

## ASSISTING STATES IN COLLECTING SALES AND USE TAXES ON CIGARETTES

JULY 11 (legislative day, JUNE 2), 1949.—Ordered to be printed

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

### REPORT

(To accompany H. R. 195)

The Committee on Finance, to whom was referred the bill (H. R. 195) to assist States in collecting sales and use taxes on cigarettes, having had the same under consideration, report it back to the Senate without amendment and unanimously recommend that the bill do pass.

#### GENERAL STATEMENT

The purpose of this bill is to assist the States in collecting State-imposed sales and use taxes on cigarettes.

To accomplish this objective, the bill provides that any person who sells or otherwise disposes of cigarettes for profit in interstate commerce (where shipment is made to other than a distributor licensed by or located in a State taxing the sale or use of cigarettes) must provide the tobacco tax administrator, in the State into which the shipment is made, necessary data upon which to base assessment and collection of the State cigarette tax. The specific information required by this bill is a memorandum, or a copy of the invoice, containing the name and address of the person to whom the shipment was made, the brand, and the quantity of the shipment.

The bill would place no additional burden upon anyone shipping cigarettes to licensed distributors. It would only require information to be supplied by establishments which ship cigarettes across a State border to consumers in States imposing a tax on cigarettes.

#### THE NEED FOR THIS LEGISLATION

The avoidance of State sales and uses taxes on cigarettes by interstate shipments to consumers in States taxing cigarettes is depriving the States of large amounts of sorely needed revenue. It is believed that this revenue loss to the States amounts to approximately \$40,000,000 annually. Moreover, it is the general opinion of State tax administrators that the percentage of loss, as well as the aggregate loss, is steadily mounting throughout the 40 States that now impose

cigarette taxes. This is particularly deplorable in view of the fact that many of the States earmark revenues from their cigarette taxes for such uses as payment of veterans' bonuses, public assistance, education, aid to the blind, and the improvement of penal and charitable institutions.

This legislation is urgently needed also because of the unfair competitive situation now existing in the case of dealers located within the taxing States. This is especially true in those States where the rate of tax is high. The very existence of established wholesale and retail outlets is threatened by this practice of making shipments from nontaxing jurisdictions. Moreover, in some States the license fees which are collected represent a considerable business investment. Price differentials consisting of a tax of several cents a pack render competition well-nigh impossible.

A further objection to this technique of avoiding State-imposed cigarette taxes is the fact that the United States mails are used to accomplish the avoidance. The shipments are for the most part by parcel post because the light weight and small bulk of the article, relative to its value, makes this an inexpensive method of interstate transportation. Thus, certain individuals and organizations are using the United States mails to circumvent State laws. Moreover, advertisements of organizations specializing in this business cite the availability and use of the United States mails as proof of legality of their operations. Accordingly, your committee believes that respect for the laws of the sovereign States will be furthered by the passage of this bill and that the public interest will be served by eliminating any inference that the Federal Government approves of the circumventing of State laws.

#### ENFORCEMENT

The enforcement of the provisions of this bill will present no unusual difficulty or expense. No department of the Federal Government is charged with any administrative duty with respect to the collection of the State tax. The bill merely provides for making readily available to the States, data needed by them for the effective enforcement of their cigarette tax laws.

#### ANALYSIS OF THE BILL

Section 1 is divided into six subsections lettered (a) through (f) which define the terms used in section 2.

Section 2 requires any person selling or disposing of cigarettes in interstate commerce, where shipment is made to other than a distributor licensed by or located in the taxing State, to forward to the State tobacco tax administrator thereof a memorandum, or copy of the invoice of the shipment, showing the name and address of the person to whom the shipment is made, the brand and quantity. Such memoranda or copies are to be forwarded not later than the tenth day of the month following the month of shipment.

Shipments to distributors licensed by or located in a State which taxes the sale or use of cigarettes are not subject to the provisions of this bill.

Section 3 provides that a violation of the provisions of the bill constitutes a misdemeanor punishable by fine of not more than \$1,000 or imprisonment for not more than 6 months, or both.

