

Item 1



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JOINT COMMITTEE ON INTERNAL  
REVENUE TAXATION  
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SUMMARY OF RECOMMENDATIONS PRESENTED  
BY WITNESSES TESTIFYING BEFORE THE  
SENATE FINANCE COMMITTEE  
ON  
STATE TAXATION OF INCOME ORIGINATING  
FROM INTERSTATE ACTIVITIES

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PREPARED BY THE  
STAFF OF THE JOINT COMMITTEE ON  
INTERNAL REVENUE TAXATION



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**S. 2213, 86TH CONGRESS, 1ST SESSION<sup>1</sup>**

A BILL To limit the power of the States to impose income taxes on income derived exclusively from the conduct of interstate commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, after the date of the enactment of this Act, no State, or political subdivision thereof, shall have the power to impose a net income tax on income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person, if such person maintains no stock of goods, plant, office, warehouse, or other place of business within the State.

<sup>1</sup> Introduced by Hon. Prescott Bush, June 22, 1959.



## S. 2281, 86TH CONGRESS, 1ST SESSION<sup>2</sup>

A BILL To prescribe limitations on the power of the States to impose income taxes on business entities engaged in interstate commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) no State or political subdivision thereof shall impose an income tax on income derived from a trade or business by a person engaged in interstate commerce unless such person is carrying on such trade or business in such State.

(b) For purposes of subsection (a), a person is not carrying on a trade or business in a State solely by reason of one or more sales of tangible personal property in the State (whether title to such property passes in or outside of the State), if such person does not have or maintain an office, warehouse, or other place of business in the State, and does not have an officer, agent, or representative in the State who has an office or other place of business in the State. For purposes of the preceding sentence, the terms "agent" and "representative" do not include an independent broker or contractor who is engaged independently in soliciting orders in the State for more than one seller, and who holds himself out as such.

SEC. 2. No State or political subdivision thereof shall, on or after the date of the enactment of this Act, assess or collect any income tax, or make any levy with respect thereto, which was imposed by such State or political subdivision thereof on the income of any person before the date of the enactment of this Act, if the imposition of such tax, on or after the date of the enactment of this Act, is prohibited by the first section of this Act.

SEC. 3. For purposes of this Act, the term "income tax" means any tax imposed on, or measured by, net income.

<sup>2</sup> Introduced by Hon. Leverett Saltonstall, June 25, 1959.



## S.J. RES. 113, 86TH CONGRESS, 1ST SESSION<sup>3</sup>

JOINT RESOLUTION To bring about greater uniformity in State taxation of business income derived from interstate commerce; to establish a Commission on Taxation of Interstate Commerce; and for other purposes

Whereas the Constitution vests in the Congress the power to regulate interstate commerce; and

Whereas a free and unimpeded flow of commerce between the several States is vital to the economy and the general well-being of the Nation; and

Whereas the practice, presently engaged in by a number of the several States, of imposing a tax upon the income of businesses engaged in interstate commerce which operate or do business in such States has resulted in subjecting such businesses to a multiplicity of income tax laws which are independently imposed, lack uniformity in substance and application, and are often inconsistent in theory and administration; and

Whereas such practice has tended to impede, obstruct, restrain, and embarrass the free flow of commerce between the several States; and

Whereas in order to insure the free and uninterrupted flow of commerce between the several States, it is imperative that the several States be permitted to impose income taxes upon businesses engaged in interstate commerce only in accordance with reasonable and uniform standards: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

### TITLE I—TEMPORARY MINIMUM STANDARD

SEC. 101. No State or political subdivision thereof shall impose a tax upon the income of any business engaged in interstate commerce for any taxable year unless, during such year, such business has maintained a stock of goods, an office, warehouse, or other place of business in such State or has had an officer, agent, or representative who has maintained an office or other place of business in such State.

SEC. 102. The provisions of section 101 shall apply only with respect to taxable years which end after December 31, 1958, and which begin before January 1, 1961.

