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Part 1

TRANSPORTATION EMPLOYEE FAIR TAXATION ACT OF 1999

OCTOBER 3, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1293]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1293) amending title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1293, the “Transportation Employee Fair Taxation Act of 1999” is designed to clarify the taxing status of certain types of interstate waterway workers, which under current law is ambiguous. This uncertainty in taxing status allows States to tax the income of interstate waterway workers in a worker’s State of residence and in any State in which the worker earns 50 percent or more of his or her annual income. H.R. 1293 resolves this ambi-

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guity by prohibiting any State from taxing the income of a nonresident interstate waterway worker.

Background and Need for the Legislation

The right of States to tax economic activities within their borders is a key aspect of Federalism rooted in the Constitution and long recognized by Congress. At the same time, the Supreme Court has recognized that "a right to tax is a right to destroy." [1] The authority of States to lay and collect taxes is thus subject to a number of constitutional limitations. First, the Commerce Clause prohibits States from assessing taxes which may burden interstate commerce.[2] Second, the Due Process clause prohibits States from taxing those who lack a "substantial nexus" with the taxing State.[3] Finally, the Privileges and Immunities clause prevents States from assessing taxes which discriminate against nonresidents.[4]

Almost all States levy personal income taxes.[5] States may tax the income of in-State residents, even if this income is derived from sources outside the taxing State.[6] It is also constitutionally permissible for States to levy taxes on nonresident income derived from economic activities within the State, as long as the nonresident is taxed in a manner similar to in State residents.[7] To prevent the imposition of multiple and discriminatory taxes, most States provide their residents with credits to offset income taxes paid to other States on income also taxable by the State of residence.[8] Other States, such as those with large commuting populations, protect residents from double taxation by entering into reciprocal agreements with neighboring States. Some of these agreements require that income be taxed solely by the State of residence, while others apportion taxes between neighboring States.[9]

Interstate Transportation Workers

Workers employed by interstate railway, motor, water, and air carriers work in multiple States while conducting their regularly assigned duties. These interstate transportation workers are subject to a myriad of State tax regimes and are sometimes required to pay multiple State taxes on earned income. While most States allow residents to credit income taxes paid to other States, State efforts to protect residents from taxes collected by other States are complicated when the taxpayer's State of residence does not levy an

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[1] *McCulloch* v. *Maryland*, 17 U.S. 316, 347 (1819).

[2] *Quill* v. *North Dakota* 504 U.S. 298 (1992). A State tax survives Commerce Clause challenge if it is:

(1) applied to an activity with a substantial nexus with the taxing State;
(2) fairly apportioned;
(3) does not discriminate against interstate commerce and;
(4) is fairly related to services provided by the State.

Id. at 311; see also Ronald Rotunda, Modern Constitutional Law at 135 (5th ed. 1998).

[3] *Quill* at 306.

[4] *Ward* v. *Maryland*, 79 U.S. 418 (1870).

[5] Forty-one States and the District of Columbia levy a broadly-based personal income tax. Tennessee and New Hampshire impose more narrowly based income taxes on passive income derived from interest, dividends and capital gains. Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming do not collect personal income taxes. Jerome R. Hellerstein & Walter Hellerstein, State Taxation § 20 (1992).

[6] New York *ex rel. Cohn* v. *Graves* 300 U.S. 308 (1937).

[7] *Shatter* v. *Carter*, 252 U.S. 37 (1920).

[8] Hellerstein and Hellerstein, *supra* note 5, § 20.

[9] See *id.*

income tax against which to credit taxes paid to other States.[10] These difficulties are further compounded by the administrative challenges—such as monitoring the physical location of employees—associated with apportioning and collecting taxes on income that might be derived in multiple States in the course of regularly assigned employment responsibilities.

Federal Legislation Affecting State Taxation of Interstate Transportation Workers

Congress has repeatedly attempted to provide a more uniform State taxing framework for interstate transportation workers. In 1970, Congress passed legislation[11] to provide streamlined taxing principles for this class of workers. The legislation prohibited nonresident States from withholding taxes on the income of interstate transportation workers unless the worker earned 50 percent or more of his or her income in the nonresident State. This 50 percent taxing threshold is often referred to as the "Fifty Percent Rule." The act specifically prohibited States from taxing the income of interstate rail, motor carrier and aircraft workers if they did not meet this taxing threshold. While interstate waterway workers were not exempted from having to pay income taxes to nonresident States, the statute did exempt interstate waterway workers from having to report income falling short of the Fifty Percent Rule to nonresident States.[12]

While a promising first step toward tax equalization, the "50 Percent Rule" proved to be administratively burdensome to States and interstate transportation workers alike. In response to these concerns, Congress incrementally rescinded the 50 Percent Rule with respect to various classes of interstate transportation workers. In 1979, Congress prohibited States other than the taxpayer's State of residence from taxing interstate air carrier workers.[13] Two decades later, Congress eliminated the 50 Percent Rule for interstate motor and railway carrier workers by prohibiting States other than the taxpayer's State of residence from taxing these workers.[14]

The Interstate Commerce Commission Termination Act of 1995 (ICCTA)[15] brought further taxing clarity to railway and motor carrier workers. While the act reiterated the exemption of interstate railway, aviation, and motor carriers from paying State income taxes to a State other than their State of residence, it did not extend this protection to interstate water carriers. The legislation thus had the effect of preserving the 50 Percent Rule for interstate waterway workers. While the ICCTA maintained the 50 Percent Rule for interstate water workers, other Federal legislation expressly prohibits any State from withholding wages of masters or seaman engaged in interstate commerce.[16] As a result of these overlapping and sometimes conflicting Federal statutes, interstate waterway carriers occupy an unsettled taxing status. This lack of taxing clarity is compounded by the monitoring and reporting dif-

[10] See *id.*
[11] Pub. L. No. 91–569, 84 Stat. 1499.
[12] See *id.*, § 324(a).
[13] Aviation Safety and Noise Abatement Act, Pub. L. No. 96–193, 94 Stat. 50.
[14] Amtrak Reauthorization and Improvement Act of 1990, Pub. L. No. 101–322, 104 Stat. 295.
[15] Pub. L. No. 104–88, 109 Stat. 803.
[16] 46 U.S.C. § 11108 (2000).

ficulties that underlie the proper apportionment of income earned while navigating waterways that delineate interstate boundaries.

