Model Legislation

A Resolution Supporting Congressional Action to Affirm State Authority over Tax Incentives and Economic Development

Background

The value of state tax incentives has always been a matter of vigorous debate. Do state tax incentives encourage job creation and investment that otherwise would not occur or are they merely a form of corporate welfare? Historically, this debate has taken place among elected legislators in state capitols; however, a recent Federal Appeals Court decision paves the way for state tax policy to be decided, not in state Legislatures, but in the Federal court system.

In September 2004, a three judge panel for the 6th U.S. Circuit Court of Appeals struck down Ohio’s program that provides manufacturers tax credits for new machinery and equipment used in Ohio. Under the auspices of the “Dormant Commerce Clause Doctrine” the Federal Court declared that the Investment Tax Credit (ITC) program violated the Constitution by penalizing companies that may want to develop business outside Ohio. This Court’s decision, while limited to the four states in the 6th Circuit (KY, MI, OH, and TN), has far-reaching implications and paves the way for other Federal courts to dictate state tax policy and thus remove the decision from the hands of elected state lawmakers.

In response to the 6th Circuit’s opinion Federal legislation was introduced in the 109th Congress that seeks to ensure that state Legislatures retain the authority to decide whether to offer economic development incentives. From a federal perspective, the question is not whether economic development incentives work. Rather, the question is whether state Legislatures or Federal courts should decide state tax policy.

Model Legislation

WHEREAS, the American Legislative Exchange Council’s (ALEC) mission is to promote the principles of federalism and support policies that give states flexibility to shape public policy, and;

WHEREAS, ALEC has a longstanding policy that the federal government should not unduly interfere with the ability of states to structure competitive tax systems, and;

WHEREAS, ALEC has long promoted broad-based, low rate state tax systems as a matter of tax policy, and;

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NOW THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council supports congressional efforts to affirm state authority and sovereignty over such non-discriminatory economic development tools.
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