



Richard D. Holcomb
General Counsel and Senior Vice President
for Law and Regulatory Affairs

February 25, 2008

Mr. John H. Hill
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Re: Application of the American Trucking Associations for a Determination that Identification Requirements Imposed on Interstate Motor Carriers by New York City Are Preempted by 49 U.S. Code 14506

Dear Administrator Hill:

The American Trucking Associations (ATA) hereby petitions the U.S. Secretary of Transportation for a determination under Section 4306 of SAFETEA-LU (P.L. 109-59), codified at 49 U.S. Code §14506, that the identification requirements imposed under Chapter 8 of the Title 11 of the New York City Administrative Code (the Code), the Tax on Commercial Motor Vehicles and Motor Vehicles for Transportation of Passengers (the Tax), are preempted by federal law.

ATA is the national trade association of the American trucking industry. It is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the motor carrier industry. ATA's membership includes more than 2,000 trucking companies and suppliers of motor carrier equipment and services. Directly and indirectly through our affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

As the national representative of the trucking industry, ATA is vitally interested in matters affecting state and federal regulatory simplification and efficiencies.

The Ordinance

In this petition, ATA refers particularly to §11-809 of the Code provides for issuance of stamps or other indicia evidencing payment of the Tax and requires motor carriers to affix those stamps to their vehicles or keep the stamps or other indicia in the vehicle readily available for inspection. A copy of this provision is enclosed. These requirements apply to interstate motor carriers as well as to those involved in purely intrastate commerce.

Good stuff.



Federal Statute

Section 4306 of SAFETEA-LU, which was effective August 10, 2005, generally preempts state requirements of any kind for interstate motor carriers to carry or display any form of identification in or on a commercial motor vehicle. The only exceptions are those credentials required in connection with (1) the International Registration Plan, (2) the International Fuel Tax Agreement, (3) a state law regarding motor vehicle license plates, "or other displays that the Secretary determines are appropriate," (4) federal requirements for the transportation of hazardous materials, and (5) federal vehicle inspection standards.

Prior FMCSA Determination

This provision of SAFETEA-LU appears clearly to preempt the identification credential requirements associated with the New York City Tax. The Federal Motor Carrier Safety Administration (FMCSA) has already determined that a similar identification requirement imposed in association with the Oregon weight-distance tax system was preempted. See, Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination, No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (Mar. 6, 2007).

In finding the Oregon cab-card credential preempted, FMCSA noted that "ensuring that the paper documents are distributed to and carried on each vehicle, and that driver has ready access to the document, could add considerably to the paperwork burden of the carrier and driver, especially if similar documents were to be required by other States." The agency further observed that "[t]he fact that enforcement could be 'more challenging' does not outweigh the burden that the additional paperwork places on carriers engaged in interstate commerce" and concluded that tax compliance identification credentials such as the Oregon cab card "are exactly the type of display Section 4306 was enacted to prohibit." Similar considerations apply in the analysis of the New York City requirements at issue.

Analysis

ATA submits that there is little question that the Tax stamp provisions fall squarely within the scope of preemption found by the FMCSA in the Oregon matter. Like the Oregon cab card, the City's Tax identification provisions are simply credentialing aids to tax enforcement and the burden they impose on motor carriers outweighs their value as enforcement tools. FMCSA's conclusion that these types of tax identification devices are exactly the type of display that the preemption provision was designed to prohibit is equally true here.

It is not entirely clear what Congress intended by the clause in Section 4306 quoted above that excepts from the preemption "other displays that the Secretary determines are appropriate." ATA believes, however, that the placement of this language with the narrow exception for state vehicle registration licenses plates indicates Congress meant by this language to except requirements related to state vehicle registration procedures – perhaps, for example, an exception for transponders required as an alternative or in addition to the traditional metal plate. In any event, this obscure clause should not be held to create an exception for such local tax-related requirements as those imposed by the New York City Tax. Such a determination would only open the way to the imposition of a multitude of other state and local requirements on interstate motor carriers, just the sort of situation Congress clearly intended to put a stop to.

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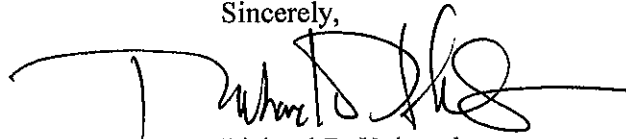
City Notified

By letter dated November 26, 2007 (enclosed), ATA has expressed its concerns to the City over the Tax stickers and requested the City immediately to cease enforcing those requirements as applied to the vehicles of interstate motor carriers of any description. The City has not favored us with a response.

Conclusion

In conclusion, ATA asks that the Secretary determine that the commercial motor vehicle identification requirements as imposed by New York City on interstate motor carriers as a part of the City's Tax on Commercial Motor Vehicles and Motor Vehicles for Transportation of Passengers are preempted by Section 4306 of SAFETEA-LU.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Holcomb", with a long horizontal flourish extending to the right.

