

108TH CONGRESS  
1ST SESSION

# H. R. 3220

To regulate certain State taxation of interstate commerce, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2003

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. BOEHNER, Mr. SMITH of Texas, Mr. CHABOT, Mr. FORBES, Ms. PRYCE of Ohio, Mr. RAMSTAD, Mr. WILSON of South Carolina, Mr. TIBERI, and Mr. BARRETT of South Carolina) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To regulate certain State taxation of 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 “Business Activity Tax  
5       Simplification Act of 2003”.

6       **SEC. 2. REMOVAL OF CERTAIN LIMITATIONS ON THE AP-**  
7       **PLICATION OF PUBLIC LAW 86–272.**

8       (a) SOLICITATIONS WITH RESPECT TO SALES OF  
9       OTHER THAN TANGIBLE PERSONAL PROPERTY.—Section

1 101 of the Act entitled “An Act relating to the power of  
2 the States to impose net income taxes on income derived  
3 from interstate commerce, and authorizing studies by con-  
4 gressional committees of matters pertaining thereto”, ap-  
5 proved September 14, 1959 (15 U.S.C. 381 et seq.) is  
6 amended—

7 (1) in subsections (a) and (c), by striking “of  
8 tangible personal property”; and

9 (2) in subsection (d) by striking “the sale of,  
10 tangible personal property” and inserting “a sale,”.

11 (b) APPLICATION OF PROHIBITIONS TO OTHER BUSI-  
12 NESS ACTIVITY TAXES.—Title I of the Act entitled “An  
13 Act relating to the power of the States to impose net in-  
14 come taxes on income derived from interstate commerce,  
15 and authorizing studies by congressional committees of  
16 matters pertaining thereto”, approved September 14,  
17 1959 (15 U.S.C. 381 et seq.) is amended by adding at  
18 the end the following:

19 “SEC. 105. Beginning with taxable periods beginning  
20 on or after the first day of the first calendar year that  
21 begins after the date of the enactment of the Business  
22 Activity Tax Simplification Act of 2003, the prohibitions  
23 of section 101 that apply with respect to net income taxes  
24 shall also apply with respect to each other business activity  
25 tax, as defined in section 4 of the Business Activity Tax

1 Simplification Act of 2003. A State or subdivision may  
 2 not assess or collect any tax which by reason of this sec-  
 3 tion the State or subdivision may not impose.”.

4 (c) EFFECTIVE DATE OF SUBSECTION (a) AMEND-  
 5 MENTS.—The amendments made by subsection (a) shall  
 6 apply with respect to the imposition, assessment, and col-  
 7 lection of taxes for taxable periods beginning on or after  
 8 the first day of the first calendar year that begins after  
 9 the date of the enactment of the Business Activity Tax  
 10 Simplification Act of 2003.

11 **SEC. 3. JURISDICTIONAL STANDARD FOR STATE AND**  
 12 **LOCAL NET INCOME TAXES AND OTHER BUSI-**  
 13 **NESS ACTIVITY TAXES.**

14 (a) IN GENERAL.—Except as otherwise provided by  
 15 this Act, no taxing authority of a State shall have power  
 16 to impose, assess, or collect a net income tax or other busi-  
 17 ness activity tax on any person relating to such person’s  
 18 activities in interstate commerce, unless such person has  
 19 a physical presence in the State during the taxable period  
 20 with respect to which the tax is imposed.

21 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—Ex-  
 22 cept as otherwise provided by this Act, for the purposes  
 23 of subsection (a), a person has a physical presence in a  
 24 State only if such person’s business activities within such

1 State include any of the following during the person's tax-  
2 able year:

3 (1) Being an individual physically within the  
4 State, or assigning one or more employees to be in  
5 such State, on more than 21 days. However, the fol-  
6 lowing shall be disregarded in determining whether  
7 such 21-day limit has been exceeded:

8 (A) Activities in connection with a possible  
9 purchase of goods or services for the business.

10 (B) Gathering news and covering events  
11 for print, broadcast, or other distribution  
12 through the media.

13 (C) Meeting government officials for pur-  
14 poses other than selling goods or services.

15 (D) Participation in educational or train-  
16 ing conferences, seminars or other similar func-  
17 tions.

18 (E) Participating in charitable activities.

19 (2) Using the services of another person, except  
20 an employee, in such State, on more than 21 days  
21 to establish or maintain the market in that State,  
22 unless that other person performs similar functions  
23 on behalf of at least one additional business entity  
24 during the taxable year.