### TITLE II—COMMISSION ON STATE TAXATION OF INTERSTATE COMMERCE

#### DECLARATION OF PURPOSE

SEC. 201. It is the purpose of this title to provide for the formulation of a concrete proposal for an equitable solution to the problems experienced (1) by businesses (particularly small businesses) engaged

<sup>3</sup> Introduced by Hon. John Sparkman, June 29, 1959.

in interstate commerce as the result of their being subjected to a multiplicity of income taxes independently imposed by the various States in which they operate or do business, and (2) by the various States in which such businesses operate or do business in assuring that such businesses shall be required to assume a fair share of the tax burden imposed upon the residents of, and businesses located within, such State.

#### ESTABLISHMENT OF COMMISSION

SEC. 202. (a) In order to carry out the purposes of this title, there is hereby established a Commission to be known as the "Commission on State Taxation of Interstate Commerce" (hereinafter referred to as the "Commission") which shall be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall be individuals from private life who are familiar with the problems connected with State taxation of income of businesses (particularly small businesses) engaged in interstate commerce and who, by reason of education, training, or experience, are peculiarly qualified to carry out the duties of the Commission.

(b) The Commission shall elect a Chairman from among its members.

(c) Any vacancy occurring in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(d) Three members of the Commission shall constitute a quorum, except that the Commission may establish a lesser number as a quorum for the purpose of taking sworn testimony.

(e) Members of the Commission shall be compensated at the rate of \$20,000 per annum and shall be reimbursed for any travel, subsistence, or other necessary expenses incurred by them while engaged in the actual performance of the duties of the Commission.

(f) Service of an individual as a member of the Commission or employment of an individual by the Commission as an attorney or employee in any business or professional capacity, on a part-time or full-time basis, with or without compensation, shall not be considered as service or employment of such individual within the provisions of section 281, 283, 284, or 1914 of title 18 of the United States Code, or section 190 of the Revised Statutes (5 U.S.C. 99).

#### STAFF OF THE COMMISSION

SEC. 203. (a) The Commission shall have the authority to appoint, without regard to the civil-service laws and the Classification Act of 1949, as amended, such personnel as it deems necessary to enable it to discharge its duties under this title.

(b) The Commission may procure, without regard to the civil-service laws and the Classification Act of 1949, as amended, temporary and intermittent services to the same extent as is authorized for the departments by section 15 of the Act of August 2, 1946 (60 Stat. 810), but at rates not to exceed \$50 per diem for individuals.

## DUTIES OF THE COMMISSION

SEC. 204. (a) The Commission shall conduct a thorough and complete study and investigation of all matters pertaining to the taxation by States of the income of businesses (particularly small businesses) engaged in interstate commerce for the purpose of enabling the Commission to formulate and recommend to the Congress a concrete proposal for legislation providing for the establishment of uniform standards which the States will be required to observe in imposing income taxes upon businesses engaged in interstate commerce. Such standards shall be designed to permit any State to require businesses engaged in interstate commerce which operate or do business in such State to assume a fair share of the tax burden of such State, but shall, at the same time, be designed to protect such businesses (particularly small businesses) from being unduly hampered or embarrassed in their operations by reason of being subjected to a multiplicity of income tax laws which are independently imposed by the various States in which such businesses operate or do business and which not only are not uniform either in substance or application but which are often inconsistent in theory and administration.

## POWERS OF COMMISSION

SEC. 205. (a) In carrying out its duties under this title, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, take such testimony, and make such expenditures as the Commission or such committee may deem advisable. The Chairman of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof. The Commission shall have such power of subpoena and compulsion of attendance of witnesses and production of documents as are conferred upon the Securities and Exchange Commission by subsection (c) of section 18 of the Act of August 26, 1935, and the provisions of subsection (d) of such section shall be applicable to all persons summoned by subpoena or otherwise to attend and testify or produce such documents as are described therein before the Commission, except that no subpoena shall be issued except under the signature of the Chairman, and application to any court for aid in enforcing such subpoena may be made only by the Chairman. Subpoenas shall be served by any person designated by the Chairman.

