

The original documents are located in Box 52, folder “8/3/76 S2447 Exemption of Members of Congress from State Income Taxes (vetoed)” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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*Noted
8/3/76
Delivered to the
Senate - 6:45pm*

*noted
9/3/76*

THE WHITE HOUSE

ACTION

WASHINGTON
July 30, 1976

Last Day: August 3

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON
SUBJECT: S. 2447 - Exemption of Members of Congress from State Income Taxes

Attached for your consideration is S. 2447, sponsored by Senators Hruska and Eastland, which provides that Members of Congress may not, for purposes of State income tax laws, be treated as residents of any State other than the State from which they were elected. Existing Virginia and District of Columbia laws exempt out-of-state Members of Congress from Virginia and District income taxes. Maryland law, however, contains no such exemption.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB recommends approval of the enrolled bill "in the absence of clear grounds for a constitutional challenge, there is not sufficient reason to oppose the Congress' judgment to exempt itself from out-of-state income taxes." Max Friedersdorf and I reluctantly recommend approval. The Counsel's Office has no recommendation as to whether to sign or veto the enrolled bill, but offers the attached memorandum for your consideration in making your decision.

RECOMMENDATION

That you sign S. 2447 at Tab B.

Approve _____

Disapprove _____



THE WHITE HOUSE

WASHINGTON

July 30, 1976

MEMORANDUM FOR: JIM CANNON
THROUGH: PHIL BUCHEN *P.*
FROM: KEN LAZARUS *K.*
SUBJECT: Enrolled Bill S. 2447 - Exemption of
Members of Congress from State
Income Taxes

Counsel's Office has reviewed the attached OMB memorandum on the subject bill and offers the following:

(1) Constitutional Considerations. The arguments advanced by proponents of S. 2447 to the effect that it is constitutionally required are simply without merit.

(a) Congressmen and Senators do not qualify as "instrumentalities of the United States", beyond the reach of Maryland taxes. The folly of this position should be recognized by the fact that this argument would also lead one to the conclusion that Members of Congress cannot be subjected to any taxes imposed by the states which they represent.

(b) Similarly, we do not believe that the Maryland income tax scheme exposes Senators and Congressmen living there to multiple taxation in contravention of the Fourteenth Amendment. Part-time residency alone has long been considered a sufficient nexus for state taxation and the fact that Maryland recognizes a credit for taxes paid to other states on a reciprocal basis generally eliminates the dual state taxation problem.



(c) Maryland imposes a maximum 5 percent state tax on income and also authorizes a 50 percent surcharge imposable at the county level, for an effective tax rate of 7.5 percent. It is true that the county surcharge does not permit any credit for other state taxes, but this feature is only a relatively minor aspect of the bill and would not appear to raise an issue of constitutional dimension.

(2) Equities.

(a) Congressmen and Senators who live in Maryland while representing other states are at a disadvantage over those from other states who live in the District of Columbia or in Virginia. The District and Virginia exempt them from its income tax but also exempt the President and Vice President and appointees of the President who are confirmed by the Senate if they are residents of another state. On the other hand, Congressmen and Senators subject to the Maryland income tax are allowed a credit against the state portion of Maryland tax for income taxes paid to their home states but not against the county portion. This credit does not, however, help those whose home states impose no income tax, and those whose home states tax at a lower rate will have to make up the difference to Maryland.

(b) The sponsors of the bill have not argued that out-of-state Members of Congress should likewise be exempt from state and local property taxes on their homes in or near Washington. So Maryland residents can argue that income taxes are just another form of tax to support the schools and other services from which out-of-state Members of Congress benefit and it is sufficient equity to allow them a credit against the state portion of the Maryland income tax for income taxes paid to their home states.



(3) Federalism. It is, of course, difficult to perceive a Federal interest in these circumstances sufficient to justify the negation of a portion of the Maryland tax scheme. Since a certain deference to state authority is normally a hallmark of any Republican administration, support of S. 2447 would have a curious ring.

(4) Political Considerations. This bill may appear to represent "politics as usual" by "Washington insiders" to provide special benefits for Members of Congress when other people who for one reason or another are subject to income taxes in more than one state. Without its enactment, a number of Senators and Congressmen will pay higher tax bills next year. Thus, the President's participation in its enactment could make him vulnerable to a political attack.

(5) Recommendation. The President could approve the bill on the grounds that it involves a matter of exclusive concern to the Congress because it affects only certain Members of the Congress and does not affect any other federal interest. Unlike a salary increase for Congressmen, it does not even have an impact on the federal budget. However, if the President believes that he should not by signing the bill become a willing party to special interest legislation passed for the benefit exclusively of certain Members of the Congress, he should veto it. The constitutional considerations of the supporters of the bill appear to have no merit, and if the Congressmen and Senators who voted for the bill truly believe that there are constitutional defects in the Maryland tax scheme as it affects them, they should challenge such schemes in the courts.





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 28 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2447 - Exemption of Members of
Congress from State income taxes
Sponsor - Sen. Hruska (R) Nebraska and Sen. Eastland
(D) Mississippi

Last Day for Action

August 3, 1976 - Tuesday

Purpose

To provide that Members of Congress may not, for purposes of State income tax laws, be treated as residents of any State other than the State from which they were elected.

Agency Recommendations

Office of Management and Budget

Approval

Department of Justice

No objection (Informally)

Department of the Treasury

No Recommendation

Advisory Commission on

Intergovernmental Relations

No Recommendation
(Informally)

Discussion

The enrolled bill would provide that no State or locality may levy income taxes on Members of Congress who maintain an abode within such jurisdictions and away from their home for purposes of attending sessions of Congress. The term "Member of Congress" would include delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico and the term "State" would include the District of Columbia.



Existing Virginia and District of Columbia laws exempt out-of-State Members of Congress from Virginia and District income taxes. Maryland law, however, contains no such exemption. Therefore, the practical effect of the enrolled bill would be to prevent the State of Maryland from levying income taxes on Members of Congress who reside in, but are not elected from, that State. S. 2447 would not, however, affect in any way the tax liability of a Member to his home State and locality.

Proponents of this bill have based their support of it on the following arguments which were presented in the Senate report on S. 2447:

- (1) By law, no State can tax an instrumentality of the United States Government; therefore, Members of Congress "being the embodiment of the Legislative branch of government are such an instrumentality and immune from taxation by a state."
- (2) Because the Constitution requires that a Senator or Representative must be an inhabitant, i.e., resident, of the State he represents when elected, a determination by any other State that a Member is a resident for any purpose infringes on this Constitutional requirement and the Member's right to stand for reelection.
- (3) Multiple taxation of Members of Congress who maintain residences both in their home State and in or near Washington for purposes of attending sessions of Congress violates the due process and equal protection clauses of the fourteenth amendment. In this connection the Senate report also noted that only credit toward the Maryland State income tax is allowed for taxes paid to another State. However, Maryland also collects income taxes on behalf of its counties as an add-on-percentage of the State income tax; no credit for the county income tax is allowed for taxes paid to another State.

Proponents of the proposed legislation have also pointed out that enactment of the bill would not exempt Members of Congress from property or sales taxes levied by the State of physical residence. Moreover, the revenue that Maryland would lose by enactment of this legislation would in part be offset by the very generous Federal impact aid payments made to Maryland suburban counties for the education of the children of Federal employees, including the children of the approximately 125 Congressmen who live in Maryland.



Opponents of the bill, many of whom are members of the Maryland congressional delegation, have opposed S. 2447 chiefly on the grounds of fairness and equity. During the Senate floor debate on the bill, Senators Beall and Mathias argued that Members of Congress living in Maryland had an obligation to contribute to the payment for public services which they use and which they enjoy. While acknowledging that there is a real problem for those Members whose home States exact an income tax but do not allow reciprocity for the tax levied by Maryland, the Maryland Senators urged that the preferable alternative to enactment of S. 2447 was for those out-of-State Members of Congress maintaining a residence in Maryland to attempt to bring Maryland and their home State into reciprocity.

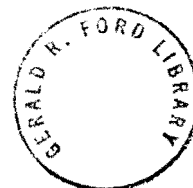
The opponents have also criticized this proposed legislation because it would grant special tax exemption to Congressmen while continuing to deny similar treatment to other citizens who also are compelled to take up "temporary" residence in the Washington area. Such individuals would include Presidentially-appointed Federal officials who, while maintaining a permanent residence in their home State, must also pay Maryland, District of Columbia, or Virginia income taxes during their Washington assignment.

