

Unions Oppose “Business Activity Tax Simplification Act of 2013”, H.R. 2992

February 26, 2014

Dear Representative:

The undersigned labor unions urge you to oppose the “Business Activity Tax Simplification Act of 2013” (BATSA), H.R. 2992. Our unions oppose this troubling proposal because it would impose an unfunded mandate and permanently shrink state and local government tax revenues. H.R. 2992 would limit states and localities from determining and keeping their own tax systems, and it encourages and rewards businesses and large profitable corporations for taking business decisions designed to aggressively avoid taxes.

The Congressional Budget Office’s (CBO) September 2011 review of an identical BATSA bill estimated it would reduce state and local government revenues by “about \$2 billion in the first full year after enactment and at least that amount in subsequent years.” CBO’s review also stated, “Subsequently, corporations likely would rearrange their business activities to take advantage of beneficial tax treatments that would result from the interaction of the new federal law and certain state taxing regimes. Those changes in business activities would likely result in additional revenue losses to the states” in excess of the \$2 billion direct loss. H.R. 2992 is worse than its predecessors in some prior Congresses. For example, H.R. 2992 now has an added provision limiting state authority to impose combined reporting, which previously would have partially counteracted effects of earlier versions of this bill.

H.R. 2992 is designed to reduce business taxes now being paid to states and localities. Under current law, these governments have the authority to and do tax businesses that have employees and/or property within their borders temporarily. H.R. 2992 would effectively prevent states and localities from taxing any business that did not have a permanent “brick-and-mortar” presence within the jurisdiction. Moreover, even permanently-present businesses could shelter substantial amounts of profits from state and local taxation due to loopholes that H.R. 2992 would open. H.R. 2992 also would vastly and unjustifiably expand the scope of an existing limit on state corporate income taxes, Public Law 86-272. While Public Law 86-272 currently restricts jurisdictions in imposing taxes on sellers of goods, H.R. 2992 would extend Public Law 86-272 to sellers of services (e.g. banking or media) and intangibles (e.g. franchisors). Furthermore, H.R. 2992 would extend P.L. 86-272 to many taxes to which it does not currently apply, such as the Washington Business and Occupation Tax, Texas Franchise Tax, Ohio Commercial Activities Tax, and New Hampshire Business Enterprise Tax.

CBO has determined that BATSA is an unfunded mandate - “by prohibiting state and local governments from taxing certain business activities,” BATSA “would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA).” This unfunded mandate and \$2 billion annual loss would worsen already severe state and local budget problems and potentially force cuts to education, health care, job creation and other vital public services.

Some corporations design their operations to avoid nexus in states where they earn profits and produce a self-serving paper trail of “nowhere” income – to try to prevent states from taxing their income. H.R. 2992 would protect these tax shelters, increase their quantity and dollar value, and reward these tax avoidance actions. Large profitable corporations will take advantage of these combined practices to shift the tax burden further onto state and local residents.

We urge every Congressman to oppose preempting state and local government taxing authority and preventing states and localities from creating viable and equitable tax systems.

Sincerely,

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

American Federation of State, County and Municipal Employees (AFSCME)

American Federation of Teachers (AFT)

Communications Workers of America (CWA)

Department for Professional Employees, AFL-CIO (DPE)

International Association of Fire Fighters (IAFF)

International Federation of Professional and Technical Engineers (IFPTE)

National Education Association (NEA)

Service Employees International Union (SEIU)

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)