

STATE TAXATION OF INCOME DERIVED FROM INTER- STATE COMMERCE

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Mr. BYRD of Virginia, from the Committee on Finance, submitted
the following

R E P O R T

together with

MINORITY AND INDIVIDUAL VIEWS

[To accompany S. 2524]

The Committee on Finance, having had under consideration various bills relating to the power of the States to impose net income taxes on income derived from interstate commerce, report favorably an original bill relating thereto, and recommend that the bill do pass.

SUMMARY OF COMMITTEE'S BILL

Under your committee's bill, no State or political subdivision thereof may impose, for any taxable year ending after the date of enactment of the bill, a tax on net income, or a tax measured by net income, on income derived within the State by a company (whether it be an individual proprietorship, partnership, or corporation) from interstate commerce if the only business activities within the State by or on behalf of such company are the minimum activities described in the bill. In general, these activities are (i) the solicitation of orders within the State for tangible personal property and (ii) the maintenance and operation within the State of a sales office, i.e., an office, the primary purpose and use of which is to serve representatives of the company engaged in the solicitation of such orders. To qualify, however, all such orders must be sent outside the State for approval or rejection, and if approved, must be filled by shipment or delivery from a point outside the State.

In addition, your committee's bill provides that no State or political subdivision thereof may impose such a tax merely because a company

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uses one or more "independent contractors" (a term defined in the bill) making sales in such State, or soliciting orders in such State, for tangible personal property on its behalf.

In general, your committee's bill adopts an approach suggested by S. 2213, S. 2281, and Senate joint resolution 113, all of which were the subject of hearings on July 21 and 22, 1959, by your committee. This approach may be referred to as a "minimum activities" type of approach.

Under your committee's bill no State or political subdivision thereof may assess, on or after the date of enactment of the bill, any such tax regardless of whether it is for a past year or the current year. Your committee's bill, however, does not prohibit a State or political subdivision thereof from collecting, on or before the date of its enactment, any such taxes imposed for such past years. Hence, your committee's bill requires no refunds to be made by the States or political subdivisions thereof for such taxes with respect to such past years and collected on or before the effective date of the bill. Further, your committee's bill does not prohibit the collection, after the date of the enactment of the bill, of any such taxes assessed on or before such date for such past years.

The provisions of your committee's bill do not apply 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.

NEED FOR THE LEGISLATION

Hearings were held by your committee on July 21 and 22, 1959, in connection with S. 2213, S. 2281 and Senate Joint Resolution 113, all of which would prescribe limitations on the power of the States to impose taxes on income derived from the conduct of interstate commerce. In addition, Senate Joint Resolution 113 would provide for the establishment of a commission on taxation of interstate commerce to bring about greater uniformity of State taxation of income derived from interstate commerce. These bills and the joint resolution deal with the problem arising by reason of a recent decision of the U.S. Supreme Court in *Northwestern States Portland Cement Co. v. State of Minnesota* and *T. V. Williams, Commissioner v. Stockham Valves & Fittings, Inc.* (358 U.S. 450 (1959)).

Your committee finds that the broad language used by the Supreme Court in its decision in these cases—

We conclude that net income from the interstate operations of a foreign corporation may be subjected to State taxation provided the levy is not discriminatory and is properly apportioned to *local activities within the taxing State forming sufficient nexus to support the same.* (358 U.S. 450 at 452).

has created considerable concern and uncertainty. [Emphasis supplied.]

Persons engaged in interstate commerce are in doubt as to the amount of local activities within a State that will be regarded as forming a sufficient "nexus," that is, connection, with the State to support the imposition of a tax on net income from interstate opera-

tions and "properly apportioned" to the State. Information brought to the attention of your committee in connection with the recent hearings reveals a general apprehension in the business community that sales within a State obtained through the mere solicitation of orders within the State by an out-of-State company having no other activities within the State would subject the out-of-State company to the imposition of an income tax by the State on earnings of the company "properly apportioned" to the State. This apprehension is apparently strengthened by the decision of the Louisiana Supreme Court in the *Brown-Forman* case,¹ which the U.S. Supreme Court refused to review.² There the activities of the corporation within the State were apparently limited to the presence of "missionary men" engaged in solicitation. Your committee understands that this apprehension is due in large part to the burdens of compliance an out-of-State company may be subjected to in ascertaining, with respect to every State in which such sales are made, first, the company's "taxable income," prior to any apportionment, for purposes of the particular State's tax law and, secondly, the portion of the company's total "taxable income" that is "properly apportioned" to the taxing State under the apportionment formula used by that particular State.

