TO AMEND TITLE 4 OF THE UNITED STATES CODE TO CLARIFY THE TREATMENT OF SELF-EMPLOYMENT FOR PURPOSES OF THE LIMITATION ON STATE TAXATION OF RETIREMENT INCOME

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

H.R. 4019

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CONTENTS

DECEMBER 13, 2005

OPENING STATEMENT

WITNESSES

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

TO AMEND TITLE 4 OF THE UNITED STATES CODE TO CLARIFY THE TREATMENT OF SELF-EMPLOYMENT FOR PURPOSES OF THE LIMITATION ON STATE TAXATION OF RETIREMENT INCOME

TUESDAY, DECEMBER 13, 2005

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

The Subcommittee met, pursuant to notice, at 4:04 p.m., in Room 2141, Rayburn House Office Building, the Honorable Chris Cannon [Chairman of the Subcommittee] presiding.

Mr. CANNON. This hearing of the Subcommittee on Commercial and Administrative Law will now come to order.

Today we will consider H.R. 4019, a bill I introduced earlier this year to clarify the treatment of self-employment in regard to the taxation of retirement income and, to ensure fairness across the board for all retirees. This bill is intended to place all retirees on equal footing regarding the taxation of their retirement benefits, whether they worked for a company as an employee, were self-employed or were a partner prior to retirement.

In the 104th Congress this Subcommittee passed the Senate Taxation of Pension Income Act of 1995, which subsequently became Public Law 104–95. The purpose of this act was to prohibit the State taxation of certain retirement income of nonresidents. The act did not allow all retirement income to be removed from taxation by a State where the retirees were no longer residents. It specifically set certain standards under which a retiree's income could not be taxed by State where that person was no longer living.

No matter how clear and precise Congress thought it was when it originally passed the bill to prevent States from taxing the retirement incomes of retirees who no longer live in those States, it seems that the language and principle in Public Law 104–95 is being circumvented, or at least an attempt is being made.

Congress made it so very clear in 1995 in determining that States should not tax the retirement income of people who are not in the State. The determination was regarding all retirees. This bill is not trying to change the intent of the original law or increase the bounds. It is to make sure that, as it should be, all retirees are treated the same, regardless of whether they worked for someone else or themselves prior to retirement.

The bill clarifies that Public Law 104–95 was intended to cover all retirees with regard to the described plans, specifically the non-qualified types of plans and the restrictions in it.

I look forward to the testimony of the panel.

Without objection, the Chair will be authorized to declare recesses of the hearing at any point.

Hearing none, so ordered.

I further ask unanimous consent that Members have 5 legislative days to submit written statements and statements by interested parties for inclusion in today's record.

I now yield to Mr. Watt, the Ranking Member of the Subcommittee, for an opening statement.

Mr. WATT. Thank you, Mr. Chairman. And thank you for convening the hearing so that we can get some clarification about what we may be doing subsequently in the markup.

This bill amends, as I understand it, Public Law 104–95, to which some of us objected when it came before the Committee in 1996.

A review of the record from 1996 indicates that at that time I, along with several of my colleagues, including Ranking Member Conyers, had three principal concerns about the bill: that it failed exclude non-qualified deferred compensation plan; that it failed to impose a monetary cap on exempting funds; and that it was not made subject to the Unfunded Mandate Reform Act.

These concerns have really not gone away and were this a new bill that presented the same issues that were presented by Public Law 104–95 that we were marking up in 1996, no doubt we'd probably be having the same debate with the same concerns being raised.

As I understand H.R. 4019, however, we do not today revisit the policy choices implemented by the underlying bill. Instead, H.R. 4019 represents a technical correction designed to preempt at least one State from implementing an interpretation that's clearly at odds with the intent of the original bill, and one which would create a situation under which a specific group of retirees—that is partners and principals—would be treated differently from all other groups of retirees.

I will be interested in hearing Mr. Duncan's testimony since he suggests that bill may be more than simply a technical correction. So I'll be listening carefully to what he has to say about that.

However, if H.R. 4019 is truly only a technical correction, I see no reason to oppose it. In addition, even if the bill does not—does more than merely clarify the original intent of the underlying law, there is nonetheless some basis upon which to support it. And that is presumably most States have, over the nearly 10 years since the law first passed, structured or enforced their tax systems in accordance with the law and they've made the necessary adjustments to this bill already.

Absent a persuasive objection from the States, therefore I see no reason to deviate from that policy because one State revenue department has found a potential loophole in the original language.

I'll listen intently to the testimony, particularly Mr. Duncan's testimony, and look forward to the hearing and perhaps look forward to the subsequent markup.

Mr. CANNON. The gentleman yields back.

Mr. WATT. I yield back.

Mr. CANNON. Thank you.

I'm going to dispense, just to meet the needs of a couple of our Members, I'm going to dispense with introductions if you don't mind. We'll include those for the record and we'll just go right directly to your testimony.

[The information referred to is available in the Appendix.]

So Mr. Gekas, would you honor us with your testimony? Welcome back before—I feel really awkward sitting up here with the chairman sitting at the table.

Mr. WATT. Mr. Chairman, I'm almost constraint to introduce the Honorable George Gekas myself, just to give him an adequate introduction. But I'll restrain myself.

Mr. CANNON. A man who otherwise needs no introduction and who used to chair this Committee. We appreciate your coming back Mr. Gekas, and look forward to your testimony.

STATEMENT OF THE HONORABLE GEORGE W. GEKAS, FORMER UNITED STATES REPRESENTATIVE, FORMER CHAIRMAN OF THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW, COMMITTEE ON THE JUDICIARY

Mr. GEKAS. Thank you, Mr. Chairman, Mr. Watt——

Mr. CANNON. Your microphone, please. First time on that side of the table.

Mr. GEKAS. I'm so nervous.

In conjunction with the Chair's first offering, I'm going to offer this historic document as my written statement in this hearing for the record and proceed to outline some of the issues that already have been touched upon by both the Chair and Mr. Watt.

My sole purpose in being here today is to testify to the legislative intent upon which you've both touched. And that legislative intent was so clear from the beginning that I was astounded when, very recently, I was called and asked if I would testify here as to that very same intent because the State of New York, I had learned, was eager to jump on what they considered to be a loophole for the purpose of reaching beyond its borders to attach a taxation vehicle.

This first came to light, as some of you will remember—I remembered it very well—when Barbara Vucanovich, then Congresswoman Vucanovich, came to my office to explain that she, as a representative of our Congressional District in Nevada, was concerned, very concerned, about the great number of retirees who came to Nevada from the State of California, came to Nevada to establish permanent residence and then were affronted by the fact that California was reaching across the borders to tax their retirement income.

Well, that one thing led to another. I, too, was mortified at that because what it had done was to rear the ugly head of double taxation, which was one of the first fears that I uncovered as a legislator, both in the Pennsylvania Legislature and in Congress.

And indeed, this is a subject matter that arose in the context of double taxation, and therefore, Barbara's persuasion led to eventually the enactment of the—of the law which we're discussing here today.

The pure legislative intent was to honor all retirees in all States and to keep them safe from the taxation of a neighboring or any State in the Union in reaching to their retirement income, now in their new retired residential status in another State. That is clear to me. I don't see how it can be argued any other way.

Something that Mr. Watt mentioned also brings to mind that one of the chief proofs that we have about the intent to—not to exclude partners but to include partners in the whole context of retirees, was the fact that the opponents, those who voted against it back then, somewhere along the line in their documents, perhaps in the minority report, referred to the ugliness that would occur if that bill—if our bill would be passed, because you could see partners doing bailout contracts with their employers or their former bosses or colleagues. The very fact that they mentioned as a possibility means that they—that partners fit into the type of retiree that should be free from this taxation.

And so I'm eager to have your record indicate that when we enacted this legislation there was no doubt about the inclusion of partners.

As a matter of fact, we never dreamed at that time, except for that one reference in the minority report which came about after the hearings and after the deliberations and after the final vote, et cetera, that partners would be excluded. You'd have to search deeply—not search, but rather embed some kind of thoughts into the general language to bring about an exclusion for partners.

So with all of that, I am gratified that we have, joining me on this panel, experts in this whole field on all sides of the issue and I'm urging them not to contradict me at all. And if they do, they will find that I will not be here. I have to leave immediately.

With that, I yield the balance of my non-time and wish you all well. And as I'm wafting out of here, I hope to hear some lingering—shall I say—endorsement of my statement.

Thank you very much.

[The prepared statement of Mr. Gekas follows:]

PREPARED STATEMENT OF THE HONORABLE GEORGE GEKAS

Mr. Chairman, Congressman Watt and distinguished Members of the Subcommittee:

Thank you for the opportunity to testify on H.R. 4019, a bill that would make it clear that existing federal law prohibits States from taxing the retirement income of any non-residents retirees. Congress needs to take action quickly to prevent States from undermining the common-sense legislation that was enacted in 1996 to prevent unfair and burdensome taxation. I commend you, Mr. Chairman, for introducing H.R. 4019 and for holding this hearing.

I understand that at least one large State is attempting to exploit an ambiguity in the 1996 law to argue that some non-resident retirees, namely non-resident retired partners, are not covered by the current-law prohibition on State taxation of non-resident retirees. As Chairman of the Subcommittee on Commercial and Administrative Law when Congress originally considered this issue, I can tell you this is simply not the case. The purpose of my testimony today is to provide some legislative background and history that will make this abundantly clear.

