

Union Calendar No. 330

109TH CONGRESS
2^D SESSION

H. R. 1956

[Report No. 109-575]

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2005

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. CROWLEY, Mr. FORBES, Mr. MEEKS of New York, Mr. CHABOT, Mr. BACHUS, Mr. BOEHNER, Mrs. DRAKE, Mr. TIBERI, Mr. CANTOR, Mr. MORAN of Virginia, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

JULY 17, 2006

Additional sponsors: Mrs. BLACKBURN, Mr. WILSON of South Carolina, Mr. UPTON, Mr. GALLEGLY, Mr. CARTER, Mr. SOUDER, Mr. RAMSTAD, Mr. KING of Iowa, Ms. HART, Mr. COLE of Oklahoma, Mr. GARRETT of New Jersey, Mr. BARRETT of South Carolina, Mr. PENCE, Mrs. JO ANN DAVIS of Virginia, Mr. LATHAM, Mr. MARCHANT, Mr. BROWN of South Carolina, Mr. ROGERS of Kentucky, Mr. KOLBE, Mr. FLAKE, Mr. FRANKS of Arizona, Mr. ENGLISH of Pennsylvania, Ms. HERSETH, Mr. MURPHY, Mr. BISHOP of Utah, Mr. JENKINS, Mr. FEENEY, and Mr. DANIEL E. LUNGREN of California

JULY 17, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 28, 2005]

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 2006”.*

6 **SEC. 2. REMOVAL OF CERTAIN LIMITATIONS ON THE APPLI-**
7 **CATION OF PUBLIC LAW 86-272.**

8 (a) *SOLICITATIONS WITH RESPECT TO SALES AND*
9 *TRANSACTIONS OF OTHER THAN TANGIBLE PERSONAL*
10 *PROPERTY.—Section 101 of the Act entitled “An Act relat-*
11 *ing to the power of the States to impose net income taxes*
12 *on income derived from interstate commerce, and author-*
13 *izing studies by congressional committees of matters per-*
14 *taining thereto”, approved September 14, 1959 (15 U.S.C.*
15 *381 et seq.) is amended—*

16 (1) *in subsection (a)(1) by striking “of tangible”*
17 *and all that follows through “State; and” and insert-*
18 *ing the following:*

1 *“or transactions, which orders are sent outside the*
 2 *State for approval or rejection and, if approved,*
 3 *are—*

4 *“(A) in the case of tangible personal prop-*
 5 *erty, filled by shipment or delivery from a point*
 6 *outside the State; and*

7 *“(B) in the case of all other forms of prop-*
 8 *erty, services, and other transactions, fulfilled*
 9 *from a point outside the State;*

10 *and”;*

11 *(2) in subsection (c)—*

12 *(A) by inserting “or fulfilling transactions”*
 13 *after “making sales”;*

14 *(B) by inserting “or transactions” after*
 15 *“sales” the other places it appears;*

16 *(C) by striking “of tangible personal prop-*
 17 *erty” the first place it appears; and*

18 *(D) by striking “, of tangible personal prop-*
 19 *erty”;* and

20 *(3) in subsection (d)(1) by striking “the sale of,*
 21 *tangible personal property” and inserting “a sale or*
 22 *transaction,”.*

23 ***(b) APPLICATION OF PROHIBITIONS TO OTHER BUSI-***
 24 ***NESS ACTIVITY TAXES.—Title I of the Act entitled “An Act***
 25 ***relating to the power of the States to impose net income***

1 *taxes on income derived from interstate commerce, and au-*
2 *thorizing studies by congressional committees of matters*
3 *pertaining thereto”, approved September 14, 1959 (15*
4 *U.S.C. 381 et seq.) is amended by adding at the end the*
5 *following:*

6 “*SEC. 105. Beginning with taxable periods beginning*
7 *on or after the first day of the first calendar year that be-*
8 *gins after the date of the enactment of the Business Activity*
9 *Tax Simplification Act of 2006, the prohibitions of section*
10 *101 that apply with respect to net income taxes shall also*
11 *apply with respect to each other business activity tax, as*
12 *defined in section 4 of the Business Activity Tax Sim-*
13 *plification Act of 2006. A State or political subdivision*
14 *thereof may not assess or collect any tax which by reason*
15 *of this section the State or political subdivision may not*
16 *impose.”.*