Many small- and medium-sized firms engaged in interstate commerce are fearful of the cost of compliance necessary to properly make such determinations under the laws of each of the States in which such sales are made. This apprehension exists in large part because of the lack of uniformity in the laws of the various States in determining "taxable income," prior to apportionment, and in the factors to be taken into account in determining the amount of income to be apportioned to the State.

There are at least 35 States, the District of Columbia, and at least 8 cities taxing business income, including earnings derived from interstate commerce where there is local business activity. No two States have exactly the same formula for apportioning the amount of income attributable to local activities within the State. The committee understands that the formulas currently in use are complex, that even within the formulas the meaning of the basic words are inexact; and that for example, many of the 35 income tax States used a different definition to cover the term "sale." It understands that a "sale" may be considered to have taken place, according to these definitions, in any of these locations: In the place where the buyer and seller met; in the place where the goods were manufactured; in the place where the goods were stored; in the place where the transaction was finally approved; in the place where the selling company was domiciled; in the place where the salesman's office was located; or in the place to which the goods were shipped. This lack of uniformity creates the possibility that each of a number of different States may regard the same sale as having occurred in it, depending upon the particular definition of "sale" under its own tax laws. If each of several different States treat the same sale as attributable to it because of its own definition of "sale" in the State, it is apparent that income from the same sale may be attributed to each of the States

¹ *Brown-Forman Distillers Corporation v. Collector of Revenue*, 224 La. 651; 101 So. 2d 70 (1958).

² *Brown-Forman Distillers Corp. v. Collector of Revenue*, 389 U.S. 28 (1959).

under whose law the same sale is to be attributed. The amount of income from the sale to be attributed to any one State would apparently depend on the weight given "sales" in the State and the various factors taken into account by the particular State under its apportionment formula.

Many of the witnesses appearing before the committee advised the committee that they had no objection to paying their fair share of the State tax burden, but were concerned with the heavy cost of compliance that resulted from the lack of uniformity mentioned above and suggested that in fact in some cases the cost of compliance would exceed the amount of tax liability reflected on the return.

Your committee believes that, unless some certainty is restored to this area, the economic implications for the economy of the entire Nation may be unfortunate. Your committee believes that as a result of the broad scope of the language of the Supreme Court, quoted above, and the apprehension that it has generated in the business community over the minimum amount of local activity within a State that would constitute a sufficient "nexus" to subject a business to the tax on income derived from interstate commerce and "properly apportioned" to the State, businesses, particularly small- and medium-sized businesses, may be hesitant to develop new markets in some States by extending their solicitation activities to such States, or may cause the withdrawal of such activities from some existing markets in other States, should mere solicitation of orders be regarded as a local activity forming a sufficient "nexus" with the State, where the burdens of compliance with the taxing requirements of the State make such a course of action advantageous. This may tend to leave the markets to larger businesses whose activities are already widespread and which can better absorb the overhead expenses of (i) securing the necessary advice on the requirements imposed by the taxing laws of the States, and political subdivisions thereof, in which they sell, and (ii) keeping adequate accounting records reflecting all the information, such as sales, property, and payroll, segregated on a State-by-State basis, that may be necessary to meet the requirements imposed by such laws in preparing the necessary returns and in determining the amount of tax liability.

It has been reported that at least three of the States (Idaho, Tennessee, and Utah) have revised their laws since the February 1959 decision of the U.S. Supreme Court. Your committee believes that the February 1959 decision of the U.S. Supreme Court will probably stimulate States which have not already done so to devise a formula of apportionment to tax the income of businesses carrying on interstate commerce exclusively.

One of the problems raised by the broad scope of the language of the Supreme Court is the extent of tax liability of firms engaged in interstate commerce for taxes for past years to States in which they may now find they may be exposed to tax liability for many prior years. Your committee's bill provides that assessment of taxes prohibited by the bill shall not be made after enactment of the bill, even though the assessment is for prior years.

Your committee recognizes that the bill it has reported is not a permanent solution to the problem that exists. It was not intended to be. Your committee, like the Select Committee on Small Business of the U.S. Senate, recognizes that the problem is a complex one which re-

quires extensive and exhaustive study in arriving at a permanent solution fair alike to the States and to the Nation. Your committee believes, however, that the bill it has reported will serve as an effective stopgap or temporary solution while further studies are made of the problem.

The bill does not give to the States any power to tax income derived from interstate commerce. The power of the States in this respect will be determined with no inference from the bill.

