

107TH CONGRESS  
1ST SESSION

# S. 664

To provide jurisdictional standards for the imposition of State and local tax obligations on interstate commerce, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 29, 2001

Mr. GREGG (for himself and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide jurisdictional standards for the imposition of State and local tax obligations on interstate commerce, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “New Economy Tax  
5       Fairness Act or NET FAIR Act”.

1 **SEC. 2. JURISDICTIONAL STANDARDS FOR THE IMPOSI-**  
 2 **TION OF STATE AND LOCAL BUSINESS ACTIV-**  
 3 **ITY, SALES, AND USE TAX OBLIGATIONS ON**  
 4 **INTERSTATE COMMERCE.**

5 Title I of the Act entitled “An Act relating to the  
 6 power of the States to impose net income taxes on income  
 7 derived from interstate commerce, and authorizing studies  
 8 by congressional committees of matters pertaining there-  
 9 to”, approved on September 14, 1959 (15 U.S.C. 381 et  
 10 seq.), is amended to read as follows:

11 **“TITLE I—JURISDICTIONAL**  
 12 **STANDARDS**

13 **“SEC. 101. IMPOSITION OF STATE AND LOCAL BUSINESS AC-**  
 14 **TIVITY, SALES, AND USE TAX OBLIGATIONS**  
 15 **ON INTERSTATE COMMERCE.**

16 “(a) IN GENERAL.—No State shall have power to im-  
 17 pose, for any taxable year ending after the date of enact-  
 18 ment of this title, a business activity tax or a duty to col-  
 19 lect and remit a sales or use tax on the income derived  
 20 within such State by any person from interstate com-  
 21 merce, unless such person has a substantial physical pres-  
 22 ence in such State. A substantial physical presence is not  
 23 established if the only business activities within such State  
 24 by or on behalf of such person during such taxable year  
 25 are any or all of the following:

1           “(1) The solicitation of orders or contracts by  
2           such person or such person’s representative in such  
3           State for sales of tangible or intangible personal  
4           property or services, which orders or contracts are  
5           approved or rejected outside the State, and, if ap-  
6           proved, are fulfilled by shipment or delivery of such  
7           property from a point outside the State or the per-  
8           formance of such services outside the State.

9           “(2) The solicitation of orders or contracts by  
10          such person or such person’s representative in such  
11          State in the name of or for the benefit of a prospec-  
12          tive customer of such person, if orders or contracts  
13          by such customer to such person to enable such cus-  
14          tomer to fill orders or contracts resulting from such  
15          solicitation are orders or contracts described in para-  
16          graph (1).

17          “(3) The presence or use of intangible personal  
18          property in such State, including patents, copy-  
19          rights, trademarks, logos, securities, contracts,  
20          money, deposits, loans, electronic or digital signals,  
21          and web pages, whether or not subject to licenses,  
22          franchises, or other agreements.

23          “(4) The use of the Internet to create or main-  
24          tain a World Wide Web site accessible by persons in  
25          such State.

1           “(5) The use of an Internet service provider,  
2           on-line service provider, internetwork communication  
3           service provider, or other Internet access service pro-  
4           vider, or World Wide Web hosting services to main-  
5           tain or take and process orders via a web page or  
6           site on a computer that is physically located in such  
7           State.

8           “(6) The use of any service provider for trans-  
9           mission of communications, whether by cable, sat-  
10          ellite, radio, telecommunications, or other similar  
11          system.

12          “(7) The affiliation with a person located in the  
13          State, unless—

14               “(A) the person located in the State is the  
15               person’s agent under the terms and conditions  
16               of subsection (d); and

17               “(B) the activity of the agent in the State  
18               constitutes substantial physical presence under  
19               this subsection.

20          “(8) The use of an unaffiliated representative  
21          or independent contractor in such State for the pur-  
22          pose of performing warranty or repair services with  
23          respect to tangible or intangible personal property  
24          sold by a person located outside the State.

1       “(b) DOMESTIC CORPORATIONS; PERSONS DOMI-  
 2       CILED IN OR RESIDENTS OF A STATE.—The provisions  
 3       of subsection (a) shall not apply to the imposition of a  
 4       business activity tax or a duty to collect and remit a sales  
 5       or use tax by any State with respect to—

6               “(1) any corporation which is incorporated  
 7       under the laws of such State; or

8               “(2) any individual who, under the laws of such  
 9       State, is domiciled in, or a resident of, such State.

10       “(c) SALES OR SOLICITATION OF ORDERS OR CON-  
 11       TRACTS FOR SALES BY INDEPENDENT CONTRACTORS.—  
 12       For purposes of subsection (a), a person shall not be con-  
 13       sidered to have engaged in business activities within a  
 14       State during any taxable year merely by reason of sales  
 15       of tangible or intangible personal property or services in  
 16       such State, or the solicitation of orders or contracts for  
 17       such sales in such State, on behalf of such person by one  
 18       or more independent contractors, or by reason of the  
 19       maintenance of an office in such State by one or more  
 20       independent contractors whose activities on behalf of such  
 21       person in such State consist solely of making such sales,  
 22       or soliciting orders or contracts for such sales.