This issue first arose in the 1990s because some States, such California and New York, were imposing an income tax on retirement income of retired, non-resident individuals who worked in those States for part or all of their careers. At the time, several other States were discussing so-called "State source" taxes. There was no question that States had the Constitutional authority to impose such taxes, but Congress intervened because of the risks of double taxation and the complexity of multistate compliance.

Largely due to the efforts of Congresswoman Barbara Vucanovich of Nevada, Congress ultimately passed the State Taxation of Pension Income Act of 1995 (Public Law 104–95). Public Law 104–95 is very straightforward. It provides that a State may not tax the retirement income of non-residents. The definition of retirement income includes income from a qualified retirement or annuity plan, such as an IRA or 401(k) plan, and income from a nonqualified deferred compensation plan. As Congresswoman Vucanovich noted when she introduced the legislation, it was purposefully designed to apply to all retirement income in order to be fair and treat all retirees equally.[1]

Although I believe that current law prohibits any State taxation of non-resident retirement income, I also understand that at least one State is arguing that there is a "loophole" in the statute that allows them to tax some non-resident retirees and not others, simply because they are non-resident retired partners rather than non-resident retired employees. I disagree. Therefore, it is important that Congress remove any doubt by enacting H.R. 4019. Otherwise, certain non-resident retirees could face costly litigation to fight aggressive taxation by some States—a fight retirees would clearly win in court. In addition, if Congress does not act now, this issue could develop into a significant problem with other States.

The issue we are considering today stems from the definition of nonqualified deferred compensation plan contained in Public Law 104–95. When the decision was made during the legislative process to include nonqualified retirement plans, we referred to the definition of "nonqualified deferred compensation plan" found in the employment tax. At least one State has used this reference to argue that Public Law 104–95 only applies to nonqualified deferred compensation received by retired, non-resident employees and does not protect retired, non-resident partners. In reality, we used the reference to employment tax because, unlike qualified retirement plans, there is no reference to nonqualified retirement plans in the income tax code. The employment tax reference was meant to serve as a general, non-technical description of nonqualified deferred compensation plans. Had we fully understood the potential tax implications of including a FICA tax reference, we most certainly would have drafted the legislation differently.

Congress never intended to arbitrarily carve out certain groups of individuals from the protection of Public Law 104–95 even though the retirement income that they receive is in all other respects identical to the retirement income received by individuals enjoying the protection of Public Law 104–95. For example, Congress never intended to prohibit source State taxation of nonqualified retirement income of all employees, including highly compensated executives, but not of self-employed individuals, such as partners. Moreover, Congress never intended for self-employed retirees to receive protection from source State taxation on their qualified retirement income (which Public Law 104–95 clearly covers) but not their nonqualified retirement income, while highly compensated executive retirees enjoy protection under Public Law 104–95 with regard to both types of retirement income. It is also difficult to see any policy reason for such a distinction.

In fact, Members of Congress who opposed Public Law 104–95 clearly believed the statute would apply to partners. The Dissenting Views section of the Committee report complains that "[b]y including nonqualified plans in the legislation, Congress will open broad new loopholes for lucrative compensation arrangements, such as golden parachutes, partnership buy-outs, and large severance packages."[2]

I believe it is clear from the statutory language, legislative history and purpose of the statute that Public Law 104–95 protects all non-resident retirees, regardless of whether they are a retired employee or a retired partner. However, because at least one large State is unwilling to recognize this, I strongly support enactment of H.R. 4019, which would shut down any possibility that States might be able to unfairly tax the retirement income of certain non-resident retirees, effective as of the date of enactment of Public Law 104–95 because it is consistent with Congressional intent.

Thank you again for the opportunity to testify today. I would be happy to answer any questions you may have.

Mr. CANNON. If you leave quickly, I think Mr. Portnoy is probably going to be very supportive of your statement.

Thank you for being here. And just for everyone's recollection, you were the Chairman at the time this bill was passed.

Mr. GEKAS. That's correct.

[1] Congressional Record, Extension of Remarks, January 5, 1995, p. E42.
[2] H. Rep. No. 104–389 at 16.

Mr. CANNON. You chaired this Committee. And so we appreciate your expertise and your knowledge on the subject.

I recognize——

Mr. WATT. Mr. Chairman, can I just thank the gentleman for being here?

Mr. CANNON. Certainly.

Mr. WATT. George was always one of my favorite people to get into debates with. But he's a great guy and no doubt when he leaves we're going to hear sleigh bells ring. That's what we're likely to hear.

Mr. GEKAS. Bill, glad to see you.

Mr. DELAHUNT. Good to see you, George, and welcome back. I would echo all of the kudos and sentiments that were expressed by Mr. Watt.

I haven't read the bill yet, but I am sure I'll support it with vigor, if you leave now.

Mr. GEKAS. Thank you very much.

Mr. CANNON. Thank you, George.

Mr. Portnoy, I will recognize you for 5 minutes and feel free to summarize your testimony because we do have your written record in the record. Thank you very much.

STATEMENT OF LAWRENCE F. PORTNOY, LLP, RETIRED PARTNER, PRICEWATERHOUSECOOPERS

Mr. PORTNOY. Thank you, Mr. Chairman.

I'm Lawrence Portnoy, a retired partner of PricewaterhouseCoopers, LLP. From 1992 until my retirement in 2001, I served as the tax matters partner for my firm. During this period, among other things, I supervised the firm's implementation of the procedure to account for income earned by staff working in nonresident States, withholding and reporting procedures, preparation of the resident tax returns for staff claiming credit for tax paid to the nonresident States, and calculating any amounts to be paid by the firm to those staff to assure that their total tax cost was no greater than if they did not work temporarily in a nonresident State.

For example, if you send someone out of town to work on a job for 6 months, and because of that he's got an incremental tax cost, this was a process to take care of all of that and to make that person whole.

As a result of my work in this area, I'm very familiar with the laws regarding the taxation, both federally and at the State level, of individuals and other taxable entities. In this regard, I wish to express my concerns with the States' misinterpretation in the State Taxation and Pension Act of 1995, P.L. 104–95, often referred to as H.R. 394.

The purpose behind passage of the act was simple, to prohibit State taxation of certain pension income by States in which the recipient was neither resident nor domiciled at the time of receipt.

According to the December 7, 1995 report of the Committee on the Judiciary of the House of Representatives, the bill was needed because the system permitting both the individual State of residence and the States in which the individual had previously earned income to tax that retirement income would produce a burden on retirees that would "be, all too often, simply unreasonable."

The act defines retirement income broadly. The reason for exempting income from both qualified and nonqualified plans was best expressed by Representative Vucanovich during the hearing before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary in June 1995. She stated that "it is a question of fairness to make the law apply equally to all retirees."

I would particularly like to point out that after the enactment of P.L. 104–95, all of the States respected the exemption of nonqualified deferred compensation, as defined in the act, from nonresident taxation to all retirees, irrespective of whether he or she was formerly an employee or a self-employed individual.

This was the case until the past year or so. Now the question of whether the law applies equally to all retirees is being questioned by one State. And there's no doubt that other States will follow. This State is asserting that the exemption does not apply to retired partners, only to retired employees. Any disparity in the treatment of retired partners would raise a major issue with regard to fairness in that, unlike employees, partners of large accounting and law firms pay tax in as many as 30 or more States because that's where the partnerships did business rather than where the individual partner performed services. These partners did not reside in these States where they paid tax and, in many instances, performed no services in the vast majority of these States. They were taxed under State partnership rules and received no benefits from the State either as a resident or as an income earner.

Congress clearly understood the issue of burden, which is one of the major reasons for the original legislation. And the same burden applies to retired partners as well. And, in fact, the burden is even greater on retired partners than it is on retired employees. As a result of the original legislation, retired partners correctly concluded that they were covered by P.L. 104–95 and thus, did not file any returns outside their State of residence.

It's been 10 years since P.L. 104–95 has been enacted and, up until last year, the States agreed with that position. If the States were now to adopt a different position, the States could require nonresident returns to be filed for all prior years with the payment of tax and interest.

Let me emphasize that the burden on retired partners also involves determining how much of their income is taxable by a particular nonresident State. We could easily be looking at 30 or more States for which data would have to be gathered and the proper formula applied. This is precisely the type of burden——

Mr. CANNON. Mr. Portnoy, could I just ask how much more do you have left in your testimony?

Mr. PORTNOY. Quarter of a page.

Mr. CANNON. Go ahead.

Mr. PORTNOY. Sorry.

This is precisely the type of burden the act was designed to avoid. This bill clarifies P.L. 104–95 by specifically stating that retired partners are included. The bill further clarifies the type of income Congress intended to cover because one State is trying to tax certain types of nonqualified retirement income. These changes are intended to provide clarity and precision to the types of income intended to be covered.

Most importantly, since it is a clarification of existing law rather than a change in the law, H.R. 4019 will be effective as of the date that P.L. 104–95 was effective. With the passage of H.R. 4019, Congress will have assured that the problems that necessitated the enactment of P.L. 104–95 are solved for all retirees.

Thank you for your time and consideration of this important issue.

[The prepared statement of Mr. Portnoy follows:]

PREPARED STATEMENT OF LAWRENCE F. PORTNOY

Mr. Chairman, Congressman Watt and distinguished Members of the Subcommittee: Thank you for the opportunity to testify on H.R. 4019.

I am Lawrence Portnoy, a retired partner of PricewaterhouseCoopers, LLP. I joined the tax department of Price Waterhouse (now PricewaterhouseCoopers) in 1964 and was admitted to the partnership in 1975.

During my years with the firm I served as a tax consultant for many large multinational clients and later was responsible for representing clients before the National Office of the Internal Revenue Service on accounting method change requests, accounting period change requests, ruling requests and requests for technical advice. I represented the firm when making comments to IRS and Treasury Department on proposed regulations.

