discriminatory State Taxes on Automobile Renters Act.

Sincerely,

Grover Norquist
President
Americans for Tax Reform

Cc: Members of the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee

LETTER FROM RICHARD D. BROOME, SR. VICE PRESIDENT, CORPORATE AFFAIRS & COMMUNICATIONS, THE HERTZ CORPORATION

RICHARD D. BROOME Senior Vice President
Corporate Affairs & Communications
THE HERTZ CORPORATION
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Hertz

Honorable Steve Cohen
Chair, Subcommittee on Commercial
And Administrative Law
2138 Rayburn House Office Building
Washington, DC 20515

June 14, 2010

Dear Mr. Chairman,

On behalf of The Hertz Corporation, I am writing in support of HR 4175. Hertz supports this legislation because the explosion of unfair, discriminatory state and local rental car excise taxes is a problem that must be addressed.

State and local governments have unfairly targeted car rental customers to fund a host of public projects. Car rental customers have been singled out to pay for stadiums and other endeavors such as baseball spring training facilities, a culinary institute, police radios, even a sewage treatment plant. None of these taxes have any nexus to the car rental industry. Over the last twenty years, over 100 special car rental taxes have been enacted in 43 states and the District of Columbia. Car rental customers have paid over $7 billion in taxes for projects that do not have any connection to renting a car. And there is no relief in sight.

Car rental taxes not only impact interstate travelers to states and localities but they also have an adverse impact on local residents as well, many of whom rent for a variety of reasons such as their car is in the shop, they need a bigger car for vacation, or because they do not own a car.

In addition, car rental taxes may have a detrimental impact on the broader national economy. In fact, the coalition in support of this legislation includes organizations representing consumers, auto manufacturers, auto workers, the travel industry, taxpayers and the car rental industry. These organizations are concerned about the ripple effects that these taxes have on the economy and the industries and people they represent.

HR 4175 addresses the aforementioned concerns by prohibiting state and local governments from imposing

RICHARD D. BROOME Corporate Affairs & Communications

Hertz

discriminatory car rental excise taxes in the future. Existing car rental taxes would be grandfathered, thus protecting projects that rely on such taxes for funding. The legislation will not impact state or local sales taxes or airport fees and will not apply to any car rental taxes enacted prior to the effective date of the bill.

Disproportionately imposing taxes on one group of consumers to fund public programs is bad tax policy. Hertz respectfully requests that the Commercial and Administrative Law Subcommittee vote in support of HR 4175.

Sincerely,

Richard D. Broome
Sr. Vice President
Corporate Affairs &
Communications

cc: Honorable Trent Franks

LETTER FROM CHRIS RUSSO, PRESIDENT AND CHAIR, AMERICAN SOCIETY OF TRAVEL AGENTS (ASTA)

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The Honorable Steve Cohen
Chairman
Subcommittee on Commercial and Administrative Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20510

11 June 2010

Dear Chairman Cohen:

On behalf of the American Society of Travel Agents (ASTA) and its approximately 3,500 domestic travel agency firms, thank you for considering H.R. 4175, which would protect consumers from discriminatory State taxes on motor vehicle rentals, before your subcommittee. It is my pleasure to offer the Society's strong endorsement of this important legislation.

ASTA has consistently expressed alarm at the trend of taxing jurisdictions levying discriminatory car rental taxes. Left unchecked by Congress, this practice has grown to staggering levels as states and localities have seen out-of-state consumers as an easy, low-risk source of funding special projects such as sports arenas, cultural attractions, and other municipal improvements.

As ASTA has long argued, these taxes serve as a classic illustration of the ill effects of short-term thinking. Over the long term, such taxes threaten to suppress travel and tourism to and within the jurisdictions that impose them. Leisure travelers and corporate business planners alike exercise care in choosing among competing destinations for vacations and meetings. Once any destination is overburdened with state and local taxes, whether for hotel rooms, car rentals, airport fees, or some combination of these, that destination threatens to become cost-prohibitive to at least a portion of travelers who choose locations based on value.

More broadly, the proliferation of discriminatory car rental taxes threatens to have a widespread suppressive effect on the demand for travel services. This is particularly true during times of economic distress such as the current recession. In the past 18 months, travel agents have been forced to contend with emerging trends away from traditional family vacations and face-to-face corporate meetings in favor of videoconferences, webinars, and so-called "staycations." New and discriminatory taxes serve as a disincentive to the economic recovery that could result from increased travel.

When fewer people travel, states and localities fail to benefit from the "multiplier effect" that tourism brings. Fewer visitors will mean fewer people taking taxis, dining in restaurants, attending ballgames, visiting tourist attractions, and shopping in

local businesses. The predictable effect is a net loss of overall tax and tourism revenue in both would-be destinations and points of origin.

