Summary

Current law mandates that a business has to have physical presence or nexus in a state before that business is compelled to collect and remit sales and use taxes on consumer purchases. Out of state tax collectors, however, have become consistently more aggressive in demanding sales and use taxes from businesses that may not have any physical connection with those states. ALEC’s Sales and Use Tax Collection Protection Act is legislation that gives in-state retailers an important new tool to protect themselves from unfair and costly litigation in an out of state court, against a foreign tax administrator. This model bill simply gives an in-state business a special declaratory judgment action, which a business can seek in the courts of the state, that will determine if that business has the requisite nexus, or physical presence in another state that would justify the requirement to collect and remit sales and use taxes. And in turn, that judicial determination must be honored in other states courts under the “full faith and credit” clause of the United States Constitution.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Introduction} A proposal to amend the laws of {insert state} to adjudicate constitutional nexus issues relating to sales and use tax.

Section 2. {Declaratory Judgment to Adjudicate Constitutional Nexus}

A. Circuit courts shall have original jurisdiction over civil actions seeking declaratory judgment where:

1. The party seeking declaratory relief is a business that (i) is organized under the laws of {insert state} or a sole proprietorship owned by a {insert state} domiciliary, or (ii) has qualified to do business in {insert state}; and

2. The responding party is a government official of another state, or political subdivision of another state, who asserts that the business in question is obliged to collect sales or use taxes for such state or political subdivision based upon conduct of the business that occurs wholly or partially within {insert state}.

B. Any business meeting the requirements and facing the circumstances described in subsection A shall be entitled to declaratory relief on the issue of whether the requirement of another state, or political subdivision of another state, that the business collect and remit sales or use taxes to that state, or political subdivision, in the factual circumstances of the business’ operations giving rise to the demand, constitutes an undue burden on interstate commerce within the meaning of Article I, Section 8, Clause 3 of the United States Constitution.
Section 3. {Repealer Clause}

Section 4. {Effective Date}

Approved by the full ALEC Board of Directors August, 2004.

Center for Media and Democracy’s quick summary

This act and those in this multi-state tax category help write rules that make combined reporting harder and make it harder to collect taxes from corporations in general. See also “A Resolution In Opposition to Mandatory Unitary Combined Reporting.”

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