

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 677

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1
2 RELATING TO THE TAXPAYERS' BILL OF RIGHTS; PROVIDING LEGISLATIVE INTENT;
3 AMENDING CHAPTER 40, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW
4 SECTION 63-4015, IDAHO CODE, TO PROHIBIT THE ENFORCEMENT OF CERTAIN
5 TAXATION OF IDAHO BUSINESSES BY OUT-OF-STATE TAXING ENTITIES; AND
6 DECLARING AN EMERGENCY.

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. LEGISLATIVE INTENT. (1) It is the intent of the Legislature
9 to protect the citizens of Idaho from the overreach of out-of-state taxing
10 entities. The Oregon Legislative Assembly enacted a corporate activity tax,
11 effective January 1, 2020, and the Oregon Department of Revenue has taken
12 the position that the tax can be imposed on an Idaho business selling an item
13 within the boundaries of the State of Idaho if the purchaser is an Oregon
14 resident physically present in Idaho during the sale. Several other states
15 have passed or contemplated passing similar taxes on businesses not located
16 within their borders.

17 (2) Clause 3, Section 8, Article I of the United States Constitution
18 provides that Congress shall have the power to "regulate commerce with for-
19 eign nations, and among the several states, and with the Indian tribes,"
20 which is commonly known as the Commerce Clause. The Commerce Clause acts to
21 limit state interference with the national economy and interstate commerce.

22 (3) The United States Supreme Court has held that a state attempting
23 to impose a sales tax on an out-of-state seller must meet four requirements;
24 namely, that the tax: 1) is applied to an activity with a substantial nexus
25 with the taxing state; 2) is fairly apportioned; 3) does not discriminate
26 against interstate commerce; and 4) is fairly related to the services pro-
27 vided by the taxing state. In the case of *south dakota v. wayfair*, 138 S.
28 Ct. (2018), the U.S. Supreme Court held that a seller's physical presence
29 in the taxing state is not essential to establishing a substantial nexus be-
30 tween an out-of-state seller and a state attempting to impose a sales tax on
31 such a seller. In upholding the South Dakota law, the Court cautioned that
32 this ruling applied only as to the substantial nexus requirement, which was
33 the only issue before the Court, and left open the question of whether one of
34 the other Commerce Clause requirements might invalidate the law of a state
35 attempting to tax an out-of-state seller.

36 (4) The Oregon Department of Revenue's extension of its corporate ac-
37 tivity tax upon a seller in Idaho based on a sale that took place in Idaho
38 to an Oregon resident in Idaho is an unwarranted and unsupported extension
39 of the holding in *south dakota v. wayfair*, violates the requirements of the
40 Commerce Clause and the Due Process Clause of the United States Constitu-
41 tion, and is not acceptable to the sovereign State of Idaho.
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1 SECTION 2. That Chapter 40, Title 63, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 63-4015, Idaho Code, and to read as follows:

4 63-4015. UNCONSTITUTIONAL TAXATION BY OUT-OF-STATE TAXING ENTI-
5 TIES. (1) No out-of-state taxing entity may tax an Idaho business for
6 conducting sales or other business taking place within the state of Idaho
7 between an Idaho business and a nonresident who is physically present within
8 the state of Idaho while engaging in the business transaction. Notwith-
9 standing any provision of chapter 13, title 10, Idaho Code, to the contrary,
10 any attempt to tax an Idaho business in contravention of this section vi-
11 olates the United States constitution, is null and void, and shall not be
12 enforced in the state of Idaho.

13 (2) For the purpose of this section, an "out-of-state taxing entity"
14 means another state or territory of the United States, or any governmental
15 subdivision thereof, or any foreign nation or government. An "out-of-state
16 taxing entity" does not include the United States government.

17 SECTION 3. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after its
19 passage and approval.