S. 2447 passed the Senate by voice vote on February 18, 1976; it passed the House by 310 to 84 on July 20, 1976.

While the equity and fairness arguments advanced by opponents of S. 2447 have merit, the Justice Department has indicated informally that it does not believe that Congress has exceeded its constitutional powers in enacting this legislation. We believe therefore that, in the absence of clear grounds for a constitutional challenge, there is not sufficient reason to oppose the Congress' judgment to exempt itself from out-of-State income taxes.

James M. Frey
Assistant Director
for Legislative Reference

Enclosures



TO THE SENATE OF THE UNITED STATES:

I am returning today without my signature S. 2447, which would exempt Members of Congress from certain local income taxes. This bill provides that a Member of Congress need not pay the income tax levied by a state or municipality in which the Member lives for the purpose of attending Congress.

Since Virginia and District of Columbia laws already exempt from payment of their income taxes Members living in such jurisdictions only while attending Congress, S. 2447 would serve principally to prevent Maryland from levying such taxes on Members of Congress. However, it is one thing for a taxing jurisdiction voluntarily to exempt Members of Congress from its income tax laws and quite another for Congress to mandate a Federal exemption on a state income tax system. I believe such Federal interference is particularly objectionable where, as is the case in Maryland, a portion of the income tax is collected on behalf of counties to pay for local public services which all residents use and enjoy. It should also be noted that this bill would in effect freeze the exemptions now provided by Virginia and the District of Columbia, and they would then be powerless to change their tax laws in this regard.

Since this bill benefits a narrow and special class of persons it violates, in my view, the basic concept of equity and fairness by creating a special tax exemption for Members of Congress while other citizens who are required to take up temporary residence in the Washington area -- or elsewhere -- do not enjoy a similar privilege.

Finally, those who assert that there is a Constitutional infirmity in applying a state income tax to Members while attending Congress may present the issue to the courts for resolution.

As the end of this session of Congress approaches, the American people would be better served if Congress would direct its attention to the important laws that should be passed this year -- to cut taxes and spending; to expand catastrophic health care programs; to limit court ordered school busing; to attack crime and drugs; and to address many other important matters of concern to the American people -- rather than by enacting legislation such as S. 2447.

For these reasons, I am returning S. 2447 and asking Congress to reconsider this bill.

Gerald R. Ford

THE WHITE HOUSE,

August 3, 1976.





THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

JUL 22 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Reference


Sir:

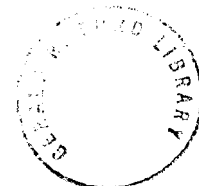
Reference is made to your request for the views of this Department on the enrolled enactment of S. 2447, "To amend title 4 of the United States Code to make it clear that Members of Congress may not, for purposes of State income tax laws, be treated as residents of any State other than the State from which they were elected."

The enrolled bill would provide that a Member of Congress does not have to pay the income tax levied by a State or political subdivision thereof in which the Member maintains a place of abode for the purpose of attending Congress. The enrolled enactment would serve to prevent Maryland from levying an income tax on Members of Congress as Members are already exempted from paying Virginia and District of Columbia income taxes.

Since the enrolled enactment would have no effect on the Federal revenues and is not otherwise of primary interest to this Department, we have no recommendation to make concerning whether it should be approved by the President.

Sincerely yours,


Richard K. Albrecht
General Counsel



Date: July 29

Time: 930am

FOR ACTION:

Paul Leach
Max Friedersdorf
Ken Lazarus
Steve McConahey
Dick Parsons

cc (for information):

Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: July 30

Time: noon

SUBJECT:

S. 2447-Exemption of Members of Congress from State Income Taxes

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks



REMARKS:

please return to judy johnston, ground floor west wing

OK PLZ 7/29/76, but judgizly.

However, this could be viewed as another attempt by Washington "powers-that-be" to help each other, to the detriment of the average guy who does not get the benefit

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Campbell
For the President

July 29

Time: 930am

FOR ACTION: Paul Leach
 Max Friedersdorf *M.C.* cc (for information):
 Ken Lazarus
 Steve McConahey
 Dick Parsons

Jack Marsh
 Jim Cavanaugh
 Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: July 30 Time: noon

SUBJECT:

S. 2447-Exemption of Members of Congress from State Income Taxes

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

reluctantly recommend approval.



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cannon
For the President

Date: July 29

Time: 930am

FOR ACTION: Paul Leach
 Max Friedersdorf
 Ken Lazarus
 Steve McConahey
 Dick Parsons

cc (for information): Jack Marsh
 Jim Cavanaugh
 Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: July 30

Time: noon

SUBJECT:

S. 2447-Exemption of Members of Congress from
 State Income Taxes

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

Approval. RLP
 . please return to judy johnston, ground floor west wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
 For the President



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 28 1976

To: J. Conaway
7-28-76
6:00 p.m.

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2447 - Exemption of Members of Congress from State income taxes
Sponsor - Sen. Hruska (R) Nebraska and Sen. Eastland (D) Mississippi

Last Day for Action

August 3, 1976 - Tuesday

Purpose

To provide that Members of Congress may not, for purposes of State income tax laws, be treated as residents of any State other than the State from which they were elected.

Agency Recommendations

Office of Management and Budget

Approval

Department of Justice

No objection (Informal)

Department of the Treasury

No Recommendation

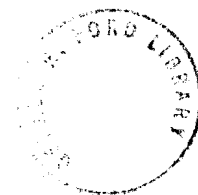
Advisory Commission on

Intergovernmental Relations

No Recommendation (Informal)

Discussion

The enrolled bill would provide that no State or locality may levy income taxes on Members of Congress who maintain an abode within such jurisdictions and away from their home for purposes of attending sessions of Congress. The term "Member of Congress" would include delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico and the term "State" would include the District of Columbia.



August 3, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE SENATE OF THE UNITED STATES:

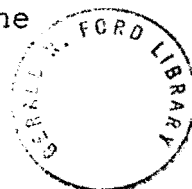
I am returning today without my signature S. 2447, which would exempt Members of Congress from certain local income taxes. This bill provides that a Member of Congress need not pay the income tax levied by a state or municipality in which the Member lives for the purpose of attending Congress.

Since Virginia and District of Columbia laws already exempt from payment of their income taxes Members living in such jurisdictions only while attending Congress, S. 2447 would serve principally to prevent Maryland from levying such taxes on Members of Congress. However, it is one thing for a taxing jurisdiction voluntarily to exempt Members of Congress from its income tax laws and quite another for Congress to mandate a Federal exemption on a state income tax system. I believe such Federal interference is particularly objectionable where, as is the case in Maryland, a portion of the income tax is collected on behalf of counties to pay for local public services which all residents use and enjoy. It should also be noted that this bill would in effect freeze the exemptions now provided by Virginia and the District of Columbia, and they would then be powerless to change their tax laws in this regard.

Since this bill benefits a narrow and special class of persons it violates, in my view, the basic concept of equity and fairness by creating a special tax exemption for Members of Congress while other citizens who are required to take up temporary residence in the Washington area -- or elsewhere -- do not enjoy a similar privilege.

Finally, those who assert that there is a Constitutional infirmity in applying a state income tax to Members while attending Congress may present the issue to the courts for resolution.

As the end of this session of Congress approaches, the American people would be better served if Congress would direct its attention to the important laws that should be passed this year --- to cut taxes and spending; to expand catastrophic health care programs, to limit court ordered school busing; to attack crime and drugs, and to address many other important matters of concern to the American people --- rather than by enacting legislation such as S. 2447.



For these reasons, I am returning S. 2447 and asking Congress to reconsider this bill.

GERALD R. FORD

THE WHITE HOUSE,

August 3, 1976.

#

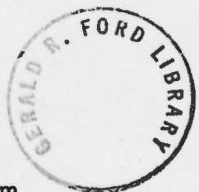
TO THE SENATE:

I am returning today without my signature S. 2447, ~~a bill~~ which would exempt Members of Congress from certain local income taxes. This bill provides that a Member of Congress need not pay the income tax levied by a state or municipality in which the Member lives for the purpose of attending Congress.