Your committee has been increasingly concerned with the growing complexity of the tax structures devised by the several levels of government. Studies held in connection with legislation relating to State taxation of interstate commerce have served to focus still further attention on the trend toward the wide diversity reflected in the indiscriminate use of sources and rates by the several tax systems.

This lack of coordination and uniformity has resulted in the creation of sprawling diverse revenue systems with underlying potential for great harm to the economy of the country and to the individual taxpayers to such an extent that urgent remedial action appears necessary.

Repeated efforts over the years, in the form of advisory commissions and committees, have failed to satisfactorily resolve the current tax dilemma. Your committee feels that much of the failure experienced in these attempts has been occasioned by the ambitious objectives sought by these groups in the broad area of intergovernmental conflict. The fruits of such efforts have, of course, been enlightening but, unfortunately, have not served to abate existing revenue trends.

The duplication and, indeed, even the triplication in the field of income taxation, requires that prompt attention be given to the dangers inherent in the widespread exploitation of tax sources among the governmental levels.

Your committee feels that the problem might best be approached by attempting to reserve those sources of taxation best adapted to the needs peculiar to the Federal and State Governments exclusively for these respective units. Such an approach would, of course, take into consideration the responsibilities of the different levels of government and would require concurrent action to avoid any possible tax losses.

As a result your committee is contemplating legislation to establish a committee designed to deal solely with the intergovernmental problems attendant to taxation, with a view toward recommending methods to (1) eliminate overlapping areas of taxation; (2) avoid competition for the tax dollar; (3) improve administration and collection practices; (4) coordinate and simplify revenue laws; (5) and to ease the taxpayers burden of complying therewith.

It is anticipated that representatives from the Congress, the executive branch, and the several States would constitute the membership of the committee, along with such staff assistance as may be required.

DETAILED DESCRIPTION OF COMMITTEE'S BILL

Under subsection (a) of section 1 of the committee's bill no State or political subdivision thereof shall have power to impose, for any taxable year ending after the date of the enactment of the act, a net income tax on income, or a tax measured by net income, on the income derived within such State by any person from interstate com-

merce if the only business activities within such State by or on behalf of such person during such taxable year are any or all 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;

(2) the solicitation of orders by such persons, or his representative, in such State in the name of or for the benefit of a prospective client or customer of such person, if orders by such client or customer to such person to enable such client or customer to fill orders resulting from such solicitation are orders described in paragraph (1); and

(3) the maintenance and operation by such person, or by his representative, in such State of an office the primary purpose and use of which is to serve representatives of such person who are engaged in the solicitation of orders described in paragraphs (1) or (2), or both, and to receive, process, and forward such orders.

Under subsection (c) of section 1 of the committee's bill, a person shall not be considered, for purposes of subsection (a) of section 1 of the bill, to be 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.

The term "independent contractor" is defined to mean 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. The term "representative" does not include an independent contractor. The term "net income tax" means any tax imposed on, or measured by, net income.

Under the provisions of section 1 of the bill no net income tax on income derived within the State by any person from interstate commerce may be imposed by a State or political subdivision thereof for any taxable year ending after the date of enactment of the act if the only business activities by or on behalf of such person are those described above in section 1 (a) and (c). Consequently, if the only business presence within the State by a person engaged in interstate commerce is the solicitation by his salesmen of orders for sales of tangible personal property and the orders are sent to an office out of the State for approval or rejection, and if the order is approved, it is filled by shipment or delivery from a stock of goods, warehouse, plant, or factory located out of the State, the net income tax of the State or political subdivision thereof on income derived within the State by such person from interstate commerce may not be imposed.

The immunity provided by subsection (a) of section 1 of the bill will not be available to a person, however, if the business activities by salesmen within the State on behalf of such person are not limited during the taxable year to the solicitation of such orders or of orders described in paragraph (2) of subsection (a), or both. The provisions of subsection (a) of section 1 of the bill will not be available to grant immunity to a person where the orders are filled by a shipment or

delivery from a stock of goods, warehouse, plant, or factory maintained by the person within the State.

The immunity otherwise available under the bill to an out-of-State company is not lost merely because the company or its representatives maintain and operate in the State an office, provided the primary purpose and use of that office is to serve representatives of such company who are engaged in the solicitation of orders described above (i.e. orders described in paragraphs (1) or (2) or both, of subsection (a)). For convenience, such an office is referred to here as a "sales office." The fact that orders received by salesmen of such company, who are on the road, are first sent by the salesmen to the sales office, processed there, and then forwarded from the sales office to the out-of-State office for approval or rejection will not deprive the out-of-State company of the immunity otherwise available under subsection (a).