From 1992 until my retirement in 2001 I served as Tax Matters Partner and Senior Tax Technical Partner. This involved setting policy for the firm on major client tax matters and having responsibility for planning and compliance (the filing of all required tax returns) for the firm's federal, state, local, and international tax matters. During this period I supervised the firm's implementation of the procedure to account for income earned by staff in nonresident states, withholding and reporting procedures, preparation of resident tax returns for staff claiming credit for tax paid to nonresident states, and calculating any amounts to be paid by the firm to staff to assure that their tax cost is no greater than if they did not work temporarily in nonresident states.

As a result of my work in this area, I am very familiar with the laws regarding the taxation, both federally and at the state level, of individuals and other taxable entities. In this regard, I wish to express my concerns with the misunderstanding in the State Taxation of Pension Income Act of 1995, (P.L. 104-95), often referred to as HR 394. The purpose behind passage of the Act was simple: to prohibit state taxation of certain pension income by states in which the recipient was neither resident nor domiciled at the time of receipt. According to the December 7, 1995 Report of the Committee on the Judiciary of the House of Representatives, the bill was needed because a system permitting both the individual's state of residence and the states in which the individual had previously earned income to tax retirement income, would produce a burden on retirees that would be "all too often simply unreasonable."

The Act defines retirement income broadly and exempts all income from "qualified" pension plans as defined in the Internal Revenue Code, as well as income received under deferred compensation plans that are "non-qualified" retirement plans under the Code, but that meet additional requirements. While HR 394 as originally proposed did not exempt income from non-qualified plans, it was amended prior to passage to add the exemption (with certain caveats) to distributions from such non-qualified plans. The reason for including income from non-qualified plans was best expressed by Representative Vucanovich during the Hearing before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary in June of 1995. She stated that "it is a question of fairness to make the law apply equally to all retirees."

After the enactment of HR 394, all of the states respected the exemption of non-qualified deferred compensation (as defined under the Act) from nonresident taxation to all retirees, irrespective of whether he/she was formerly an employee or a self-employed individual-until the past year or so. Now, the question of whether the law applies equally to all retirees is being questioned by the states, "unreasonable" burdens are surfacing, and double taxation of such income is again likely. The major factor accounting for the lack of equal application is that some states are asserting that the exemption does not apply to retired partners, only to retired employees. These states are also asserting that, even if retired partners are eligible for the exemption from nonresident taxation, an additional requirement applies to non-qualified deferred compensation received by them. Specifically, they assert that, if a partnership plan has a formulary cap or a provision for a cost of living adjustment, it does not qualify for the exemption, since the payments do not meet the Act's definition of "substantially equal periodic payments."

Why do we now have a problem? While the law was intended to apply to all retirees, due to what I believe is a misreading of the section of HR 394 exempting non-qualified plan benefits only where such benefits are paid pursuant to Section 3121 (v)(2)(C) of the Internal Revenue Code, some state taxing authorities maintain that the exemption is only available to employees. This section is a part of the Code relating to the Social Security and Medicare tax payments that employers and employees make under FICA. Partners, as self-employed individuals, make their payments of Social Security and Medicare taxes under a different section of the Code. However, nowhere does HR 394 use the word "employee." All references are to individuals and a reasonable interpretation would be that the reference to Section 3121 (v)(2)(C) was meant only to generally describe the type of non-qualified plan subject to the exemption - not to restrict the exemption to employees and allow the taxation of those who were self-employed.

This disparity in the treatment of retired partners raises a major issue with regard to "fairness" in that, unlike employees, partners of large accounting and law firms paid tax in as many as thirty or more states because that is where the partnership did business rather than where the individual performed services. These partners did not reside in these states and, in many instances, performed no services in the vast majority of these states. They were taxed under state partnership rules and received no benefits from the states either as residents or as income earners. In most cases, the partnership filed both a partnership return and a composite return that included all partners who elected to be part of the return. The firm determined the income allocable to the state based on the firm's federal taxable income and the specific state apportionment formula. That total was then allocated to each partner. The composite return was filed for non-resident partners in lieu of individual returns filed by each nonresident partner and was based on the partner's distributive share of the *firm's* income earned in the state - whether the individual partner had worked in the state or had never stepped foot in it. In contrast, employees generally worked in only a few states during their active careers and actually earned income in such states and enjoyed the benefits as income earners in the states.

With regard to the issue of burden, it is clear that a system that would require retired partners, particularly those who were members of large partnerships, to determine how much of their income was taxable in every state in which the partnership earned income is difficult at best, impossible at worst. Add to this the fact that most retired partners reasonably believed that they were covered by HR 394 and never filed returns outside of their state of residence. These retired partners have no statute of limitations protection. It is ten years since HR 394 was enacted, and states could require nonresident returns to be filed for all prior years, creating a substantial compliance burden in terms of tax and interest, and the cost of preparing nonresident tax returns. The statute of limitations trap is exacerbated by the fact that retired partners who reside in a state that imposes an income tax can only claim a refund for nonresident taxes paid within the resident state's statute of limitations, generally three years. Nonresident taxes that are assessed outside of this period will provide no resident state tax relief, resulting in double taxation for the entire amount of nonresident tax assessed. This is a burden that had not even been contemplated when the law was passed.

Another burden involves determining how much of the retired partner's pension income is allocable to a particular state. One state is presently considering employing two alternative methods, depending on whether the retired partner's interest in the partnership is totally liquidated. If the interest is not totally liquidated, then the state intends to allocate the retirement income by the allocation percentage of the partnership itself for the current year. If the interest is liquidated, then the amount allocated to the state is based on where the partner performed his or her services prior to retirement, using the ratio derived from dividing the number of days services were performed in the state during the portion of the retirement year plus the prior three years, by the total number of days services were performed everywhere during the same period.

Neither of these methods is reasonable. In the first instance, since the retired partner performed no work for the partnership during the taxable year, how can the partnership's allocation percentage be relevant? Under the second method the problem of finding and defending the number of days worked years in the past is virtually an insurmountable burden. Worst of all, each state that determines that partners are not exempt individuals may devise its own allocation formula. We could easily be looking at 30 or more states for which data would have to be gathered and the proper formula applied. This is precisely the type of burden the Act was designed to avoid.

As to double taxation, it is clear that retired partners who may have earned income in as many as thirty states during their active tenure could be responsible for taxes in all of these states. This raises the possibility they will pay state taxes on more than one hundred percent of their retirement income.

State administrators point to the fact that the states generally allow a credit for taxes paid to non-domiciliary states. They must also agree, however, that this does not eliminate the problem. Most states, if not all, allow the credit only up the amount that would be subject to tax under their laws. For example, if I am a resident of a state that imposes its tax at the rate of five percent, and a state that imposes its tax at the rate of ten percent also taxes my retirement income, I will pay ten percent to that non-resident state, but only receive a credit by my resident state equal to five percent of that amount. Also, some states will not allow a credit to its residents for a tax that they do not impose on its nonresidents, or do not believe is valid. And, of course, retirees who live in states that do not impose an income tax will receive no relief from paying tax to other states when there is no offset to be had. Finally, there may be little or no concomitant federal tax relief for these multiple payments due to the Alternative Minimum Tax.

. An example of the difficulties of calculating the amounts owed is attached to this testimony. It would be necessary to estimate the amount a state could assess on audit for each open year and the maximum credit available to be claimed against the tax in the resident state. Further, the schedule would need to be updated periodically as the states assess and collect the tax. In the attached schedule, a retired partner resident in New Jersey had, in the 2001 tax year, a total of $18,826.06 of state taxable income attributable to 34 different states. His state tax would total $1,192.49 but based on state rules, only $1,040.58 would be creditable. It is clear that the credit mechanism does not solve the problem of double taxation. Further, retired partners who, in 2001 were residents of Pennsylvania, Illinois, Mississippi or Hawaii would receive no credit since those states did not tax pension income.

How can these problems be solved? The answer is to enact HR 4019. This bill clarifies HR 394 by specifically stating that retired partners are included. Further, it makes it clear that the language requiring that payments from non-qualified plans must be "part of a series of substantially equal periodic payments (not less frequently than annually)" does not preclude such plans from the exemption based merely upon caps or limits based on a predetermined formula or on adjustments such as cost of living increases. Most importantly, since it is a clarification of existing law, rather than a change in the law, HR 4019 is applied retroactively to the December 31, 1995 date that HR 394 was enacted. With the passage of HR 4019, Congress will have assured that the problems that necessitated the enactment of HR 394 are solved for all retirees.

Thank you for your time and consideration of this important issue.