Since Virginia and District of Columbia laws already exempt from ^{payment of} their income taxes Members living in such jurisdictions only while attending Congress, S. 2447 would serve principally to prevent Maryland from levying such taxes on Members of Congress.

However, it is one thing for a taxing jurisdiction voluntarily to exempt Members of Congress from its income tax laws and quite another for Congress to ~~mandate~~ a Federal exemption on a state income tax system.

I believe such Federal interference is particularly objectionable where, as is ~~true in~~ the case ⁱⁿ Maryland, a portion of the income tax is collected on behalf of ~~the~~ counties to pay for local public services which all residents use and enjoy. ~~It~~ ^{also} should be noted that this bill would in effect freeze the exemptions now provided by Virginia and the District of Columbia, and ~~thus~~ ^{then} they would be powerless to change their tax laws in this regard.



~~Since~~ this bill benefits a narrow and special class of persons, it violates, in my view, the ^{basic} concept of equity and fairness by creating a special tax exemption for Members of Congress while other citizens who are required to take up temporary residence in the Washington area--or elsewhere--do not enjoy ~~such~~ a ^{similar} privilege.

Finally, those who assert that ~~there is a~~ Constitutional infirmity ^{the imposition of} in applying a state income tax ~~on~~ ^{is constitutionally objectionable} Members while attending Congress, may present the issue to the courts for resolution.

As the end of this session of Congress approaches, the American people would be better served if Congress ^{direct its attention to} ~~would take action on~~ the important laws that should be passed this year--to cut taxes and spending; to expand catastrophic health care programs; to limit court ordered school busing; to attack crime and drugs; and to address many other important matters of concern to the American people--rather than ^{by} ~~enacting~~ ^{special interest} legislation such as S. 2447.

For these reasons, I am returning S. 2447 and asking Congress to reconsider this bill.



TO THE SENATE OF THE UNITED STATES:

I am returning today without my signature S. 2447, which would exempt Members of Congress from certain local income taxes. This bill provides that a Member of Congress need not pay the income tax levied by a state or municipality in which the Member lives for the purpose of attending Congress.

Since Virginia and District of Columbia laws already exempt from payment of their income taxes Members living in such jurisdictions only while attending Congress, S. 2447 would serve principally to prevent Maryland from levying such taxes on Members of Congress. However, it is one thing for a taxing jurisdiction voluntarily to exempt Members of Congress from its income tax laws and quite another for Congress to mandate a Federal exemption on a state income tax system. I believe such Federal interference is particularly objectionable where, as is the case in Maryland, a portion of the income tax is collected on behalf of counties to pay for local public services which all residents use and enjoy. It should also be noted that this bill would in effect freeze the exemptions now provided by Virginia and the District of Columbia, and they would then be powerless to change their tax laws in this regard.

Since this bill benefits a narrow and special class of persons it violates, in my view, the basic concept of equity and fairness by creating a special tax exemption for Members of Congress while other citizens who are required to take up temporary residence in the Washington area -- or elsewhere -- do not enjoy a similar privilege.

Finally, those who assert that there is a Constitutional infirmity in applying a state income tax to Members while attending Congress may present the issue to the courts for resolution.



As the end of this session of Congress approaches, the American people would be better served if Congress would direct its attention to the important laws that should be passed this year -- to cut taxes and spending; to expand catastrophic health care programs; to limit court ordered school busing; to attack crime and drugs; and to address many other important matters of concern to the American people -- rather than by enacting legislation such as S. 2447.

For these reasons, I am returning S. 2447 and asking Congress to reconsider this bill.

THE WHITE HOUSE,

August 3, 1976.

TO THE SENATE:

I am returning today without my signature S. 2447, a bill which would exempt Members of Congress from certain local income taxes. This bill provides that a Member of Congress need not pay the income tax levied by a state or municipality in which the Member lives for the purpose of attending Congress.

Since Virginia and District of Columbia laws already exempt from their income taxes Members living in such jurisdictions only while attending Congress, S. 2447 would serve principally to prevent Maryland from levying such taxes on Members of Congress. However, it is one thing for a taxing jurisdiction voluntarily to exempt Members of Congress from its income tax laws and quite another for Congress to impose a Federal exemption on a state income tax system. I believe such Federal interference is particularly objectionable where, as is true in the case of Maryland, a portion of the income tax is collected on behalf of its counties to pay for local public services which all residents use and enjoy. Moreover, it should be noted that this bill would in effect freeze the exemptions now provided by Virginia and the District of Columbia, and thus they would be powerless to change their tax laws in this regard.

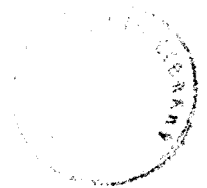


As this bill benefits a narrow and special class of persons, it violates, in my view, the concept of equity and fairness by creating a special tax exemption for Members of Congress while other citizens who are required to take up temporary residence in the Washington area--or elsewhere--do not enjoy such a privilege.

Finally, those who assert that there is a Constitutional infirmity in applying a state income tax to Members while attending Congress may present the issue to the courts for resolution.

As the end of this session of Congress approaches, the American people would be better served if Congress would take action on the important laws that should be passed this year--to cut taxes and spending; to expand catastrophic health care programs; to limit court ordered school busing; to attack crime and drugs; and to address many other important matters of concern to the American people--rather than enacting legislation such as S. 2447.

For these reasons, I am returning S. 2447 and asking Congress to reconsider this bill.



ARGUMENTS PRO SIGNING S. 2447

- This would be viewed positively by the approximately 125 Members who live in Maryland.
- By law, no State can tax an instrumentality of the United States Government; therefore, Members of Congress "being the embodiment of the Legislative Branch of government are such an instrumentality and immune from taxation by a state." (Quote from Senate report).
- Because the Constitution requires that a Senator or Representative must be an inhabitant, i.e., resident, of the State he represents when elected, a determination by any other State that a Member is a resident for any purpose infringes on this Constitutional requirement and the Member's right to stand for reelection (another Senate report argument).
- Multiple taxation is argued to violate the 14th Amendment equal protection and due process clauses.
- The revenue lost by Maryland would be offset in part by the "very generous" Federal impact aid payments for education of children of Federal employees.

ARGUMENTS PRO VETOING S. 2447

- This bill presents the President with an opportunity to disassociate himself from the "Washington buddy system" which is criticized by two former State governors.
- Many Members of Congress, including the Maryland Congressional delegation, have strongly opposed this bill.
- This is an unjustified Federal interference with the obligation of State residents to contribute to the payment for public services which they use and enjoy.



- Insofar as a problem exists, it should be corrected through State action, including tax reciprocity agreements between Maryland and other States.

- This bill violates concepts of equity and fairness by creating a special tax exemption for Members of Congress while continuing to deny similar treatment to other citizens who also are compelled to take up "temporary" residence in the Washington area -- or elsewhere.



TO THE SENATE:

I am returning today without my signature S. 2447, a bill which exempts Members of Congress from certain State income taxes.

It should be noted that the Maryland income tax is really in two increments. The pick and reject increment goes to the State of Maryland; however, there is a second increment in the nature of a sur charge on the basic State income tax, which is collected by the State for the local government. This local portion of the State income tax is used for usual government services.

This bill is in the nature of special legislation and benefits a very narrow and special group of persons. In this regard it violates a concept of equity and fairness in creating a special tax exemption for Members of Congress while continuing to deny similar treatment to other citizens who also are compelled to take up "temporary" residence in the Washington area -- or elsewhere.

It should be noted that there is a local law exempting Members from paying income taxes in Virginia and the District of Columbia.



However, it is significant to note that in these cases the tax relief was afforded by the jurisdiction in question and was not imposed upon them in a manner in which this bill would impose an exemption which would, in effect, make Maryland tax law inoperative for Members of Congress. In this regard the legislation in question, although directed principally at Maryland would also impact on Virginia and the District of Columbia in that it would usurp the power of those two jurisdictions to change the present exemptions involving Members of Congress, should they seek to do so.

In that portion of the State tax that accrues for local purposes, the failure of the sur charge service goes to private governmental services, which would benefit Members of Congress, and which they will not be making a financial contribution. It is transferred to the municipality to provide these services, and not be able to tax a class of beneficiaries.



TO THE SENATE:

I am returning today without my signature S. 2447, a bill which exempts Members of Congress from certain State income taxes.

