



Working together since 1967 to preserve federalism and tax fairness

To: Uniformity Committee
From: Roxanne Bland, Counsel
Date: November 20, 2009
Subject: Report on Pending Federal Legislation, 111th Congress

Below is a report on proposed federal legislation pending in the 111th Congress relating to state taxation.

Income/Franchise Taxes

1. H.R. 1083, Business Activity Tax Simplification Act of 2009

Expands the federal prohibition against state taxation of interstate commerce to: (1) include taxation of out-of-state transactions involving all forms of property, including intangible personal property and services (currently, only sales of tangible personal property are protected); and (2) prohibit state taxation of an out-of-state entity unless such entity has a physical presence in the taxing state that is not “limited” or “transient.” Sets forth criteria for determining that a person has a physical presence in a state. Introduced 2/13/2009. Sponsor: Rep. Rick Boucher, R-VA. Referred to Subcommittee on Commercial and Administrative Law. Current Activity: Proponents are trying for an end of session floor vote, but with only 11 out of 40 members on the Judiciary Committee on the bill and 48 out of 50 states facing revenue shortfalls, it is unlikely.

2. H.R. 2110, Mobile Workforce State Income Tax Fairness and Simplification Act, H.R. 2600, Telecommuter Tax Fairness Act of 2009

a. H.R. 2110: Limits state taxation of the wages or other remuneration of any employee who performs duties in more than one state to: (1) the state of the employee's residence; and (2) the state in which the employee is present and performing employment duties for more than 30 days. Exempts from the definition of "employee" for purposes of this Act a professional athlete or entertainer or certain public figures. Introduced on 4/27/2009. Sponsor: Rep. Henry C. (Hank)

Johnson, Jr., D-GA. Referred to Subcommittee on Commercial and Administrative Law. No hearing has been held and none is scheduled.

b. H.R. 2600: Prohibits a state from imposing an income tax on the compensation of a nonresident individual for any period in which such individual is not physically present in or working in such state or from deeming such nonresident individual to be present in or working in such state on the grounds that: (1) such individual is present at or working at home for convenience; or (2) such individual's work at home fails any convenience of the employer test or any similar test. Introduced on 5/21/09. Sponsor: Rep. James A. Himes, D-CT. Referred to the Subcommittee on Commercial and Administrative Law. Current Activity: Because of the Uniformity Committee's efforts on model state legislation in this area, COST has asked congressional staff to not schedule the bill for any legislative action.

3. H.R. 2303, State Tax Administration Assistance Act of 2009

Amends the Internal Revenue Code to eliminate the restriction on reductions of Federal income tax refunds by permitting a state to offset state income tax obligations owed by nonresidents against any federal income tax refunds due to such nonresidents if such state has in effect a reciprocal agreement with the Secretary of the Treasury that allows an offset of federal income tax obligations against state tax refunds. Introduced on 5/7/09. Sponsor: Rep. John Lewis, D-GA. Current activity: Action unlikely for this year, as congressional priorities right now are health care and tax extenders (including estate tax and offshore tax havens).

4. H.R. 1956, Crime Victim Restitution and Court Fee Intercept Act

Amends the Internal Revenue Code to direct the Secretary of the Treasury, upon receiving notice from a state judicial agency that a named person owes a past-due, legally enforceable state judicial debt, to pay such debt from any tax refund due to such person. Introduced on 4/2/09. Sponsor: Rep. Erik Paulsen, R-MN. Current Activity: Action unlikely for this year, as congressional priorities right now are health care and tax extenders (including estate tax and offshore tax havens).