The immunity provisions granted by subsection (a) of section 1 of the bill will not be available if the out-of-State company maintains within the State an office, the primary purpose and use of which is other than that which is described in paragraph (3) of subsection (a).

It will be noted that paragraph (3) of subsection (a) of section 1 of the bill requires not only that the primary purpose of the office be that which is required by that paragraph but also that the use of the office be so limited.

Because of the provisions of subsection (c) of section 1 of the bill, an out-of-State company otherwise qualifying for the immunity provisions of subsection (a) of section 1 shall not lose that immunity merely by reason of sales in the State, or the solicitation of orders in the State, of tangible personal property on its behalf by one or more independent contractors. Hence, the fact that an independent contractor not only solicits orders for the sale of tangible personal property on behalf of the out-of-State company but also accepts the orders on behalf of that company and thereby binds the company to the contracts of sale will not deprive the out-of-State company of the immunity of subsection (a) that is otherwise available to it.

If the out-of-State company has no other business activities within the State other than (i) business activities described in paragraphs (1), (2), and (3) of subsection (a), and (ii) sales in the State, or the solicitation of orders for sales in the State, of tangible personal property on its behalf by one or more independent contractors, the out-of-State company shall qualify for the immunity of subsection (a). For example, if an out-of-State company not only has its own salesmen soliciting orders (of the nature described in paragraphs (1) and (2) of subsection (a)), and in addition has sales made and orders solicited on its behalf in the State by one or more independent contractors, and the out-of-State company has no other business activities within the State, the immunity granted by subsection (a) is available to the out-of-State company.

The immunity otherwise available to an out-of-State company under subsection (a) of section 1 is not lost merely by reason of the fact that an independent contractor soliciting and accepting orders on its behalf for sales of tangible personal property maintains an office in the State, the primary purpose and use of which is other than to serve representatives of the out-of-State company who are engaged in the solicitation of orders of the nature described in paragraphs (1)

or (2) of subsection (a), or both, since the maintenance of an office by an independent contractor is not the maintenance of an office by such out-of-State company or by its "representative." (Under subsection (d)(2) of section 1, the term "representative" does not include an "independent contractor.")

The immunity provisions of subsection (a) of section 1 are not applicable if the business activities within a State by or on behalf of an out-of-State company are not limited to the activities described in paragraphs (1), (2), and (3) of subsection (a) and the activities described in subsection (c) of section 1. Hence, the immunity provisions of section 1 are not available if, for example, the out-of-State company maintains a warehouse or a stock of goods within the State.

Whether business activities other than those described in the bill constitute a sufficient basis for the imposition by a State or political subdivision thereof of a net income tax on income derived from interstate commerce is left for future determination by the Congress, or in the absence of congressional action, by the courts.

Under section 1 of title 1 of the United States Code, the word "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals. This definition applies in determining the meaning of any act of Congress, unless the context indicates otherwise. Such meaning applies to the word "person" as used in the committee's bill.

Under the provisions of subsection (b) of section 1 of the bill, the provisions of subsection (a) do 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.

Hence, the immunity provisions are not available to a corporation incorporated under the laws of the State even though it may have no business activities within the State other than those described in paragraphs (1), (2), and (3) of subsection (a) or those described in subsection (c) of section 1 of the bill. Likewise, the immunity provisions of section 1 of the bill are not available to an individual who under the laws of such State, is domiciled in, or a resident of, such State, even though the business activities of or on behalf of such person within the State are only those business activities described in paragraphs (1), (2), and (3) of subsection (a) and those described in subsection (c) of section 1 of the bill.

Under subsection (a) of section 2 of the bill no State or political subdivision thereof shall have the power to assess, after the date of enactment of this bill, any net income tax, including a tax measured by net income, which was imposed by such State, or political subdivision thereof, as the case may be, for any taxable year ending on or before such date, on 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 1 of the bill.