ATTACHMENT

PRICEWATERHOUSECOOPERS

State of Residence: NJ

Adjusted 2001 Schedule I

	State Taxable Income	State Tax	Creditable Tax
Alabama	97.52	4.88	4.88
Arizona	0.00	0.00	0.00
Arkansas	2.93	0.21	0.19
California	3,400.07	316.21	216.58
Colorado	315.11	14.59	14.59
Connecticut	618.33	27.83	27.83
Delaware	40.40	2.40	2.40
Georgia	972.05	58.32	58.32
Hawaii	66.02	5.61	4.21
Idaho	46.23	3.61	2.95
Illinois	1,612.87	48.39	48.39
Indiana	171.66	5.84	5.84
Kansas	9.20	0.59	0.59
Kentucky	88.51	5.31	5.31
Louisiana	94.50	5.67	5.67
Maine	33.43	2.84	2.13
Maryland	305.70	14.67	14.67
Massachusetts	1,803.46	100.99	100.99
Michigan	88.47	3.72	3.72
Minnesota	9.10	0.71	0.58
Mississippi	2.58	0.13	0.13
Missouri	404.83	24.29	24.29
Nebraska	44.22	2.95	2.82
New Jersey	0.00	0.00	0.00
New York	4,122.29	282.38	262.59
North Carolina	819.89	67.64	52.23
Ohio	702.29	52.67	44.74
Oklahoma	131.74	8.89	8.39
Oregon	154.88	13.94	9.87
Pennsylvania	1,305.90	36.57	36.57
Rhode Island	16.42	1.66	1.05
South Carolina	66.01	4.62	4.21
Utah	46.69	3.27	2.97
Vermont	5.85	0.56	0.37
Virginia	1,226.88	70.55	70.55
Total:	18,826.06	1,192.49	1,040.58

Footnote - Partners who were residents of Pennsylvania, Illinois, Mississippi, or Hawaii during 2001 will not have an additional tax credit because these states do not tax pension income.

Mr. CANNON. Thank you, Mr. Portnoy.

Mr. Duncan, we look forward to your testimony now.

STATEMENT OF HARLEY T. DUNCAN, HARLEY T. DUNCAN, EXECUTIVE DIRECTOR, FEDERATION OF TAX ADMINISTRATORS

Mr. DUNCAN. Thank you, Mr. Chairman. My name is Harley Duncan. I'm the Executive Director of the Federation of Tax Administrators, which is an association of the principal tax administration agencies in the 50 States, D.C., and New York City. We appreciate the opportunity to present our position on H.R. 4019.

That position can be summarized, I think, as follows, that if the Subcommittee determines that it is appropriate to move forward with the bill, we would encourage you to take steps to improve the clarity and precision of the bill in order that we can avoid conflict in interpretations and confusion for taxpayers, make the act administrable by the States, and prevent the bill from creating opportunities for substantial tax avoidance.

The Federation was an active participant in the discussion surrounding the passage of Public Law 104–95, and we worked closely with Mr. Gekas and the Members of this Subcommittee to define—develop the final legislation.

Then, as now, we recognize that the source principle of taxation must be balanced with the administrative difficulties and burdens that might be imposed on taxpayers and their employers in maintaining sufficient records over a lifetime of earning to ensure an appropriate allocation of the deferred income among all States in which it might be taxed.

At the same time, the proponents of 104–95 and this Subcommittee recognized that limitations that were going to be imposed on State and local taxing authority needed to be narrowly and clearly drawn so that they accomplished their intended purposes, did not create unintended consequences and open up the States to substantial taxable avoidance. We think the same considerations are appropriate for 4019.

Public Law 104–95 substantially achieved those principles and goals because every item of income that's subject to the act is defined with reference to the Internal Revenue Code so that the taxpayer knows and the tax agency knows what type of income we're talking about.

In the one area where that's not possible, with the nonqualified deferred comp plans, there were two provisions inserted by the Subcommittee to make sure that distributions from those nonqualified plans looked like the rest of the retirement income that was being—that was covered by the bill, namely that it was paid out over a substantial period of years or the length of life of the individual, and that it came out in substantially equal installments to take then the differential nonqualified deferred comp and make it look like the rest of the retirement income, but again with specific reference to the Internal Revenue Code so that it both defined it specifically and prevented abuses.

Those two things do not occur in H.R. 4019. First of all, the term retirement benefits, which are then to be subject to the limitation, is fully undefined in the bill. There's no reference to the Code, there's no reference to anything that we could find that we would then be able to say this constitutes the retirement benefit that's subject to the limitation.

Second, the term retired partner is defined by a parenthetical that says defined as such in appropriate tax laws. But that's not a meaningful statement. It doesn't help you determine who is eligible for the limitation and when they're eligible for the limitation.

Finally, there are some qualifications then added to the two limitations that this Subcommittee put in in 1995, about the length of the pay out and the substantially equal installments. And those are accompanied by undefined terms such as a predetermined formula that might be used to deviate from those limits, similar alterations or similar formula to alter those pay outs again, without respect to any definition that we could find.

The end result then is that you've got an ability to recharacterize virtually any income as a retirement benefit and try to qualify for the limitation. We don't know who it applies to. And the predetermined formula and qualifications on the length of pay out and substantially equal payments can be used to effectively negate those limitations.

If you move forward, we would make several suggestions. First, tie the income to some part of the Code. We'd throw out 1402(a)(10) as a starter for working away from it. At least it talks about the types of income that makes for non—for retired partners.

Specifically include an exclusion for retirement—from the definition of retirement benefits for gains on the sale of a partnership interest in a trade or business so that we don't have that converted into retirement benefits.

Delete the modifications on the length of the pay out and the substantially equal test or put them in some form so that they are meaningful limits and can't be used to negate those two principles.

If those don't work for you, consider tying the amount of income that's exempt to some prior level so that we know what we're looking at. Those are the types of things that we think need to be done so that A, the taxpayer knows what he or she can do; B, the State can administer it and we don't open ourselves up to avoidance.

One minute, 15 seconds on the effective date, if I may.

We would argue that it ought to be January 2006. It may be that this is retirement income that is similar to that in 104–95. I think it is fair to say that retired partners were not excluded by choice from 104–95. Equally, I think it's an overstatement to say that they are included in 104–95. The language tying to all those references in the Code doesn't deal with partners. They simply aren't addressed in the bill as it was passed.

So I think it's an overstatement to say clarification. That, if you extend it, if you take the effective date back to 1995, that implies a misapplication in some fashion by the States. I don't think that's the case. If a taxpayer feels that's the case, he or she should contest that in a State tax administration appeals system.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Duncan follows:]

PREPARED STATEMENT OF HARLEY T. DUNCAN

Chairman Cannon, Congressman Watt and Members of the Subcommittee:

Thank you for the opportunity to appear before the Subcommittee on H.R. 4019 relating to state and local taxation of certain payments to retired members of partnerships. My name is Harley Duncan, and I am the Executive Director of the Federation of Tax Administrators. The Federation is an association of the principal tax administration agencies in the 50 states, the District of Columbia and New York City. My purpose today is twofold: (1) to request that the Subcommittee require the proponents of the bill to demonstrate with clear and convincing evidence that the source principle of taxation should be overridden because of concerns regarding the administrative and recordkeeping burden associated with taxing retirement income paid to retired partners in the source state; and (2) to request that, if the Subcommittee determines it is appropriate to move forward with this bill, that it take steps to improve the clarity and precision of the bill in order to prevent the bill from creating opportunities for substantial avoidance.

H.R. 4019 would amend P.L. 104–95 by including in the list of specific distributions from specific types of retirement plans that may be taxed only by the state in which an individual resides or is a domiciliary a new category of income characterized as "any plan, program or arrangement providing for retirement benefits to a retired partner (treated as such under applicable tax laws). . . ." It would also liberalize the requirement that distributions from nonqualified deferred compensation plans (and the newly included partnership retirement benefits) be made not less frequently than annually and that the distributions be made in substantially equal amounts.

INTRODUCTION

As a preliminary matter, it should be stated that to this point, there has been no discussion with the Federation or its staff as to the need for H.R. 4019. We understand there is a desire to bring parity to the tax treatment of various streams of income that some consider "identical," and that there are issues of administrative burden that have been raised. These, however, have not been explained to or discussed with us. We believe that the Subcommittee as a first order of business should require the proponents of the bill to demonstrate clearly that the administrative and recordkeeping burden associated with taxing the retirement income in question is so onerous as to require a modification of the source principle of taxation, which would hold that the income in question should be taxed where the services giving rise to the income were performed even if the taxation is deferred until the income is actually received. Simply saying that the income in question is the "same as that covered by an earlier act of Congress" (P.L. 104–95) is insufficient without further evidence.

The Federation was an active participant in the discussions surrounding the passage of P.L. 104–95 and worked closely with this Subcommittee in developing the final shape of the legislation. Then, as now, we recognize that the source principle of taxation must be balanced with administrative difficulties and burdens that might be imposed on taxpayers and their employers in maintaining sufficient records over a lifetime of income to ensure an appropriate allocation of the deferred income among all states in which it might have been earned. At the same time, proponents of P.L. 104–95 and Members of this Subcommittee recognized that any limitations imposed on state and local taxing authority should be narrowly and clearly drawn so as to accomplish their intended purpose, but not to create unintended consequences and open up opportunities for substantial tax avoidance. We think the same considerations are appropriate in deliberations regarding H.R. 4019.

During testimony before this Subcommittee on legislation that ultimately became P.L. 104–95, FTA offered the following statement:

> As a general matter, the Federation urges the Congress to move cautiously in considering legislation to restrict the ability of states to tax retirement income paid to former residents. Any such legislation should: (1) preserve to the maximum extent possible the source taxation principle under-girding state income tax systems; (2) not create opportunities for substantial tax avoidance; (3) be designed carefully to address the issues present in today's environment and not a series of hypothetical situations which someone might conjure; and (4) be ca-

pable of being administered by being precisely drawn and based upon references to current laws or understood concepts where possible.[1]

P.L. 104–95 substantially follows these principles in that it specifically identifies the types of retirement income that are taxable only in the state of residence by defining them with respect to specific sections of the Internal Revenue Code. As to nonqualified deferred compensation plans, which are by definition variegated arrangements, the legislation imposed standards for the length and amount of distributions so as to avoid potentially abusive situations where an individual could defer substantial amounts in the latter part of a career, move to a non-tax state and avoid substantial taxes to the state in which the income was earned. P.L. 104–95 provides a good model to follow should the Subcommittee determine that the administrative burdens associated with continuing to tax the income in question at the source are too onerous. Any limitation should be clear and unambiguous.

