II

110TH CONGRESS
1ST SESSION

S. 914

To authorize the States (and subdivisions thereof), the District of Columbia, territories, and possessions of the United States to provide certain tax incentives to any person for economic development purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2007

Mr. VOINOVICH (for himself, Mr. MCCONNELL, Mr. ALEXANDER, Mr. BOND, Mr. BURR, and Mr. SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To authorize the States (and subdivisions thereof), the District of Columbia, territories, and possessions of the United States to provide certain tax incentives to any person for economic development purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Economic Development Act of 2007''.

SEC. 2. AUTHORIZATION.

Congress hereby exercises its power under Article I, Section 8, Clause 3 of the United States Constitution to regulate commerce among the several States by authorizing any State to provide to any person for economic development purposes tax incentives that otherwise would be the cause or source of discrimination against interstate commerce under the Commerce Clause of the United States Constitution, except as otherwise provided by law.

SEC. 3. LIMITATIONS.

(a) TAX INCENTIVES NOT SUBJECT TO PROTECTION UNDER THIS ACT.—Section 2 shall not apply to any State tax incentive which—

(1) has a requirement regarding State or country of incorporation, commercial domicile, or residence of an individual;

(2) requires the recipient of the tax incentive to acquire, lease, license, use, or provide services to property produced, manufactured, generated, assembled, developed, fabricated, or created in the State;

(3) is reduced or eliminated as a direct result of an increase in out-of-State activity by the recipient of the tax incentive;

(4) is reduced or eliminated as a result of an increase in out-of-State activity by a person other than the recipient of the tax incentive or as a result of such other person not having a taxable presence in the State;

(5) results in loss of a compensating tax system, because the tax on interstate commerce exceeds the tax on intrastate commerce;

(6) requires that other taxing jurisdictions offer reciprocal tax benefits; or

(7) requires that a tax incentive earned with respect to one tax can only be used to reduce a tax burden for or provide a tax benefit against any other tax that is not imposed on apportioned interstate activities.

(b) NO INFERENCE.—Nothing in this section shall be construed to create any inference with respect to the invalidity under the Commerce Clause of the United States Constitution of any tax incentive described in this section.

SEC. 4. DEFINITIONS; RULE OF CONSTRUCTION.

(a) DEFINITIONS.—For purposes of this Act—

(1) COMPENSATING TAX SYSTEM.—The term ‘‘compensating tax system’’ means complementary taxes imposed on both interstate and intrastate commerce where the tax on interstate commerce does not exceed the tax on intrastate commerce and the taxes are imposed on substantially equivalent events.

(2) ECONOMIC DEVELOPMENT PURPOSES.—The term ‘‘economic development purposes’’ means all legally permitted activities for attracting, retaining, or

expanding business activity, jobs, or investment in a State.

(3) IMPOSED ON APPORTIONED INTERSTATE ACTIVITIES.—The term ''imposed on apportioned interstate activities'' means, with respect to a tax, a tax levied on values that can arise out of interstate or foreign transactions or operations, including taxes on income, sales, use, gross receipts, net worth, and value added taxable bases. Such term shall not include taxes levied on property, transactions, or operations that are taxable only if they exist or occur exclusively inside the State, including any real property and severance taxes.

(4) PERSON.—The term ''person'' means any individual, corporation, partnership, limited liability company, association, or other organization that engages in any for profit or not-for-profit activities within a State.

(5) PROPERTY.—The term ''property'' means all forms of real, tangible, and intangible property.

(6) STATE.—The term ''State'' means each of the several States (or subdivision thereof), the District of Columbia, and any territory or possession of the United States.

(7) STATE TAX.—The term ‘‘State tax’’ means all taxes or fees imposed by a State.

(8) TAX BENEFIT.—The term ‘‘tax benefit’’ means all permanent and temporary tax savings, including applicable carrybacks and carryforwards, regardless of the taxable period in which the benefit is claimed, received, recognized, realized, or earned.

(9) TAX INCENTIVE.—The term ‘‘tax incentive’’ means any provision that reduces a State tax burden or provides a tax benefit as a result of any activity by a person that is enumerated or recognized by a State tax jurisdiction as a qualified activity for economic development purposes.

(b) RULE OF CONSTRUCTION.—It is the sense of Congress that the authorization provided in section 2 should be construed broadly and the limitations in section 3 should be construed narrowly.

SEC. 5. SEVERABILITY.

If any provision of this Act or the application of any provision of this Act to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of this Act to any person or circumstance shall not be affected by the holding.

SEC. 6. EFFECTIVE DATE.

This Act shall apply to any State tax incentive enacted before, on, or after the date of the enactment of this Act.

○