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87TH CONGRESS, 1st Session | SENATE | REPORT No. 87

STUDY OF STATE TAXATION OF INTERSTATE COMMERCE

MARCH 24, 1961.—Ordered to be printed

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

REPORT

[To accompany H.R. 4363]

The Committee on Finance, to whom was referred the bill (H.R. 4363) to amend Public Law 86–272 relating to State taxation of interstate commerce, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 4363 is to expand the scope of the study authorized by Public Law 86–272 to include all matters pertaining to the taxation of interstate commerce by the States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any political or taxing subdivision of the foregoing. The study is to be made by the House Committee on Judiciary or the Senate Committee on Finance, acting separately or jointly.

GENERAL STATEMENT

Public Law 86–272 was the outgrowth of the decision by the Supreme Court in *Northwestern Cement Company* v. *Minnesota*, 358 U.S. 450 (1959) and of a number of subsequent cases in which the Court denied certiorari. Those cases dealt with the problem of income taxation and consequently when Congress sought to provide a more certain standard for businesses engaged in interstate commerce, it enacted a statute which was concerned only with the problem of State income taxation.

Subsequent to Public Law 86–272, the Supreme Court decided the case of *Scripto* v. *Carson*, 362 U.S. 207 (1960). In that case, the facts were somewhat similar to those in the income tax cases which followed *Northwestern* and in which the Supreme Court denied certiorari. However, the tax involved in the *Scripto* case was a use tax. In *Scripto* it was held that an out-of-State business could be required to collect and pay over a use tax on sales made within the taxing State even though the out-of-State business maintained no facilities in the taxing State.

The *Scripto* decision evoked a number of bills in both the House and Senate patterned after those which followed the *Northwestern* case. These bills, in most instances, sought to do two things:

First, they sought to impose a prohibition upon requiring an out-of-State business to collect a use tax on behalf of a State if the only activity within that State is solicitation of orders to be filled by shipment from outside the State;

Second, they sought to broaden the scope of the study required under Public Law 86–272 to include sales and use taxes.

In the 86th Congress, the Senate Committee on Finance approved a bill of this kind, S. 3549, which extended the scope of the study to all matters pertaining to the imposition of sales and use taxes by the States on sales and other business activities which are exclusively in furtherance of interstate commerce. However, no action was taken in the House.

The Committee on Finance is in agreement with the following statements from the report of the House Committee on the Judiciary:

> In view of the history of the problems of State taxation of interstate commerce, it would appear that to enlarge the scope of this study simply by adding another specific category of taxes would not prove the basis for an effective solution. If congressional action is necessary, then it must be predicated upon considerations which go beyond those relating to a particular form of tax. Since Congress must concern itself not only with safeguarding the unimpeded flow of commerce but also with the fiscal problems of State governments, it must take into account the effect which any action it may take will have upon the revenue needs of the States. Since revenues are obtained from a variety of taxes, all of which are closely interrelated, a valid judgment can be predicated only upon a consideration of the entire picture rather than a fragment of it.
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> The committee is of the view that the scope of this study should be enlarged not only because it involves a unitary economic problem but because a solution predicated upon a consideration of only specified tax forms would be ineffective. In the event that Congress should determine to limit the imposition by the States of income or sales and use taxes upon interstate commerce, the States might then turn to other forms of taxes which were not considered by Congress. This is amply demonstrated by the ineffectiveness which any solution dealing with income taxes alone would have had on the problems brought to light by the *Scripto* decision in the area of sales and use taxes. A complete study must there-

fore take into account not only those taxes which happen to have been the subject of recent Supreme Court decisions but also others which have long vexed the courts.

This bill would provide the comprehensive authority necessary to consider all matters relating to taxation by the States which affect business activities in interstate commerce.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

PUBLIC LAW 86-272

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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] *of interstate commerce by the States, territories, and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico, or any political or taxing subdivision of the foregoing.*

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