

108TH CONGRESS
1ST SESSION

H. R. 3220

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

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

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 INDI-
2 VIDUALS DOMICILED IN THE STATE.—Subsection (a)
3 does not apply with respect to—

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 PER-
11 SONS.—If a taxing authority is not prohibited by
12 this section from taxing an entity that is a partner-
13 ship, a Subchapter S corporation, a limited liability
14 company, a trust, or an estate, or another similar
15 entity, that taxing authority is also not prohibited by
16 this section from taxing the owners or beneficiaries
17 of the entity, if State law imposes the tax not on the
18 entity itself but on the entity’s owners or bene-
19 ficiaries, whether or not they are in the State, with
20 respect to their ownership interest in the entity.

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

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

1 erty originates and is completed within that
2 State.

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

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

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

12 (B) A live sporting event in the State be-
13 fore more than 100 spectators present at the
14 event.

15 **SEC. 4. DEFINITIONS.**

16 The following definitions apply in this Act:

17 (1) NET INCOME TAX.—The term “net income
18 tax” has the meaning given that term for the pur-
19 poses of the Act entitled “An Act relating to the
20 power of the States to impose net income taxes on
21 income derived from interstate commerce, and au-
22 thorizing studies by congressional committees of
23 matters pertaining thereto”, approved September
24 14, 1959 (15 U.S.C. 381 et seq.).

25 (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.

○