SOURCE TAX PRINCIPLE

There should be no question regarding the legal authority of states to tax the retirement income of nonresident partners where the services giving rise to the income were performed in the state.[2] The basis of current state income tax systems is that a state may tax income that is derived from sources within the state, regardless of whether it is earned by a resident of the state or a nonresident engaging in income-producing activities within the state. In-state sources are generally defined to include the performance of services in the state, the conduct of a trade, business or occupation in the state, or the receipt of income from property owned within the state.

State authority to tax nonresident income from in-state sources was validated by the U.S. Supreme Court over 70 years ago in *Shaffer v. Carter* 252 U.S. 37 (1920) when it wrote:

> . . .we deem it clear, upon principle as well as authority, that just as a State may impose general income taxes upon its own citizens and residents . . . , it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein. . . .

As the *Shaffer* court noted, and as has been developed in subsequent cases, the essential constraint on the states in the taxation of nonresident income is that the nonresident may not be taxed to a greater degree than a similarly situated resident of the state and may not be discriminated against by virtue of the nonresident status.[3] It is also clear that states have authority to tax all income received by a resident, regardless of the source of that income.[4] To avoid double taxation, however, all states with a broad-based income tax[5] provide a tax credit to residents for income taxes paid to another state on income which is also included in the tax base of the state of residence.[6] This system of reciprocal credits generally prevents retire-

[1] Testimony of Harley T. Duncan before the Commercial and Administrative Law Subcommittee of the House Committee on the Judiciary, "State Taxation of Nonresident Pension Income," June 28, 1995.

[2] Throughout the testimony, references to nonresident pension or retirement income should be read to refer to that portion of any deferred compensation arrangement that is attributable to services performed in the state at an earlier point in time. A state would not have authority to tax pension income of a nonresident if it did not arise from services or other activities performed in the state.

[3] With respect to nonresident pension income in particular, states take the position that the pension income is simply deferred income or compensation for services performed at an earlier point in time. This issue has not been addressed directly by the Supreme Court. The Court's ruling in *Davis v. Michigan Department of Treasury* 109 S.Ct. 1500 (1989) (intergovernmental tax immunity and 4 U.S.C. 111 prevent a state from taxing federal pensions to a greater degree than they do state and local pensions), however, certainly supports the state interpretation that pensions are deferred income paid for services performed previously.

[4] *New York ex. rel. Cohn v. Graves,* 300 U.S. 308 (1937) and *Lawrence v. State Tax Commission,* 286 U.S. 276 (1932).

[5] Forty-one states and the District of Columbia levy a broad-based personal income tax. New Hampshire and Tennessee levy an income tax on limited types of interest, dividend and capital gains income. Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming do not levy a personal income tax.

[6] Maine and Virginia do not grant such a credit on retirement income. Neither state, however, includes retirement income from non-state sources in the tax base of the resident.

ment (and other) income from being taxed in both the state in which it is earned and in the state of residence.[7]

As noted, the principle of source taxation must be balanced with issues concerning the administrative and compliance burden that may be imposed on individual taxpayers and their employers in maintaining the records necessary to appropriately allocate income among states and filing the requisite returns. For example, Congress has limited the taxation of individuals engaged in most interstate transportation industries to the state of residence or where the taxpayer spends a majority of his/her time in recognition of this type of burden. It was these sorts of concerns that also were the genesis for P.L. 104–95. As Congress has recognized in its earlier deliberations, if limits are to be imposed on state taxation, care must be taken to ensure that the limits are clear and precise and that they do not create opportunities for unwarranted tax avoidance.

ISSUES RELATIVE TO H.R. 4019

The Federation believes that H.R. 4019, as drafted, falls short of this goal and the criteria outlined earlier in this testimony. Specifically, we have three concerns with H.R. 4019: (1) Certain terms and phrases used in H.R. 4019 are unclear and require further specific definitions; (2) Without greater clarification and precision, H.R. 4019 creates opportunities for substantial, unwarranted tax avoidance; and (3) The effective date in H.R. 4019 should be changed.

Lack of precision. In subsection 1(a)(1) of H.R. 4019, the term "retirement benefits" is used, but not defined in any way.[8] By contrast, P.L. 104–95 goes to great length to define the term "retirement income" with specific reference to sections of the Internal Revenue Code. This not only provides specificity for administrative purposes, but ensures that the income is actually retirement income in the normal sense of the term, where income has been systematically set aside in a trust arrangement to be paid out when one ceases work. Without any definition, H.R. 4019 would potentially allow nearly any stream of post-employment income to be characterized as "retirement income" and made free of tax if one resided in a non-tax state. We would suggest that the Subcommittee consider IRC section 1402(a) as a potential definition for "retirement benefits." The section defines income of former partners that are not subject to self-employment tax and may be a model for H.R. 4019.[9]

The phrase "retired partner (treated as such under applicable tax laws)" [Section 1(a)(1)] is presumably designed to define the types of individuals that qualify for the limitation. Without further specificity, however, it is simply a phrase without meaning. It will become a point of contention and litigation and creates opportunities for recipients to try to avoid tax by characterizing themselves as "retired partners." The phrase must be defined with reference to the specific tax laws that help define "retired partner" or otherwise provide a statement of the qualifications that define one as a retired partner if it is to be administrable and enable taxpayers and states alike to determine who qualifies for the special treatment.

The meaning and intent of Section 1(a)(2) is unclear and requires explanation. On its face, it modifies the "substantially equal periodic payments" test imposed on distributions from nonqualified deferred compensation plans to enable what are being touted as "retirement benefits" to be paid under some non-normal schedule. This would seem to open up the bill to gaming by allowing the partnership benefits to be paid on some other basis. If the purpose of H.R. 4019 is to replicate P.L. 104–95, this modification should be deleted. The effort in P.L. 104–95 was to place a limit on what all considered to be "normal" retirement plans. The "substantially equal" requirement was designed to ensure that nonqualified plans could not easily be used to avoid tax liabilities.[10]

The phrases "predetermined formula" and "similar adjustments" in Section 1(a)(3) also need to be defined, if indeed the terms are even necessary. If those terms remains undefined, they become points of potential conflict and litigation. Also, such

[7] Certain groups of states do not use such a system of credits. Instead, they have reciprocal agreements under which all income is taxed by the state of residence rather than the state in which it is earned. (This also avoids taxation by two states.) These agreements are most prevalent in the Virginia-D.C.-Maryland, Pennsylvania-New Jersey, and Ohio-Indiana-Illinois areas.

[8] Other than, we presume, by the current law's limits regarding the length of payouts and the "substantially equal" requirement that govern distributions from nonqualified deferred compensation arrangements.

[9] This reference is provided as a possibility for further analysis. It has not been reviewed widely by states to determine if it would be suitable. It is an example, however, of the benefits of tying the definition in H.R. 4019 to other sections of the Internal Revenue Code.

[10] Note also that the term "period" in page 2, lines 13 and 14 of the bill should be changed to "periodic."

adjustments could be structured so as to effectively negate the ten-year/life-expectancy requirement and the "substantially equal" requirement, both of which are critical to limiting the use of nonqualified deferred compensation programs as tax avoidance techniques. While it is unclear why the language is necessary, such adjustments should be limited in some fashion, e.g., as a proportion of the total amount, not more than some percentage annually or the like.

Tax Avoidance. As noted, without precise and specific definitions of such terms as "retirement benefits" and "retired partner," there is a significant potential that income that is simply deferred (regardless of the reason) could be characterized as retirement income and thus be subject to the limitation in the bill. Depending on the state in which the individual lives at the time the income is received, it could turn a tax deferral into a tax exemption.

The greatest concern is that, given the lack of precision in the language, an individual that was a partner in a trade or business could sell the partnership interest and structure the pay-out so that it met the time period and "substantially equal" tests and argue that the income is retirement income subject to the limitation. In actuality, the income is gain on the sale of assets associated with the trade or business and is subject to tax in the state(s) in which the trade or business operated. However, without specific definitions of "retirement benefits" in the bill, there is a potential for the gain to be characterized as retirement income.

In addition to precisely defining what constitutes "retirement benefits," we would offer several additional suggestions of ways to avoid potential abuse of the limitation contained in H.R. 4019.

- The bill should be amended to state that proceeds from the sale of a partnership interest in a trade or business shall not be considered a retirement benefit subject to the limitation.
- The amount of retirement income subject to the limitation could be defined with reference to a particular level of income earned by the partner prior to retirement, e.g., income in excess of 110 percent of the average annual wages subject to wage withholding paid to the recipient by the partnership in the three years prior to retirement of the partner would not be considered retirement income.
- The limitation could be limited to income paid from plans or programs that existed for some time period (e.g., three years) prior to the time the partner retired.
- The term "retirement benefit" could be left to determination under state law, thus allowing the states to distinguish between retirement payments and proceeds from the sale of partnership interests.

EFFECTIVE DATE

As introduced, H.R. 4019 provides that the amendments shall be applied to income received after December 31, 1995. The effect is to retroactively apply the law change against the states. It would arguably allow those taxpayers that have voluntarily complied with those laws currently imposing tax on the affected income to file claims for refund. It would also negate any assessments states may have made. The change should be applied only to tax year 2006 and forward.

