

STATE TAXATION OF INCOME FROM INTERSTATE COMMERCE

SEPTEMBER 1, 1959.—Ordered to be printed

Mr. CELLER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 2524]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2524) relating to the power of the States to impose net income taxes on income derived from interstate commerce and establishing a Commission on State Taxation of Interstate Commerce and Interstate and Intergovernmental Taxation Problems, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—IMPOSITION OF MINIMUM STANDARD

SEC. 101. (a) No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after the date of the enactment of this Act, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to

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enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(b) The provisions of subsection (a) shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to—

(1) any corporation which is incorporated under the laws of such State; or

(2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.

(c) For purposes of subsection (a), a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, of tangible personal property.

(d) For purposes of this section—

(1) the term “independent contractor” means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of, tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities; and

(2) the term “representative” does not include an independent contractor.

SEC. 102. (a) No State, or political subdivision thereof, shall have power to assess, after the date of the enactment of this Act, any net income tax which was imposed by such State or political subdivision, as the case may be, for any taxable year ending on or before such date, on the income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after such date is prohibited by section 101.

(b) The provisions of subsection (a) shall not be construed—

(1) to invalidate the collection, on or before the date of the enactment of this Act, of any net income tax imposed for a taxable year ending on or before such date, or

(2) to prohibit the collection, after the date of the enactment of this Act, of any net income tax which was assessed on or before such date for a taxable year ending on or before such date.

SEC. 103. For purposes of this title, the term “net income tax” means any tax imposed on, or measured by, net income.

SEC. 104. If any provision of this title or the application of such provision to any person or circumstance is held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

TITLE II.—STUDY AND REPORT BY CONGRESSIONAL COMMITTEES

SEC. 201. The Committee on the Judiciary of the House of Representatives and the Committee on Finance of the United States Senate, acting, separately or jointly, or both, or any duly authorized subcommittees thereof, shall make full and complete studies of all matters pertaining to the taxation by the States of income derived within the States from the conduct of business activities which are exclusively in furtherance of interstate commerce or which are a part of interstate commerce, for the purpose of recommending to the Congress proposed legislation providing uniform standards to be observed by the States in imposing income taxes on income so derived.

SEC. 202. The Committees shall report to their respective Houses the results of such studies together with their proposals for legislation on or before July 1, 1962.

And the House agree to the same.

Amend the title so as to read: "An Act relating to the power of the States to impose net income taxes on income derived from interstate commerce, and authorizing studies by congressional committees of matters pertaining thereto."

EMANUEL CELLER,
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E. E. WILLIS,
WILLIAM M. McCULLOUGH,
WILLIAM E. MILLER,
Managers on the Part of the House.

HARRY F. BYRD,
ROBT. S. KERR,
J. ALLEN FREAR,
By R. S. K.
JOHN J. WILLIAMS,
FRANK CARLSON,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the Senate bill (S. 2524) relating to the power of the States to impose net income taxes on income derived from interstate commerce and establishing a Commission on State Taxation of Interstate Commerce and Interstate and Intergovernmental Taxation Problems, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Both the House and Senate bills contain a minimum activities approach to the problem of State taxation of income from interstate commerce. It was the purpose of both Houses to specifically exempt, from State taxation, income derived from interstate commerce where the only business activity within the State by the out-of-State company was solicitation. The bills, however, differ in the language used to accomplish this objective. The House conferees believe it is more appropriate to accept the language of title I of the Senate bill.

Unlike the House bill, the Senate bill contains no time limitation on the effectiveness of the immunity granted in the bill. The Senate bill also contains a more specific treatment of dealings through an independent contractor, by providing specifically that an out-of-State business shall not be considered to be conducting business activities within the State by reason of solicitation of orders or sales in that State by an independent contractor in its behalf. The conferees have inserted a clarifying amendment to this provision of the Senate bill, to assure that the maintenance of an office by such an independent contractor within the State shall not subject the out-of-State business to income taxation.

The Senate bill is limited to sales of and solicitation of orders for sales of tangible personal property. The House bill is not so limited.

The House bill contains no provision barring the assessment of taxes for years prior to the period of immunity specified in the bill, even though income derived from the same kind of activity could not be taxed during the period specified in the bill. Under the Senate bill no State or political subdivision thereof may assess, after enactment of the bill, taxes for previous years which would be barred under the standard established in the bill.

Both the House and the Senate, recognizing the complexity of the issues involved, provided for a study of the entire problem with a view toward the enactment of appropriate legislation by the Congress. However, the Senate bill provided for an independent commission while the House bill provided that the study was to be made by Congress. The conferees concluded that the matter should remain with congressional committees. Consequently, the conferees recom-

mend that the Committee on the Judiciary of the House of Representatives and the Committee on Finance of the Senate shall undertake a study of State taxation of income derived from interstate commerce and shall report to the Congress the results of this study together with proposals for legislation by July 1, 1962. It is contemplated, of course, that the committees will consult with the States in this respect.

EMANUEL CELLER,
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Managers on the Part of the House.

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