(b) The Commission is authorized to secure from any department, agency, or independent instrumentality of the Government such information or assistance as the Commission may deem necessary or desirable to enable it to carry out its duties under this title.

## COOPERATION WITH STATES AND PRIVATE PERSONS

SEC. 206. In carrying out its duties, the Commission shall cooperate with States and with private persons or private organizations who are able to assist the Commission in carrying out the purposes of this title. The Commission is further authorized to utilize the uncompensated services of private individuals or of State or local employees in carrying out its duties.

EXPENSES OF THE COMMISSION

SEC. 207. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, such amount, not in excess of \$ \_\_\_\_\_, as may be necessary to carry out the provisions of this title.

REPORT BY AND EXPIRATION OF COMMISSION

SEC. 208. (a) The Commission shall report to the Congress the results of its study and investigation along with its proposals for legislation on or before February 1, 1961.

(b) On July 31, 1961, all authority under this title shall terminate and the Commission shall cease to exist.

## STATEMENTS OF WITNESSES

*Lincoln Arnold, American Mining Congress*

Enact legislation to prohibit State taxation when no permanent or established stock of goods, plant, office or warehouse is maintained within the taxing State.

*Roland M. Bixler, National Association of Manufacturers*

Recommends speedy enactment of minimum activity type of legislation but without limitation as to time of duration. This would enable appropriate committees of Congress to make further study of the problem.

Suggests that an independent broker or contractor should be excluded even when he represents only one concern.

*E. M. Bleser, the American Brass Co.*

The Bush bill would be strengthened by not limiting it to a tax on "net" income, but by extending it to all forms of income taxes on interstate commerce.

Insert the word "general" following the word "no" in line 9.

*J. Olney Brott, American Bankers Association*

A question has been raised as to whether a bank might be subject to State income taxation by reason of its acquiring loans or investments in which he had no office or other place of business. The following redrafts of the Bush bill and the Saltonstall bill, with omissions and additions indicated, provide that a business would not be subject to State income taxation solely by reason of making or acquiring loans or investments in the State:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, after the date of the enactment of this Act, no State, or political subdivision thereof, shall have the power to impose a [net income] tax on or measured by income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders, or the making or acquiring from an office outside the State of loans (whether secured or unsecured) or other investments, in the State by such person, or by an agent or employee of such person, if such person maintains no stock of goods, plant, office, warehouse, or other place of business within the State.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) no State or political subdivision thereof shall impose [an income] a tax on or measured by income derived from a trade or business by a person engaged in interstate commerce unless such person is carrying on such trade or business in such State.

(b) For purposes of subsection (a), a person is not carrying on a trade or business in a State solely by reason of one or more sales of tangible personal property in the State (whether title to such property passes in or outside of the State), or the making or acquiring of loans (whether secured or unsecured) or investment in such State from an office outside such State, if such person does not have or maintain an office, warehouse, or other place of business in the State, and does not have an officer, agent, or representative in the State who has an office or other place of business in the State. For purposes of the preceding sentence, the terms "agent" and "representative" do not include an independent broker or contractor who is engaged independently in soliciting orders in the State for more than one seller, and who holds himself out as such.

SEC. 2. No State or political subdivision thereof shall, on or after the date of the enactment of this Act, assess or collect any income tax, or make any levy with respect thereto, which was imposed by such State or political subdivision thereof on the income of any person before the date of the enactment of this Act, if the imposition of such tax, on or after the date of the enactment of this Act, is prohibited by the first section of this Act.

SEC. 3. For purposes of this Act, the term "income tax" means any tax imposed on, or measured by, net income.

*Ephriam H. Brown, the Ohio Brass Co.*

Urges the committee to further define the meaning of an office and the presence of the office being intrastate or interstate.

Although the State of Pennsylvania has ruled that business conducted by the Ohio Brass Co. in Pennsylvania is completely interstate, the Supreme Court decision would make it taxable.

*Hon. Prescott Bush, U.S. Senator*

Agrees to eliminate the phrase "or other place of business" from his bill.

*Rolla D. Campbell, National Coal Association*

A State shall not have the right to tax net income arising from interstate commerce activities within a State unless there are certain things within the State, such as an established place of business."

Approves of the Bush bill with certain changes:

(1) In line 5, after the word "impose", insert the words "or collect."

(2) In line 9, after the word "no", insert the word "established," so that a place of business in a State would not be a transitory place, but something of a permanent nature.

(3) In line 10, delete the words "or other place of business."

Does not like phrase in Saltonstall bill, "and does not have an officer, agent, or representative in the State who has an office or other place of business in the State."

The following formal draft of his proposal is suggested as a substitute:

"That, after the date of the enactment of this Act, no State, or political subdivision thereof, shall have the power to impose or collect a net income tax on income derived by a person exclusively from the conduct of interstate commerce, solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person, if such person maintains no permanent or established stock of goods, plant, office, or warehouse within the State."

*Charles F. Conly, National Association of Tax Administrators*

Resolution adopted by the National Association of Tax Administrators, Buffalo, N.Y., July 8-11, 1959:

*Resolved*, That the National Association of Tax Administrators urge the appropriate committee of the Congress of the United States to recommend deferral of congressional legislative attention in the matter of State taxation of net income of corporations engaged in interstate commerce until a study commission set up by the Congress and including appropriate State officials has had opportunity to examine the impact of the recent Supreme Court decisions with regard to State income taxation of interstate commerce.

*Fred L. Cox, revenue department, State of Georgia*

Favors the commission form of a study as proposed by the Sparkman bill, but feels the study should precede legislation.

Congress should promote a joint Federal and State compact for uniform allocation and apportionment of multistate income regardless of the subject of the tax.

The following formal draft was suggested as a substitute bill:

Re proposed substitute (2) for S. 2281 and similar measures.

Submitted by Ben F. Johnson, Jr., deputy assistant attorney general, State of Georgia.

To define the taxing powers of the States and political subdivisions thereof with respect to activities exclusively in interstate commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### ANNUAL EXCISE TAXES MEASURED BY NET INCOME

SECTION 1. No person shall be relieved from the payment of any annual excise, license, or occupation tax, or tax on the privilege of doing business, when same is measured by net income, imposed by any State or political subdivision thereof on the ground that he is engaged exclusively in interstate or foreign commerce.

#### TAXES ON OR MEASURED BY NET INCOME

SEC. 2. (a) GENERAL.—No State, or political subdivision thereof, shall impose on any foreign corporation or taxable entity not domesticated or qualified to do business therein, a tax on net income derived therein from exclusively interstate commerce, or a tax described in Section 1 measured by net income, unless, during the taxable year, such corporation or taxable entity, within the taxing jurisdiction—

(1) maintains a warehouse, or a stock of goods which has become a part of the common mass of property therein, or

(2) an office or other place of business, or

(3) owns, leases or operates other tangible property therein on a more or less permanent and not transitory basis (except rolling stock regularly transiting the taxable jurisdiction without stops for picking up or discharging persons or property), or

(4) has an officer, employee, agent or other representative who has an office within the taxing jurisdiction. The term "office" shall include the residence of any officer, employee, agent or representative if such residence is identified in the trade with the business of such corporation or other taxable entity.

#### STATES AND USE TAXES

SEC. 3. No person, firm, corporation or other taxable entity, regularly engaged in selling or renting tangible personal property or services and regularly delivering, shipping, or transmitting same, or causing same to be delivered, shipped or transmitted, in interstate commerce to a destination in a State, or political subdivision thereof, whose law imposes an obligation on out-of-State sellers to collect from purchasers and consumers within its taxing jurisdiction a tax on the use of tangible personal property or services therein, shall be relieved from compliance with such law on the ground that he is engaged in interstate or foreign commerce.

