

109TH CONGRESS
2D SESSION

S. 2721

To simplify the taxation of business activity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4, 2006

Mr. SCHUMER (for himself, Mr. CRAPO, Mr. JOHNSON, Mr. THUNE, Mr. DEMINT, and Mr. ALLEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To simplify the taxation of business activity, 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 AP-**
7 **PLICATION 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 re-

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

6 (1) in subsection (a)(1) by striking “of tan-
 7 gible” and all that follows through “State; and” and
 8 inserting the following: “or transactions, which or-
 9 ders are sent outside the State for approval or rejec-
 10 tion and, if approved, are—

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

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

17 (2) in subsection (c)—

18 (A) by inserting “or fulfilling transactions”
 19 after “making sales”;

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

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

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

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

12 “SEC. 105. Beginning with taxable periods beginning
13 on or after the first day of the first calendar year that
14 begins after the date of the enactment of the Business
15 Activity Tax Simplification Act of 2006, the prohibitions
16 of section 101 that apply with respect to net income taxes
17 shall also apply with respect to each other business activity
18 tax, as defined in section 4 of the Business Activity Tax
19 Simplification Act of 2006. A State or political subdivision
20 thereof may not assess or collect any tax which by reason
21 of this section the State or political subdivision may not
22 impose.”.

23 (c) EFFECTIVE DATE OF SUBSECTION (a) AMEND-
24 MENTS.—The amendments made by subsection (a) shall
25 apply with respect to the imposition, assessment, and col-

lection 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 2006.

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 in the State include any of the following, collectively and on more than 21 days in the aggregate, during such person’s taxable year:

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

1 (A) Activities in connection with a possible
2 or an actual purchase of goods or services, for
3 consumption by the person's business.

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

7 (C) Gathering information needed in order
8 to perform services outside the State.

9 (D) Meeting government officials for pur-
10 poses other than selling goods or services, for
11 consumption by such government.

12 (E) Merely attending educational or train-
13 ing conferences, seminars or other similar func-
14 tions.

15 (F) Participating in charitable activities.

16 (2) Using the services of an agent (excluding an
17 employee) to establish or maintain the market in the
18 State, if such agent does not perform business serv-
19 ices in the State for any other person during such
20 taxable year.

21 (3) The leasing or owning of tangible personal
22 property or of real property in the State, except that
23 the following shall be excluded in determining wheth-
24 er such 21-day limit 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.

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

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

18 (d) EXCEPTIONS.—

19 (1) DOMESTIC BUSINESS ENTITIES AND INDIV-
 20 IDUALS DOMICILED IN, OR RESIDENTS OF, THE
 21 STATE.—Subsection (a) does not apply with respect
 22 to—

23 (A) a person (other than an individual)
 24 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, or a
 4 resident of, the State in which the tax is im-
 5 posed.

6 (2) TAXATION OF PARTNERS AND SIMILAR PER-
 7 SONS.—This section shall not be construed to modify
 8 or affect any State business activity tax liability of
 9 an owner or beneficiary of an entity that is a part-
 10 nership, an S corporation (as defined in section
 11 1361 of the Internal Revenue Code of 1986 (26
 12 U.S.C. 1361)), a limited liability company, a trust,
 13 an estate, or any other similar entity, if the entity
 14 has a physical presence in the State in which the tax
 15 is imposed.

16 (3) PRESERVATION OF AUTHORITY.—This sec-
 17 tion shall not be construed to modify, affect, or su-
 18 persede the authority of a State to bring an enforce-
 19 ment action against a person or entity that may be
 20 engaged in an illegal activity, a sham transaction, or
 21 any perceived or actual abuse in its business activi-
 22 ties if such enforcement action—

23 (A) is of a kind customarily used by the
 24 State; and

1 (B) does not modify, affect, or supersede
 2 the operation of any provision of this Act or of
 3 any other Federal law.

4 (4) CERTAIN ACTIVITIES.—With respect to the
 5 following, subsection (b) shall be read by sub-
 6 stituting “at least one day” for “more than 21 days
 7 in the aggregate”:

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

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

13 (5) EXCEPTION RELATING TO CERTAIN PER-
 14 FORMANCES AND SPORTING EVENTS.—With respect
 15 to the taxation of the following, subsection (b) shall
 16 be read by substituting “at least one day” for “more
 17 than 21 days in the aggregate”:

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

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

22 (e) RULE OF CONSTRUCTION.—This section shall not
 23 be construed to modify, affect, or supersede the operation
 24 of title I of the Act entitled “An Act relating to the power
 25 of the States to impose net income taxes on income derived

1 from interstate commerce, and authorizing studies by con-
 2 gressional committees of matters pertaining thereto”, ap-
 3 proved September 14, 1959 (15 U.S.C. 381 et seq.).

4 **SEC. 4. DEFINITIONS.**

5 The following definitions apply in this Act:

6 (1) NET INCOME TAX.—The term “net income
 7 tax” has the meaning given that term for the pur-
 8 poses of the Act entitled “An Act relating to the
 9 power of the States to impose net income taxes on
 10 income derived from interstate commerce, and au-
 11 thorizing studies by congressional committees of
 12 matters pertaining thereto”, approved September
 13 14, 1959 (15 U.S.C. 381 et seq.).

14 (2) OTHER BUSINESS ACTIVITY TAX.—

15 (A) The term “other business activity tax”
 16 means—

17 (i) a tax imposed on or measured by
 18 gross receipts, gross income, or gross prof-
 19 its;

20 (ii) a business and occupation tax;

21 (iii) a franchise tax;

22 (iv) a single business tax or a capital
 23 stock tax; or

24 (v) any other tax imposed by a State
 25 on a business measured by the amount of,

1 or economic results of, business or related
2 activity conducted in the State.

3 (B) The term “other business activity tax”
4 does not include a sales tax, a use tax, or a
5 similar tax, imposed as the result of the sale or
6 acquisition of goods or services, whether or not
7 denominated a tax imposed on the privilege of
8 doing business.

9 (3) STATE.—The term “State” means any of
10 the several States, the District of Columbia, or any
11 territory or possession of the United States, or any
12 political subdivision of any of the foregoing.

13 (4) TANGIBLE PERSONAL PROPERTY.—The
14 term “tangible personal property” does not include
15 computer software that is owned and licensed by the
16 owner to another person.

17 **SEC. 5. EFFECTIVE DATE.**

18 Except as provided otherwise in this Act, this Act ap-
19 plies with respect to taxable periods beginning on and
20 after the first day of the first year that begins after the
21 date of the enactment of this Act.

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