The provisions of section 2(a), however, shall not be construed—

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

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

Under section 2 of the bill a State or political subdivision thereof is not prohibited by section 1 of the bill from collecting, on or before the date of enactment of this bill, a tax on net income, or a tax measured by net income, on income derived from interstate commerce if the tax was imposed for a taxable year ending on or before the enactment of this bill, even though assessments of such tax on or after the date of the enactment of this bill would be prohibited by section 1. Further, section 2 does not prohibit the collection, after the date of enactment of this bill, of any such tax which was assessed on or before such date for a taxable year ending on or before such date. However, section 2 does prohibit a State or political subdivision thereof from assessing, after the date of enactment of this bill any tax on net income, or a tax measured by net income, 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 income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after the date of enactment of this bill is prohibited by section 1 of this bill. Section 2 of the bill thus prohibits assessment of taxes for past years on net income or taxes measured by net income, on income derived from interstate commerce if the imposition of such a tax for any year ending after the date of the enactment of this bill would be prohibited under section 1 of the bill.

MINORITY VIEWS

That the Constitution gives to the Congress the right to regulate interstate commerce is clear and undisputed. Article I, section 8, clause 3 states that the Congress shall have power to "regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

This power vested in the Congress is one of the most important sources of power given to the Federal Government and, at the same time, one of the most far-reaching restrictions on the States. This power should not be invoked by the Congress without due study and deliberation.

Equally clear and undisputed is the fact that each State has an interest in that part of interstate business which is carried on within its borders. The mere fact that goods or services may be connected in some way with activities in two or more States does not necessarily put such activities in that area of control prohibited to the States by the above section of the Constitution.

It has been generally held that the various States may not obstruct interstate commerce. It has not been held that appropriate State taxation constitutes such an obstruction. Testimony heard by the Finance Committee on this bill does not indicate that State taxation is obstructing interstate commerce. Vague fears of future developments have been expressed, but they remain more in the speculative field rather than being based upon well-founded practice or actual problems.

It should be borne in mind that the subject of this bill is a tax on net income or a tax measured by net income. We are not here considering licensing or franchise regulations or fees which might truly set up barriers to interstate commerce. Businesses will likely operate across State lines so long as a profit can be realized. If no profit is made, there is no net income to be taxed.

Ours is a Federal type of government. While some may allege that the National Government has increased in importance and the States have diminished in importance, it cannot be gainsaid that the States still have a vital role in our total government. Some may feel that certain activities can best be carried out at the Federal level, while others may feel that more activities should be left to the States. Regardless of the position which one may take on the appropriate level at which any given activity should be carried out, certainly no one could wish to move in the direction of the destruction of properly exercised State power and authority. This bill takes away from the States powers which they now have. This bill, if enacted into law, would constitute an unwise precedent of congressional action to curb the power and statutory rights of States by curtailing the ability and choice of the States to raise sufficient revenue to carry out proper and necessary State functions.

This bill represents a part of the fight, which is even older than the Constitution, between the producing and the consuming sections of our country. Two-thirds of the revenue collected by the various States from net income taxes on interstate business is collected by 10 manufacturing States. Should this bill be enacted into law, these States will be able to collect additional revenue at the expense of the consuming States.

Attacks on the Supreme Court appear to have become popular. This climate of opinion may tempt some interests to take advantage of it in order to gain economic advantages for themselves. Congress should examine this question with great care.

What specific circumstances have brought about the alleged necessity for this bill? Has the Supreme Court, indeed, reversed itself and handed down decisions which will do irreparable harm if not overruled by congressional action?

The Supreme Court has held, at least since 1920, that a tax levied on the proportion of the net profits of a foreign corporation earned by operations conducted within the taxing State is valid, if the method of allocation is not arbitrary or unreasonable. (See *Underwood Typewriter Co. v. Chamberlain*, 254 U.S. 113.)

In 1946, Justice Frankfurter stated:

"The power of the States to tax and the limitations upon that power imposed by the commerce clause have necessitated a long, continuous process of judicial adjustment. The need for such adjustment is inherent in a Federal Government like ours, where the same transaction has aspects that may concern the interests and involve the authority of both the Central Government and the constituent States. The history of this problem is spread over hundreds of volumes of our reports. To attempt to harmonize all that has been said in the past would neither clarify what has gone before nor guide the future. Suffice it to say that especially in this field opinions must be read in the setting of the particular cases and as the product of preoccupation with their special facts (*Freeman v. Hewit*, 329 U.S. 249 (1946))."

In the two recently decided cases which have received so much publicity, the *Northwest Portland Cement* and *Stockham Valves* cases, there were definite, physical activities carried on in the taxing States.

Some have claimed to feel alarm over the refusal of the Court to review the *Brown-Forman* case, on the basis that this company employed only "missionary men." We fail to see any real distinction between sales promotion by such means and other types of business activity carried out in a State for profit, by which a foreign corporation makes sales and gain profits from the people and services of another State.

