

Regular Session, 2011

HOUSE CONCURRENT RESOLUTION NO. 162

BY REPRESENTATIVE ARNOLD

A CONCURRENT RESOLUTION

To urge and request the Arkansas Department of Finance and Administration to revise its current criteria for determining that a tax "nexus" exists between the state of Arkansas and businesses in other states by adopting a policy that the holder of a mortgage or security interest by an out-of-state business on property located in Arkansas does not create a "nexus" with Arkansas thereby subjecting such businesses to payment of income tax in Arkansas.

WHEREAS, a state's ability to impose taxes on a multi-state business is limited by "nexus" standards rooted in the due process and commerce clauses of the United States Constitution; and

WHEREAS, the United States Supreme Court has reaffirmed that "nexus" requires some form of physical presence in the taxing state, and that the tax imposed must be fairly apportioned and related to services provided by the state; and

WHEREAS, in recent years a number of Louisiana financial institutions doing business close to the Arkansas border have received a survey from the Arkansas Department of Finance and Administration (ADFA) inquiring about their business operations or activity in the state of Arkansas; and

WHEREAS, upon receiving completed surveys from Louisiana financial institutions, the ADFA determined that certain Louisiana financial institutions have a sufficient "nexus" with the state of Arkansas and that such Louisiana businesses owe income tax to the state of Arkansas; and

WHEREAS, in these cases where ADFA determined a "nexus" existed with Louisiana financial institutions, such institutions did not have a physical business presence in the state of Arkansas; did not close any loans in the state of Arkansas; did not actively solicit business from Arkansas residents; and did not own any property in the state of Arkansas; and

WHEREAS, it appears in these cases that ADFA determined a "nexus" existed simply because certain Louisiana financial institutions had obtained a mortgage on property located in the state of Arkansas, even though the mortgage interest was created in Louisiana and the loan was closed in Louisiana; and

WHEREAS, in these cases, Louisiana financial institutions are being taxed in both Arkansas and Louisiana for the same business activity; and

WHEREAS, the Louisiana Bankers Association has heard of similar situations where ADFA has determined "nexus" exists with businesses in other states surrounding Arkansas where the only apparent connection with the state of Arkansas was that the out-of-state business held a mortgage or security interest on property located in Arkansas; and

WHEREAS, the Legislature of Louisiana believes that simply holding a mortgage or security interest on property located in Arkansas is not sufficient for ADFA to determine that a "nexus" for tax purposes exists between the state of Arkansas and Louisiana businesses.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Arkansas Department of Finance and Administration to revise its current criteria for determining that a tax "nexus" exists between the state of Arkansas and businesses in other states by adopting a policy that the holder of a mortgage or security interest by an out-of-state business on property located in Arkansas does not create a "nexus" with Arkansas thereby subjecting such businesses to payment of income tax in Arkansas.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Arkansas Department of Finance and Administration, the governor of the state of Arkansas, and the Arkansas Legislature.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the governor of the state of Louisiana, the secretary of the Louisiana Department of Economic

Development, and the secretary of the Louisiana Department of Revenue, so that they may be made aware of the adverse economic conditions facing Louisiana businesses.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE