

114TH CONGRESS
1ST SESSION

S. 1164

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

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2015

Mr. KIRK (for himself, Mr. BLUMENTHAL, Mr. BLUNT, Mr. MORAN, and Mr. ROBERTS) introduced the following bill; which was read twice and referred to the Committee on Finance

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 2015”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Congress has prohibited economic protec-
9 tionism by State and local governments that unduly
10 burden or discriminate against interstate commerce

1 and transportation under the authority granted by
 2 the Commerce Clause of the Constitution by enact-
 3 ing laws such as the Railroad Revitalization and
 4 Regulatory Reform Act of 1976, the Motor Carrier
 5 Act of 1980, the Bus Regulatory Reform Act of
 6 1982, and the Airport and Airway Improvement Act
 7 of 1982.

8 (2) In *Gibbons v. Ogden*, (22 U.S. 1 (1824)),
 9 a case challenging the exclusive right of navigating
 10 the waters of New York granted by that State, the
 11 Supreme Court affirmed that it is the sole right of
 12 Congress to regulate commerce between the States
 13 under what Chief Justice John Marshall recognized
 14 as the dormant Commerce Clause.

15 (3) Since 1990, over 100 discriminatory taxes
 16 have been imposed by State and local governments
 17 on motor vehicle rentals in violation of the dormant
 18 Commerce Clause.

19 (b) PURPOSE.—The purpose of this Act is to prohibit
 20 prospectively, and provide a remedy for, tax discrimination
 21 by a State or Locality against the rental of motor vehicles.

22 **SEC. 3. PROHIBITION ON DISCRIMINATION.**

23 (a) IN GENERAL.—Chapter 805 of title 49, United
 24 States Code, is amended by adding at the end the fol-
 25 lowing new section:

1 **“SEC. 80505. TAX DISCRIMINATION AGAINST MOTOR VEHI-**
 2 **CLE RENTAL PROPERTY.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) ASSESSMENT AND ASSESSMENT JURISDIC-
 5 TION.—

6 “(A) ASSESSMENT.—The term ‘assess-
 7 ment’ has the meaning given that term in sec-
 8 tion 11501(a)(1).

9 “(B) ASSESSMENT JURISDICTION.—The
 10 term ‘assessment jurisdiction’ has the meaning
 11 given that term in section 11501(a)(2).

12 “(2) COMMERCIAL AND INDUSTRIAL PROP-
 13 ERTY.—The term ‘commercial and industrial prop-
 14 erty’ means property, other than motor vehicle rent-
 15 al property and land used primarily for agricultural
 16 purposes or timber growing, which is devoted to a
 17 commercial or industrial use.

18 “(3) COMMERCIAL AND INDUSTRIAL TAX-
 19 PAYERS.—The term ‘other commercial and indus-
 20 trial taxpayers’ means persons or entities who are
 21 engaged in a trade or business, other than the trade
 22 or business of renting motor vehicles, within a State
 23 or Locality.

24 “(4) COVERED PERSON.—The term ‘covered
 25 person’ means a person who—

1 “(A) rents motor vehicles to another per-
2 son;

3 “(B) is engaged in the business of renting
4 motor vehicles;

5 “(C) owns motor vehicle rental property;

6 “(D) rents a motor vehicle from another
7 person; or

8 “(E) purchases motor vehicle rental prop-
9 erty.

10 “(5) DISCRIMINATORY TAX.—The term ‘dis-
11 criminatory tax’ includes the following:

12 “(A) A tax discriminates against the rental
13 of motor vehicles if a State or Locality imposes
14 the tax on, or with respect to—

15 “(i) the rental of motor vehicles but
16 the tax is not a generally applicable tax on,
17 or with respect to, more than 51 percent of
18 the rentals of other tangible personal prop-
19 erty within the State or Locality; or

20 “(ii) the rental of motor vehicles at a
21 tax rate that exceeds the generally applica-
22 ble tax rate on at least 51 percent of the
23 rentals of other tangible personal property
24 within the same State or Locality.

1 “(B) A tax discriminates against the busi-
2 ness of renting motor vehicles if a State or Lo-
3 cality imposes the tax on, or with respect to—

4 “(i) the business of renting motor ve-
5 hicles but the tax is not a generally appli-
6 cable tax on, or with respect to, more than
7 51 percent of the businesses of other com-
8 mercial and industrial taxpayers within the
9 State or Locality, on the same tax base as
10 the State or Locality employs with respect
11 to the business of renting motor vehicles;
12 or

13 “(ii) the business of renting motor ve-
14 hicles at a tax rate that exceeds the gen-
15 erally applicable tax rate on at least 51
16 percent of the business of commercial and
17 industrial taxpayers within the State or
18 Local jurisdiction.

19 “(C) A tax discriminates against motor ve-
20 hicle rental property if a State or Locality—

21 “(i) assesses motor vehicle rental
22 property at a value that has a higher ratio
23 to the true market value of the property
24 than the ratio of the assessed value to the
25 true market value applicable to commercial

1 and industrial property in the same assess-
2 ment jurisdiction;

3 “(ii) levies or collects a tax on an as-
4 sessment that may not be made under
5 clause (i); or

6 “(iii) levies or collects an ad valorem
7 property tax on motor vehicle rental prop-
8 erty at a generally applicable tax rate that
9 exceeds the tax rate applicable to commer-
10 cial and industrial property in the same as-
11 sessment jurisdiction.

12 “(6) LOCAL OR LOCALITY.—The terms ‘Local’
13 and ‘Locality’ mean a political subdivision of any
14 State, or any governmental entity or person acting
15 on behalf of such Locality, with the authority to im-
16 pose, levy, or collect taxes.