This bill provides that a Member of Congress need not pay the income tax levied by a State or municipality in which the Member maintains a place of abode while attending Congress. Since local law already exempts Members from paying income taxes in Virginia and District of Columbia, S. 2447 would have the effect of preventing the State of Maryland from levying an income tax on Members of Congress who reside in, but are not elected from, that State.

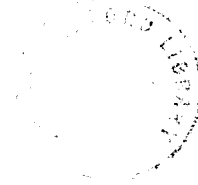
D. C. + Va. on this one make decision / incl. submit.

I cannot accept this ^{Congressional} ~~Federal~~ interference with the obligation of State residents to contribute to the payment for public services which they use and enjoy. If a local income tax problem exists in a State, such as Maryland, this is a matter to be corrected by State action.

At a time when the equity and fairness of our tax system is repeatedly in question, we would not fulfill our responsibilities to the people if we were to accept a special tax exemption for Members of Congress while continuing to deny similar treatment to other citizens who also are compelled to take up "temporary" residence in the Washington area --- or elsewhere.



For these reasons, I am returning S. 2447 unsigned and asking the Congress to reconsider this bill.



I am returning today without my signature S. 2447, a bill which exempts Members of Congress from certain State income taxes.

This bill provides that a Member of Congress need not pay the income tax levied by a State or municipality in which the Member maintains a place of abode while attending Congress.

~~Today I am vetoing S. 2447.~~ In a year when the Congress has refused to grant the American people the kind of tax cut they deserve, I find it appalling that the Congress would send me a bill giving themselves a tax break in the State of Maryland.

Local law already exempts Members from paying income taxes in Virginia and the District of Columbia. This bill would prevent the State of Maryland from levying an income tax on Members of Congress who reside in but are not elected in that a state.

I cannot accept this Congressional interference with the obligation of State residents to contribute to the payment for public services which they use and enjoy. If a local income tax problem exists in a State, such as Maryland, this is a matter to be corrected by State action.

At a time when the equity and fairness of our tax system is repeatedly in question, we would not fulfill our responsibilities to the people if we were to accept a special tax exemption for Members of Congress while continuing to deny similar treatment to other citizens who also are compelled to take up "temporary" residence in the Washington area -- or elsewhere.

As we approach the end of this session of Congress, ~~it seems to me~~ the American people would be far better served if the Congress would pay immediate attention to passing those pieces of legislation which would benefit all Americans in the areas of crime, energy, health and spending restraints instead of passing legislation such as S. 2447, which benefits only Members of Congress.

For these reasons, I am returning S. 2447 unsigned and asking the Congress to reconsider this bill.



Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six

An Act

To amend title 4 of the United States Code to make it clear that Members of Congress may not, for purposes of State income tax laws, be treated as residents of any State other than the State from which they were elected.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 4 of title 4 of the United States Code is amended by adding at the end thereof the following new section:

“§ 113. Residence of Members of Congress for State income tax laws

“(a) No State, or political subdivision thereof, in which a Member of Congress maintains a place of abode for purposes of attending sessions of Congress may, for purposes of any income tax (as defined in section 110(c) of this title) levied by such State or political subdivision thereof—

“(1) treat such Member as a resident or domiciliary of such State or political subdivision thereof; or

“(2) treat any compensation paid by the United States to such Member as income for services performed within, or from sources within, such State or political subdivision thereof,

unless such Member represents such State or a district in such State.

“(b) For purposes of subsection (a)—

“(1) the term ‘Member of Congress’ includes the delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico; and

“(2) the term ‘State’ includes the District of Columbia.”

(b) The table of sections for such chapter 4 is amended by adding at the end thereof the following new item:

“113. Residence of Members of Congress for State income tax laws.”

Carl Albert

Speaker of the House of Representatives.

James O. Eastland

*Vice President of the United States and
President of the Senate, pro Tempore.*



CONGRESSIONAL TAX LIABILITY

FEBRUARY 6, 1976.—Ordered to be printed

Mr. HRUSKA, from the Committee on the Judiciary,
submitted the following



REPORT

[To accompany S. 2447]

The Committee on the Judiciary to which was referred the bill (S. 2447), to amend title 4 of the United States Code to make it clear that Members of Congress may not, for the purposes of State income tax laws, be treated as residents of any State other than the State from which they were elected, having considered the same, reports favorably thereon and recommends that the bill do pass.

STATEMENT

HISTORY OF THE LEGISLATION

The bill was introduced on October 2, 1975. A similar bill, H.R. 8904, was introduced in the House on June 24, 1975.

NATURE AND SCOPE OF THE LEGISLATION

The founding fathers, in order to insure that the people were properly represented, Constitutionally required that members of Congress be inhabitants of the state from whence they are elected. Because of this Constitutional provision most members of Congress, unlike other individuals, are legally required to maintain a residence in their home state while at the same time, in view of geographic considerations, find it necessary to establish an abode in or near Washington, D.C.

The purpose of the legislation is to provide for equal state income tax treatment for those Congressmen who are subject to state income tax assessment in their elective state or congressional district and in the place of their Capitol abode.

Members of Congress who for reasons of distance are required to maintain their abode near the United States Capitol in order to discharge their duties normally do so in the states of Virginia and Maryland or in the District of Columbia.

The District and the Commonwealth of Virginia both expressly exempt members of the Congress under their income tax statutes. D.C. Code § 47-551 (C) (S), Virginia Code, Sec. 58-151.02(e) (1) (i).

No similar exemption is provided by the State of Maryland.

The Maryland Code provides for an income tax on substantially all the income of "residents" of Maryland. A resident is defined as "an individual domiciled in this State on the last day of the taxable year, and every other individual, who, for more than six months of the taxable year, maintained a place of abode within this State, whether domiciled in this State or not; but any individual, who, on or before the last day of the taxable year, changes his place of abode to a place without this State, with the bona fide intention of continuing to abide permanently without this State, shall be taxable as a resident of this State for the portion of the taxable year in which he resided in this State, and as a nonresident of the State for the remainder of the taxable year. The fact that a person who has changed his place of abode within six months from so doing again resides in this State, shall be prima facie evidence that he did not intend to have his place of abode permanently without this State." Md. Ann. Code, Art. 81, Sec. 279(i).

Only limited tax credits are available to Maryland residents who are entitled to a credit against Maryland tax for tax paid to other states on the income taxable by Maryland. Md. Ann. Code, Art. 81 Sec. 290. Maryland also collects income taxes on behalf of its counties as an add-on percentage of the state income tax. No credit toward this tax is allowed for taxes paid to another state. (See Senate Bill No. 23, Chapter 3, Laws 1975, approved February 11, 1975 amending Article 81, Section 290 of the annotated Code of Maryland.)

The action of the State of Maryland taxing members of Congress from other states who maintain an abode in Maryland for the purposes of being near the U.S. Capitol raises serious Constitutional questions.

1. No State can tax an instrumentality of the United States Government. *McCulloch v. Maryland*, 4 Wheat. 316 (1819). Congressmen being the embodiment of the Legislative Branch of government are such an instrumentality and immune from taxation by a state.

2. The Constitution provides that each Senator and each Representative must be an inhabitant of the state he represents when elected. Art. I Secs. 2, 3. Inhabitant and resident are synonymous. This provision implies that the member shall continue to be an inhabitant to preserve his right to stand for reelection. The ability of any other state to determine that a member is a resident for any purpose infringes on the Constitutional requirement and right of reelection.

3. Multiple taxation of Senator and Representatives by several jurisdictions, based simply on the fact of physical location necessary to the performance of constitutional duties, violates the due process and equal protection clauses of the fourteenth amendment.

Approximately twenty-five Senators and one hundred Representatives maintain abodes in Maryland. The bill will insure that these Constitutional principles are abided with and prevent needless litigation.

CONSTITUTIONAL CONSIDERATIONS

STATE TAXATION OF INSTRUMENTALITIES OF THE FEDERAL GOVERNMENT

A research of this subject reveals no previous attempt of a state to tax the income of members of Congress because of their physical location incident to service in Congress. Therefore, no direct decisions exist on the question of immunity of Senators or Representatives from income tax of states other than the state that they represent. However, since the time of the inception of the Republic, when Maryland attempted to tax the Federally-created Bank of the United States, it has been established that no state can tax an agency or instrumentality of the United States Government. *McCulloch v. Maryland*, *supra*.

An agency or instrumentality of the United States Government has, for this purpose, been broadly construed to include not only the departments and regulatory commissions of the Government, but also public corporations such as the Federal Land Bank (see *Federal Land Bank v. Bismark Lumber Co.*, 314 U.S. 95 (1941)) and the Home Owners Loan Corporation (see *Pittman v. Home Owners Loan Corp.*, 308 U.S. 21 (1939)). The states may only tax properties, functions, and instrumentalities of the Federal Government with the express consent of Congress. *Kern-Limerick Inc. v. Scurlock*, 347 U.S. 110 (1954); *Reconstruction Finance Corporation v. Beaver County*, 328 U.S. 204 (1946).

Until relatively recently, the courts had held that the states cannot levy a tax upon the income of Federal employees because to do so was indirectly a tax by the states on the Federal Government. See *Dobbins v. Commissioners of Erie County*, 16 Pet. 435 (1842); *New York ex rel Rogers v. Graves*, 299 U.S. 401 (1937). Conversely, the Federal Government could not tax state officials. See *Collector v. Day*, 11 Wall. 113 (1870).

In 1938, the Supreme Court decided the case of *Helvering v. Gerhardt*, 304 U.S. 405, holding that the Federal Government could tax a state employee, specifically an employee of the Port of New York Authority, even though the Authority itself was not subject to taxation.

In the case of *Graves v. New York*, 306 U.S. 466 (1939), the Supreme Court considered again whether a state could impose an income tax upon a Federal employee, in this case, an employee of the Home Owners Loan Corporation. The Supreme Court held that the corporation itself was immune from state taxation, but that the income of an employee was personal and a tax on such income did not impose a burden on the agency. The Court made it clear that no state could tax the agency itself. "[W]hen the National Government lawfully acts through a corporation which it owns and controls, those activities are governmental functions entitled to whatever tax immunity attaches to those functions when carried on by the Government itself through its departments." 306 U.S. at 477. The Court strongly implied that if Congress chose to exempt the incomes of Federal agency employees from state income taxation, the exemption would be effective. See 306 U.S. at 479, 480. In the *Graves* case, however, the Court found that there was no basis for inferring an intention of Congress to exempt the income of employees of the corporation. See 306 U.S. at 485.

The case of a Federal employee is totally different in essence from the situation of a member of Congress. A Federal employee is not constitutionally forced to maintain an abode away from his home state; he may readily become a citizen of the state where he is employed. His employment is not necessarily temporary or uncertain; he has not been chosen to represent citizens as their representative, but is pursuing a personal career. As an employee, he is not an agency of the Government. His employment is not basic to the maintenance of the Government. *Helvering v. Gerhardt*, 304 U.S. 405, 418, 424 (1938).

On the other hand, a member of Congress is not engaged merely in the pursuit of his personal career. Being a member of Congress, he is on more and no less than a representative of his constituents. He may run for office, but must be elected by the people. In this basic sense, he cannot select the occupation of Senator or Representative.

Moreover, Congress is not merely a Federal agency or instrumentality; it is a fundamental branch of the Federal Government created by the Constitution directly. Article I of the Constitution provides that all legislative powers of the Federal Government shall be vested in the Congress, consisting of the Senate and House of Representatives. It further provides that the Senate and House shall be composed of members elected by the people of the several states. The Congress, therefore, is simply an aggregation of its members. A tax on the incomes of the Senators and Representatives is a tax on the Congress, as a tax on the income of the Bank of the United States, or the powers or functions of such a bank, would be a tax on a Federal Government agency.

Members of Congress are not Federal employees, and the decision in the *Graves* case, *supra*, allowing a state to tax the salary of an employee of the Home Owners Loan Corporation is not applicable. Under the Public Salary Tax Act of 1939, as amended in 1966, Congress consented to non-discriminatory taxation of the compensation of a Federal "officer" or "employee" by duly constituted taxing authorities "having jurisdiction." 4 U.S.C. Sec. 111.

The terms "officer" and "employee" are not defined for the purposes of the Public Salary Tax Act and there is nothing in that Act to indicate a consent to state taxation of members of Congress. In fact, the terms "officer" and "employee" are not usually defined to include members of Congress. See, e.g., 5 U.S.C. Secs. 2104, 2105, and 2106 (providing for different definitions of "officer," "employee," and "Member of Congress" for the purposes of Title 5 of the United States Code).

The conclusion, therefore, is that a tax on a Congressman by a state, based on his compensation for serving in the Congress, is a tax on the legislative branch of the Federal Government—which no state may impose.

Exemption because the Maryland Definition of "Resident" Is Here Invalid

The Constitution provides that a Representative or a Senator must "when elected, be an inhabitant of that state in which he shall be chosen." Art. I, Secs. 2, 3. Although literally these provisions do not require that a Senator or Representative continue to be an inhabitant

of the State that he represents after his election, there is no question in practice, usage, and construction that Senators and Representatives are deemed to continue to be inhabitants of their respective states during their terms of office. Otherwise, no member of Congress could ever be re-elected, except from the states of Virginia and Maryland. That is, if a Senator from Alaska, who lives in the State of Maryland during his term of office, is deemed to be a resident of Maryland rather than an inhabitant of Alaska, he could not run for re-election.¹ Since the Constitution requires each Senator and Representative to be an inhabitant (i.e., resident) of the state that he represents, it is concluded that no definition in any state statute purporting to make him a resident (or inhabitant) of any other state is constitutionally valid.

Since the Constitution prohibits treating Senators and Representatives as residents (or inhabitants) of any state other than the one they represent, it follows that Maryland lacks the legislative jurisdiction to tax the income of Senators and Representatives other than its own. It has long been established that a state has no authority to tax the income of a nonresident derived from sources outside that state.

Where there is jurisdiction neither as to person nor property, the imposition of a tax would be *ultra vires* and void. If the legislature of a state should enact that the citizens or property of another state or county should be taxed in the same manner as the persons and property within its own limits and subject to its own authority, or in any manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition.

St. Louis v. The Ferry Company, 11 Wall. 423, 430 (1870), quoted with approval in *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 342 (1954); accord, *Dewey v. Des Moines*, 173 U.S. 193 (1899).

The statutory provisions of Virginia and the District of Columbia are regarded as simple recognitions of the fact that each Senator and Representative is in law a resident of the state which he represents, and not any other state. In a basic sense, the location of any Senator or Representative in the jurisdictions adjacent to the Capitol is a necessary incident to the proper carrying on of constitutional duties. Since Senators or Representatives cannot inhabit the air above the buildings of Congress, they are bound to live in one of the surrounding jurisdictions, be it the District of Columbia, Virginia, or Maryland. Their physical presence in one of these jurisdictions does not make them local "residents" in a constitutional sense, and does not give

¹ The words "resident" and "inhabitant" are for these purposes synonymous or virtually synonymous. The *Oxford Universal Dictionary* (3d Ed.) defines an "inhabitant" as "a human being . . . dwelling in a place, a permanent resident." A "resident" is defined as "one who resides permanently in a place; sometimes spec. applied to inhabitants." "In its general and popular sense, the word 'inhabitant' is the same as 'resident,' or one who lives in a place." *New Haven v. Bridgeport*, 37 A. 307 (Conn. 1897). When employed in statutes, the term "inhabitant" has been held to be equivalent to the word "resident." E.g., *Shaw v. Quincy Mining Company*, 145 U.S. 444 (1892); *ARO Manufacturing Co. v. Automobile Research Corp.*, 352 F.2d 400 (1st Cir. 1965). In considering qualifications of Congressmen, the former House Committee on Elections defined the term "inhabitant" as it is used in Article I, Sections 2, 3 of the Constitution as follows: "This term is the legal equivalent of the term 'resident' . . ." *Scott, Hinds' Precedents of the House of Representatives*, Vol. I, Sec. 439, p. 429. See also *Pigott, id.*, Vol. I, Sec. 369; *Bailey, id.*, Vol. I, Sec. 434.

the state wherein they live authority to tax them on their compensation as Federal legislators.²

The view set forth here is directly supported by decisions of the former Committee on Elections of the House of Representatives.

