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## APPLICATION OF STATE SALES, USE, AND INCOME TAXES TO TRANSACTIONS IN FEDERAL AREAS

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MAY 16 (legislative day, APRIL 21), 1940.—Ordered to be printed

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MR. GEORGE, from the Committee on Finance, submitted the following

### REPORT

[To accompany H. R. 6687]

The Committee on Finance, to whom was referred the bill (H. R. 6687) to authorize the levy of State, Territory, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof occurring in United States national parks, military and other reservations or sites over which the United States Government may have jurisdiction, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

#### GENERAL STATEMENT

This bill passed the House at the first session of the Seventy-sixth Congress and was referred to the Committee on Finance which reported it to the Senate with certain clarifying changes on July 28, 1939. Due to certain objections being raised to the bill by various departments in the executive branch of the Government after the bill had been reported to the Senate, it was recommitted to the Committee on Finance for further study and recommendation. Your committee, through a subcommittee composed of Senators George, Brown, and La Follette, held a hearing on April 23, 1940, at which time representatives of the various State taxing authorities appeared in favor of the bill and representatives of the War and Navy Departments and of the Department of the Interior appeared in opposition to certain features of the bill.

Upon completion of the hearings, the subcommittee suggested that a conference be held by the representatives of the State agencies and the Federal agencies with a view to recommending to said subcommittee any proposal or proposals upon which said representatives

could agree. Such a conference was held and the proposals which were submitted were used as a point of departure by the subcommittee in drafting the amendment reported by your committee.

In general, the bill, as amended, proposes to do three things. First, it provides that State sales and use taxes (with certain exceptions which are hereafter explained) shall be applicable with respect to transactions occurring within Federal areas in the same manner and to the same extent as they are applicable with respect to transactions occurring outside such areas and within the State. Second, it provides that State income taxes shall be applicable with respect to persons residing within a Federal area or receiving income from transactions occurring or services performed in such area in the same manner and to the same extent as they are applicable with respect to persons residing outside such area or receiving income from transactions occurring or services performed outside such area. Third, it contains certain clarifying amendments to section 10 of the Federal Highway Act of June 16, 1936 (known as the Hayden-Cartwright Act permitting State taxation of sales of gasoline and other motor-vehicle fuels sold in Federal areas for private purposes), and provides that the tax levied and collected under that section shall continue to be levied and collected under that section, as amended, rather than under the authority contained in section 1 of this bill.

#### DETAILED EXPLANATION OF THE BILL

Section 1 (a) of the committee amendment removes the exemption from sales or use taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area. At the present time exemption from such taxes is claimed on the ground that the Federal Government has exclusive jurisdiction over such areas. Such an exemption may be claimed in the following types of cases: First, where the seller's place of business is within the Federal area and a transaction occurs there, and, second, where the seller's place of business is outside the Federal area but delivery is made in Federal area and payment received there. This section will remove the right to claim an exemption because of the exclusive Federal jurisdiction over the area in both of these situations. The section will not affect any right to claim any exemption from such taxes on any ground other than that the Federal Government has exclusive jurisdiction over the area where the transaction occurred.

This section also contains a provision granting the State or taxing authority full jurisdiction and power to levy and collect any such sale or use tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area. This additional authorization was deemed to be necessary so as to make it clear that the State or taxing authority had power to levy or collect any such tax in any Federal area within the State by the ordinary methods employed outside such areas, such as by judgment and execution thereof against any property of the judgment-debtor.

Subsection (b) of section 1 provides that the taxes to be levied and collected under this section shall be applicable only with respect to

sales or purchases made, receipts from sales received, or storage or use occurring, after June 30, 1940.

Section 2 (a) of the committee amendment removes the exemption from income taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the taxpayer resides within a Federal area or receives his income from transactions occurring or services performed in such area. One of the reasons for removing the above exemption is because of an inequity which has arisen under the Public Salary Tax Act of 1939. Under that act a State is permitted to tax the compensation of officers and employees of the United States when such officers and employees reside or are domiciled in that State but is not permitted to tax the compensation of such officers and employees who reside within Federal areas within such State. For example, a naval officer who is ordered to the Naval Academy for duty and is fortunate enough to have quarters assigned to him within the Naval Academy grounds is exempt from the Maryland income tax because the Naval Academy grounds are a Federal area over which the United States has exclusive jurisdiction; but his less fortunate colleague, who is also ordered there for duty and rents a house outside the academy grounds because no quarters are available inside, must pay the Maryland income tax on his Federal salary. Another reason for removing the above exemption, is that under the doctrine laid down in *James V. Dravo Contracting Co.* (302 U. S. 134, 1937), a State may tax the income or receipts from transactions occurring or services performed in an area within the State over which the United States and the State exercise concurrent jurisdiction but may not tax such income or receipts if the transactions occurred or the services were performed in an area within the State over which the United States has exclusive jurisdiction.

