



March 22, 2021

The Honorable Mike Crapo  
Ranking Member, Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Ranking Member Crapo:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write to thank you for introducing the State Fiscal Flexibility Act. We are alarmed by the provision of the American Rescue Plan (ARP) that could prevent states from offering tax relief to their residents over the next several years, and we appreciate your leadership in attempting to reverse and/or mitigate the impacts of this onerous inclusion in ARP.

NTU's mission is to achieve favorable policy outcomes using the most effective pro-taxpayer team on Capitol Hill *and in the states*. That is why we were deeply concerned to discover that Senate leadership inserted a last-minute provision into ARP that hamstringing state governments from offering tax relief to their constituents, potentially through 2024. As NTU Foundation's Joe Bishop-Henchman wrote:

The bill says [state governments may not use ARP funds to] “directly *or indirectly* offset a reduction” (emphasis added). What is “indirectly” using stimulus money to cut taxes? It conceivably could cover *all* state tax cuts from now to 2024. That makes it likely that anyone could challenge any tax reduction on the basis of some attenuated chain of reasoning. If it does, however, such an assertion of federal power would be so all-encompassing as to be unconstitutional commandeering of state policy.<sup>1</sup>

Though Congressional leaders responsible for this provision may have been looking to preempt certain ongoing pro-growth tax reform efforts -- a policy that is harmful enough to begin with -- we are especially concerned that this provision of ARP could block states from enacting immediate tax relief for those struggling the most during the economic downturn. As NTU's Brandon Arnold has pointed out, this provision could tie the hands of states looking to forgive state taxes on an individual's unemployment benefits from last year:

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<sup>1</sup> Bishop-Henchman, Joe. “Provision Added to Stimulus Bill to Halt State Tax Cuts.” National Taxpayers Union Foundation, March 10, 2021. Retrieved from: <https://www.ntu.org/foundation/detail/provision-added-to-stimulus-bill-to-halt-state-tax-cuts>

Fortunately, some states had already taken action to address this problem. ... Other states, like Maryland and Arkansas, suspended state taxes on unemployment benefits for 2020 and 2021, but more than half of states continue to collect taxes on unemployment. [Because of this provision in ARP, r]esidents of Hawaii, D.C., and other jurisdictions where pending legislation could have provided similar tax relief, no longer have cause for optimism.<sup>2</sup>

The State Fiscal Flexibility Act would give states reason for optimism again. While clear and flexible guidance from the Treasury Department may help reduce the burdens facing state governments due to this provision of ARP, the State Fiscal Flexibility Act would provide even more clarity by repealing the offending provision. By reversing this onerous provision tying state governments' hands if they accept COVID aid, your legislation would allow governors and state lawmakers to continue exploring opportunities for tax relief in the years ahead. Indeed, some of this tax relief may be necessary and urgent for those hit hardest by the pandemic.

Thank you for introducing the State Fiscal Flexibility Act. We look forward to working with you and your colleagues on this issue further.

Sincerely,

Andrew Lautz  
Director of Federal Policy

CC: The Honorable Jim Risch  
The Honorable Chuck Grassley  
The Honorable John Cornyn  
The Honorable John Thune  
The Honorable Rob Portman  
The Honorable Tim Scott  
The Honorable James Lankford  
The Honorable Steve Daines  
The Honorable Todd Young

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<sup>2</sup> Arnold, Brandon. "Democrats' Stimulus Bill May Block States from Suspending Taxes on Unemployment Benefits." National Taxpayers Union, March 16, 2021. Retrieved from:  
<https://www.ntu.org/publications/detail/democrats-stimulus-bill-may-block-states-from-suspending-taxes-on-unemployment-benefits>