17 *(c) EFFECTIVE DATE OF SUBSECTION (a) AMEND-*
18 *MENTS.—The amendments made by subsection (a) shall*
19 *apply with respect to the imposition, assessment, and collec-*
20 *tion of taxes for taxable periods beginning on or after the*
21 *first day of the first calendar year that begins after the date*
22 *of the enactment of the Business Activity Tax Simplifica-*
23 *tion Act of 2006.*

1 **SEC. 3. JURISDICTIONAL STANDARD FOR STATE AND**
2 **LOCAL NET INCOME TAXES AND OTHER BUSI-**
3 **NESS ACTIVITY TAXES.**

4 (a) *IN GENERAL.*—No taxing authority of a State shall
5 have power to impose, assess, or collect a net income tax
6 or other business activity tax on any person relating to such
7 person’s activities in interstate commerce unless such per-
8 son has a physical presence in the State during the taxable
9 period with respect to which the tax is imposed.

10 (b) *REQUIREMENTS FOR PHYSICAL PRESENCE.*—For
11 the purposes of subsection (a), a person has a physical pres-
12 ence in a State only if such person’s business activities in
13 the State include any of the following, collectively and on
14 more than 21 days in the aggregate, during such person’s
15 taxable year:

16 (1) *Being an individual physically in the State,*
17 *or assigning one or more employees to be in the State,*
18 *except that the following shall be excluded in deter-*
19 *mining whether such 21-day limit has been exceeded:*

20 (A) *Activities in connection with a possible*
21 *or an actual purchase of goods or services, for*
22 *consumption by the person’s business.*

23 (B) *Gathering news for print, broadcast, or*
24 *other distribution through the news media.*

1 (C) Meeting government officials for pur-
2 poses other than selling goods or services, for con-
3 sumption by such government.

4 (D) Merely attending educational or train-
5 ing conferences, seminars or other similar func-
6 tions.

7 (E) Nonprofit participation in charitable
8 activities.

9 (2) Using the services of an agent (excluding an
10 employee) to establish or maintain the market in the
11 State, if such agent does not perform business services
12 in the State for any other person during such taxable
13 year.

14 (3) The leasing or owning of tangible personal
15 property or of real property in the State, except that
16 the following shall be excluded in determining whether
17 such 21-day limit has been exceeded:

18 (A) Tangible personal property located in
19 the State for purposes of being assembled, manu-
20 factured, processed, or tested by another person
21 for the benefit of the owner or lessee, or used to
22 furnish a service to the owner or lessee by an-
23 other person.

24 (B) Marketing or promotional materials
25 distributed in the State.

1 (C) Any property to the extent used ancil-
2 lary to an activity excluded from the computa-
3 tion of the 21-day period based on paragraph (1)
4 or (2).

5 (c) *TAXABLE PERIODS NOT CONSISTING OF A YEAR.*—
6 If the taxable period for which the tax is imposed is not
7 a year, then any requirements expressed in days for estab-
8 lishing physical presence under this Act shall be adjusted
9 pro rata accordingly.

10 (d) *EXCEPTIONS.*—

11 (1) *DOMESTIC BUSINESS ENTITIES AND INDIVID-*
12 *UALS DOMICILED IN, OR RESIDENTS OF, THE*
13 *STATE.*—Subsection (a) does not apply with respect
14 to—

15 (A) a person (other than an individual)
16 that is incorporated or formed under the laws of
17 the State (or domiciled in the State) in which
18 the tax is imposed; or

19 (B) an individual who is domiciled in, or
20 a resident of, the State in which the tax is im-
21 posed.

