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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.

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 “Economic Development
5 Act of 2007”.

6 **SEC. 2. AUTHORIZATION.**

7 Congress hereby exercises its power under Article I,
8 Section 8, Clause 3 of the United States Constitution to

1 regulate commerce among the several States by author-
2 izing any State to provide to any person for economic de-
3 velopment purposes tax incentives that otherwise would be
4 the cause or source of discrimination against interstate
5 commerce under the Commerce Clause of the United
6 States Constitution, except as otherwise provided by law.

7 **SEC. 3. LIMITATIONS.**

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

11 (1) has a requirement regarding State or coun-
12 try of incorporation, commercial domicile, or resi-
13 dence of an individual;

14 (2) requires the recipient of the tax incentive to
15 acquire, lease, license, use, or provide services to
16 property produced, manufactured, generated, assem-
17 bled, developed, fabricated, or created in the State;

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

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

1 (5) results in loss of a compensating tax sys-
2 tem, because the tax on interstate commerce exceeds
3 the tax on intrastate commerce;

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

6 (7) requires that a tax incentive earned with re-
7 spect to one tax can only be used to reduce a tax
8 burden for or provide a tax benefit against any other
9 tax that is not imposed on apportioned interstate ac-
10 tivities.

11 (b) NO INFERENCE.—Nothing in this section shall be
12 construed to create any inference with respect to the inva-
13 lidity under the Commerce Clause of the United States
14 Constitution of any tax incentive described in this section.

15 **SEC. 4. DEFINITIONS; RULE OF CONSTRUCTION.**

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

17 (1) COMPENSATING TAX SYSTEM.—The term
18 “compensating tax system” means complementary
19 taxes imposed on both interstate and intrastate com-
20 merce where the tax on interstate commerce does
21 not exceed the tax on intrastate commerce and the
22 taxes are imposed on substantially equivalent events.

23 (2) ECONOMIC DEVELOPMENT PURPOSES.—The
24 term “economic development purposes” means all le-
25 gally permitted activities for attracting, retaining, or

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

3 (3) IMPOSED ON APPORTIONED INTERSTATE
4 ACTIVITIES.—The term “imposed on apportioned
5 interstate activities” means, with respect to a tax, a
6 tax levied on values that can arise out of interstate
7 or foreign transactions or operations, including taxes
8 on income, sales, use, gross receipts, net worth, and
9 value added taxable bases. Such term shall not in-
10 clude taxes levied on property, transactions, or oper-
11 ations that are taxable only if they exist or occur ex-
12 clusively inside the State, including any real prop-
13 erty and severance taxes.

14 (4) PERSON.—The term “person” means any
15 individual, corporation, partnership, limited liability
16 company, association, or other organization that en-
17 gages in any for profit or not-for-profit activities
18 within a State.

19 (5) PROPERTY.—The term “property” means
20 all forms of real, tangible, and intangible property.

21 (6) STATE.—The term “State” means each of
22 the several States (or subdivision thereof), the Dis-
23 trict of Columbia, and any territory or possession of
24 the United States.

1 (7) STATE TAX.—The term “State tax” means
2 all taxes or fees imposed by a State.

3 (8) TAX BENEFIT.—The term “tax benefit”
4 means all permanent and temporary tax savings, in-
5 cluding applicable carrybacks and carryforwards, re-
6 gardless of the taxable period in which the benefit
7 is claimed, received, recognized, realized, or earned.

8 (9) TAX INCENTIVE.—The term “tax incentive”
9 means any provision that reduces a State tax burden
10 or provides a tax benefit as a result of any activity
11 by a person that is enumerated or recognized by a
12 State tax jurisdiction as a qualified activity for eco-
13 nomic development purposes.

14 (b) RULE OF CONSTRUCTION.—It is the sense of
15 Congress that the authorization provided in section 2
16 should be construed broadly and the limitations in section
17 3 should be construed narrowly.

18 **SEC. 5. SEVERABILITY.**

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

1 **SEC. 6. EFFECTIVE DATE.**

2 This Act shall apply to any State tax incentive en-
3 acted before, on, or after the date of the enactment of
4 this Act.

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