



March 23, 2010

The Honorable Rene Oliveira, Chairman
Ways and Means Committee
Texas House of Representatives
EXT E2.116
P.O. Box 2910
Austin, TX 78768-2910

Dear Mr. Chairman, Mr. Vice Chair, and Members of the Committee:

On behalf of the 362,000 members of the National Taxpayers Union, more than 23,000 of whom hail from Texas, I write to offer comments – as well as cautions – regarding the issues to be discussed in tomorrow’s Committee hearing.

Although Texas has not been spared from the ravages of the current economic downturn, the state has weathered these adverse conditions better than others. In our opinion, this is not some accident of good fortune. Texas has avoided imposing an income tax, and despite having property and sales taxes above the national median, the state and local tax burden there (as a percentage of personal income) is 43rd-highest. The Tax Foundation ranks Texas’ Business Tax Climate as 11th-best in the entire nation. Moreover, despite a per capita state and local debt burden that is somewhat above the national average, Texas has often shunned the budgetary excesses that have put other states into dire financial straits.

It is therefore vital that whenever lawmakers consider fiscal policy choices for Texas, they avoid doing harm to a number of competitive advantages that have served the state well. We are greatly concerned over several items on the Committee’s hearing agenda tomorrow.

For example, Item I is to “[s]tudy the tax structure as applied to cable versus satellite services to determine if any unfair competition results from state tax policies.” Based on our experience in other states as well as in Texas, we would urge the Committee to take extreme care not to accept at face value the arguments of cable industry advocates who claim the tax “playing field” is tilted in favor of satellite TV.

In a letter to the Texas Legislature last year calling for opposition to H.B. 3893, I noted that provisions to impose a new 7 percent tax on satellite TV, raising the combined burden on this service to 13.25 percent, would “discourage the innovation and competition in the video market that benefits all consumers with lower prices and better service.” This notion is as true today as it was a year ago.

The trend of using tax laws to handicap competitors’ products while giving oneself a leg up is disturbing. Those who take the side of cable TV providers say that because satellite firms

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often have little or no physical presence in a state, they “escape” property taxes and should pay more in other levies. This contention is bizarre – should someone who works from home be forced to pay a special tax because he or she “escapes” paying gasoline taxes by not driving to work? Should a customer who buys running shoes pay a higher tax for Nike than for Adidas?

Granted, cable companies have paid “franchise fees” in exchange for public rights of way to lay transmission wires. But for many years, satellite providers have had to competitively bid for the use of federally owned spectrum over which they can transmit their signals. One could argue that this “right of way” through space is analogous to the terrestrial rights of way for which cable companies are paying under franchise agreements. Certainly, satellite companies also pay a cost of business in preparing, launching, and maintaining their spacecraft as a precondition of getting their products to market.

In any case, if cable advocates believe they have been taxed unfairly, then the solution is to lobby for lower taxes on their own industry, rather than for higher taxes on someone else. The fact is, Texas already taxes telecommunications harshly compared to other states. The Heartland Institute calculates that the total government tax load on voice, video, and data services is over 15 percent in Dallas, significantly higher than the national average of nearly 11 percent. We would advise the Committee to seek ways that would lighten, rather than add to, this burden.

We also understand that the Committee intends to “[s]tudy methods for improving the quality and uniformity of, and communications to taxpayers about, property tax appraisals.” We are most encouraged by the Committee’s exploration of this subject, and would urge Members to concentrate on improving the availability of information concerning taxpayers’ rights to appeal assessments. Although Texas localities do a better job than those in many other states in providing homeowners with the facts they need to proceed with challenging appraisals, there is additional room for improvement. For example, more documents could be made available online to help property owners conduct additional research on their assessments, such as PDF versions of the manuals or guidelines assessors may use when conducting appraisals. More online tools to facilitate research into comparable values for similar properties would be helpful as well.

Of course, improving the quality and uniformity of appraisal communications would benefit tremendously if the quality and uniformity of the assessment process itself were upgraded. One idea at least worth considering would be the adoption of acquisition-based valuation, which would set individual tax assessments (at least for residences) at each property’s sale price whenever it is transferred. Although this process has raised concerns in areas where it is employed because of potential disparities in values of homes held for long periods of time, the assessment method is, for the owner, as transparent as possible. By effectively removing calculations such as replacement value or overall market trends from the equation, the concept of assessment based on acquisition price is crystal-clear.

Finally, the Committee’s agenda calls for consideration of “Certain Sales Tax Exclusions.” We understand and sympathize with policy makers who contend that sales tax structures have become needlessly complicated. In many states, we have seen public officials wrestle with minute questions over the sales tax base such as what constitutes food for

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immediate consumption on the premises of a business versus at home, whether food for working animals should be taxed the same as for house pets, and whether ingredients such as marshmallows should be taxed as “snack” foods merely because they can be eaten alone.

Such questions do not admit to easy answers, and most exclusions from sales taxes have constituencies that are highly vested in their preservation. Nonetheless, we believe that there can be some value in carefully simplifying and broadening the sales tax base if the intention is to lower the state’s sales tax rate rather than raise additional revenues.

One reason the public is often skeptical of policymakers’ attempts to “reform” tax laws is because they perceive the motive as serving the government rather than the people. We contend there will be no support among consumers or in the business community for repeal of sales tax exclusions for the sake of fattening the state’s coffers. In addition, we would caution the Committee over a paradoxical result from streamlining the system of exclusions – higher complexity. For example, requiring sales taxes to be charged on services such as taxis could, depending upon how the tax is administered, require a whole new level of recordkeeping and remittance from thousands of operators in the state. This could also inconvenience consumers of such services. Moreover, some of the activities exempted from sales taxes pay different kinds of mandatory government charges. If they are to be forced to collect sales taxes, then these charges should be repealed. In short, we would encourage the Committee to consider sales tax exclusion changes only in a revenue-neutral and regulatory cost-neutral context.

In closing, we firmly believe that Texans are not undertaxed, and that reforms to the state’s current system must be made in the best interests of consumers, not tax collectors or firms with vendettas against their competitors. We stand ready to assist you in these and future deliberations over making Texas an even better place for taxpayers.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Sepp". The signature is stylized and written in cursive.

Pete Sepp
Vice President for Policy and Communications