22 (2) *TAXATION OF PARTNERS AND SIMILAR PER-*
23 *SONS.*—This section shall not be construed to modify
24 or affect any State business activity tax liability of
25 an owner or beneficiary of an entity that is a part-

1 *nership, an S corporation (as defined in section 1361*
2 *of the Internal Revenue Code of 1986 (26 U.S.C.*
3 *1361)), a limited liability company, a trust, an es-*
4 *tate, or any other similar entity, if the entity has a*
5 *physical presence in the State in which the tax is im-*
6 *posed.*

7 (3) *PRESERVATION OF AUTHORITY.—This section*
8 *shall not be construed to modify, affect, or supersede*
9 *the authority of a State to bring an enforcement ac-*
10 *tion against a person or entity that may be engaged*
11 *in an illegal activity, a sham transaction, or any*
12 *perceived or actual abuse in its business activities if*
13 *such enforcement action does not modify, affect, or su-*
14 *persede the operation of any provision of this Act or*
15 *of any other Federal law.*

16 (4) *CERTAIN ACTIVITIES.—With respect to the*
17 *following, subsection (b) shall be read by substituting*
18 *“at least one day” for “more than 21 days in the ag-*
19 *gregate”:*

20 (A) *The sale within a State of tangible per-*
21 *sonal property, if delivery of the property origi-*
22 *nates and is completed within the State.*

23 (B) *The performance of services that phys-*
24 *ically affect real property within a State.*

1 (5) *EXCEPTION RELATING TO CERTAIN PERFORM-*
2 *ANCES AND SPORTING EVENTS.*—*With respect to the*
3 *taxation of the following, subsection (b) shall be read*
4 *by substituting “at least one day” for “more than 21*
5 *days in the aggregate”:*

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

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

10 (e) *RULE OF CONSTRUCTION.*—*This section shall not*
11 *be construed to modify, affect, or supersede the operation*
12 *of title I of the Act entitled “An Act relating to the power*
13 *of the States to impose net income taxes on income derived*
14 *from interstate commerce, and authorizing studies by con-*
15 *gressional committees of matters pertaining thereto”, ap-*
16 *proved September 14, 1959 (15 U.S.C. 381 et seq.).*

17 **SEC. 4. DEFINITIONS.**

18 *The following definitions apply in this Act:*

19 (1) *NET INCOME TAX.*—*The term “net income*
20 *tax” has the meaning given that term for the purposes*
21 *of the Act entitled “An Act relating to the power of*
22 *the States to impose net income taxes on income de-*
23 *derived from interstate commerce, and authorizing stud-*
24 *ies by congressional committees of matters pertaining*

1 *thereto*”, approved September 14, 1959 (15 U.S.C.
2 381 *et seq.*).

3 (2) *OTHER BUSINESS ACTIVITY TAX.*—

4 (A) The term “*other business activity tax*”
5 *means*—

6 (i) a tax imposed on or measured by
7 *gross receipts, gross income, or gross profits;*

8 (ii) a business license tax;

9 (iii) a business and occupation tax;

10 (iv) a franchise tax;

11 (v) a single business tax or a capital
12 *stock tax; or*

13 (vi) any other tax imposed by a State
14 *on a business for the right to do business in*
15 *the State or measured by the amount of, or*
16 *economic results of, business or related ac-*
17 *tivity conducted in the State.*

18 (B) The term “*other business activity tax*”
19 *does not include a sales tax, a use tax, or a simi-*
20 *lar tax, imposed as the result of the sale or ac-*
21 *quisition of goods or services, whether or not de-*
22 *nominated a tax imposed on the privilege of*
23 *doing business.*

24 (3) *STATE.*—The term “*State*” means any of the
25 *several States, the District of Columbia, or any terri-*

1 *tory or possession of the United States, or any polit-*
2 *ical subdivision of any of the foregoing.*

3 (4) *TANGIBLE PERSONAL PROPERTY.*—*The term*
4 *“tangible personal property” does not include com-*
5 *puter software that is owned and licensed by the*
6 *owner to another person.*

7 **SEC. 5. EFFECTIVE DATE.**

8 *Except as provided otherwise in this Act, this Act ap-*
9 *plies with respect to taxable periods beginning on and after*
10 *the first day of the first year that begins after the date of*
11 *enactment of this Act.*

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