

Multistate Tax Commission



Resolution No. 00-6

Resolution Opposing S. 2401, New Economy Tax Simplification Act

Repealed 8/2/02 by MTC Policy Statement 02-02

WHEREAS, Senator Judd Gregg of New Hampshire and Senator Herb Kohl of Wisconsin have introduced S. 2401, the “New Economy Tax Simplification Act (NETSA)”; and

WHEREAS, the bill would amend Public Law 86-272 to establish a new nexus standard in federal law for all business activity taxes as well as the collection of sales and use taxes; and

WHEREAS, efforts to define nexus in federal law by detailing the level of physical contacts required by a taxpayer will necessarily lead to lengthy and expensive litigation to determine the full meaning of such laws and to challenge their limits; and

WHEREAS, the established policy of the Multistate Tax Commission has been consistently and throughout its history against the creation of federal statutory definitions of nexus; and

WHEREAS, the bill is mischaracterized by those who would be favored by the bill as codifying the nexus standard set forth by the U.S. Supreme Court in *Quill v. North Dakota*; and

WHEREAS, the U.S. Supreme Court held in *Quill* that physical presence is not required to establish state jurisdiction over a person under the Due Process Clause, but that “substantial nexus” is required under the Commerce Clause to require an interstate seller to collect tax; and

WHEREAS, the Court ruled that Congress is free under the Commerce Clause to allow the states to impose tax obligations on taxpayers even when they do not have substantial nexus with a particular taxing jurisdiction; and

WHEREAS, the bill establishes a requirement that a business have a “substantial physical presence” in state before it can be subjected to a business activity tax or use tax collection obligation; and

WHEREAS, the bill additionally establishes ten special conditions that would be deemed not to meet this substantial physical presence requirement; and

WHEREAS, these “carve-outs” include solicitation of orders for tangible or intangible personal property; presence or the use of intangible property in a State; use of the Internet to create or maintain a website accessible by persons in the State; use of an Internet service provider to

maintain, take, or process orders via a website on a computer that is physically located in the state; use of a service provider to transmit communications (including cable, satellite, radio and telecommunications); and affiliation with a person in the State who is not an agent of the company; and

WHEREAS, defining nexus in federal law would upset the tenets of federalism and the system of shared authority and responsibilities long practiced by the federal and state governments; and

WHEREAS, the nexus definitions expressed in S. 2401 would establish favored categories of taxpayers and differentiate among groups of like taxpayers; now, therefore, be it

RESOLVED, that the Congress be urged to refrain from considering S. 2401.

RESOLVED, that the Multistate Tax Commission urges Congress refrain from enacting this or any other legislation that establishes nexus standards.

Adopted this 28th day of July 2000 by the Multistate Tax Commission.

Dan R. Bucks, Executive Director