Interstate Water Carriers in the Pacific Northwest

Interstate water carriers working along the Columbia River in the Pacific Northwest highlight the uncertain taxing position of interstate water carriers. The Columbia River serves as the boundary between Oregon and Washington. Oregon levies a broad based tax on personal income, while Washington does not. Over the last several years, Washington residents who work on the Columbia River as riverport pilots and barge operators have unexpectedly received tax assessments of hundreds of thousands of dollars in back taxes by Oregon taxing authorities.[17] Since interstate water carriers along the Columbia River are unable to precisely ascertain how much time their workers spend in Oregon waters, Oregon taxing authorities have assumed that these workers spend half their time in Oregon and are thus taxable under the 50 Percent Rule.[18] On March 25, 1999, Representative Brian Baird (Wash. 3rd) introduced H.R. 1293, the "Transportation Employee Fair Taxation Act of 1999," to simplify the taxing status of interstate waterway workers.

HEARINGS

The committee's Subcommittee on Commercial and Administrative Law held 1 day of hearings on H.R. 1293 on July 17, 2000. Testimony was received from the following four witnesses: Representative Brian Baird, (Wash, 3rd District); Chris Eckhardt, Tugboat Captain, Shaver Transportation; and Mike Simonsen, Representative, International Organization of Masters, Mates and Pilots. Additional information was submitted by Elizabeth Harchenko, Director of the Oregon Department of Revenue, and Robert A. Nelson, Tugboat Captain (Ret.), Shaver Transportation.

COMMITTEE CONSIDERATION

On September 12, 2000, the committee met in open session and ordered favorably reported the bill H.R. 1293, without amendment by unanimous consent, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

[17] Foster Church, *Waterway Tax Jolts Workers: Baird Files Bill*, PORTLAND OREGONIAN, Mar. 30, 1999, at B2.

[18] Jeff Mize, *Lawmaker Goes to Bat for River Workers*, THE COLUMBIAN, Mar. 30, 1999, at B1.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to H.R. 1293, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1293, a bill to amend title 46, United States Code, to provide equitable treatment with respect to state and local income taxes for certain individuals who perform duties on vessels.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Victoria Heid Hall (for the state and local impact), who can be reached at 225–3220, Deborah Reis (for federal costs), who can be reached at 226–2860, and Jean Wooster (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 1293—A bill to amend title 46, United States Code, to provide equitable treatment with respect to state and local income taxes for certain individuals who perform duties on vessels.

SUMMARY

H.R. 1293 would prohibit state and local governments from imposing income taxes on individuals working on vessels operating on the navigable waters of more than one state unless that individual resides in the jurisdiction assessing the tax. Such a prohibition is an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs of this mandate would be well below the threshold established in UMRA ($55 million in 2000, adjusted annually for inflation). H.R. 1293 would have no impact on the federal budget and contains no new private-sector mandates as defined in UMRA.

According to the Federation of Tax Administrators (FTA), under current law the amount of state and local income taxes owed by the individuals affected by this bill is based on the jurisdiction with the highest applicable income tax rate: either the jurisdiction where the income is earned, or the jurisdiction where the worker resides. In contrast, under H.R. 1293 state and local income taxes would be based solely on where a vessel worker resides. In that case, some individuals would pay lower income taxes than they would under current law, resulting in a net loss nationwide in state and local income tax revenues. Little data are available on the number of workers on vessels that operate on the navigable waters of more than one state and on where such workers reside. Consequently, CBO cannot precisely estimate those losses. Based on information from FTA, the U.S. Coast Guard's National Maritime Center, and the Bureau of Labor Statistics, however, CBO estimates that the revenues forgone by state and local governments would be small and would not exceed the threshold established in UMRA ($55 million in 2000, adjusted annually for inflation).

On August 11, 2000, CBO prepared a cost estimate for S. 893, a similar bill ordered reported by the Senate Committee on Commerce on June 15, 2000. The estimated impacts of the two bills on the federal government and on state and local government are the same.

The CBO contacts are Victoria Heid Hall (for the state and local impact), who can be reached at 225–3220, Deborah Reis (for federal costs), who can be reached at 226–2860, and Jean Wooster (for the private-sector impact), who can be reached at 226–2940. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

Constitutional Authority Statement

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8 clause 3 of the Constitution.

Section-by-Section Analysis and Discussion

Section 1. Short Title.

This section states that the act may be cited as the "Transportation Employee Fair Taxation Act of 1999."

Section 2. Equitable Treatment for Individuals Employed on Vessels with Respect to State and Local Income Taxes.

Section 2 amends 46 U.S.C. § 11108 to clarify the taxing status of interstate waterway workers. Specifically, the amendment provides that any person who performs assigned duties on a vessel in more than one State as a licensed pilot under 46 U.S.C. § 7101, or as a State-licensed or authorized pilot, shall not be subject to State income taxes in any State other than the individual's State of residence.

Section 2 extends this exemption from multiple State income taxation to persons who perform regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one State.

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