In determining whether persons were inhabitants of the states from which they had been elected, that Committee frequently declared that inhabitancy was the equivalent of residence and that two factors—where did he vote and to what state did he pay taxes—were the important determinants of inhabitancy. See *Updike v. Ludlow*, *Cannon's Precedents of the House of Representatives*, Vol. VI. Sec. 55; *Beck, id.*, Vol. VI, Sec. 174. To permit Maryland to impose income taxes on a non-Maryland Congressman who lives in Maryland in order to attend to his Congressional duties, would be to attach one of the most important indicia of inhabitancy to a state other than the one which he represents. The result could be to bar that Congressman from representing his home state (the representation of which was the very reason for his maintaining living quarters in Maryland). In a case like this, where the provisions of the United States Constitution and a state statute are in conflict, the supremacy clause requires that the state statute give way.

In the *Beck* case, the Committee observed—

We do not think that the framers of the Constitution intended by the use of the word "inhabitant" that the anomalous situation might ever arise that man should be a citizen, a legal resident, and a voter within a given State and yet be constitutionally an inhabitant elsewhere. If any such conclusion could be reached we might have the peculiar result in this country of a man being a resident, a citizen, and a voter in a given State, and yet within the constitutional sense barred from the right of representing a district in that State in Congress, but having the right to represent a district in another State in Congress. No such interpretation can fairly be read into this provision.

Consistently with this view, a member of Congress from another state does not become an inhabitant or resident of Maryland because he lives there during his term of office, even if Maryland statutes purport to say otherwise.

This view receives further reinforcement from the Soldiers' and Sailors' Civil Relief Act of 1940, which in Section 514 provides that military or naval personnel may not, for purposes of state income taxation, "be deemed . . . to have acquired a residence or domicile in, or to have become resident in or a resident of, any other state, territory, possession, or political subdivision . . . or the District of Columbia" by reason of compliance with military or naval orders. This legislation is binding upon the states (including Maryland).

² It should be noted that Senators and Representatives are subject to local property taxes, which are inherently *in rem* taxes. They are also subject to a variety of excise taxes, such as sales taxes on transactions. Thus, there is no question that they lend substantial financial support to the jurisdictions in which they live.

If the states could constitutionally determine "residence" as they pleased for tax purposes, the Soldiers' and Sailors' Civil Relief Act would be invalid as an encroachment by Congress on powers of the states. This is not the case. See *Dameron v. Brodhead*, 345 U.S. 322 (1953).

Due Process and Equal Protection

To subject members of Congress to local income taxes because of their abode in a state near the Capitol is to subject them, in most cases, to double taxation as a result of their constitutional functions and duties. They are required constitutionally to be and remain citizens of the states they represent, and to be subject to taxes as citizens of their home states. If the Maryland statute were applicable, they would be required additionally to pay taxes to Maryland. In accord with this view, this would deny them due process and equal protection of the laws.

Again, the case of a member of Congress with that of a Federal employee is contrasted. A Federal employee will ordinarily have one domicile and one residence. He will be subject, as a resident or a domiciliary, to income tax in only one state or jurisdiction. Unless the Maryland definition of "resident" is struck down, however, a member of Congress from a state other than Maryland, who lives in Maryland, will automatically be subject to double taxation.

Moreover, this is a classical case of taxation without representation. A Senator from Utah obviously votes in Utah, and cannot vote in Maryland. Although he is not and cannot be a citizen of Maryland, and does not participate in its government, the Maryland income tax law wrongfully purports to tax him.

In this respect, the situation of a member of Congress is unique, and the uniqueness is a direct result of the constitutional requirements for election. The result, if Maryland's right to tax were upheld, would be grossly discriminatory and unfair.

It may be contended that since Maryland recognizes a credit for taxes paid to other states, most of double taxation is obviated. There are several responses to this fallacious argument. First, to the extent that Maryland taxes are at a higher rate than home state taxes, there is double taxation in the amount of the excess. Second, the recent Maryland statute indicates an intention to allow only a partial credit. Thus, Maryland's top tax bracket is 5%, but county taxes may be an additional 2½%. A Senator or Representative from a state imposing a 10% income tax will pay an aggregate 12½% tax. A Senator or Representative from a home state imposing a 3% tax will pay an aggregate tax of 7½%. A Senator or Representative from a home state imposing a 6% tax will pay an 8½% tax.

Finally, it should be noted that the interstate credit depends on reciprocity, and is, in any event, a matter of grace. As Maryland has recently provided with respect to so-called county taxes, the credit can be partially or wholly eliminated, leading to complete double taxation.

The unfair character of a Maryland tax on out-of-state Congressmen may be illustrated with respect to specific transactions. A Representative from Montana owns a ranch in Montana which he sells at a capital gain of \$50,000. Although Maryland has nothing whatever to do with this transaction, if the Representative maintains premises in Maryland, the State will presumably attempt to tax the Montana gain in its entirety. Yet, the transaction has no Maryland connection in any meaningful sense.

Finally, while the problem we are considering is relatively discrete at the present time because Maryland income taxes are fairly low, nothing prevents the State from increasing its rate to as high a range as it pleases. Under circumstances of very high rates, double taxation of members of Congress could lead to making Congressional positions untenable for persons of limited means. In this sense, a free-handed power to impose double taxes is indeed, as Chief Justice Marshall observed in the *McCulloch* case, the "power to destroy." What would be destroyed, of course, would be the equal opportunity for persons of limited means, as well as those of great means, to become members of Congress. The "door of this part of the federal government" heretofore "open to merit of every description . . . without regard to poverty or wealth" would be closed. *The Federalist*, No. 52; cf. *Bullock v. Carter*, 405 U.S. 134 (1972) (forbidding large filing fees from barring candidates for public office); *Williams v. Rhodes*, 393 U.S. 23 (1968).

EXPLANATION OF THE LEGISLATION

The bill provides that no state or political subdivision thereof in which a member of Congress maintains a place of abode for purposes of attending sessions of Congress may for state or subdivision income tax purposes treat the member as a resident or domiciliary or treat any income paid by the United States as income for services performed within or from sources within such State or political subdivision thereof unless such member represents such State or a district of such State.

The bill also provides equal treatment for delegates from the District of Columbia, Guam and the Virgin Islands and the Resident Commissioner from Puerto Rico. The District of Columbia is included within the prohibitions of the amendment. It is the intention of the Committee that the bill shall apply to any past accrued tax liabilities of the nature encompassed within this legislation not yet paid the State or political subdivision.

COST OF LEGISLATION

In compliance with Sec. 252(a) (1) of the Legislative Reorganization Act of 1970, as amended (2 U.S.C. 190j), the Committee estimates that there will be no cost to the Federal government in carrying out the provisions of this legislation.

SECTION-BY-SECTION SUMMARY

SEC. 113.—Provides that no State or political subdivision thereof in which a Member of Congress maintains a place of abode for purposes

of attending sessions of Congress may for the purposes of any income tax:

1. Treat such member as a resident or domiciliary;
2. Treat any compensation paid by the United States to such member as income for services performed within, or from sources within such State or political subdivision, unless such member represents such State or district in such State.

For the purposes of this Section the term "Member of Congress" includes the delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico. The term State includes the District of Columbia.

RECOMMENDATION

For the foregoing reasons, the Committee on the Judiciary favorably reported S. 2447 with the recommendation that it do pass.

CHANGES IN EXISTING LAW

In compliance with Subsection (4) of Rule XXIX of the Standing Rules of the Senate, the new language to be added by this bill is printed in italic:

TITLE 4, CHAPTER 4, UNITED STATES CODE

- * * * * *
- "§ 113. *Residence of Members of Congress for State income tax laws*
- "*(a) No State, or political subdivision thereof, in which a Member of Congress maintains a place of abode for purposes of attending sessions of Congress may, for purposes of any income tax (as defined in section 110(c) of this title) levied by such State or political subdivision thereof—*
- "*(1) treat such Member as a resident or domiciliary of such State or political subdivision thereof; or*
- "*(2) treat any compensation paid by the United States to such Member as income for services performed within, or from sources within, such State or political subdivision thereof, unless such Member represents such State or a district in such State.*
- "*(b) For purposes of subsection (a)—*
- "*(1) the term 'Member of Congress' includes the delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico; and*
- "*(2) the term 'State' includes the District of Columbia.*"
- "*(b) The table of sections for such chapter 4 is amended by adding at the end thereof the following new item:*
- "*113. Residence of Members of Congress for State income tax laws.*"

○

CONGRESSIONAL TAX LIABILITY

JUNE 16, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FLOWERS, from the Committee on the Judiciary,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany S. 2447]

The Committee on the Judiciary, to whom was referred the bill (S. 2447) to amend title 4 of the United States Code to make it clear that Members of Congress may not, for purposes of State income tax laws, be treated as residents of any State other than the State from which they were elected, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to add a new section 113 to Title 4 of the United States Code concerning the incidence of State income tax laws on Members of Congress and providing that such taxes may not be levied against such a Member as a "resident" or "domiciliary" of a State in which he maintains a place of abode away from his home State for the purpose of attending sessions of Congress nor in such an instance shall his congressional salary be treated "as income for service performed within, or from sources within such State or political subdivision thereof".

