



THE STATE  
of **ALASKA**  
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The Honorable Bert Stedman  
Alaska State Senator  
State Capitol, Room 518  
Juneau AK, 99801

Senator Stedman,

This is a follow up with the Senate Finance Committee from the hearing on January 29, 2024, regarding your inquiry about exempting Alaskan residents from the vehicle rental tax. The short answer is that there could be potential Commerce Clause and Privileges and Immunities Clause issues.

The Commerce Clause gives Congress the power to regulate interstate and foreign commerce.<sup>1</sup> The United States Supreme Court recognizes the Commerce Clause as a limitation on States' power to enact laws that impose a substantial burden on commerce.<sup>2</sup> State statutes that discriminate in this way are routinely struck down unless the discrimination is justified by a factor unrelated to economic protectionism.<sup>3</sup>

The U.S. Supreme Court provided a four-part test for determining whether a tax violates the Commerce Clause. Under *Complete Auto*, a state tax will be upheld if it (1) applies to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services the State provides.<sup>4</sup> Additionally, there is an "internal consistency test". To pass this test, "a state tax must be of a kind that, 'if applied by every jurisdiction, there would be no impermissible interference with free trade.'"<sup>5</sup>

Applying these tests, exempting Alaskan residents from a vehicle rental tax could potentially implicate the Commerce Clause and be found unconstitutional. Other

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<sup>1</sup> U.S. Const. art. I, § 8, cl. 3.

<sup>2</sup> *State v. Nabors International Finance, Inc.*, 514 P.3d 893, 903 (Alaska 2022) (citing *S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984)).

<sup>3</sup> *Id.* (citing *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 274 (1988)).

<sup>4</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 297 (1977).

<sup>5</sup> *Am. Trucking Associations, Inc. v. Scheiner*, 483 U.S. 266, 284 (1987); *See Tesoro Corp. v. State, Dep't of Revenue*, 312 P.3d 830 (Alaska 2013).

jurisdictions have found or opined that vehicle renting is part of interstate commerce.<sup>6</sup> Even though Alaska is geographically isolated, Commerce Clause analysis is not necessarily defeated even if the tax is only attaching to a “local” or intrastate activity.<sup>7</sup>

The Privileges and Immunities clause prevents a state from substantially discriminating based on residency.<sup>8</sup> This is a two-step inquiry: First, whether the restricted activity relates to pursuing a livelihood, and second, whether the restriction deprives nonresidents of a protected privilege and is not closely related to the advancement of a substantial state interest.<sup>9</sup> Fees or taxes on a trade or business, like commercial fishing licenses,<sup>10</sup> have been found as protected but differential fees for residents and nonresidents for recreational hunting were not.<sup>11</sup>

Conceptually, there could be Commerce Clause or Privileges and Immunities Clause concerns with exempting only residents from a vehicle rental tax. However, absent provided language it is difficult to affirmatively determine an answer because the language and structure of the statute and the actual effects of the language inform the final analysis. Further, such constitutional issues are exceedingly nuanced, fact specific, and the case law is not always clear. As such, at this moment in time it is difficult to affirmatively say whether such a concept would be unconstitutional.

If I may be of further assistance please do not hesitate to contact me at law.legislation@alaska.gov or at (907) 465-6544.

Sincerely,

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By:

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<sup>6</sup> *Opinion of Justs. to the House of Representatives*, 428 Mass. 1201, 1204-1205 (1998); *Saban Rent-a-Car LLC v. Arizona Dep’t of Revenue*, 246 Ariz. 89, 92-95 (2019).

<sup>7</sup> *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 615 (1981).

<sup>8</sup> U.S. Const. art. IV, § 2, cl. 1.

<sup>9</sup> *Carlson v. State, Com. Fisheries Entry Comm’n*, 919 P.2d 1337, 1341 (Alaska 1996).

<sup>10</sup> *Id.*

<sup>11</sup> *Baldwin v. Fish & Game Comm’n of Montana*, 436 U.S. 371, 386-387 (1978).