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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Business Activity Tax Simplification Act of 2005".

SEC. 2. REMOVAL OF CERTAIN LIMITATIONS ON THE APPLICATION OF PUBLIC LAW 86–272.

(a) SOLICITATIONS WITH RESPECT TO SALES AND 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

(C) by striking "of tangible personal property" each place it appears; and

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

(b) APPLICATION OF PROHIBITIONS TO OTHER BUSINESS ACTIVITY TAXES.—Title I 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.) is amended by adding at the end the following:

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

(c) EFFECTIVE DATE OF SUBSECTION (a) AMENDMENTS.—The amendments made by subsection (a) shall apply with respect to the imposition, assessment, and collection of taxes for taxable periods beginning on or after the first day of the first calendar year that begins after the date of the enactment of the Business Activity Tax Simplification Act of 2005.

SEC. 3. JURISDICTIONAL STANDARD FOR STATE AND LOCAL NET INCOME TAXES AND OTHER BUSINESS ACTIVITY TAXES.

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

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

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

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

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

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

(C) Meeting government officials for purposes other than selling goods or services.

(D) Participation in educational or training conferences, seminars or other similar functions.

(E) Participating in charitable activities.

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

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

(A) Tangible personal property located in the State for purposes of being assembled, manufactured, processed, or tested by another person for the benefit of the owner or lessee, or used to furnish a service to the owner or lessee by another person.

(B) Marketing or promotional materials distributed in the State using mail or a common carrier, or as inserts in or components of publications.

(C) Any property to the extent used ancillary to an activity excluded from the computation of the 21-day period under paragraph (1) or (2).

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

(d) EXCEPTIONS.—

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

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

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

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

(2) TAXATION OF PARTNERS AND SIMILAR PERSONS.—If a taxing authority is not prohibited by this section from taxing an entity that is a partnership, an S corporation (as defined in section 1361 of the Internal Revenue Code of 1986), a limited liability company, a trust, or an estate, or another similar entity, that taxing authority is also not prohibited by this section from taxing the owners or beneficiaries of the entity, if State law imposes the tax not on the entity itself but on the entity's owners or beneficiaries, whether or not they are in the State, with respect to their ownership interest in the entity.

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

(A) The sale within a State of tangible personal property, where delivery of the property originates and is completed within the State.

(B) The performance of services that physically affect real property within a State.

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

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

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

(e) RULE OF CONSTRUCTION.—This section shall not be construed to modify, affect, or supersede the operation of title I 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.).

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 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.

○