

111TH CONGRESS
1ST SESSION

H. R. 4175

To protect consumers from discriminatory State taxes on motor vehicle rentals.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 2, 2009

Mr. BOUCHER (for himself, Mr. AKIN, Mr. CARNAHAN, Mr. GRAVES, Mr. BOREN, Mr. SULLIVAN, Mr. ISRAEL, Mr. WILSON of South Carolina, and Mr. CARTER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect consumers from discriminatory State taxes on motor vehicle rentals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “End Discriminatory
5 State Taxes for Automobile Renters Act of 2009”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to prohibit prospectively,
8 and provide a remedy for tax discrimination by a State
9 or Locality against the rental of motor vehicles.

1 **SEC. 3. DEFINITIONS.**

2 (a) ASSESSMENT AND ASSESSMENT JURISDIC-
 3 TION.—The term “assessment” means valuation for a
 4 property tax levied by a taxing district. The term “assess-
 5 ment jurisdiction” means a geographical area in a State
 6 or Locality used in determining the assessed value of prop-
 7 erty for ad valorem taxation.

8 (b) COMMERCIAL AND INDUSTRIAL PROPERTY.—The
 9 term “commercial and industrial property” means prop-
 10 erty, other than motor vehicle rental property and land
 11 used primarily for agricultural purposes or timber grow-
 12 ing, devoted to a commercial or industrial use, and subject
 13 to a property tax levy.

14 (c) DISCRIMINATORY TAX.—The term “discrimina-
 15 tory tax” includes the following:

16 (1) A tax discriminates against the rental of
 17 motor vehicles if a State or Locality imposes the tax
 18 on, or with respect to—

19 (A) the rental of motor vehicles but not on,
 20 or with respect to, the rental of more than 51
 21 percent of the rentals of other tangible personal
 22 property rented within the State or Locality, or

23 (B) the rental of motor vehicles at a tax
 24 rate that exceeds the tax rate generally applica-
 25 ble to at least 51 percent of the rentals of other

1 tangible personal property within the same
2 State or Locality.

3 (2) A tax discriminates against the business of
4 renting motor vehicles if a State or Locality imposes
5 the tax on, or with respect to—

6 (A) the business of renting motor vehicles
7 but not on, or with respect to, the business of
8 more than 51 percent of the other commercial
9 and industrial taxpayers within the State or Lo-
10 cality, on the same tax base as the State or Lo-
11 cality employs with respect to the business of
12 renting motor vehicles, or

13 (B) the business of renting motor vehicles,
14 at a tax rate that exceeds the tax rate generally
15 applicable to the business of more than 51 per-
16 cent of the other commercial and industrial tax-
17 payers within the State or Local jurisdiction.

18 (3) A tax discriminates against motor vehicle
19 rental property if a State or Locality—

20 (A) assesses motor vehicle rental property
21 at a value that has a higher ratio to the true
22 market value of the property than the ratio that
23 the assessed value of other commercial and in-
24 dustrial property of the same type in the same
25 assessment jurisdiction has to the true market

1 value of the other commercial and industrial
2 property,

3 (B) levies or collects a tax on an assess-
4 ment that may not be made under subpara-
5 graph (A), or

6 (C) levies or collects an ad valorem prop-
7 erty tax on motor vehicle rental property at a
8 tax rate that exceeds the tax rate applicable to
9 commercial and industrial property in the same
10 assessment jurisdiction.

11 (d) LOCAL OR LOCALITY.—The terms “Local” and
12 “Locality” mean a political subdivision of any State, or
13 any governmental entity or person acting on behalf of such
14 Locality, and with the authority to impose, levy or collect
15 taxes.

16 (e) MOTOR VEHICLE.—The term “motor vehicle” has
17 the same meaning as in section 13102(16) of title 49 of
18 the United States Code.

19 (f) OTHER COMMERCIAL AND INDUSTRIAL TAX-
20 PAYERS.—The term “other commercial and industrial tax-
21 payers” means persons or entities who are engaged in
22 trade or business within a State or Locality and who are
23 subject to some form of taxation by a State or Locality.

24 (g) RENTAL OF MOTOR VEHICLES.—The term “rent-
25 al of motor vehicles” means the rental of a motor vehicle

1 that is given by the owner of the motor vehicle for exclu-
2 sive use to another for not longer than 180 days for valu-
3 able consideration and only includes the rental of motor
4 vehicles with a pre-arranged driver or motor vehicles with-
5 out a driver, but shall not include taxi cab service as de-
6 fined by section 13102(20) of title 49 of the United States
7 Code.

8 (h) STATE.—The term “State” means any of the sev-
9 eral States, the District of Columbia or any territory or
10 possession of the United States, or any governmental enti-
11 ty or person acting on behalf of such State, and with the
12 authority to impose, levy or collect taxes.

