

1 HOUSE RESOLUTION NO. 164

2 BY J. K. VAN FOSSEN

3 A Resolution requesting the United States Congress to  
4 expand the physical presence standard for the  
5 imposition of state and local business activity  
6 taxes.

7 WHEREAS, the United States Supreme Court, in Quill  
8 Corp. v. North Dakota, 504 U. S. 298 (1992), held that  
9 remote sellers lacking a physical presence may not be  
10 required to act as tax collection agents of the state;  
11 and

12 WHEREAS, direct state and local taxes on  
13 businesses, also known as "business activity taxes",  
14 such as income, franchise, net worth, business  
15 license, business and occupation, single business,  
16 capital stock, and like taxes, impose an even greater  
17 burden on businesses engaged in interstate commerce  
18 than an obligation to collect a tax from consumers;  
19 and

20 WHEREAS, the physical presence standard promotes  
21 fairness by ensuring that businesses that receive  
22 benefits and protections provided by state and local  
23 governments pay their fair share for these services;  
24 and

25 WHEREAS, the ability of state and local  
26 jurisdictions to tax out-of-state businesses should be  
27 limited to those situations in which the business has  
28 employees or property in the taxing jurisdiction and  
29 accordingly receives meaningful governmental benefits  
30 or protections from the jurisdiction; and

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1 WHEREAS, the physical presence standard results in  
2 the proper attribution of business profits to taxing  
3 jurisdictions where a business is located and thus  
4 does not result in tax avoidance; and

5 WHEREAS, a business activity tax filing requirement  
6 based on a standard other than physical presence  
7 results in increased filing requirements and thus  
8 increased compliance costs; and

9 WHEREAS, businesses currently rely on a physical  
10 presence standard for complying with state and local  
11 business activity tax obligations, and this standard  
12 is applied currently by most state courts; and

13 WHEREAS, any congressional authorization for states  
14 to impose a sales and use tax collection obligation  
15 would further put businesses at risk of the unfair  
16 application of business activity taxes by  
17 jurisdictions in which the businesses lack a physical  
18 presence; and

19 WHEREAS, the imposition of a standard other than  
20 physical presence for business activity taxes would  
21 expose United States companies lacking a physical  
22 presence overseas to similarly expansive and unfair  
23 taxation by foreign countries and their provinces; and

24 WHEREAS, businesses operating in interstate  
25 commerce should not be compelled to pay taxes in state  
26 and local jurisdictions solely as a result of the  
27 business having customers located in the taxing  
28 jurisdiction; and

29 WHEREAS, the United States economy has become more  
30 global since Congress first enacted Pub. L. No. 86-272

1 and has shifted toward the provision of more  
2 interstate services and intangibles, and providers of  
3 services and intangibles are competitively  
4 disadvantaged relative to businesses that only sell  
5 tangible personal property; and

6 WHEREAS, the enactment of new business activity  
7 taxes other than income taxes threatens to circumvent  
8 the intent of Congress in enacting Pub. L. No. 86-272;  
9 NOW THEREFORE,

10 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES,  
11 That the State of Iowa urges Congress to enact  
12 legislation recognizing a physical presence standard  
13 for the imposition of state and local business  
14 activity taxes, defining de minimis standards for  
15 measuring physical presence and setting reasonable  
16 limits on the attribution of nexus, and updating Pub.  
17 L. No. 86-272 to extend the current protections  
18 available for the solicitation for sales of goods to  
19 the solicitation for sales of services and intangibles  
20 and to apply these protections to all business  
21 activity taxes; and

22 BE IT FURTHER RESOLVED, That the State of Iowa  
23 recognizes that any congressional approval of "sales  
24 tax streamlining" without the simultaneous enactment  
25 of these business activity tax measures would have a  
26 harmful effect on American businesses and the economy;  
27 and

28 BE IT FURTHER RESOLVED, That the Chief Clerk of the  
29 House of Representatives shall forward a copy of this  
30 Resolution to the Congress of the United States.