#### OTHER TAXES

SEC. 4. (a) EFFECT OF INCLUSION.—Sections 1, 2, and 3 hereof shall in nowise be construed as prohibiting, limiting, or restricting other methods of taxation of interstate commerce by States or political subdivisions thereof.

#### EFFECTIVE DATES

SEC. 5. Sections 1 and 2 shall be effective for all taxable years beginning on and after January 1, 1959. Section 3 shall be effective as to all shipments made on and after the thirtieth day after the effective date of this Act.

*John Dane, Jr., U.S. Chamber of Commerce*

Suggests that legislation be limited to the minimum activity type of bill (such as S. 2213, S. 2281, and S.J. Res. 113) which would pro-

hibit a State from taxing the income of a company doing solely interstate commerce within its borders where the company has no office, warehouse, or other place of business in the taxing State.

*Jacob McGavock Dickinson, Tennessee Department of Revenue*

Legislation should be deferred until after a study and report is made by an appropriate commission.

Consideration should be given to States which do not and may not impose direct income taxes because of constitutional limitations. Any standard which permits only the levying by the States of a direct income tax on income derived from interstate commerce necessarily discriminates against States which have constitutional prohibitions against income taxes.

*Mrs. Pauline Dunkel, Institute of Appliance Manufacturers*

Would amend the Saltonstall bill as follows:

Page 2, line 2, after the word "maintain" strike out the words "an office, warehouse or other place of business" and insert the words "a permanent office, warehouse or plant."

Approves the definition of doing business in the Saltonstall bill. This would have the effect of limiting a State's power to tax any out-of-State individual or company which solicits business only through nonresident salesmen, letters, wires, etc., or through manufacturer's agents who may reside in the taxing State but who handle several lines. With respect to that part of the definition relating to manufacturer's agents, it is not particularly important that they should represent more than one seller because perhaps at any one time they may represent only one seller. Their function would still be that of a factor.

Approves the study commission proposed in the Sparkman bill.

Establishment of a sales office where no inventory of goods is maintained is not a good identification of the volume of local business.

Page 2, line 2, after the word "maintain" strike out the remainder of the sentence and insert—

a permanent office, warehouse, or plant in the State, and does not have an officer, agent or representative in the State who has an office in the State.

*H. E. Dunkelberger, Jr., National Cannery Association*

Supports the temporary restriction imposed by the Sparkman bill and suggests that an appropriate committee study the problem, looking toward an equitable solution "within the next few years."

Permanent legislation should make clear that a canner who sells through independent brokers in a State is not "doing business" in that State.

Under permanent legislation a stock of goods temporarily stored in original packages in a public warehouse should not in itself subject a canner or his business to State income taxation.

Permanent legislation should apply to taxes imposed on, or measured by, income, regardless of the name chosen by the State or describe its tax. This is the approach of the Saltonstall bill.

Supports the limitation of the terms "agent" and "representative" in the Saltonstall bill. There, those terms do not include an independent broker or contractor who is engaged independently in soliciting orders in the State for more than one seller.

Sections 1 and 3 of the Saltonstall bill would be a very adequate basis for committee study.

*Robert W. Frase, American Book Publishers Council*

Would delete the term "other place of business" from all three bills because it might conceivably subject a book publisher to State taxation if the salesman or agent had his home in one of the States in which the salesman or agent solicited orders; also, temporary exhibition of samples in a hotel or elsewhere. The Saltonstall bill defines an independent contractor as one who solicits orders for more than one seller. Selling through an independent contractor should not subject a firm to State taxation regardless of whether the independent contractor solicits orders or only a single firm.