The implication of the retroactive date is that the states have in some fashion misapplied P.L. 104–95 and that P.L. 104–95 was intended to cover the types of income that is the subject of H.R. 4019. That is simply not true in my estimation. As an active participant in the discussion surrounding P.L. 104–95, it is true that retirement payments to retired partners were not considered when P.L. 104–95 was approved. It is incorrect to say that such income would be included within the terms of P.L. 104–95. If a taxpayer was assessed on tax that is considered to be within the terms of P.L. 104–95, she/he should contest the assessment through administrative appeals processes as opposed to pursuing federal legislation.

CONCLUSION

In conclusion, Mr. Chairman and Members of the Subcommittee, the Federation is committed to working with you further on this legislation if the proponents demonstrate to you the need for the legislation. We believe that H.R. 4019 as drafted is ambiguous and imprecise. It is likely to result in conflict and litigation regarding its interpretation and application Further work to clearly define what constitutes "retirement benefits," who is a "retired partner," and to avoid situations in which income could be re-characterized to take advantage of the limitations is necessary and we are willing to assist in this effort.

Mr. CANNON. Thank you, Mr. Duncan.

As always, your comments are very constructive. We appreciate them and we'll take them into account and hopefully you'll be available to work with us as we refine this bill before it goes to the floor.

Mr. DUNCAN. We would be more than glad to work with you, and the Committee and the proponents of the bill.

Mr. CANNON. Thank you, very much.

Mr. Arnold, you may have noticed by now that we have a little clock up there that goes red—or from green to yellow to red. Thank you. Obviously, we're not pounding on the red, but if you could draw your comments to a close when we get there, we'd appreciate that.

Thank you.

STATEMENT OF STANLEY R. ARNOLD, CPA, FORMER COMMISSIONER OF NEW HAMPSHIRE'S DEPARTMENT OF REVENUE ADMINISTRATION AND FORMER PRESIDENT OF THE FEDERATION OF TAX ADMINISTRATORS

Mr. ARNOLD. Thank you, Mr. Chairman, Members of the Committee.

My name is Stan Arnold and I served as the Commissioner of the New Hampshire Department of Revenue Administration for 14 years, spanning the administration of four governors, both Republican and Democrat, from 1988 to 2002. I also was President of the Federation of Tax Administrators and served on a number of joint business and Government task forces attempting to resolve tax administration issues.

In fact, Harvey became Executive Director of the FTA the same year that I was appointed, first appointed, commissioner. Several years later, I became President of FTA and had the pleasure of working closely with Harley during that time.

Currently, I'm the Senior Tax Policy Adviser at the law firm of Rath, Young & Pignatelli on Concord, New Hampshire. I have a total of 30 years of experience in State and Federal taxes, both in the private sector and in Government. I have prepared tax returns for individuals and businesses, I've audited business tax returns as a State auditor, I developed audit policies as an assistant director of an audit division, and I developed new tax laws as commissioner.

I appear before the Committee in support of H.R. 4019 and to present the viewpoint of a former State tax administrator as why it's appropriate for Congress to take action on this issue.

In the United States, both of the Federal and State tax systems are voluntary compliance systems built on an unwritten agreement between the citizens being taxed and the taxing authorities. Citizens are willing to put up with some administrative burden because they understand the need for compliance. But at the same time they expect administrators and their elected officials to keep that administrative burden to a minimum.

Administrative burden is reduced when there is stability and predictability in the law. It's my experience that citizens and businesses value that stability in tax law above all else. They want to be able to plan their affairs. They want to be able to comply with the law. Most of all, they don't want the rules to be changed after they believe that they have honestly complied with the law.

H.R. 4019 is not a State's rights issue. Congress decided, back in 1995, that it was appropriate for it to assert its Commerce Clause authority. We're now asking that Congress clarify its intention to prevent States from taxing all nonresidents, including partners, on their retirement income.

This is an issue of whether or not citizens should be able to rely the actions of Congress once it decides to resolve a State tax issue. This is about stability of the tax system and the unwritten agreement between citizens and Government to minimize compliance burden. This is a matter of all retirees being treated equally and fairly.

Congress has only rarely involved itself in State tax matters. And because Congressional action to resolve the State tax issue is extraordinary, the rule of law created by Congressional action must be respected.

For 10 years following the passage of Public Law 104–95, the taxation of nonresident income has been settled law. In fact, until recently the law as passed in 1995 has guided and been respected by taxpayers and individual States alike.

In passing the original law, Congress took an important and difficult action to resolve what was becoming a possible impediment to interstate commerce. Public Law 104–95's purpose was to make sure that States could not reach and tax the retirement income of nonresidents.

Today you are being asked to clarify that retirement benefits to a retired partner are included for the purposes of that previous limitation on State taxation.

Once Congress entered the field in '95 and asserted its authority under the Commerce Clause, States have not attempted to tax these retirement payments. Congress broadly restricted the source taxation of retirement income whether from qualified or nonqualified plans.

However, one State at least has issued a technical bulletin deciding retirement benefits paid to nonresident partners are not included in the Congressional limitation. There is no rational distinction to treat nonqualified plans for employees different from nonqualified plans for partners. Therefore, Congress should adopt H.R. 4019 to clarify its intent to ensure consistent application of those principles established in 1995.

Thank you for the opportunity to testify. I'm prepared to answer any questions you may have.

[The prepared statement of Mr. Arnold follows:]

PREPARED STATEMENT OF STANLEY R. ARNOLD

I. INTRODUCTION

A. Personal Information.

My name is Stanley R. Arnold, CPA, MBA and I served as the Commissioner of the New Hampshire Department of Revenue Administration for 14 years spanning the administration of four governors both Republican and Democrat from 1988 to 2002. I also served as President of the Federation of Tax Administrators and served on a number of joint business and government task forces attempting to resolve tax administration issues. Currently, I am the Senior Tax Policy Advisor at the law firm of Rath, Young & Pignatelli, P.A. in Concord, NH. I have a total of 30 years of experience in state and federal taxes. My 30 years of experience has included work in both the private sector and in government. I have prepared tax returns for individuals and businesses; audited business tax returns as a state auditor; developed audit policies as an assistant director of an audit division; developed new tax laws as Commissioner and now represent clients on tax matters. I also advise clients and teach classes on the how and why the state tax system works the way it does work—or doesn't work.

B. Overview of Testimony.

I appear before the committee to support H.R. 4019 and to present the viewpoint of a former state tax administrator as to why it is appropriate for Congress to take action on this issue. In the United States both the federal and state tax systems are voluntary compliance systems built on an unwritten agreement between the citizens being taxed and the taxing authorities. Citizens are willing to put up with some administrative burden to increase compliance, but at the same time, expect administrators and their elected officials to keep that administrative burden to a minimum. One way to minimize the administrative burden is stability and predictability in tax law. It is my experience that citizens and businesses value stability in tax law above all else. They want to be able to plan their affairs and they want to be able to comply with the law. Most of all, they don't want the rules to be changed after they believe they have honestly complied with the law.

Congress has only rarely involved itself in State Tax matters. Because Congressional action to resolve a state tax issue is an extraordinary step, the rule of law created by Congressional action must be respected. For ten years following the passage of Public Law 104–95, codified at 4 U.S.C. 114, the taxation of non-resident retirement income has been settled law. In fact, until recently, the law as passed in 1995 has guided and been respected by taxpayers and the individual States alike.

In passing the original law, Congress took an important and difficult action to resolve what was becoming a possible impediment to interstate commerce. Public Law 104–95's purpose was to make sure that states could not reach out and tax the retirement income of nonresidents. Today you are being asked to clarify that retirement benefits to a retired partner are included for the purposes of the previous limitation on state taxation of retirement income. Once Congress entered the field in 1995 and asserted its authority under the Commerce Clause, States have not attempted to tax these retirement payments. Congress broadly restricted the source taxation of retirement income whether from qualified or non-qualified retirement plans. However, at least one state recently issued a draft Technical Services Division Bulletin deciding that retirement benefits paid to nonresident and part-year resident partners was not included in the congressional limitation. There is no rational distinction to treat non-qualified plans for "employees" different from non-qualified plans for "partners." Therefore, Congress should adopt H.R. 4019 to clarify their intent to insure consistent application of the principles established in 1995.

At the time of previous Congressional action, expert testimony before this committee discussed two courses of probable action that a state could take if it wished to continue to tax retirement income after the passage of P.L.104–95. First, an individual state could tax deferred retirement income on a current basis by decoupling from the federal deferral provisions. While various states, including New Hampshire, have decoupled from recent federal tax law changes, no state has chosen to decouple on this issue. Second, a state could seek to tax the deferred income in the year a resident changed residence to another state. To the best of my knowledge, no state has passed this type of "exit toll" provision either. In my opinion, State Legislatures have not taken action to enact such provisions because they are keeping faith with the underlying principle established by Congress that States should not tax the retirement income of nonresidents.

II. 1995 CONGRESSIONAL ACTION (P.L. 104–95)

When I was the New Hampshire Commissioner, I supported annual resolutions adopted by the Federation of Tax Administrators (FTA) asking Congress not to pass legislation restricting a state's authority to design its own tax system. I continue to believe that Congress' power to restrict States taxing power should be used with restraint. At the same time, the States are not always right when they develop their tax policy and Congress has stepped in several times in the past when Congress believed it was necessary to prevent inappropriate actions which would affect individual and business taxapayers. The most well known example of Congressional action was the passage of Public Law 86–272 (15.U.S.C. 381) which permits companies to engage in certain sales solicitation activities in states without being subject to state corporate income tax. While not popular with tax administrators, the core of that law has been respected by the states. Tax administrators have tested it around the edges, but the core principle embodied in that law continues to be observed.