17 “(7) MOTOR VEHICLE.—The term ‘motor vehi-
18 cle’ has the meaning given that term in section
19 13102(16).

20 “(8) MOTOR VEHICLE RENTAL PROPERTY.—
21 The term ‘motor vehicle rental property’ means
22 property owned or used by a person engaged in the
23 business of renting motor vehicles and used to pro-
24 vide rentals of motor vehicles.

1 “(9) RENTAL OF MOTOR VEHICLES.—The term
 2 ‘rental of motor vehicles’ means the rental of a
 3 motor vehicle that is given by the owner of the
 4 motor vehicle for exclusive use to another for not
 5 longer than 180 days for valuable consideration and
 6 only includes the rental of motor vehicles with a pre-
 7 arranged driver or motor vehicles without a driver,
 8 but shall not include taxi cab service as defined by
 9 section 13102(22).

10 “(10) RENTALS OF OTHER TANGIBLE PER-
 11 SONAL PROPERTY.—The term ‘rentals of other tan-
 12 gible personal property’ means any rental of tangible
 13 personal property, other than the rental of motor ve-
 14 hicles.

15 “(11) STATE.—The term ‘State’ means any of
 16 the several States, the District of Columbia, or any
 17 territory or possession of the United States, or any
 18 governmental entity or person acting on behalf of
 19 such State, and with the authority to impose, levy,
 20 or collect taxes.

21 “(12) TAX.—Except as otherwise specifically
 22 provided below, the term ‘tax’ means any type of
 23 charge required by statute, regulation, or agreement
 24 to be paid or furnished to a State or Locality, re-
 25 gardless of whether such charge is denominated as

1 a tax, a fee, or any other type of exaction. The term
 2 ‘tax’ does not include any charge imposed by a State
 3 or Locality with respect to a concession agreement
 4 at a Federally assisted airport (provided the agree-
 5 ment does not violate the revenue diversion provi-
 6 sions of section 47107(b), or the registration, licens-
 7 ing, or inspection of motor vehicles), if the charge is
 8 imposed generally with respect to motor vehicles,
 9 without regard to whether such vehicles are used in
 10 the business of renting motor vehicles within the
 11 State or Locality.

12 “(13) TAX BASE.—The term ‘tax base’ means
 13 the receipts, income, value, weight, or other measure
 14 of a tax to which the rate is applied. The ‘tax base’
 15 of a tax imposed on a per unit basis is the unit.

16 “(14) GENERALLY APPLICABLE TAX.—The
 17 term ‘generally applicable tax’ may be determined
 18 by—

19 “(A) the gross receipts of rentals of other
 20 tangible personal property or other commercial
 21 and industrial taxpayers within the State or Lo-
 22 cality to which the tax is imposed by the State
 23 or Locality compared to the gross receipts of
 24 rentals of other tangible personal property or

1 other commercial and industrial taxpayers with-
 2 in the State or Locality; or

3 “(B) another method used to determine
 4 whether more than 51 percent of rentals of
 5 other tangible personal property or other com-
 6 mercial and industrial taxpayers is subject to
 7 the tax.

8 “(b) UNREASONABLE BURDENS AND DISCRIMINA-
 9 TION AGAINST INTERSTATE COMMERCE.—

10 “(1) IN GENERAL.—The following acts unrea-
 11 sonably burden and discriminate against interstate
 12 commerce, and a State or Locality may not do any
 13 of them:

14 “(A) Levy or collect a discriminatory tax
 15 on the rental of motor vehicles.

16 “(B) Levy or collect a discriminatory tax
 17 on the business of renting motor vehicles.

18 “(C) Levy or collect a discriminatory tax
 19 on motor vehicle rental property.

20 “(2) EXCLUSION.—Discriminatory taxes are
 21 not prohibited under this section if the tax is im-
 22 posed as of the date of the enactment of this section,
 23 does not lapse, the tax rate does not increase, and
 24 the tax base for such tax does not change.

25 “(c) REMEDIES.—

1 “(1) IN GENERAL.—Notwithstanding section
 2 1341 of title 28, a covered person aggrieved of a vio-
 3 lation of subsection (b) may bring a civil action in
 4 a district court of the United States seeking dam-
 5 ages, injunctive relief, other legal or equitable relief,
 6 or declaratory relief.

7 “(2) RELIEF.—In granting relief against a tax
 8 levied or collected in violation of subsection (b), if
 9 the tax is a discriminatory tax the court shall strike
 10 only the discriminatory or excessive portion of the
 11 tax.

12 “(3) BURDEN OF PROOF.—

13 “(A) IN GENERAL.—Except as provided in
 14 subparagraph (B), a covered person shall have
 15 the burden of proving, by a preponderance of
 16 the evidence, that the levying or collecting of a
 17 tax violates subsection (b).

18 “(B) EQUIVALENT OF OTHER TAXES.—If
 19 the court determines that the levying or col-
 20 lecting of a tax violates subsection (b), the
 21 State or Locality shall have the burden of prov-
 22 ing, by a preponderance of the evidence, that
 23 the tax is the equivalent of a tax imposed on
 24 other commercial and industrial taxpayers
 25 under paragraph (2).

1 “(4) OTHER REMEDIES.—Nothing in this sub-
2 section shall limit any cause of action or remedy
3 available under any other provision of Federal or
4 State law.

5 “(d) LIMITATIONS.—This section shall not be con-
6 strued to constitute the consent of Congress to State or
7 Local taxation that would be prohibited in the absence of
8 this section.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
10 for chapter 805 of title 49, United States Code, is amend-
11 ed by inserting after the item relating to section 80504
12 the following:

“80505. Rules relating to State taxation with respect to automobile rentals.”.

