

109TH CONGRESS
1ST SESSION

H. R. 1956

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

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 2005”.

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

8 (a) SOLICITATIONS WITH RESPECT TO SALES AND
9 TRANSACTIONS OF OTHER THAN TANGIBLE PERSONAL

1 PROPERTY.—Section 101 of the Act entitled “An Act re-
2 lating to the power of the States to impose net income
3 taxes on income derived from interstate commerce, and
4 authorizing studies by congressional committees of mat-
5 ters pertaining thereto”, approved September 14, 1959
6 (15 U.S.C. 381 et seq.) is amended—

7 (1) in subsection (a)(1) by striking “of tan-
8 gible” and all that follows through “State; and” and
9 inserting the following:

10 “or transactions, which orders are sent outside the
11 State for approval or rejection and, if approved,
12 are—

13 “(A) in the case of tangible personal prop-
14 erty, filled by shipment or delivery from a point
15 outside the State; and

16 “(B) in the case of all other forms of prop-
17 erty, services, and other transactions, fulfilled
18 from a point outside the State;

19 and”;

20 (2) in subsection (c)—

21 (A) by inserting “or fulfilling transactions”
22 after “making sales”;

23 (B) by inserting “or transactions” after
24 “sales” the other places it appears; and

1 (C) by striking “of tangible personal prop-
2 erty” each place it appears; and

3 (3) in subsection (d) by striking “the sale of,
4 tangible personal property” and inserting “a sale or
5 transaction,”.

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

14 “SEC. 105. Beginning with taxable periods beginning
15 on or after the first day of the first calendar year that
16 begins after the date of the enactment of the Business
17 Activity Tax Simplification Act of 2005, the prohibitions
18 of section 101 that apply with respect to net income taxes
19 shall also apply with respect to each other business activity
20 tax, as defined in section 4 of the Business Activity Tax
21 Simplification Act of 2005. A State or political subdivision
22 thereof may not assess or collect any tax which by reason
23 of this section the State or political subdivision may not
24 impose.”.

1 (c) EFFECTIVE DATE OF SUBSECTION (a) AMEND-
2 MENTS.—The amendments made by subsection (a) shall
3 apply with respect to the imposition, assessment, and col-
4 lection of taxes for taxable periods beginning on or after
5 the first day of the first calendar year that begins after
6 the date of the enactment of the Business Activity Tax
7 Simplification Act of 2005.

8 **SEC. 3. JURISDICTIONAL STANDARD FOR STATE AND**
9 **LOCAL NET INCOME TAXES AND OTHER BUSI-**
10 **NESS ACTIVITY TAXES.**

11 (a) IN GENERAL.—No taxing authority of a State
12 shall have power to impose, assess, or collect a net income
13 tax or other business activity tax on any person relating
14 to such person’s activities in interstate commerce unless
15 such person has a physical presence in the State during
16 the taxable period with respect to which the tax is im-
17 posed.

18 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—For
19 the purposes of subsection (a), a person has a physical
20 presence in a State only if such person’s business activities
21 within the State include any of the following during such
22 person’s taxable year:

23 (1) Being an individual physically within the
24 State, or assigning one or more employees to be in
25 the State, on more than 21 days, except that the fol-

1 lowing shall be disregarded in determining whether
2 such 21-day limit has been exceeded:

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

5 (B) Gathering news and covering events
6 for print, broadcast, or other distribution
7 through the media.

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

10 (D) Participation in educational or train-
11 ing conferences, seminars or other similar func-
12 tions.

13 (E) Participating in charitable activities.

14 (2) Using the services of another person, except
15 an employee, in the State, on more than 21 days to
16 establish or maintain the market in the State, unless
17 such other person performs similar functions on be-
18 half of at least one additional business entity during
19 the taxable year.

20 (3) The leasing or owning of tangible personal
21 property or of real property in the State on more
22 than 21 days, except that the following shall be dis-
23 regarded in determining whether such 21-day limit
24 has been exceeded:

1 (A) Tangible personal property located in
2 the State for purposes of being assembled, man-
3 ufactured, processed, or tested by another per-
4 son for the benefit of the owner or lessee, or
5 used to furnish a service to the owner or lessee
6 by another person.

7 (B) Marketing or promotional materials
8 distributed in the State using mail or a common
9 carrier, or as inserts in or components of publi-
10 cations.

11 (C) Any property to the extent used ancil-
12 lary to an activity excluded from the computa-
13 tion of the 21-day period under paragraph (1)
14 or (2).

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

20 (d) EXCEPTIONS.—

21 (1) DOMESTIC BUSINESS ENTITIES AND INDI-
22 VIDUALS DOMICILED IN THE STATE.—Subsection (a)
23 does not apply with respect to—

24 (A) a person (other than an individual)
25 that is incorporated or formed under the laws

1 of the State, or domiciled in the State, in which
2 the tax is imposed; or

3 (B) an individual who is domiciled in the
4 State in which the tax is imposed.

5 (2) TAXATION OF PARTNERS AND SIMILAR PER-
6 SONS.—If a taxing authority is not prohibited by
7 this section from taxing an entity that is a partner-
8 ship, an S corporation (as defined in section 1361
9 of the Internal Revenue Code of 1986), a limited li-
10 ability company, a trust, or an estate, or another
11 similar entity, that taxing authority is also not pro-
12 hibited by this section from taxing the owners or
13 beneficiaries of the entity, if State law imposes the
14 tax not on the entity itself but on the entity’s owners
15 or beneficiaries, whether or not they are in the
16 State, with respect to their ownership interest in the
17 entity.

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

21 (A) The sale within a State of tangible
22 personal property, where delivery of the prop-
23 erty originates and is completed within the
24 State.

1 (B) The performance of services that phys-
2 ically affect real property within a State.

3 (4) EXCEPTION RELATING TO CERTAIN PER-
4 FORMANCES AND SPORTING EVENTS.—With respect
5 to the taxation of the following, subsection (b) shall
6 be read by substituting “one day” for “more than
7 21 days”:

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

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

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

19 **SEC. 4. DEFINITIONS.**

20 The following definitions apply in this Act:

21 (1) NET INCOME TAX.—The term “net income
22 tax” has the meaning given that term for the pur-
23 poses of the Act entitled “An Act relating to the
24 power of the States to impose net income taxes on
25 income derived from interstate commerce, and au-

1 thorizing studies by congressional committees of
2 matters pertaining thereto”, approved September
3 14, 1959 (15 U.S.C. 381 et seq.).

4 (2) OTHER BUSINESS ACTIVITY TAX.—

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

7 (i) a tax imposed on or measured by
8 gross receipts, gross income, or gross prof-
9 its;

10 (ii) a business license tax;

11 (iii) a business and occupation tax;

12 (iv) a franchise tax;

13 (v) a single business tax or a capital
14 stock tax; or

15 (vi) any other tax imposed by a State
16 on a business for the right to do business
17 in the State or measured by the amount
18 of, or economic results of, business or re-
19 lated activity conducted in the State.

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

22 (3) STATE.—The term “State” means any of
23 the several States, the District of Columbia, or any
24 territory or possession of the United States, or any
25 political subdivision of any of the foregoing.

1 **SEC. 5. EFFECTIVE DATE.**

2 Except as provided otherwise in this Act, this Act ap-
3 plies with respect to taxable periods beginning on and
4 after the first day of the first year that begins after the
5 date of enactment of this Act.

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