In 1995, this Committee and Congress enacted P.L. 104–95 to limit state taxation of retirement income when a resident retired and moved from one state to retire in another state. Congress understood that when individuals retire to a different state they no longer vote in that state, they no longer receive benefits from that state, and therefore, they should not be taxed in their former state. Congress acknowledged that the States had a right to tax non-resident retirement income under the so called "source rule." Congress also made clear that it wished to restrict that right because of the (1) administrative burden imposed on a citizen in complying with such a demand and (2) the unfairness, whether perceived or actual, of a state continuing to tax retirement income once a citizen had moved from the state.

There are several elements included in the testimony presented on H.R. 394 that are relevant to the need for H.R. 4019. In testimony to this committee on H.R. 394, several members of Congress expressed concern that H.R. 394 could lead to abusive tax planning by wealthy individuals using tax planning to defer income while in a high tax state and then receive that income after retiring to a non-income tax state. An amendment to the original bill addressed that concern by requiring that payments from non-qualified plans be in the form of periodic payments under federal rules. It appears to me that the debate on the original legislation and subsequent amendment clearly shows Congress was broadly defining retirement benefits from non-qualified plans in the protected category.

III. DYNAMICS OF A TAX SYSTEM

Questions from individuals, businesses, tax professionals and internal staff of the agency may always be raised about how to apply tax laws after they are passed. Many questions are answered on an ad hoc basis or through letters, Technical Information Releases and Declaratory Rulings. There are two "waves" of questions; those raised during the implementation phase of a law and those raised several years later when taxpayers are audited.

Auditors are always looking backwards. They are often auditing returns that report transactions conducted two or three years previously. Conflicts sometimes arise between taxpayers and auditors because the law has changed and the interpretations of that law were developed after the returns were filed. Good administrators will make these adjustments prospective to maintain the stability and predictability principles, but sometimes that does not occur.

Once the state auditors join in the fray, they will raise questions based on their audit experience. Auditors are generally not concerned with the policy behind the law; they simply want 100 percent compliance regardless of any administrative burden. Administrative burden is the responsibility of the policy makers. In the immediate issue at hand, the draft technical bulletin addresses retirement payments to nonresident partners. It is important to note, that the dynamics of the system will cause the expansion of the enforcement beyond the initial group. At some point, an administrator will point out that "everyone needs to be treated the same." So it is likely that the current audit interpretation will expand to anyone the audit division can classify as non-employees, such as proprietorships and self-employed individuals. H.R. 4019 addresses this issue directly by clearly including the retirement payments to partners and self-employed individuals.

States struggle every budget cycle on how best to finance the services they provide fueled in part by balanced budget requirements. In 2005, I served as a co-chair of Governor Lynch's transition team with responsibility for developing the biennial budget. I have also worked closely with four governors, both Republican and Democrat in developing budgets and have never experienced an "easy" budget. The state budget process is difficult and requires both financial and political skills to achieve a balance between required services and available revenue.

The "no new taxes" position has become a standard of American politics and made it even more difficult for any eventual winner of an election to develop a budget. The result is politicians have had to become very imaginative in how to pay for state services. Aggressive tax policy administration frequently raises revenue. And, all too often states look to nonvoters to raise revenue without regard to the administrative burdens imposed.

Audit division interpretations and informal rule making can raise revenue directly or indirectly. Unfortunately, each of these methods increases administrative costs to companies and individuals paying lawyers and accountants to defend their rights. Often, aggressive audit actions are reinforced by administrations trumpeting the "success" of some audit initiative. By embracing the principles established in 1995, H.R. 4019 will reduce administrative costs borne directly by taxpayers.

IV. CONCLUSION

H.R. 4019 is not a "states' rights" issue. Congress decided back in 1995 that it was appropriate for it to assert its Commerce Clause authority. We are now asking that Congress clarify its intention to prevent states from taxing all nonresidents on their retirement income. This clarification would of course have the same effective date as the original legislation. This is an issue of whether or not citizens should be able to rely on the actions of Congress when it decides to resolve a state tax issue. This is about the stability of the tax system and the unwritten agreement between citizens and government to minimize compliance burdens.

Litigation might eventually resolve this controversy, but litigation will take a number of years. Citizens should not have to comply with the tremendous administrative burden identified in 1995, nor pay expensive legal fees while waiting for the issue to work its way through the judicial system. It is also possible that Congressional inaction would encourage other states to adopt the same interpretation to raise additional revenue.

Mr. CANNON. Thank you, Mr. Arnold.

I appreciate the panel's very concise testimony and we may want to get to you as we move forward. I think we're going to mark this bill up today. That means we have still many places or several places where we can make adjustments to it. So we appreciate your input.

Are there any Members of the panel that would like to ask some questions?

Mr. Watt is recognized for 5 minutes.

Mr. WATT. I won't take 5 minutes, Mr. Chairman. I want to do two things.

Number one, I think I misstated in my opening statement that we acted on this bill in 1996. It was actually December of '95. I think the bill was actually signed by the President in '96. So I didn't want the record to be incorrect in that respect.

I did want to ask Mr. Portnoy and Mr. Arnold whether they share the concerns that have been expressed by Mr. Duncan, and whether, in light of those concerns, we would be well advised between now and the time the full Committee acts on this bill, to address those concerns or what is your opinion on that?

Mr. ARNOLD. Mr. Watt, I think in many ways that some of the issues that were brought up by Mr. Duncan were—resolved, at least the initial one, and I'm not speaking for him, but he makes an emphasis on the issue where—he used the term retirement benefit rather than retirement income, which had been the term that had been used in the original law. We agree that that could be easily changed to retirement income and would help in the clarity. It was not intended to establish a new category of income.

Mr. PORTNOY. May I add something, Mr. Watt?

Mr. WATT. Yes, sir.

Mr. PORTNOY. The 4019 bill is not intended to make any of the changes that were being described. Many of the issues that he is articulating were issues when the original bill was enacted. You dealt with them or didn't deal with them as you saw fit. And our language does not change any of those issues.

Mr. WATT. But at the same time, we don't want to open additional areas of dispute, whether they address concerns that were addressed before or not. If we're going to open another set of issues to be quibbled about or litigated about or vexed about by accountants or State revenue authorities, we need to clarify that, I would take it. Or would you disagree with that?

Mr. PORTNOY. I think that's an appropriate concept, Mr. Watt, but I don't think that any of that has occurred. For example, the 10-year rule of substantially equal payments was in the original legislation. But substantially equal was undefined.

So there has always been a degree of question about what that meant.

What our bill does is narrow that to a certain extent, possibly in a way Mr. Duncan is not in favor of, but nonetheless is just a clarification of the original bill with these issues that you dealt with previously.

Mr. WATT. I appreciate it, Mr. Chairman. I yield back.

Mr. CANNON. The gentleman yields back.

The Chair hopes no one else is interested in asking questions. That being the case, we want to thank the panel for being here today.

Mr. DELAHUNT. Can I just ask one question?

Mr. CANNON. Absolutely, Mr. Delahunt. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. Do you want your quorum? I figured you'd recognize, Mr. Chairman.

I'm really confused and I wasn't here when the original bill came out. But let me just pursue what Mr. Watt was addressing.

Is this a language problem, Mr. Duncan?

Mr. DUNCAN. I thought perhaps it was. But now, after Mr. Portnoy's answer, I'm not so sure that it is.

I guess we believe that the limits that are in the current law of 10 years on the pay out and substantially equal are important to avoid abusive situations with nonqualified deferred comp plans.

The language that's being inserted here, we think can effectively negate those. And the answer of Mr. Portnoy was—implies that they'd like to at least alter the substantially equal.

We are fine with the current language, in terms of length of pay out and substantially equal.

Mr. DELAHUNT. Mr. Portnoy?

Mr. PORTNOY. We have no changes to that language. It's still 10 years substantially equal.

What we are saying is there are some standard provisions in these type of plans, such as COLA adjustments annually, that one State at the moment and others shortly are saying disqualifies that from meeting the 10 years substantially equal test.

We're suggesting that this legislation doesn't change that definition of the 10 years substantially equal.

Mr. DELAHUNT. If I'm incorrect, I think that there's a consensus that the issue should be addressed, but that there's a real disagreement among Members of the panel here as to whether, as Mr. Watt says, it opens up new areas of uncertainty, as opposed to clarification.

Mr. ARNOLD. Mr. Delahunt, if I could, I think number one, one of the main issues was the definition of whether or not we were talking about retirement income or a new thing called retirement benefit. We agree with Mr. Duncan that should be changed.

And again, as far as working with the language, the sponsors when this bill was drafted who were working on the drafting of this bill, there was no intent to change what Congress had done back in 1995.

Now from the standpoint of the language and where it is, I think it's just a matter of maybe working with Mr. Duncan to ensure that he understands how it does not change that.

Mr. DELAHUNT. That was going to be my recommendation because I don't think that we want to make something that is arcane and esoteric, really complicated because we don't like to deal with things that are any of those.

So if you really have a desire to resolve this, I daresay that the three of you gentleman sit down and have discussions that prove to resolve that so you can reassure the Chairman and Members of the Committee and the Ranking Member that we're all on the same page.

I yield back.

Mr. CANNON. The gentleman yields back. Thank you.

Let me just say that we're learning as we go. I think some very good ideas have come up here. We will be talking with particularly Mr. Duncan and others and will involve certainly the minority staff in this process so we can come up with a bill that is actually clarificatory and not one that creates more difficulty in the future.

Other questions from the panel?

If not, we thank you all for being here.

This hearing is adjourned and now we're going to go into a markup, so gentleman, thanks for being here.

