

105TH CONGRESS
2D SESSION

S. 2300

To provide for the collection of certain State taxes from an individual who is not a member of an Indian tribe.

IN THE SENATE OF THE UNITED STATES

JULY 14, 1998

Mr. GORTON introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide for the collection of certain State taxes from an individual who is not a member of an Indian tribe.

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 “State Excise, Sales,
5 and Transaction Tax Enforcement Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) a long line of decisions of the United States
9 Supreme Court has established that States have the
10 right to collect lawfully imposed nondiscriminatory

1 State excise, sales, and transaction taxes on the pur-
2 chase of a good or service from an Indian tribe (in-
3 cluding a tribal government or tribal corporation) by
4 a person who is not a member of that Indian tribe;

5 (2) the collection of the taxes referred to in
6 paragraph (1) has been impeded by the assertion of
7 tribal immunity by Indian tribes (including tribal
8 governments and corporations) and members of an
9 Indian tribe as a defense in an action in a Federal
10 court that is necessary to enforce the collection of
11 the State taxes that apply to the sales referred to in
12 paragraph (1); and

13 (3) the failure of an Indian tribe (including a
14 tribal government or tribal corporation) or a member
15 of an Indian tribe to act as an agent of a State to
16 collect a State tax referred to in paragraph (1)—

17 (A) unlawfully deprives that State of es-
18 sential tax revenues needed for infrastructure
19 improvement and ensuring the health and wel-
20 fare of all of the citizens of that State; and

21 (B) creates a disadvantage for law-abiding
22 businesses that are not associated with the In-
23 dian tribe and that fulfill their obligation to act
24 as an agent of the State, and, as a result of

1 that disadvantage, some of those businesses
2 may be forced out of business.

3 **SEC. 3. COLLECTION OF STATE TAXES.**

4 Section 1362 of title 28, United States Code, is
5 amended—

6 (1) by inserting “(a) IN GENERAL.—” before
7 “The district courts”;

8 (2) by inserting “(referred to in this section as
9 an ‘Indian tribe’)” after “Interior”; and

10 (3) by adding at the end the following:

11 “(b) COLLECTION OF QUALIFIED STATE TAXES BY
12 INDIAN TRIBES.—

13 “(1) DEFINITIONS.—In this subsection:

14 “(A) GOOD OR SERVICE.—The term ‘good
15 or service’ includes any tobacco product or
16 motor fuel (within the meaning of the Internal
17 Revenue Code of 1986).

18 “(B) QUALIFIED STATE TAX.—

19 “(i) IN GENERAL.—The term ‘quali-
20 fied State tax’ means any lawfully im-
21 posed, nondiscriminatory excise, sales, or
22 transaction tax imposed by a State on a
23 purchase of a good or service from a tribal
24 retail enterprise by a person who is not a
25 member of that Indian tribe.

1 “(ii) EXCEPTIONS.—The term does
2 not include any State tax—

3 “(I) imposed on the sale of a
4 good or service by a tribal retail en-
5 terprise to a person who is not a
6 member of an Indian tribe with re-
7 spect to which, as of the date of en-
8 actment of the State Excise, Sales,
9 and Transaction Tax Enforcement
10 Act of 1998, the tribal retail enter-
11 prise is exempted under the law of
12 that State from collecting and remit-
13 ting because the Indian tribe associ-
14 ated with that tribal retail enterprise
15 imposes and collects an equivalent tax
16 on such sale in an amount equal to
17 the tax that would otherwise be im-
18 posed by the State;

19 “(II) imposed on the sales of a
20 tribal retail enterprise if, as of the
21 date of enactment of the State Excise,
22 Sales, and Transaction Tax Enforce-
23 ment Act of 1998, the State has
24 waived the applicability of that tax to
25 the purchase of a good or service from

1 that tribal retail enterprise by a per-
2 son who is not a member of the In-
3 dian tribe of the owner or operator of
4 that tribal retail enterprise;

5 “(III) that is the subject, as of
6 the date of enactment of the State
7 Excise, Sales, and Transaction Tax
8 Enforcement Act of 1998, of an
9 agreement between a tribal retail en-
10 terprise and a State that exempts that
11 tribal retail enterprise from collecting
12 and remitting that tax; or

13 “(IV) with respect to which the
14 incidence of the tax falls on an Indian
15 tribe (including a tribal government or
16 tribal corporation) or member of an
17 Indian tribe.

18 “(C) TRIBAL IMMUNITY.—The term ‘tribal
19 immunity’ means the immunity of an Indian
20 tribe (including a tribal government or tribal
21 corporation) from jurisdiction of the Federal
22 courts, judicial review of an action of that In-
23 dian tribe, and other remedies.

1 “(D) TRIBAL RETAIL ENTERPRISE.—The
 2 term ‘tribal retail enterprise’ includes any entity
 3 that—

4 “(i) is owned or operated by an In-
 5 dian tribe (including a tribal government
 6 or tribal corporation) or member of an In-
 7 dian tribe; and

8 “(ii) engages in the business of the
 9 wholesale or retail sales of a good or serv-
 10 ice.

11 “(2) COLLECTION OF QUALIFIED STATE
 12 TAXES.—Subject to paragraph (3), the owner or op-
 13 erator of a tribal retail enterprise shall collect and
 14 remit such qualified State taxes as the owner or op-
 15 erator of the tribal retail enterprise is required to
 16 collect and remit.

17 “(3) CONFLICT RESOLUTION.—

18 “(A) DECLARATORY JUDGMENTS.—A
 19 State may bring an action for a declaratory
 20 judgment under section 2201 of this title in a
 21 district court of appropriate jurisdiction con-
 22 cerning the applicability or lawfulness of a
 23 qualified State tax referred to in paragraph (2).

24 “(B) ACTIONS.—A State may bring an ac-
 25 tion against a tribal retail enterprise, or the In-

dian tribe (including a tribal government or tribal corporation) or member of an Indian tribe that owns or operates the tribal retail enterprise in a district court of appropriate jurisdiction to enforce the collection or remittance of a qualified State tax under paragraph (2).

“(C) WAIVER OF TRIBAL IMMUNITY.—In an action referred to in subparagraph (A) or (B), to the extent necessary to obtain a judgment in that action, the tribal immunity of the Indian tribe (including a tribal government or tribal corporation) or member of the Indian tribe is waived.”.

SEC. 4. APPLICABILITY.

The amendments made by section 3 shall apply to sales of goods or services referred to in section 1362(b) of title 28, United States Code, as added by section 3, that are made after the date of enactment of this Act.

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