

Napolitano Legislation regarding FAA's 2014 rulemaking on state and local general sales taxes as they apply to aviation fuel

- This legislation protects 45 states and approximately 10,000 local governments that have general sales taxes from federal government intrusion in the use of their general sales tax revenues.

Summary

- Re-establish Congressional intent and 29 years of federal interpretation that the limitation on the use of sales taxes collected on aviation fuel for airport purposes is applied to excise taxes on aviation fuel only, and not to general sales taxes that states and localities impose on all goods.

Background

- In 1987 Congress passed the FAA authorization amendments that required airports to spend aviation fuel excise tax revenue on airport uses. The conference report for the 1987 amendments to the FAA statute (H.R. Conf. Rept. No. 484, 100th Cong., 1st Sess. 1987 accompanying P.L. 100-223) clearly stated that the requirement that local taxes on aviation fuel must be spent on airports “is intended to apply to local fuel taxes only, **and not to other taxes imposed by local governments, or to state taxes**”.

Problem

- On December 8, 2014 (79 FR 66282), FAA made a final rulemaking that contradicts the Congressional intent and 29 years of practice by saying that “*the agency interpreted the provisions of Sections 47107(b) and 47133 to apply to any state or local tax on aviation fuel, whether the tax was specifically targeted at aviation fuel or was a general sales tax on products that included aviation fuel without exemption.*”

Concerns

- This FAA rulemaking is contrary to states' rights and is an assault on state and local control of their general application sales tax measures.
- Many local governments have voter approved sales tax measures for specific purposes such as transportation funding. This rulemaking will overturn the decision of local voters in taxing themselves for specific purposes.
- Due to the fact that sales taxes on aviation fuel are not segregated from other taxable sources, the burden placed on states and local governments to implement the tracking system necessary is extensive and represents an unfunded mandate.

Solution

- The bill would overturn the FAA rulemaking of 2014 and re-establish 29 years of FAA interpretation by clarifying Congress' original intent that general sales taxes are not subject to 49 U.S.C. Sections 47107(b)(1) and 47133(a), and that “local tax on aviation fuel” means local excise taxes on aviation fuel.