*John W. Geipe, Movers Conference of America*

Permanent legislation should provide relief for the moving industry in the form of a definition which spells out that pickup and delivery and traversal of a State in connection with exclusively interstate commerce does not constitute doing business in a State for State income tax purposes.

The definition of agent in the Sparkman bill and in the Saltonstall bill should be refined to exclude independent businessmen if they are autonomous within their States.

*John A. Gosnell, National Small Business Men's Association*

Suggests speedy enactment of a definition of what constitutes doing business for purposes of establishing the basis of authority to tax out-of-State business. This is the approach of the three bills before the committee. Such legislation would offer no impediment to any further study that may be required.

*H. R. Hudson, National Wooden Box Association*

The Saltonstall bill should contain a separability clause.

*Benjamin O. Johnson, National Fisheries Institute, Inc.; American Cotton Manufacturers Institute*

Supports the Sparkman bill, but suggests that terms appearing in section 101 be clearly defined.

Suggests that an amendment be adopted which would exclude from the taxing power of the State earnings derived from interstate commerce sales where the taxpayer maintains no business establishment within the State.

Mere maintenance of a stock or goods which would be irrespective of local activities forming a sufficient background to constitute business presence within a State could be troublesome. The term "representative" could also be troublesome if applied to situations where out-of-State concerns are represented by brokers and other persons acting in an independent contractual capacity.

*Hon. Kenneth B. Keating, U.S. Senator*

Urges enactment of the Bush bill which he cosponsors.

Supports proposals for a comprehensive study of all aspects of this problem.

Does not object to making the Bush bill apply retroactive.

*George A. Kelly II, Farm Equipment Institute*

(1) Suggests an immediate declaration by Congress in the nature of H. R. 7757, modified as follows:

That chapter 4 of title 4, is amended by inserting following section 106a new section:

"SEC. 106a. TAXATION OF INCOME DERIVED EXCLUSIVELY IN INTERSTATE COMMERCE.—After July 1, 1959, a person, as defined in section 1 of title 1, shall not be liable to taxation by a State or political subdivision thereof on income derived exclusively from interstate commerce which is premised solely upon sales solicitations within said State or political subdivision thereof."

(2) It should be made clear that maintenance of an office, warehouse, stock of goods, or other property within a State cannot be construed as a basis for taxation beyond the scope of its own operations.

(3) States should be encouraged to formulate cooperative agreements to develop uniform rates and treatment of all interstate business.

*Elton Kile, National Associated Businessmen, Inc.*

Urges legislation to prohibit States from taxing income of a business unless a business has an office, warehouse or other place where it actually does business in the taxing State.

*Joseph T. King, Associated Equipment Distributors*

Suggests that if the Saltonstall bill is enacted, a separability clause should be included so that sections 1 and 3 will continue in force if the retroactive provision of section 2 is found to be unconstitutional.

*Sidney S. Korzenik, apparel industry*

Section 101 of the Sparkman bill should not be limited to taxable years which end after December 31, 1958, but should apply to taxable years prior thereto.

*Phillip G. Kuehn, American Warehousemen's Association*

The phrase "stock of goods" should be deleted from the Bush bill and the Sparkman bill. The phrase does not appear in the Saltonstall bill.

*John V. Lawrence, American Trucking Association*

Congress should prohibit State taxation of interstate commerce.

Require, rather than urge, adoption of uniform allocation formulas by States.

*Robert E. Lenk, the Savogran Co.*

Congress should pass legislation stating that State taxation of businesses engaged exclusively in interstate commerce is a burden upon interstate commerce and illegal. If it is permitted, it should be made clear that orders solicited through advertising, direct mail, or salesmen would not be sufficient to justify a tax.

*Harold John Limpert III, Limpert Bros., Inc.*

A definition of doing business is not the issue; the issue is to reaffirm to the people that the United States within its boundaries exists as a free trade area, as a mass market to which its citizens have ready access.