The Supreme Court has not said that the States can levy a tax on, or measured by, net income for casual business, mail order business, radio broadcasting crossing State lines, or other types of business about which so many have expressed apprehension.

There are four basic faults with the bill reported by the Finance Committee.

First, the bill is, as we have stated, one which will foster a direct invasion of the statutory rights of the States, rights which they now

legally exercise. The States are hard pressed for tax revenues, without which they must become powerless wards of the National Government. By what reason and for just what specific purpose should Congress interfere with State assessment of taxes on profits realized within a State, in the absence of positive proof that such assessments were, in fact, interfering with or obstructing interstate commerce? Sufficient justification, we respectfully submit, is lacking.

The practical effect of the bill reported by the Finance Committee, if enacted, will be to assist in the reconcentration of wealth in fewer and fewer hands in fewer and fewer States. It may well force States to adopt new methods of taxation.

Second, this bill, if enacted into law, will discriminate against many small businesses. How can the typical small business, domiciled in and taxed upon its profits by a State, compete with a large multistate operator who pays no State income taxes where he sells his products? The local company must, if this bill becomes law, carry the tax burden for both.

A great deal has been said about the cost of compliance with various State laws, but the examples given as to specific costs concern large companies, such as Westinghouse. Small businesses operating across State lines express fears of future State requirements, but little has been said of existing requirements being onerous.

Many small business enterprises will surely suffer if this bill is enacted into law. Local warehousemen, for example, will certainly lose much of their business as multistate operators concentrate their warehouse activities in order to escape certain State taxes by terms of the pending bill.

Third, this bill does not meet the problem, if such exists, created by the Court decisions which are the alleged basis for the hasty enactment of this bill. Fears have been expressed that, because the Court has set down no guidelines for a determination of what constitutes "sufficient nexus," no limits on State taxation in this field have been defined.

This is true. Decisions in this field have been more specific than sweeping in nature.

But this bill goes beyond the Court decisions and at the same time fails to attack the problem positively. What this bill does is to deny to States the power to tax net income from certain types of transactions. There are no solutions in this bill for the problems faced by trucking companies, railroads, newspapers, pipelines, or radio and television stations, just to name a few. What is needed is proper allocation of taxes among the various States, not a prohibition against certain State taxes.

Even in the restricted field with which it deals, this bill may well create more problems than it will solve. As it stands, it is nothing more than a protective measure for a few manufacturing States and a few companies which do a multistate business of a specified type.

Fourth, this bill is premature. It has been hastily devised to meet fears of future developments. There is no necessity for hasty, premature, and possibly hurtful action. There is time for a proper study by a competent staff.

In summary, then, a competent staff should be appointed to make a study. After this study has been carefully made, it should be reviewed by the Interstate and Foreign Commerce Committee, the

Judiciary Committee, and the Finance Committee. This is a field in which all three committees have an interest, if not actual jurisdiction.

The staff making such a study should, after proper coordination with the States and interested agencies of the Federal Government, prepare a draft of legislation which will accomplish, but not necessarily be limited to, two specific purposes:

1. "Doing business" for purposes of State taxation of interstate commerce should be defined. This definition should be comprehensive and should lay down rules covering all fields of interstate commerce.

2. An allocation formula should be developed which will equitably determine the amount of net income attributable to activities in any given State. This formula should be so devised as to eliminate the possibility of subjecting any company to State tax liability on more than 100 percent of its net income.

There does exist a problem in the field of State taxation of interstate commerce. This problem cannot be properly resolved by denying, piecemeal, the right of the States to tax certain types of activities. This bill is such a measure. It would not solve the problem, but, instead, may well compound existing difficulties.

ALBERT GORE,
EUGENE J. McCARTHY.

INDIVIDUAL VIEWS

In general, I agree with the views of Senators Gore and McCarthy that this proposal too greatly restricts the taxing power of State governments. Under the proposal, a company located in a State which has no income tax could sell all or most of its production into States, which have such taxes, in such manner that no State income taxes on net profits would be owed.

This could amount to a serious disadvantage to local companies which must pay income taxes to the States wherein they are located in competition with tax-favored competitors.

While I do not insist upon a study by more than one committee, I am satisfied of three things: First, that the measure requires more study; second, that the proposed enactment will be unfair to States with proportionately small amounts of industrialization; third, that the exonerations from tax liabilities of outside companies selling their products into a State is too broad.

Accordingly, I must oppose the bill.

RUSSELL B. LONG.