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JULY 21 (legislative day, JUNE 2), 1949.—Ordered to be printed

Mr. JOHNSON of Colorado, from the Committee on Finance, submitted the following

### MINORITY VIEWS

To accompany H. R. 1951

The undersigned opposes H. R. 195 as reported by the Senate Finance Committee because it requires the Federal Government to apply criminal sanctions to assist the States in collecting taxes and thereby establishes a precedent for an unwarranted interference with interstate commerce.

(1) The Department of Justice has advised the Congress with respect to this bill as follows:

Such a measure may establish a precedent for similar legislation with respect to other commodities which are now or in the future may be subject to State sales or use taxes. Further, the responsibility of its enforcement would devolve upon the Department of Justice with attendant increased expenditures the amount of which it is impossible to estimate at this time.

Although they do not themselves sell cigarettes, several large shippers have stated in the record that the bill—

tends to establish a principle which would be extremely detrimental to those millions of persons in our Nation who buy merchandise by mail. We oppose the principle established whereby Federal law would be used to assist States in collecting sales taxes on anything bought by mail. We believe that the whole principle of sales by mail is being jeopardized in this proposed measure.

Some supporters of the bill have urged that the bill be used as an opening wedge and state that they wish to apply the principle to other commodities since in their opinion it is a good principle.

In an editorial in the Tobacco Leaf, a trade publication, of May 7, 1949, appears the following observation:

Now the Miller-Tydings law, the fair-trade-practice laws, the unfair-trade-practice laws, and the Jenkins bill have but one thing in common; all of them are intended to make price cutting more difficult.

I favor encouraging competition and not eliminating it.

There was much testimony before committees of Congress to the effect that substantial revenue was being lost by the States because of interstate shipments of cigarettes. However, estimates of loss were nothing but the wildest guesses. The committee has not reacted favorably to suggestions for an impartial inquiry with the Postal Department which would be in a position to estimate the extent of interstate mail traffic. An official chart prepared by the United States Department of Agriculture shows that, instead of the States losing tax revenue, State tax revenue from cigarettes has been constantly on the increase, and that last year's collections by the States reached a new record high of \$375,000,000.

The bill would require cigarette shippers of one State to supply State tax authorities with invoices on all shipments into a taxing State. However, many of the States have laws which do not apply to interstate shipments.

The Illinois Supreme Court has recently held that the Illinois statute may not validly be applied to interstate shipments. Yet the bill would require a shipper from Missouri into Illinois to send his invoices to the Illinois Tax Commission. This would be a great burden on the shipper and would be of no benefit to the Illinois tax commissioner unless illegally he attempted to collect taxes which the Supreme Court of Illinois has held that he has no right to collect. The same is true of many other States which have sales-tax laws or laws unconstitutional on their face. It has also been persuasively argued that under the commerce clause of the United States Constitution no State cigarette tax of any type can lawfully be applied to interstate shipments.

The bill in my opinion is an interference with States' rights. It submits State laws to the Congress and asks approval of those State laws and Federal aid in their enforcement.

As I see it in this instance, the States have surrendered their sovereignty to the extent of shifting to the Federal Government the burden of enforcing their tax laws. Whether the States have proper tax structures is made a matter of concern to the Federal Government. The Federal Government, for instance, must concern itself with whether Louisiana is acting properly in having an 8-cents-a-pack cigarette tax. States should not only be permitted but required to deal with their own tax problems and not delegate that responsibility to the Federal Government.

Perhaps it is to be expected that State tax commissions, eager, anxious, and zealous in raising revenue, do not hesitate to impose onerous duties on the citizens of other States, but Congress ought not lend itself to any such design. The committee has not been supplied with a reasonable estimate of the revenue involved, but even if the amount lost to the States by interstate trade were substantial that is no reason why an improper burden should be imposed on the Federal Government. The Federal Government should not be required by law to construct trade barriers among the States. In my opinion, H. R. 195 does precisely that.

ED. C. JOHNSON,  
*United States Senator, Colorado.*