This section contains, for the same reasons, a similar provision to the one contained in section 1 granting the State or taxing authority full jurisdiction and power to levy and collect any such income tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

Subsection (b) of section 2 provides that the taxes to be levied and collected under this section shall be applicable only with respect to income or receipts received after June 30, 1940. Your committee, upon recommendation of the representatives of the State taxing authorities, has made the effective dates of both section 1 and section 2 the same for ease in administration and to prevent the income tax section from becoming effective retroactively. The definition of income tax is broad enough to include a sales tax which is measured by gross receipts from sales. To fix an earlier effective date for the income tax section than for the sales tax section would thus result in having different effective dates for the same sales tax, in some cases, and would also permit the retroactive application of such sales taxes.

Section 3 of the committee amendment provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof. This section also provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser. An authorized purchaser being a person who is permitted, under regulations

of the Secretary of War or Navy, to make purchases from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, such as post exchanges, but such person is deemed to be an authorized purchaser only with respect to such purchases and is not deemed to be an authorized purchaser within the meaning of this section when he makes purchases from organizations other than those heretofore mentioned.

For example, tangible personal property purchased from a commissary or ship's store by an Army or naval officer or other person so permitted to make purchases from such commissary or ship's store, is exempt from the State sales or use tax since the commissary or ship's store is an instrumentality of the United States and the purchaser is an authorized purchaser. If voluntary unincorporated organizations of Army and Navy personnel, such as post exchanges, are held by the courts to be instrumentalities of the United States, the same rule will apply to similar purchases from such organizations; but if they are held not to be such instrumentalities, property so purchased from them will be subject to the State sales or use tax in the same manner and to the same extent as if such purchase was made outside a Federal area. It may also be noted at this point that if a post exchange is not such an instrumentality, it will also be subject to the State income taxes by virtue of section 2 of the committee amendment.

Section 4 of the committee amendment was inserted to make certain that the criminal jurisdiction of Federal courts with respect to Federal areas over which the United States exercises exclusive jurisdiction would not be affected by permitting the States to levy and collect sales, use, and income taxes within such areas. The provisions of this section are applicable to all Federal areas over which the United States exercises jurisdiction, including such areas as may be acquired after the date of enactment of this act.

Section 5 of the committee amendment provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.

Section 6 contains the definitions of the terms used in the committee amendment.

Subsection (a) defines the term "person" as it is defined in section 3797 of the Internal Revenue Code to mean and include an individual, trust, estate, partnership, company, or corporation.

Subsection (b) defines the term "sales or use tax" but excepts from such definition a tax with respect to which the provisions of section 10 of the Federal Highway Act of June 16, 1936, are applicable. Section 10 of that act, commonly known as the Hayden-Cartwright Act, permits State taxation of sales of gasoline and other motor-vehicle fuels sold in Federal areas for private purposes. Your committee thought it desirable that the provisions of that act should be continued in effect without regard to the provisions of section 1 of the committee amendment and therefore any State tax which is imposed on sales of gasoline and other motor-vehicle fuels will continue to be imposed on such sales in Federal areas under the provisions of section 10 of that act, as amended by section 7 of the committee amendment, rather than under the provisions of section 1 of the committee amendment.

Subsection (c) defines the term "income tax" to mean any tax levied on, with respect to, or measured by, net income, gross income,

or gross receipts. This definition, as well as the preceding definition of sales or use tax, must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or by any other name) if it is levied on, with respect to, or measured by, net income, gross income, or gross receipts.

Subsection (d) defines the term "State" to include any Territory or possession of the United States. The District of Columbia was not included in the definition since Congress is the local legislature for the District and any sales, use, or income taxes enacted for the District are applicable in all areas within said District.

Subsection (e) defines the term "Federal area" to mean any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States. Any Federal area, or any part thereof, which is located within the exterior boundaries of any State is deemed to be a Federal area within such State for the purposes of this act. For example, Yellowstone National Park is a Federal area which is located within the exterior boundaries of three States (Wyoming, Montana, and Idaho) and therefore, for the purposes of this act, that part of the Park which falls within the exterior boundaries of Wyoming will be included within Wyoming's taxing jurisdiction, that part which falls within Montana will be included within Montana's taxing jurisdiction, and that part which falls within Idaho will be included within Idaho's taxing jurisdiction.

Section 7 (a) of the committee amendment amends section 10 of the Hayden-Cartwright Act so that the authority granted to the States by such section 10 will more nearly conform to the authority granted to them under section 1 of this act. At the present time a State such as Illinois, which has a so-called gallonage tax on gasoline based upon the privilege of using the highways in that State, is prevented from levying such tax under the Hayden-Cartwright Act because it is not a tax upon the "sale" of gasoline. The amendments recommended by your committee will correct this obvious inequity and will permit the levying of any such tax which is levied "upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels."

Subsection (b) of section 7 is a clarifying amendment to such section 10 restating what was the obvious intent of the original act.

Your committee has also amended the title of the bill to conform to the changes made in the text.