*Paul F. Mickey, National Association of Motor Bus Operators*

Scope of the Sparkman bill should be broadened to include all types of State levies upon interstate business.

The objective of a uniform method of fairly apportioning a total tax burden among several States could be best and most expeditiously accomplished by a joint committee composed of members of the Finance Committee of the Senate and the Ways and Means Committee of the House

*D. F. Morris, the Mead Corp.*

Would amend the Bush bill as follows: The words—

solely by reason of the solicitation of orders in the State by such person, or by an agent or employee of such person, if

should be deleted from lines 6 through 8 and the word "unless" substituted. The word "no" in line 9 should be changed to "a". The words "or any other tax" should be added after the words "net income tax" in line 5.

The term "person" should be defined to include individuals, corporations, partnerships, and other business forms.

The terms "stock of goods," "office," and "place of business" as used in lines 9 and 10 should be defined to make clear that mere solicitation of sales by a resident agent who carries samples and has a desk in his home will be excluded.

*George F. Newman, Iowa Manufacturers Association*

Suggests that Congress should draw the line at the point where the Supreme Court left it in the *Stockham Valves* and *Northwestern Cement* cases. Congress should provide that a State may levy a nondiscriminatory and fairly apportioned tax upon profits arising out of sales within the taxing State only when the vendor maintains a sales office, warehouse or other place of business within the State; and that in the absence of that factor the vendor should not be subjected to State taxation.

*Robert H. North, International Association of Ice Cream Manufacturers*

Urges uniform legislation which would define doing business in the State so as to exempt companies from liability for taxes on interstate income when nothing more than order taking, delivery, and collection is involved.

This matter should be resolved now to remove any uncertainty rather than delay action pending an extensive study.

*Hon. Winston L. Prouty, U.S. Senator*

Enactment of the Saltonstall bill which he cosponsors would provide immediate relief for the most pressing problems and permit further study without jeopardizing the ability of small business to continue to engage in interstate commerce.

*James W. Roberts, Harold T. Halfpenny, National Association of Wholesalers*

Suggests enactment of stopgap legislation pending a further study of the matter. Suggests that commission-type study is not necessary; regular congressional committees can properly come to a reasonable solution.

Urges enactment of the minimum activities type legislation. The temporary standard set forth in the Sparkman bill is too broad. The wording in lines 8, 9, and 10, on page 2—

or has had an officer, agent or representative who has maintained an office or other place of business in such State

is misleading. There must be some definition of "agent or representative."

*Robert L. Roland, collector of revenue, State of Louisiana*

Urges that a study should be made before legislation is adopted.

Attention should be devoted to the effect of a regular and systematic solicitation of the market in the taxing State by out-of-State firms.

*J. T. Ryan, Southern Furniture Manufacturers Association*

Approves the retroactivity provision in the Saltonstall bill.

A number of manufacturers ship products directly to customers in their own trucks. Legislation should make clear that such a manufacturer would not be subject to State income tax merely because of the method of shipment.

Mere maintenance of a stock of goods in a rented warehouse to enable a manufacturer to make fast deliveries in the case of interstate sales should not permit the State where the goods are stored to impose an income tax on the manufacturer.

Participation in a trade show should not make a manufacturer subject to local taxation.

*Hon. Leverett Saltonstall, U.S. Senator*

Suggests that the Saltonstall bill be amended (1) by striking the comma at the end of line 3 on page 2 and inserting in lieu thereof a period, and (2) by striking all of lines 4 through 10 on page 2. As amended, the bill would permit State taxation of a business whose representative maintains an office, warehouse or other place of business in the name of and for his firm.

If a study commission is desirable, consideration should be given to S. 2026 which would establish a permanent advisory commission on governmental relations with special authority to deal with the problem of State taxation of interstate commerce. This would avoid separate commissions with duplicate authority.

*Charles H. Schreyer, Manufacturers Association of Connecticut, Inc.*

Supports the Bush bill and sections 1 and 3 of the Saltonstall bill. A separability clause should be added to the Saltonstall bill if section 2 is enacted. The time limitation in the Sparkman bill makes it undesirable.