13 (i) TAX.—Except as otherwise specifically provided
14 below, the term “tax” means any type of charge required
15 by statute, regulation or agreement to be paid or furnished
16 to a State or Locality, regardless of whether such charge
17 is denominated as a tax, a fee, or any other type of exac-
18 tion. The term “tax” does not include any charge imposed
19 by a State or Locality with respect to a concession agree-
20 ment at a federally assisted airport (provided the agree-
21 ment does not violate the revenue diversion provisions of
22 section 40116(d) of title 49 of the United States Code,
23 or the registration, licensing, or inspection of motor vehi-
24 cles, if the charge is imposed generally with respect to
25 motor vehicles, without regard to whether such vehicles

1 are used in the business of renting motor vehicles within
 2 the State or Locality.

3 (j) TAX BASE.—The term “tax base” means the re-
 4 ceipts, income, value, weight, or other measure of a tax
 5 to which the rate is applied. The “tax base” of a tax im-
 6 posed on a per unit basis is the unit.

7 (k) TAX RATE GENERALLY APPLICABLE TO OTHER
 8 COMMERCIAL AND INDUSTRIAL TAXPAYERS.—The term
 9 “tax rate generally applicable to other commercial and in-
 10 dustrial taxpayers” means the lower of—

11 (1) the tax rate imposed on the greatest num-
 12 ber of other commercial and industrial taxpayers or
 13 their customers, or

14 (2) the unweighted average rate at which the
 15 tax is imposed.

16 **SEC. 4. PROHIBITED ACTS.**

17 No State or Locality may levy or collect a discrimina-
 18 tory tax on the rental of motor vehicles, the business of
 19 renting motor vehicles, or motor vehicle rental property.

20 **SEC. 5. REMEDIES.**

21 (a) JURISDICTION.—Notwithstanding any provision
 22 of section 1341 of title 28, United States Code, or the
 23 constitution or laws of any State, the district courts of
 24 the United States shall have jurisdiction, without regard
 25 to amount in controversy or citizenship of the parties, to

1 grant such mandatory or prohibitive injunctive relief, in-
2 terim equitable relief, and declaratory judgments as may
3 be necessary to prevent, restrain or terminate any acts in
4 violation of this Act, except that such jurisdiction shall
5 not be exclusive of the jurisdiction which any Federal or
6 State court may have in the absence of this section.

7 (b) BURDEN OF PROOF.—The burden of proof in any
8 proceeding brought under this Act shall be upon the party
9 seeking relief and shall be by a preponderance of the evi-
10 dence on all issues of fact.

11 (c) RELIEF.—In granting relief against a tax which
12 is imposed in violation of section 4, the court shall strike
13 the tax in its entirety, unless the court finds the tax—

14 (1) is the equivalent of a specific tax imposed
15 on at least 51 percent of other commercial and in-
16 dustrial taxpayers, and

17 (2) is not discriminatory in effect. If such tax
18 is discriminatory in effect with respect to tax rate or
19 amount only, the court shall strike only the discrimi-
20 natory or excessive portion of the tax as determined
21 by the court. Notwithstanding subsection (b) of this
22 section, the burden of proof on the issue of whether
23 a tax is the equivalent of a tax imposed on other
24 commercial and industrial taxpayers shall be on the
25 State or Locality that imposes the tax.

1 (d) CAUSE OF ACTION.—

2 (1) An action to enforce the provisions of this
3 Act may be brought only by a person who—

4 (A) rents motor vehicles to another person,

5 (B) is engaged in the business of renting
6 motor vehicles,

7 (C) owns motor vehicle rental property, or

8 (D) rents a motor vehicle from another
9 person.

10 (2) A person who rents a motor vehicle from
11 another person and is seeking relief under this Act
12 may only bring a cause of action against the State
13 or Locality imposing the discriminatory tax as de-
14 fined by this Act.

15 **SEC. 6. LIMITATIONS.**

16 This Act shall not be construed to constitute the con-
17 sent of Congress to State or Local taxation that would
18 be prohibited in the absence of this Act.

19 **SEC. 7. EFFECTIVE DATE.**

20 (a) EFFECTIVE DATE.—The provisions of this Act
21 shall become effective on December 2, 2009.

22 (b) EXCLUSION.—Discriminatory taxes as defined by
23 this Act are not prohibited under this Act if—

24 (1) State or Local legislative authorization for
25 a discriminatory tax that is in effect as of December

1 2, 2009, does not lapse, the tax rate does not in-
2 crease and the tax base for such tax does not
3 change; or

4 (2) a State enacts legislation by December 2,
5 2009;

6 (A) that specifically authorizes a Locality
7 to impose a discriminatory tax;

8 (B) the Locality imposes the authorized
9 tax within five years from the date the State
10 enacted the authorization for the Local tax; and

11 (C) the tax rate imposed by the Locality is
12 not increased and the tax base for such tax
13 does not change.

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