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STATE TAXATION OF INCOME DERIVED FROM INTERSTATE COMMERCE

AUGUST 18, 1959.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. J. Res. 450]

The Committee on the Judiciary, to whom was referred the joint resolution (H. J. Res. 450) regarding certain Supreme Court decisions, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

GENERAL STATEMENT

The recent decision of the U.S. Supreme Court in *Northwestern States Portland Cement Co.* v. *Minnesota* and *Williams* v. *Stockham Valves & Fittings, Inc.*,[1] has caused serious apprehension in the commercial community over the scope of State power to tax income derived from interstate commerce. Although a majority of the Court maintained that the decision in those cases was entirely consistent with the standards established in earlier cases, the breadth of the language in the opinion raises considerable uncertainty as to the kind and amount of local activity within a State which will be considered sufficient to support the imposition of a tax on income derived from interstate commerce.

A strict reading of the *Northwestern* and *Stockham* cases indicates that those cases are authority only for the proposition that a tax may be imposed when the out-of-State business maintains at least an office or other fixed business activity within the taxing State. However, shortly after the *Northwestern* and *Stockham* decision was handed down, the Supreme Court denied certiorari in two cases in which the activities of the out-of-State business was limited to the solicitation

[1] 358 U.S. 450 (1959).

of orders within the taxing State.[2] No office, salable inventory, warehouse, or other place of business was maintained in the taxing State. In denying certiorari, the Court left undisturbed the decision of the State court upholding a State tax on income derived from solicitation alone. While it is true that the denial of certiorari is not a decision on the merits, and although grounds other than the precedents of the *Northwestern* and *Stockham* cases were advanced as a basis for sustaining the *Brown-Forman* and *International Shoe* decisions, the fact that a tax was successfully imposed in those cases has given strength to the apprehensions which had already been generated among small and moderate size businesses.

The Committee on the Judiciary and many Members of Congress have received hundreds of letters from such firms expressing their consternation at the prospect of having to file tax returns in what may eventually be each of the 50 States as well as an unpredictable number of cities, even where the firm maintains no fixed establishment in those States and cities. These businesses are concerned not only with the costs of taxation, but also with the inescapable fact that compliance with the diverse tax laws of every jurisdiction in which income is produced will require the maintenance of records for each jurisdiction and the retention of legal counsel and accountants who are familiar with the tax practice of each jurisdiction. This will mean increases in overhead charges, in some cases to an extent that will make it uneconomical for a small business to sell at all in areas where volume is small.

Although it may be argued that the Supreme Court has not yet decisively disposed of the precise question of whether solicitation alone is a sufficient activity for the imposition of a State income tax upon an out-of-State business, the very fact that this question is unresolved is perhaps the strongest argument for Congress to act at this time. Businessmen should not be forced to guess about their tax liability. Nor should they be subject to the kind of State taxation which would Balkanize the American economy. The committee recognizes that the problems raised by State taxation of interstate commerce are numerous and complex. Involved are such basic but conflicting interests as, on the one hand, the demand of the States for greater revenue and, on the other, the necessity that we keep our economy free from the kind of taxation that will impede the flow of commerce.

In an effort to meet both the current situation and to provide for a permanent solution, this bill does two things. First, it provides a temporary minimum standard applicable only with respect to the taxable years ending after December 31, 1958, and beginning before January 1, 1961. This standard would prohibit a State or political subdivision thereof from imposing a tax upon the income of any business engaged in interstate commerce unless during the taxable year that business has maintained an office, salable inventory, warehouse, or other place of business in that State or has had an officer, agent, or representative who has maintained an office or other place of business in that State.

By this standard, the simple solicitation of orders by an out-of-State business would not subject it to income taxation in the market

[2] *Brown-Forman Distillers Corp.* v. *Collector of Internal Revenue*, 359 U.S. 28 (1959); *International Shoe Co.* v. *Fontenot*, 359 U.S. 984 (1949).

State. In terms of case law, this bill would not affect fact situations such as those in the *Northwestern* and *Stockham* cases. In both of those cases the out-of-State business maintained an office in the market State and under the standard in this bill they would remain subject to taxation. The bill would, however, alter the result in situations like *Brown-Forman* and *International Shoe* so far as the taxable years covered by the bill are concerned.

Secondly, the bill provides that the Committees on the Judiciary of the Senate and the House of Representatives shall study the entire problem of State taxation of income from interstate commerce and shall present proposals for permanent legislation to the Congress by February 1, 1961. A special subcommittee of the House Judiciary Committee has already been created for this purpose and has scheduled hearings for October of this year.

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