1           (3) The leasing or owning of tangible personal  
2           property or real property in such State on more than  
3           21 days. However, the following shall be disregarded  
4           in determining whether such 21-day limit has been  
5           exceeded:

6                   (A) Tangible property located in the State  
7                   for purposes of being assembled, manufactured,  
8                   processed, or tested by another person for the  
9                   benefit of the owner or lessee, or used to fur-  
10                  nish a service to the owner or lessee by another  
11                  person.

12                  (B) Marketing or promotional materials  
13                  distributed in a State using mail or a common  
14                  carrier, or as inserts in or components of publi-  
15                  cations.

16                  (C) Any property to the extent used ancil-  
17                  lary to an activity excluded from the computa-  
18                  tion of the 21-day period under paragraph (1)  
19                  or (2).

20           (c) TAXABLE PERIODS NOT CONSISTING OF A  
21   YEAR.—If the taxable period for which the tax is imposed  
22   is not a year, then any requirements expressed in days  
23   for establishing physical presence under this Act shall be  
24   adjusted pro rata accordingly.

25           (d) EXCEPTIONS.—

1           (1) DOMESTIC BUSINESS ENTITIES AND INDIVIDUALS DOMICILED IN THE STATE.—Subsection (a)  
2           does not apply with respect to—  
3

4                   (A) a person (other than an individual)  
5                   that is incorporated or formed under the laws  
6                   of the State or commercially domiciled in the  
7                   State in which the tax is imposed; or

8                   (B) an individual who is domiciled in the  
9                   State.

10          (2) TAXATION OF PARTNERS AND SIMILAR PERSONS.—If a taxing authority is not prohibited by  
11          this section from taxing an entity that is a partnership, a Subchapter S corporation, a limited liability  
12          company, a trust, or an estate, or another similar  
13          entity, that taxing authority is also not prohibited by  
14          this section from taxing the owners or beneficiaries  
15          of the entity, if State law imposes the tax not on the  
16          entity itself but on the entity’s owners or beneficiaries, whether or not they are in the State, with  
17          respect to their ownership interest in the entity.  
18

19          (3) CERTAIN ACTIVITIES.—With respect to the  
20          following, subsection (b) shall be read by substituting “one day” for “more than 21 days”:  
21

22                   (A) The sale within the State of tangible  
23                   personal property, where delivery of the prop-  
24  
25

erty originates and is completed within that State.

(B) The performance of services to real property within the State.

(4) EXCEPTION RELATING TO CERTAIN PERFORMANCES AND SPORTING EVENTS.—With respect to the taxation of one of the following, subsection (b) shall be read by substituting “one day” for “more than 21 days”:

(A) A live performance in the State, before a live audience of more than 100 individuals.

(B) A live sporting event in the State before more than 100 spectators present at the event.

#### SEC. 4. DEFINITIONS.

The following definitions apply in this Act:

(1) NET INCOME TAX.—The term “net income tax” has the meaning given that term for the purposes of the Act entitled “An Act relating to the power of the States to impose net income taxes on income derived from interstate commerce, and authorizing studies by congressional committees of matters pertaining thereto”, approved September 14, 1959 (15 U.S.C. 381 et seq.).

(2) OTHER BUSINESS ACTIVITY TAX.—

1 (A) The term “other business activity tax”

2 means—

3 (i) a tax imposed on or measured by  
4 gross receipts, gross income, or gross prof-  
5 its;

6 (ii) a business licence tax;

7 (iii) a business and occupation tax;

8 (iv) a franchise tax;

9 (v) a single business tax or a capital  
10 stock tax; or

11 (vi) any other tax imposed by a State  
12 on a business for the right to do business  
13 in that State or measured by the amount  
14 of, or economic results of, business or re-  
15 lated activity conducted in that State.

16 (B) The term “other business activity tax”  
17 does not include a transaction tax.

18 (3) STATE.—The term “State” means any of  
19 the several States, the District of Columbia, or any  
20 territory or possession of the United States, and any  
21 political subdivision thereof.

22 **SEC. 5. GENERAL MATTERS.**

23 (a) RULE OF CONSTRUCTION.—The limitation on the  
24 power of a State imposed by section 3 does not affect any  
25 other limitation on that power imposed by other law.



1       (b) EFFECTIVE DATE.—This Act applies with respect  
2 to taxable periods beginning on and after the first day of  
3 the first year that begins after the date of enactment of  
4 this Act.

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