Suggests that a uniform taxing formula is ultimately the only thing that will be fair to business to prevent multiple and overlapping taxation of business income.

*John M. Snow, National Association of Furniture Manufacturers*

Final legislation should clearly exempt the method of delivery as one of the qualifying aspects of State taxation of interstate commerce.

Participation in furniture markets and market showrooms should not subject the furniture company to the burden of additional State taxes.

*Hon. John Sparkman, U.S. Senator*

Finance Committee should study whether Congress should make a policy statement that all business firms should allocate and apportion 100 percent of their income for State taxation.

Suggested amendments to Senate Joint Resolution 113:

(1) An additional clause should be added to section 101 which would give a State power to tax a business which "is created, organized, incorporated, or otherwise domiciled in such State."

(2) The temporary minimum standard should be extended to taxable years beginning before January 1, 1962, rather than January 1, 1961, as provided in section 102. Since the Commissioner will not report until February 1961, it is expected that congressional action will not be completed until the middle of 1961.

(3) A new section 103 should be added to include the several States and the Commonwealth of Puerto Rico.

(4) Section 201 should be rewritten to read in part as follows:

"It is the purpose of Congress to provide for the formulation of a concrete proposal or proposals for the relief of interstate commerce and an equitable solution to the problems experienced."

The following language changes would also be made in section 201:

(a) Page 3, line 10, following the word "they" insert the words "are found by the various States to".

(b) Page 3, line 12, following the word "businesses" insert the words "are found to".

(5) Section 204 would be amended as follows:

Page 6, line 6, following the word "businesses" insert the words "are found to".

*Sewall Strout, New England Council for Economic Development*

Suggests that consideration be given to the following situations:

(1) Where the company sells service, not tangible personal property.

(2) Where a company has a sales representative residing in a State which imposes an income tax.

(3) Where the salesman acts as an independent contractor for only one concern.

(4) Whether maintenance of an office solely for purpose of sales solicitation where no plant or warehouse is located sufficient to justify imposition of the tax.

(5) Whether use of a residence for receiving telephone calls or mail constitutes an office.

(6) The term office should not include an office maintained merely for the solicitation of orders.

Submitted the following amendment to the Bush bill: Line 9, strike out the word "office" and insert before the word "warehouse" the word "or". Line 10, strike out the words "or other place of business within the State."

*Warren I. Titus, Jr., Winthrop, Stimson, Putman & Roberts*

Suggests the following redraft of section 1(b) of the Saltonstall bill:

DRAFT OF REVISED SUBPARAGRAPH (B) TO S. 2281

(b) For purposes of subsection (a), a person is not carrying on a trade or business in a State solely by reason of *making* [one or more] sales of tangible personal property in the State (whether title to such property passes in or outside of the State), if (i) such person does not have or maintain a [an office,

warehouse or other] place of business in the State, and (ii) does not have an officer, agent, or representative in the State who has a [an office or other] place of business in the State. For purposes of the preceding sentence, the terms "agent" and "representative" do not include an independent broker or contractor who is engaged independently in soliciting orders in the State [for more than one seller], and who holds himself out as such: and the term "place of business" does not include an office maintained solely for use of sales, promotional or clerical employees and their supervisors provided that (1) orders are neither accepted nor payments received at such office and (2) a stock of goods for filling such orders is not maintained in the State.

*R. B. Young, Acushnet Process Co.*

Legislation should confine the corporation's income tax liability to States in which it maintains an office, warehouse, or other place of business. Corporations should be permitted to send their salesmen throughout the United States without incurring tax liability as a result of the mere presence of a salesman in a State.

*Richard P. White, American Association of Nurserymen*

Suggests enactment of a bill which would prohibit a State from taxing income derived by a business whose only activity within the State is solicitation of orders.