23       “(d) ATTRIBUTION OF ACTIVITIES AND PRES-  
 24       ENCE.—For purposes of this section, the substantial phys-  
 25       ical presence of any person shall not be attributed to any

1 other person absent the establishment of an agency rela-  
 2 tionship between such persons that—

3 “(1) results from the consent by both persons  
 4 that one person act on behalf and subject to the con-  
 5 trol of the other; and

6 “(2) relates to the activities of the person with-  
 7 in the State.

8 “(e) DEFINITIONS.—For purposes of this title—

9 “(1) BUSINESS ACTIVITY TAX.—The term ‘busi-  
 10 ness activity tax’ means a tax imposed on, or meas-  
 11 ured by, net income, a business license tax, a busi-  
 12 ness and occupation tax, a franchise tax, a single  
 13 business tax or a capital stock tax, or any similar  
 14 tax or fee imposed by a State.

15 “(2) INDEPENDENT CONTRACTOR.—The term  
 16 ‘independent contractor’ means a commission agent,  
 17 broker, or other independent contractor who is en-  
 18 gaged in selling, or soliciting orders or contracts for  
 19 the sale of, tangible or intangible personal property  
 20 or services for more than one principal and who  
 21 holds himself or herself out as such in the regular  
 22 course of his or her business activities.

23 “(3) INTERNET.—The term ‘Internet’ means  
 24 collectively the myriad of computer and tele-  
 25 communications facilities, including equipment and

1 operating software, which comprise the inter-  
 2 connected world-wide network of networks that em-  
 3 ploy the Transmission Control Protocol/Internet  
 4 Protocol, or any predecessor or successor protocols  
 5 to such Protocol.

6 “(4) INTERNET ACCESS.—The term ‘Internet  
 7 access’ means a service that enables users to access  
 8 content, information, electronic mail, or other serv-  
 9 ices offered over the Internet, and may also include  
 10 access to proprietary content, information, and other  
 11 services as a part of a package of services offered to  
 12 users.

13 “(5) REPRESENTATIVE.—The term ‘representa-  
 14 tive’ does not include an independent contractor.

15 “(6) SALES TAX.—The term ‘sales tax’ means  
 16 a tax that is—

17 “(A) imposed on or incident to the sale of  
 18 tangible or intangible personal property or serv-  
 19 ices as may be defined or specified under the  
 20 laws imposing such tax; and

21 “(B) measured by the amount of the sales  
 22 price, cost, charge, or other value of or for such  
 23 property or services.

24 “(7) SOLICITATION OF ORDERS OR CON-  
 25 TRACTS.—The term ‘solicitation of orders or con-

1       tracts’ includes activities normally ancillary to such  
2       solicitation.

3               “(8) STATE.—The term ‘State’ means any of  
4       the several States, the District of Columbia, or any  
5       territory or possession of the United States, or any  
6       political subdivision thereof.

7               “(9) USE TAX.—The term ‘use tax’ means a  
8       tax that is—

9               “(A) imposed on the purchase, storage,  
10       consumption, distribution, or other use of tan-  
11       gible or intangible personal property or services  
12       as may be defined or specified under the laws  
13       imposing such tax; and

14              “(B) measured by the purchase price of  
15       such property or services.

16              “(10) WORLD WIDE WEB.—The term ‘World  
17       Wide Web’ means a computer server-based file ar-  
18       chive accessible, over the Internet, using a hypertext  
19       transfer protocol, file transfer protocol, or other  
20       similar protocols.

21              “(f) APPLICATION OF SECTION.—This section shall  
22       not be construed to limit, in any way, constitutional re-  
23       strictions otherwise existing on State taxing authority.



1 **“SEC. 102. ASSESSMENT OF BUSINESS ACTIVITY TAXES.**

2       “(a) LIMITATIONS.—No State shall have power to as-  
3 sess after the date of enactment of this title any business  
4 activity tax which was imposed by such State or political  
5 subdivision for any taxable year ending on or before such  
6 date, on the income derived for activities within such State  
7 that affect interstate commerce, if the imposition of such  
8 tax for a taxable year ending after such date is prohibited  
9 by section 101.

10       “(b) COLLECTIONS.—The provisions of subsection  
11 (a) shall not be construed—

12               “(1) to invalidate the collection on or before the  
13 date of enactment of this title of any business activ-  
14 ity tax imposed for a taxable year ending on or be-  
15 fore such date; or

16               “(2) to prohibit the collection after such date of  
17 any business activity tax which was assessed on or  
18 before such date for a taxable year ending on or be-  
19 fore such date.

20 **“SEC. 103. TERMINATION OF SUBSTANTIAL PHYSICAL PRES-**  
21 **ENCE.**

22       “If a State has imposed a business activity tax or  
23 a duty to collect and remit a sales or use tax on a person  
24 as described in section 101, and the person so obligated  
25 no longer has a substantial physical presence in that  
26 State, the obligation to pay a business activity tax or to

1 collect and remit a sales or use tax on behalf of that State  
2 applies only for the period in which the person has a sub-  
3 stantial physical presence.

4 **“SEC. 104. SEPARABILITY.**

5       “If any provision of this title or the application of  
6 such provision to any person or circumstance is held in-  
7 valid, the remainder of this title or the application of such  
8 provision to persons or circumstances other than those to  
9 which it is held invalid, shall not be affected thereby.”.

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