Summary of "Thoughts on the Future of the State Corporate Income Tax"

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Michael J. McIntyre

This article responds to commentators who contend that the state corporate income tax can and should be abolished by the federal government. Part 1 discusses the general merits of a state corporate income tax and concludes that it is a tax very much worth saving. The basic argument is that a state corporate tax, properly designed and coordinated with the corporate taxes of other states, is probably what it purports to be — a tax on income earned in the state by the owners of the corporation. This section addresses the legitimate concern of some commentators that a state corporate tax, in a competitive environment, can be transformed by economic forces into an excise tax of some sort — presumably an excise tax on imports. It challenges the claim that a state corporate tax imposed through the use of an apportionment formula is generally best understood as a tax on the apportionment factors.

Part 2 addresses the claim that Congress has the power under the U.S. Constitution to prohibit states from imposing a corporate income tax under the Commerce Clause. Some commentators have recently questioned the constitutional authority of Congress to enact P.L. 86-272, proposed H.R. 2526, and other laws restricting state taxing power. Other commentators have suggested that Congress has plenary power to impose limitations on state taxing power, including the power to eliminate most state taxes entirely. After reviewing some of the early federalism cases and the more recent "new federalism" cases, this section concludes that congressional authority to regulate state taxes under the Commerce Clause is not unbridled and almost certainly does not include the power to abrogate a major state revenue source.

Part 3 offers some words of encouragement to supporters of state taxing power who are deeply pessimistic about the politics of state tax reform. It also provides data showing the trends over the past decade in state corporate tax collections, in constant dollars and as a percentage of gross state product (GSP). Comparable figures for federal corporate tax collections are also provided. GSP is used as a rough proxy for the level of economic activity going on it the states. The numbers indicate that the recent decline in state revenues from the corporate tax are due in part to the decline in federal collections and in part to tax-avoidance strategies targeted at the states. This part suggests some approaches to state corporate tax reform that might break the current cycle of harmful tax competition — a competition that the Founders sought to mitigate through the adoption of the U.S. Constitution. In general, this part argues for improved and more uniform state rules for taxing corporations.