STATEMENT

The bill provides that no state or its political subdivision in which a member of Congress maintains a place of abode for purposes of attending sessions of Congress may for state or subdivision income tax purposes treat the member as a resident or domiciliary or treat any income paid by the United States as income for services performed

within or from sources within such State or political subdivision thereof unless such member represents such State or a district of such State.

The bill also provides equal treatment for delegates from the District of Columbia, Guam and the Virgin Islands and the Resident Commissioner from Puerto Rico. The District of Columbia is included within the prohibitions of the amendment.

In order to attend the sessions of the Congress, Members of Congress who reside in states other than those neighboring Washington, D.C. must maintain an abode near the United States Capitol. This, of course, is in the Washington metropolitan area and this means the District of Columbia and adjoining areas in Virginia and Maryland.

The bill would provide for a uniform statutory standard to be applied to Members of Congress who must attend sessions of Congress and maintain a place of abode in the Washington area. While the incidence of income tax is not uniform due to differing tax laws this bill would settle the question. It is in fact consistent with the provisions presently contained in the laws of Virginia and the District of Columbia which provide an exemption to Members of Congress from State or District income taxes. (D.C. Code § 47-1551c, Virginia Code, Sec. 58-151(e) (1) (i). The D.C. Code exempts from the term "resident" "any elective officer of the Government of the United States . . .", and a similar exclusion applies to the term "employee".

The Maryland law contains no such exclusion and, as noted in the Senate report, provides for an income tax on substantially all income of "residents" of Maryland as defined in its income tax law. The relevant provision is:

A resident is defined as 'an individual domiciled in this State on the last day of the taxable year, and every other individual, who, for more than six months of the taxable year, maintained a place of abode within this State, whether domiciled in this State or not; but any individual, who, on or before the last day of the taxable year, changed his place of abode to a place without this State, with the bona fide intention of continuing to abide permanently without this State, shall be taxable as a resident of this State for the portion of the taxable year in which he resided in this State, and as a non resident of the State for the remainder of the taxable year. The fact that a person who has changed his place of abode within six months from so doing again resides in this State, shall be prima facie evidence that he did not intend to have his place of abode permanently without this State.' Md. Ann. Code, Art. 81, Sec. 279(i).

The Senate report also noted that:

Only limited tax credits are available to Maryland residents who are entitled to a credit against Maryland tax for tax paid to other states on the income taxable by Maryland. Md. Ann. Code, Art. 81 Sec. 290. Maryland also collects income taxes on behalf of its counties as an add-on percentage of the state income tax. No credit toward this tax is allowed for taxes paid to another state. (Senate Bill No. 23, Chapter 3, Laws 1975, approved February 11, 1975 amending Article 81, Section 290 of the annotated Code of Maryland.)

Accordingly, the enactment of this bill will provide for uniform tax treatment of Members in this situation. It is expressly provided that it will not affect the tax obligations of Members who maintain places of abode in States or districts which they represent in Congress.

The effect of the provisions of this bill would be very similar to that that has been provided for years to servicemen under the Soldiers' and Sailors' Civil Relief Act. Section 514 of that Act was added to the law by Section 17 of the Act of Oct. 6, 1942 (56 Stat. 777) and was again amended in 1944 and 1962, which is classified to the United States Code as Section 574 of Title 50, Appendix, provides that for purposes of taxation, a member of the military services is not to be deemed to have lost a residence or domicile in any State, Territory, possession or in their political subdivisions, or in the District of Columbia solely by reason of being absent therefrom in compliance with military or naval orders. It is further provided that a serviceman shall not be deemed for taxation purposes to have acquired a residence or domicile or to have become a resident in any other State, Territory, possession or political subdivision or in the District of Columbia solely by reason of being absent on that basis from his original residence or domicile. It is also expressly provided in the Soldiers' and Sailors' Civil Relief Act of 1940 that the serviceman's compensation for military or naval service is not to be deemed income for service performed within or from sources within the other State, Territory, possession or district. These provisions of the Soldiers' and Sailors' Civil Relief Act concerning residence for tax purposes were considered by the Supreme Court in the case of *Dameron v. Brodhead*, 345 U.S. 322 (1953). The court upheld the right of a member of the Air Force assigned to duty in Colorado to assert his residence in Louisiana as a bar to tax liability for state taxes in Colorado. The statement of the court in that case observed that the provisions of the Soldiers' and Sailors' Civil Relief Act does not affect the above powers of the states to tax. The court pointed out that the statute merely states that the taxable domicile of servicemen is not to be changed by military assignments. The court explicitly stated that in so providing, the statute represented activity within the Federal power.

Clearly, this is what the bill S. 2447 would provide for Members of Congress. It provides that when an individual is elected to serve in the Congress and his duties require his attendance in Washington to attend the sessions of Congress and to discharge his responsibilities as an elected representative of a state or a district within a State, the Member shall not be held to have acquired a new residence for tax purposes under a state other than the state from which he was elected. This, of course, would only apply during his term of office. Here again, the case of *Dameron v. Brodhead* is instructive because the court in that case noted that similar provisions of the Soldiers' and Sailors' Civil Relief Act "saved the sole right of taxation to the state of original residence". The court further noted that other than this, the statute does not alter the benefits and burdens of our system of dual federalism during the individual's service. This bill, S. 2447, provides for such an effect in that it makes it clear that the member will not be relieved of his tax obligations as regards the state from which the member was elected.

The Senate report on this bill, S. Rept. 94-631, contains an impressive analysis of the history and law relative to the question of state taxation of the federal government and points out that the states may only tax properties, functions and instrumentalities of the federal gov-

ernment with the express consent of Congress. *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954); *Reconstruction Finance Corporation v. Beaver County*, 328 U.S. 204 (1946). The report also discusses the case of *Graves v. New York*, 306 U.S. 466 (1939). However, that case concerned a federal employee and the situation of a member as noted above is distinctly different from that of a federal employee whose position as a worker requires him to take up a permanent residence incident to his federal employment and he, as a practical matter, is no different than any other privately employed person in terms of his work obligations and relative permanence in his work area. It is relevant to note, however, that in a concurring opinion, Justice Frankfurter reserved judgment as to whether the Congress by express legislation might relieve government personnel from certain obligations. The *Graves* case must be distinguished for the reason that a Member of Congress is in a totally different situation. In order to discharge the Constitutionally required duties of a Member of Congress, that Member must maintain an abode away from his home state. As a representative of people in his home state, he must maintain continuous contact with those people and periodically stand for election as a resident of his state. It is inconsistent as well as unfair to characterize him as a resident for tax purposes of another jurisdiction because of his required presence in the Washington area.

The Senate report observed that the Congress is more than a federal agency or instrumentality in that it is a federal branch of the Government created by the Constitution. It was noted that the Constitution provides that the Senate and House are to be composed of members elected by the people of the several states. On this basis, the Senate report noted that it is possible that a tax on the incomes of Senators and Representatives could be interpreted as a tax on the Congress. It could also be noted that the threat of multiple taxation of this sort could be a very real deterrent to service in the Congress to those who might seek election as well as to those already elected. The bill provides a very realistic and balanced means to meet the problem. In the language of the case of *Dameron v. Brodhead*, it saves the sole right of taxation to the state of the Member's residence, that is the state from which the Member is elected.

CONCLUSION

In view of the circumstances referred to above and those outlined in the Senate report, the committee recommends that the bill be considered favorably.

COMMITTEE VOTE

On June 16, 1976, the Full Committee on the Judiciary approved the bill S. 2447 by voice vote.

COST OF LEGISLATION

(Rule XII(7)(a)(1) of the House Rules)

The Committee estimates that there will be no cost to the Federal government in carrying out the provisions of this legislation.

