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S. 1066

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

MAY 18, 2005

Mr. VOINOVICH (for himself, Ms. STABENOW, Mr. BUNNING, Mr. LEVIN, Mr. ALEXANDER, Mr. DEWINE, Mr. McCONNELL, and Mr. FRIST) 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 2005”.

1 **SEC. 2. AUTHORIZATION.**

2 Congress hereby exercises its power under Article I,
3 Section 8, Clause 3 of the United States Constitution to
4 regulate commerce among the several States by author-
5 izing any State to provide to any person for economic de-
6 velopment purposes tax incentives that otherwise would be
7 the cause or source of discrimination against interstate
8 commerce under the Commerce Clause of the United
9 States Constitution, except as otherwise provided by law.

10 **SEC. 3. LIMITATIONS.**

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

14 (1) is dependent upon State or country of incor-
15 poration, commercial domicile, or residence of an in-
16 dividual;

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

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

24 (4) is reduced or eliminated as a result of an
25 increase in out-of-State activity by a person other
26 than the recipient of the tax incentive or as a result

1 of such other person not having a taxable presence
2 in the State;

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

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

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

13 (b) NO INFERENCE.—Nothing in this section shall be
14 construed to create any inference with respect to the valid-
15 ity or invalidity under the Commerce Clause of the United
16 States Constitution of any tax incentive described in this
17 section.

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

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

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

1 (2) ECONOMIC DEVELOPMENT PURPOSES.—The
2 term “economic development purposes” means all le-
3 gally permitted activities for attracting, retaining, or
4 expanding business activity, jobs, or investment in a
5 State.

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

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

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

24 (6) STATE.—The term “State” means each of
25 the several States (or subdivision thereof), the Dis-

1 trict of Columbia, and any territory or possession of
2 the United States.

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

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

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

16 (b) RULE OF CONSTRUCTION.—It is the sense of
17 Congress that the authorization provided in section 2
18 should be construed broadly and the limitations in section
19 3 should be construed narrowly.

20 **SEC. 5. SEVERABILITY.**

21 If any provision of this Act or the application of any
22 provision of this Act to any person or circumstance is held
23 to be unconstitutional, the remainder of this Act and the
24 application of the provisions of this Act to any person or
25 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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