Richard D. Holcomb

Enclosures

cc: William Joyce, NYSMTA

New York City Administrative Code

§ 11-809 Stamps and other indicia of payment. a. The commissioner of finance may, by regulation, provide that the payment of the tax imposed by this chapter shall be evidenced by suitable stamps or other indicia of payment in a form prescribed by the commissioner of finance and that every owner shall affix such stamps or other indicia of payment in the manner prescribed by regulation to each motor vehicle for which a tax had been paid, or shall otherwise keep the indicia of payment with the vehicle, readily available for inspection, in the manner prescribed by regulation. The owner or driver of the vehicle, upon demand, shall exhibit the indicia of payment to the commissioner of finance or the commissioner's duly authorized agent or employee or to any police officer of this city or state. The commissioner of finance may, by regulation, make similar provision for the use of stamps or other indicia that no tax is payable with respect to particular motor vehicles.

b. An owner who sells a motor vehicle shall not transfer any stamp or other indicia of payment to the purchaser except on a sale to a purchaser to whom the owner has properly given the certificate provided for in section 11-808 of this chapter with regard to not obtaining a credit toward any tax payable with respect to a replacement vehicle. The commissioner of finance shall, by regulation, provide for the destruction of the stamp or other indicia of payment or its return to the commissioner of finance upon all sales except where transfer to the purchaser is permitted and, where the motor vehicle sold has been replaced, for the issuance of replacement stamps or indicia of payment.



Richard D. Holcomb
General Counsel and Senior Vice President
for Law and Regulatory Affairs

November 26, 2007

Ms. Martha E. Stark, Commissioner
Department of Finance
66 John Street
New York, NY 10038

Dear Commissioner Stark:

The American Trucking Associations, Inc. ("ATA") is writing you concerning the enforcement on interstate motor carriers by the Department of Finance of the motor carrier tax payment identification requirement imposed under Chapter 8 of the Title 11 of the New York City Administrative Code, the Tax on Commercial Motor Vehicles and Motor Vehicles for Transportation of Passengers. In particular, § 11-809 provides for issuance of stamps or other indicia evidencing payment of the City's commercial motor vehicle tax and requires motor carriers to affix those stamps to their vehicles or keep the stamps or other indicia in the vehicle readily available for inspection. We believe this requirement, as applied to the vehicles of interstate motor carriers, to be preempted by federal law.

Section 4306 of the federal highway reauthorization bill, SAFETEA-LU (P.L. 109-59), which was effective August 10, 2005, and is codified at 49 U.S.C. section 14506, generally preempts state requirements of any kind for interstate motor carriers to carry or display any form of identification in or on a commercial motor vehicle. The only exceptions are those credentials required in connection with (1) the International Registration Plan, (2) the International Fuel Tax Agreement, (3) a state law regarding motor vehicle license plates, (4) federal requirements for the transportation of hazardous materials, and (5) federal vehicle inspection standards.

This provision of SAFETEA-LU appears clearly to preempt the City's stamp and other indicia identification credential requirements. A similar identification requirement imposed in association with the Oregon weight-distance tax system was determined to be preempted earlier this year by the United States Department of Transportation. See, Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination, No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (Mar. 6, 2007) (copy enclosed).

Good stuff.

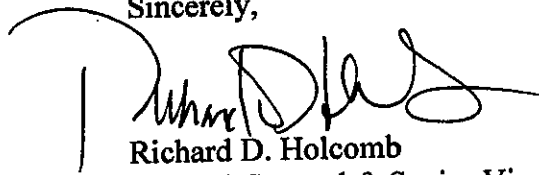


The US DOT, in finding the Oregon cab-card credential preempted, noted that "ensuring that the paper documents are distributed to and carried on each vehicle, and that driver has ready access to the document, could add considerably to the paperwork burden of the carrier and driver, especially if similar documents were to be required by other States." The agency further observed that "[t]he fact that enforcement could be 'more challenging' does not outweigh the burden that the additional paperwork places on carriers engaged in interstate commerce" and concluded that tax compliance identification credentials such as the Oregon cab card "are exactly the type of display Section 4306 was enacted to prohibit."

We submit that there is little question that the City's tax stamp or other payment indicia provision would fall squarely within the scope of preemption found by the US DOT in the Oregon matter. Like the Oregon cab card, the stamps or other indicia are simply identification credentialing aids to tax enforcement, and the burden they impose on motor carriers outweighs their value as enforcement tools. The agency's conclusion that these types of tax identification devices are exactly the type of display that the preemption provision was designed to prohibit is equally true here.

The American Trucking Associations (ATA) asks the Department to recognize that the stamp or indicia requirement of the tax on commercial motor vehicles falls within the preemptive scope of the federal law and to immediately cease enforcing that requirement as applied to the vehicles of interstate motor carriers of any description. We would appreciate confirmation of your intent to do so within 60 days. Absent voluntary rescission of the requirements, ATA reserves the right to take other appropriate legal action.

Sincerely,



Richard D. Holcomb
General Counsel & Senior Vice President
Law & Regulatory Affairs

Enclosure

cc: William Joyce, NYSMTA