OVERSIGHT STATEMENT

(Rule XI 2(1)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibilities with reference to matters of this type in accordance with Rule VI(b) of the Rules of the Committee on the Judiciary. The favorable consideration of this bill was recommended by that subcommittee and the committee has determined that legislation should be enacted as set forth in this bill.

BUDGET STATEMENT

(Rule XI 2(1)(3)(B))

As has been indicated in the committee statement as to cost made pursuant to Rule XIII (7)(a)(1), the bill merely provides for the resolution of a matter involving the impact of certain taxes on Members of Congress. The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by Clause 2(1)(3)(B) of Rule XI.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

(Rule XI 2(1)(3)(C))

No estimate or comparison was received from the Director of the Congressional Budget Office.

INFLATIONARY IMPACT

(Rule XI 2(1)(3))

In compliance with clause 2(1)(4) of House Rule XI it is stated that this legislation will have no inflationary impact on prices and costs in the operation of the national economy.

SECTION-BY-SECTION SUMMARY

SEC. 113.—Provides that no State or political subdivision thereof in which a Member of Congress maintains a place of abode for purposes of attending sessions of Congress may for the purposes of any income tax:

1. Treat such member as a resident or domiciliary;
2. Treat any compensation paid by the United States to such member as income for services performed within, or from sources within such State or political subdivision, unless such member represents such State or district in such State.

For the purposes of this Section the term "Member of Congress" includes the delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico. The term State includes the District of Columbia.

RECOMMENDATION

For the foregoing reasons, the Committee on the Judiciary favorably reported S. 2447 with the recommendation that it do pass.

CHANGES IN EXISTING LAW MADE BY THE BILL

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

TITLE 4, CHAPTER 4, UNITED STATES CODE

- * * * * *
- “§ 113. Residence of Members of Congress for State income tax laws
- “(a) No State, or political subdivision thereof, in which a Member of Congress maintains a place of abode for purposes of attending sessions of Congress may, for purposes of any income tax (as defined in section 110(c) of this title) levied by such State or political subdivision thereof—
- “(1) treat such Member as a resident or domiciliary of such State or political subdivision thereof; or
- “(2) treat any compensation paid by the United States to such Member as income for services performed within, or from sources within, such State or political subdivision thereof, unless such Member represents such State or a district in such State.
- “(b) For purposes of subsection (a)—
- “(1) the term ‘Member of Congress’ includes the delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico; and
- “(2) the term ‘State’ includes the District of Columbia.”
- (b) The table of sections for such chapter 4 is amended by adding at the end thereof the following new item:
- “113. Residence of Members of Congress for State income tax laws.”.

DISSENT TO HOUSE JUDICIARY COMMITTEE REPORT
ON S. 2447

I strongly oppose the enactment of S. 2447 which would prohibit any state from imposing an income tax on a Member of Congress other than the State which he or she was elected to represent in the Congress. This proposed legislation would in effect establish a special class of people who live in Maryland, Virginia, or the District of Columbia, who use the services of those jurisdictions but will not contribute through the income tax to payment for those services. Since neither the District of Columbia nor Virginia presently tax Members of Congress, this legislation will not result in a loss of tax revenue for either of those jurisdictions. However, the State of Maryland has not chosen to exempt Members of Congress from State and local income taxation. Enactment of this legislation would therefore result in a loss of tax revenues to Maryland and its counties where a number of Members of Congress reside.

That many Members of Congress choose to live in Maryland is easy to understand. The State of Maryland and its counties adjacent to the Nation's Capitol provide excellent services, including outstanding educational opportunities. In addition these jurisdictions provide exemplary police and firefighter services, recreational facilities, as well as such municipal functions as water, street lighting, sewer and garbage collection. All such services cost money. To pay for them the State of Maryland and its subdivisions have relied heavily upon a graduated income tax system. The more regressive property tax which in the past funded such programs has been deliberately de-emphasized. Revenues generated by the income tax pay not only for the many services provided by the State such as State police, roads, and educational aid, but through the so-called “local piggy-back income tax” also generates a substantial part of the revenue of county governments for the many services that are provided for domiciliaries of Maryland, including many Members of Congress.

Some have argued that this legislation is needed to prevent double taxation of Members of Congress who must live in Maryland when Congress is in session while maintaining a residence in their home State. I will point out, however, that the State of Maryland has reciprocity arrangements with many other States so that a Member of Congress receives a credit on his Maryland income tax obligation for the income tax that is paid in other States. As for Members of Congress who come from States that have not established reciprocity with Maryland, special efforts should be made to develop such reciprocity agreements between the two States; the problem should not be addressed by legislation that would establish a special class of residents of Maryland exempted from all State and local income taxation. Members of Congress who send their children to the outstanding public schools in Maryland, who are benefited by myriad costly public serv-

ices such as police and fire protection, should be expected to contribute their fair share of the cost. We in Maryland are proud that so many Members of Congress choose to live in our State but we believe it only fair for them to pay exactly as other residents do for the public services they receive. To do otherwise is to establish an inequity which justifiably brings severe criticism from the ordinary taxpayer.

In addition to my opposition to this legislation I regret that an amendment which I offered in the Committee to compensate the States and their subdivisions by a Federal payment for the reduced revenues resulting from this legislation was not adopted. Surely, if the Federal government is to provide special exemption from State and local income taxes for Members of Congress it ought in all fairness to compensate the States and their subdivisions for the resulting loss of revenues.

I urge my colleagues to recognize the unfairness and inequity resulting from this legislation and to reject it when it is considered by the full House.

PAUL S. SARBANES.





Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To amend title 4 of the United States Code to make it clear that Members of Congress may not, for purposes of State income tax laws, be treated as residents of any State other than the State from which they were elected.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 4 of title 4 of the United States Code is amended by adding at the end thereof the following new section:

“§ 113. Residence of Members of Congress for State income tax laws

“(a) No State, or political subdivision thereof, in which a Member of Congress maintains a place of abode for purposes of attending sessions of Congress may, for purposes of any income tax (as defined in section 110(c) of this title) levied by such State or political subdivision thereof—

“(1) treat such Member as a resident or domiciliary of such State or political subdivision thereof; or

“(2) treat any compensation paid by the United States to such Member as income for services performed within, or from sources within, such State or political subdivision thereof, unless such Member represents such State or a district in such State.

“(b) For purposes of subsection (a)—

“(1) the term ‘Member of Congress’ includes the delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico; and

“(2) the term ‘State’ includes the District of Columbia.”

(b) The table of sections for such chapter 4 is amended by adding at the end thereof the following new item:

“113. Residence of Members of Congress for State income tax laws.”

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

August 3, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE SENATE OF THE UNITED STATES:



I am returning today without my signature S. 2447, which would exempt Members of Congress from certain local income taxes. This bill provides that a Member of Congress need not pay the income tax levied by a state or municipality in which the Member lives for the purpose of attending Congress.

Since Virginia and District of Columbia laws already exempt from payment of their income taxes Members living in such jurisdictions only while attending Congress, S. 2447 would serve principally to prevent Maryland from levying such taxes on Members of Congress. However, it is one thing for a taxing jurisdiction voluntarily to exempt Members of Congress from its income tax laws and quite another for Congress to mandate a Federal exemption on a state income tax system. I believe such Federal interference is particularly objectionable where, as is the case in Maryland, a portion of the income tax is collected on behalf of counties to pay for local public services which all residents use and enjoy. It should also be noted that this bill would in effect freeze the exemptions now provided by Virginia and the District of Columbia, and they would then be powerless to change their tax laws in this regard.

Since this bill benefits a narrow and special class of persons it violates, in my view, the basic concept of equity and fairness by creating a special tax exemption for Members of Congress while other citizens who are required to take up temporary residence in the Washington area -- or elsewhere -- do not enjoy a similar privilege.

Finally, those who assert that there is a Constitutional infirmity in applying a state income tax to Members while attending Congress may present the issue to the courts for resolution.

As the end of this session of Congress approaches, the American people would be better served if Congress would direct its attention to the important laws that should be passed this year -- to cut taxes and spending; to expand catastrophic health care programs; to limit court ordered school busing; to attack crime and drugs, and to address many other important matters of concern to the American people -- rather than by enacting legislation such as S. 2447.

For these reasons, I am returning S. 2447 and asking Congress to reconsider this bill.

GERALD R. FORD

THE WHITE HOUSE,

August 3, 1976.

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