By extending to rental cars the same protection that Congress has already applied to railroads, buses, and passenger airlines, H.R. 4175 would serve to halt this trend before it can act as a further drag on economic recovery.

I respectfully request that you do all you can to support H.R. 4175. Thank you for your leadership on this important issue.

Very Truly Yours,

Chris Russo
President and Chair

LETTER FROM JOE B. HUDDLESTON, L.L.D., EXECUTIVE DIRECTOR, MULTISTATE TAX COMMISSION (MTC)

MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

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June 25, 2010

The Honorable Steve Cohen, Chairman
Subcommittee on Commercial and Administrative Law
U.S. House of Representatives
Washington, DC 20515

The Honorable Trent Franks, Ranking Minority Member
Subcommittee on Commercial and Administrative Law
U.S. House of Representatives
Washington, DC 20515

Re: H.R. 4175, "End Discriminatory State Taxes for Automobile Renters Act of 2009"

Dear Chairman Cohen and Representative Franks:

I am writing on behalf of the Multistate Tax Commission to supplement the record in the June 15, 2010 hearing on H.R. 4175 held by your Subcommittee. The Commission is an intergovernmental State tax agency working on behalf of States and taxpayers to administer, equitably and efficiently, tax laws that apply to multistate and multinational enterprises. Created by the Multistate Tax Compact, the Commission is charged with:

- Facilitating the proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;
- Promoting uniformity or compatibility in significant components of tax systems;
- Facilitating taxpayer convenience and compliance in the filing of tax returns and other phases of tax administration; and
- Avoiding duplicative taxation.

Established in 1967, forty-seven States and the District of Columbia participate in the work of the Commission.

The bill's sponsor, Representative Rick Boucher, testified at hearing that the precedent for this federal intervention in state and local taxing decisions is the 1976 Railroad Revitalization and Regulatory Reform Act. Of course, that Act was a congressional response to the fact that the

United States railway system was failing. The Act was adopted, after seventeen years of analysis and volumes of congressional reporting, in conjunction with an entire package of grants and loans and with the stated purpose of restoring financial stability to an energy-efficient, ecologically compatible transportation service.

There is no comparison between that situation and this one. The automobile rental industry is quite robust, worth over twenty billion dollars, and has a guaranteed customer base through airports and insurance contracts. There has been virtually no evidence presented at all, and certainly none that indicates interstate discrimination, financial instability, or any other rationale for federal pre-emption of these constitutional, and difficult, state taxing determinations.

Furthermore, the legislation could be seriously disruptive to state financing of infrastructure projects. Even though it is prospective, and 43 states have already enacted excise taxes for automobile rentals, the grandfather clause is problematic. If a state were to change the tax rate, alter the terms of the tax, or remove or renew a sunset clause, the grandfather clause would be voided. This could have severe negative consequences on the bonds supporting capital projects funded by a revenue stream from an automobile rental tax.

Thank you for your consideration of these comments.

Best regards,

Joe B. Huddleston, L.L.D.
Executive Director

Cc: Members, Subcommittee on Commercial and Administrative Law

PREPARED STATEMENT OF THE TRUCK RENTING AND LEASING ASSOCIATION (TRALA)

Written testimony of the Truck Renting and Leasing Association (TRALA)

Re: H.R. 4175, "End Discriminatory State Taxes for Automobile Renters Act of 2009"

Before the House Committee on the Judiciary's subcommittee on Commercial and Administrative Law

Tuesday, June 15, 2010, 11:00 a.m.
2141 Rayburn House Office Building

TRALA

TRUCK RENTING AND LEASING ASSOCIATION

On behalf of its members, the Truck Renting and Leasing Association (TRALA) strongly supports the federal effort to put an end to discriminatory taxes on motor vehicles through the passage and enactment of H.R. 4175.

TRALA members engage in the commercial renting and leasing of trucks, tractors, trailers and semitrailers, vehicle finance leasing, and consumer truck rental. The membership encompasses the full spectrum of the industry, including major national independent firms such as Ryder System, Penske Truck Leasing, U-Haul International, Budget and Enterprise Truck Rental, as well as small and medium-size businesses that generally participate as members of four group systems: Mack/Volvo Truck Leasing, NationaLease, PacLease, and Idealease. In total, these 500-plus companies operate more than 4,000 commercial lease and rental locations and more than 18,000 consumer rental locations throughout the United States, Canada and Mexico.

TRALA members understand that taxes are a necessary mechanism for funding government and public projects. However, programs and projects for the general public good should be funded by broad-based taxes rather than taxes on one specific population group or industry. An exception to this general rule is the imposition of user fees utilized by government to benefit the taxpayers from which the fees are collected. Motor vehicle rental taxes are neither broad-based taxes nor are they user fees if the collected fees are used to fund projects not associated with transportation or vehicular traffic.
In many situations, local and state motor vehicle rental taxes are touted by lawmakers as protecting local residents from tax burdens while imposing taxes on visitors from out of town. This type of "tax exporting" is poor public policy and creates a gap between government services and the taxpayers who fund them. This policy also diminishes the accountability of elected lawmakers by allowing them to fund local projects with taxes on individuals who cannot vote in the jurisdiction where the tax is imposed.

