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(Original Signature of Member)

108TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. GOODLATTE (for himself and [see attached list of cosponsors]) introduced the following bill; which was referred to the Committee on

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”.



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

3 (a) SOLICITATIONS WITH RESPECT TO SALES OF
4 OTHER THAN TANGIBLE PERSONAL PROPERTY.—Section
5 101 of the Act entitled “An Act relating to the power of
6 the States to impose net income taxes on income derived
7 from interstate commerce, and authorizing studies by con-
8 gressional committees of matters pertaining thereto”, ap-
9 proved September 14, 1959 (15 U.S.C. 381 et seq.) is
10 amended__

11 (1) in subsections (a) and (c), by striking “of
12 tangible personal property”; and

13 (2) in subsection (d) by striking “the sale of,
14 tangible personal property” and inserting “a sale,”.

15 (b) APPLICATION OF PROHIBITIONS TO OTHER BUSI-
16 NESS ACTIVITY TAXES.—Title I of the Act entitled “An
17 Act relating to the power of the States to impose net in-
18 come taxes on income derived from interstate commerce,
19 and authorizing studies by congressional committees of
20 matters pertaining thereto”, approved September 14, 1959
21 (15 U.S.C. 381 et seq.) is amended by adding at the end
22 the following:

23 “SEC. 105. Beginning with taxable periods beginning
24 on or after the first day of the first calendar year that
25 begins after the date of the enactment of the Business
26 Activity Tax Simplification Act of 2003, the prohibitions



1 of section 101 that apply with respect to net income taxes
2 shall also apply with respect to each other business activity
3 tax, as defined in section 4 of the Business Activity Tax
4 Simplification Act of 2003. A State or subdivision may
5 not assess or collect any tax which by reason of this sec-
6 tion the State or subdivision may not impose.”.

7 (c) EFFECTIVE DATE OF SUBSECTION (A) AMEND-
8 MENTS.—The amendments made by subsection (a) shall
9 apply with respect to the imposition, assessment, and col-
10 lection of taxes for taxable periods beginning on or after
11 the first day of the first calendar year that begins after
12 the date of the enactment of the Business Activity Tax
13 Simplification Act of 2003.

14 **SEC. 3. JURISDICTIONAL STANDARD FOR STATE AND**
15 **LOCAL NET INCOME TAXES AND OTHER BUSI-**
16 **NESS ACTIVITY TAXES.**

17 (a) IN GENERAL.—Except as otherwise provided by
18 this Act, no taxing authority of a State shall have power
19 to impose, assess, or collect a net income tax or other busi-
20 ness activity tax on any person relating to such person’s
21 activities in interstate commerce, unless such person has
22 a physical presence in the State during the taxable period
23 with respect to which the tax is imposed.

24 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—Ex-
25 cept as otherwise provided by this Act, for the purposes



1 of subsection (a), a person has a physical presence in a
2 State only if such person's business activities within such
3 State include any of the following during the person's tax-
4 able year:

5 (1) Being an individual physically within the
6 State, or assigning one or more employees to be in
7 such State, on more than 21 days. However, the fol-
8 lowing shall be disregarded in determining whether
9 such 21-day limit has been exceeded:

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

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

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

17 (D) Participation in educational or train-
18 ing conferences, seminars or other similar func-
19 tions.

20 (E) Participating in charitable activities.

21 (2) Using the services of another person, except
22 an employee, in such State, on more than 21 days
23 to establish or maintain the market in that State,
24 unless that other person performs similar functions



1 on behalf of at least one additional business entity
2 during the taxable year.

3 (3) The leasing or owning of tangible personal
4 property or real property in such State on more than
5 21 days. However, the following shall be disregarded
6 in determining whether such 21-day limit has been
7 exceeded:

8 (A) Tangible property located in the State
9 for purposes of being assembled, manufactured,
10 processed, or tested by another person for the
11 benefit of the owner or lessee, or used to fur-
12 nish a service to the owner or lessee by another
13 person.

14 (B) Marketing or promotional materials
15 distributed in a State using mail or a common
16 carrier, or as inserts in or components of publi-
17 cations.

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

22 (c) TAXABLE PERIODS NOT CONSISTING OF A
23 YEAR.—If the taxable period for which the tax is imposed
24 is not a year, then any requirements expressed in days



1 for establishing physical presence under this Act shall be
2 adjusted pro rata accordingly.

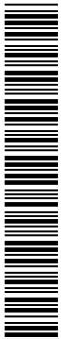
3 (d) EXCEPTIONS.—

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

7 (A) a person (other than an individual)
8 that is incorporated or formed under the laws
9 of the State or commercially domiciled in the
10 State in which the tax is imposed; or

11 (B) an individual who is domiciled in the
12 State.

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



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

4 (A) The sale within the State of tangible
5 personal property, where delivery of the prop-
6 erty originates and is completed within that
7 State.

8 (B) The performance of services to real
9 property within the State.

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

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

17 (B) A live sporting event in the State be-
18 fore more than 100 spectators present at the
19 event.

20 **SEC. 4. DEFINITIONS.**

21 The following definitions apply in this Act:

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



1 income derived from interstate commerce, and au-
2 thorizing studies by congressional committees of
3 matters pertaining thereto”, approved September 14,
4 1959 (15 U.S.C. 381 et seq.).

5 (2) OTHER BUSINESS ACTIVITY TAX.—

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

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

11 (ii) a business licence tax;

12 (iii) a business and occupation tax;

13 (iv) a franchise tax;

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

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

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

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



1 territory or possession of the United States, and any
2 political subdivision thereof.

3 **SEC. 5. GENERAL MATTERS.**

4 (a) **RULE OF CONSTRUCTION.**—The limitation on the
5 power of a State imposed by section 3 does not affect any
6 other limitation on that power imposed by other law.

7 (b) **EFFECTIVE DATE.**—This Act applies with respect
8 to taxable periods beginning on and after the first day of
9 the first year that begins after the date of enactment of
10 this Act.