[Whereupon, at 4:43 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

BIOGRAPHY OF THE HONORABLE GEORGE W. GEKAS, FORMER UNITED STATES REPRESENTATIVE, FORMER CHAIRMAN OF THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW, COMMITTEE ON THE JUDICIARY

George W. Gekas

George W. Gekas represented Dauphin County in Congress from 1983 until 2002. During his tenure in the U.S. House of Representatives, Mr. Gekas worked hard supporting the interests of his constituents and neighbors. He served as a voice of the workers and citizens of Hershey and Pennsylvania when the Hershey Trust considered selling out to an international conglomerate. Mr. Gekas was a proponent of health rights for all citizens and co-founded the Congressional Biomedical Research Caucus aimed at increasing congressional awareness and support for scientific research. In 1988, he was appointed by the House of Representatives as one of the managers to conduct the impeachment proceedings against Judge Alcee Lamar Hastings, of the United States District Court for the Southern District of Florida. Mr. Gekas was also the chairman of the Subcommittee on Commercial and Administrative Law, of the House Committee on the Judiciary from 1995 until 2002.

Mr. Gekas graduated from William Penn High School in Harrisburg, Pennsylvania and attended Dickinson College in Carlisle, Pennsylvania. After two years in the Army, he returned to Dickinson and earned his law degree. That same year he was admitted to the Pennsylvania State Bar. He returned to Dauphin County after receiving his law degree and began his political. He has represented the same county for over 40 years, in one capacity or another.

Mr. Gekas became the Assistant District Attorney for Dauphin County in 1960, a position he held for six years, after which he was elected to the Pennsylvania House of Representatives, where he served until 1974. From 1976 to 1982, he served in the Pennsylvania State Senate, and in 1983 he was elected to the U.S. Congress.

BIOGRAPHY OF LAWRENCE F. PORTNOY, LLP, RETIRED PARTNER, PRICEWATERHOUSECOOPERS

LAWRENCE F. PORTNOY
BIOGRAPHICAL INFORMATION

Born Detroit, Michigan November 22, 1940
Graduate Wayne State University 1962, Bachelor of Science degree in Business Administration
Joined Price Waterhouse, Detroit, Michigan 1964
CPA in Michigan 1964 and in several other states in subsequent years
Retired from PriceWaterhouseCoopers 2001

Summary of Career With Price Waterhouse (now PriceWaterhouseCoopers)

Joined Tax Department 1964
Admitted to Partnership 1975
Worked as partner responsible for tax services rendered to large multinational clients

Washington, DC 1984-1992
Responsible for representing clients before the National Office of the Internal Revenue Service on accounting method change requests, accounting period change requests, ruling requests and requests for technical advice. Acted as firm liason on making comments to IRS and Treasury Department on proposed regulations. Worked with clients that were preparing comments on proposed legislation.

New York, NY 1992-1996
Washington, DC 1996-2001
Tax Matters Partner and Senior Tax Technical Partner. Responsibilities included setting policy for the firm on major client tax matters and having responsibility for planning and compliance (the filing of all required tax returns) for the firm's federal, state, local, and international tax matters. During this period supervised the firm implementation of the procedure to account for income earned by staff in nonresident states, withholding and reporting procedures, filing of multiple nonresident state tax returns for staff, filing of resident tax return for such staff claiming credit for tax paid to nonresident states, calculating any amounts to be paid by firm to staff to assure that their tax cost is no greater than if they did not work temporarily in nonresident state.

BIOGRAPHY OF HARLEY T. DUNCAN, EXECUTIVE DIRECTOR, FEDERATION OF TAX ADMINISTRATORS

Harley T. Duncan

Employment History

1988 – Present: *Executive Director, Federation of Tax Administrators*, Washington, D.C.
Chief executive officer of national association of state tax administration agencies. FTA represents each of the 50 states plus D.C. and New York City and carries out a program of research, information sharing, training, intergovernmental coordination and federal representation.

1983 – 1988: *Secretary, Kansas Department of Revenue*, Topeka, Kansas
Chief administrator of state tax agency responsible for administration of major state taxes as well as motor vehicle registration, driver licensing, alcoholic beverage control and property tax oversight.

1981-1983: *Assistant Director, Kansas Division of the Budget*, Topeka, Kansas
Assistant director of executive branch agency responsible for preparation and execution of state budget and providing policy research and assistance to governor.

1979-1981: *Research Assistant, National Governors Association*, Washington, D.C.
Research for association of governors on state and local tax policy issues as well as providing technical assistance to governors' offices on various issues.

1978 – 1979: *Research Associate*, Advisory Commission on Intergovernmental Relations, Washington, D.C.
Research on state and local tax issues and intergovernmental fiscal relations

1974 – 1976: *Deputy Commissioner, South Dakota State Planning Bureau*, Pierre, S.D.
Assistant director of statewide planning agency responsible for agency administration and state-local relationships.

1972 – 1976: *Research Associate, Citizens Commission on Executive Reorganization*, Pierre, S.D.
Research associate to commission responsible for developing plan of reorganization for executive branch of state government.

Education

Master of Public Affairs, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 1978

Bachelor of Arts (Political Science), South Dakota State University, Brookings, S.D., 1972

Honors and Awards

Emmette S.Redford Research Award, Outstanding Graduate School Thesis, 1978
LBJ School Academic Award (4.0 GPA), 1978
Chairman, Multistate Tax Commission, 1986-1987
President, Midwest States Association of Tax Administrators, 1988
Member, Board of Directors, Federation of tax Administrators, 1987-1988
Member, National Tax Association, Board of Directors, 1989-1992

Other Activities

Frequent lecturer and speaker at national and regional tax conferences and meetings for such groups as Council on State Taxation, Tax Executive Institute, New York University, Georgetown University, Vanderbilt University, National Conference of State Legislatures, and regional state tax associations.

Member, State Tax Notes Editorial Advisory Board
Member, Tax Management/Bureau of National Affairs Advisory Board
Member, Commerce Clearinghouse State Tax Advisory Board
Member, Georgetown University State and Local Tax Conference Adv. Board
Member, Paul J. Hartman State and Local Tax Conference Advisory Board
Member, New York University State and Local Tax Conference Advisory Board

Regularly testify before Congressional committees on matters affecting state and local taxation.

Selected Publications

Duncan, Harley T., "Federal Tax Reform and the States," Special Supplement, *State Tax Notes*, (Vol. 38, No. 1), October 3, 2005.

Duncan, Harley and Ryan Burruss, "Electronic Filing Takes Hold in State and Federal Tax Agencies," *State Tax Notes*, April 1, 2005.

Duncan, Harley and Matt Tomalis, "On the Internet Tax Freedom Act: The Forgotten First Sentence," *State Tax Notes*, March 29, 2004.

Duncan, Harley and Matt Tomalis, "On the ITFA: Telecom's Trojan Horse," *State Tax Notes*, January 12, 2004

Duncan, Harley, "State Problems in the Internet Tax Freedom Act," *State Tax Notes*, October 27, 2003.

Duncan, Harley and Ronald Alt, "State Conformity to Federal Income Tax Provisions," *State Government News*, Council of State Governments, March 2003

Duncan, Harley, "State Responses to the Federal Estate Tax Changes Enacted as Part of the Economic Growth and Tax Relief Reconciliation Act of 2001," *State Tax Notes*, December 2, 2002.

Duncan, Harley and Charles E. McLure, Jr., "Tax Administration in the United States of America: A Decentralized System," *Hacienda Publica Español*, 1996.

Duncan, Harley, "Provisions of the Contract with America and Their Impact on State Tax Systems," *State Tax Notes*, January 23, 1995.

Duncan, Harley and Ronald Alt, "Assessing the Impact of the President's Health Care Reform on State Revenue Systems," *State Tax Notes*, January 17, 1994.

BIOGRAPHY OF STANLEY R. ARNOLD, CPA, FORMER COMMISSIONER OF NEW HAMPSHIRE'S DEPARTMENT OF REVENUE ADMINISTRATION AND FORMER PRESIDENT OF THE FEDERATION OF TAX ADMINISTRATORS

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STANLEY R. ARNOLD

PROFESSIONAL EXPERIENCE

STANLEY R. ARNOLD, MBA, CPA is Senior Tax Policy Advisor for Rath, Young & Pignatelli, in Concord, New Hampshire. Stan joined the firm in January 2003 shortly after retiring as the Commissioner of Revenue for the State of New Hampshire. In his 14-year tenure as Commissioner, Stan served four governors from different major political parties as he made New Hampshire's tax administration a model of innovation and simplicity for taxpayers. Stan used his business experience to develop a tax policy designed to allow taxpayers to understand their legal obligations without ambiguity. During his 27 years of tax experience, Stan has been involved in audits, administering state assessment and tax laws, evaluating tax legislation for the Governor and Legislature as well as providing policy advice for public decision-makers. He most recently served as co-chair of Governor Lynch's Transition Team.

Stan was the President of the Federation of Tax Administrators and served two separate terms as President of North East State Tax Officials Association (NESTOA). Stan was active in a number of Task Forces comprised of tax administers and Industry representatives formed to resolve technical issues. Stan has published a number of articles in various state tax journals.

Stan's additional managerial experience comes from 24 years in the United States Army, rising to command sergeant major of an artillery battalion. He serves as a member of the Board of Directors of the New Hampshire Society of Certified Public Accountants and as a member of the Advisory Board for the Paul J. Hartman State and Local Tax Forum.

Stan received his Bachelor of Science from Cameron University, in Lawton, Oklahoma and his MBA from Plymouth State University in Plymouth, New Hampshire.