Though many state and local motor vehicle rental taxes are described as car rental taxes, lawmakers often extend the imposition of the taxes to consumer and commercial truck rental transactions. In some cases this is done

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inadvertently, while in others it is done with purpose. Under either circumstance, taxes on rental trucks have far-reaching negative consequences.

Truck rentals to the general public (consumer truck rentals) are often covered under a state's definition of motor vehicle rental. Consequently, when discriminatory taxes are aimed at out of town visitors renting automobiles, they also hit consumer truck rental customers. The vast majority of consumer truck rental customers are local residents or small businesses that cannot afford more expensive services or alternatives in order to move their own property. In effect, these taxes are hitting the local entities least able to afford them.

In many situations, lawmakers fail to recognize the widespread use of rental trucks by businesses (commercial truck rentals). Many private motor carriers, especially in the retail industry, utilize rental trucks to meet peak demands periodically throughout the year and during holidays. These

truck rentals can be trucks from 8000 pounds in vehicle weight up to 80,000 pounds in vehicle weight. Both taxes that are based on a percentage of transaction costs and daily taxes during a rental period can add significant costs to the commercial transportation of goods. In the end, it is the consumer that ultimately pays the price for these higher costs.

The truck renting and leasing industry bears a significant burden in both broad-based taxes and user fees. In addition to state and local transactional sales and use taxes, owners of trucks operating under rental agreements pay registration fees, safety inspection fees, fuel taxes, and a host of federal excise taxes on trucks, tires and fuel. Please pass H.R. 4175 and stop the imposition of discriminatory rental taxes on top of the significant tax burden already borne by the truck rental industry.

Thank you for your consideration of the views of the Truck Renting and Leasing Association in support of H.R. 4175.

LETTER FROM ALAN REUTHER, LEGISLATIVE DIRECTOR, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKS OF AMERICA—UAW

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW

RON GETTELFINGER, President ELIZABETH ELINN, Secretary-Treasurer

VICE PRESIDENTS: GENERAL HOLIEFIELD • BOB KING • CAL RAPSON • JIMMY SETTLES

IN REPLY REFER TO

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June 10, 2010

Hon. Stephen Cohen, Chair
Subcommittee on Commercial &
Administrative Law
House Judiciary Committee
Ford House Office Building, Room H2-362
Washington, D.C. 20515

Dear Chairman Cohen:

We understand that the Subcommittee on Commercial & Administrative Law has scheduled a hearing for June 15, 2010 on "The End Discriminatory State Taxes on Automobile Renters Act (EDSTAR) (H.R. 4175). This statement is submitted by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) in connection with this hearing. We would appreciate it if you would include this in the record for this hearing.

The UAW supports EDSTAR, and urges Congress to give prompt, favorable consideration to this legislation. In recent years, state and local governments have increasingly been imposing taxes on car rentals in order to fund local projects. We are concerned that this trend is likely to intensify given the severe budgetary pressures facing many states and localities.

The UAW believes that these taxes on car rentals violate basic principles of interstate commerce, by discriminating against out-of-state consumers and businesses. They also impose a disproportionate burden on low -income persons, many of whom must rent because they do not own a car.

Most importantly, by placing a significant burden on car rentals, the UAW is concerned that these taxes have a negative impact on the volume of car rentals and thus have a depressing effect on new vehicle purchases by rental car companies. In 2009, 1,135,612 vehicles were purchased by the rental car industry from manufacturers. This represented 11 percent of all vehicles sold in 2009. It is estimated that a ten percent rise in car rental excise taxes results in a reduction of about 11 percent in auto purchases, or about 124,917 vehicles. This inevitably has a significant negative impact on auto production and employment in the United States.

The domestic auto industry has already suffered major pressures as a result of the deep recession and drop in auto sales. Further increases in car rental taxes will simply exacerbate these pressures, causing additional losses in production and employment.

The proposed EDSTAR (H.R. 4175) would address these problems by prospectively barring the imposition of discriminatory car rental taxes by states and localities. The legislation would grandfather existing taxes. It also would still allow states and localities to impose general taxes that are levied on all citizens or businesses.

In our judgment, this represents an appropriate, balanced solution to the problems posed by discriminatory car rental taxes. The UAW therefore supports EDSTAR (H.R. 4175) and urges Congress to move forward promptly to approve this legislation.

Sincerely,

Alan Reuther

Alan Reuther
Legislative Director

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