

Amendment in the Nature of a Substitute

To H.R. 1956

Offered by Mr. Cannon

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Business Activity Tax
3 Simplification Act of 2005”.

4 **SEC. 2. REMOVAL OF CERTAIN LIMITATIONS ON THE AP-
5 PPLICATION OF PUBLIC LAW 86-272.**

6 (a) SOLICITATIONS WITH RESPECT TO SALES AND
7 TRANSACTIONS OF OTHER THAN TANGIBLE PERSONAL
8 PROPERTY.—Section 101 of the Act entitled “An Act re-
9 lating to the power of the States to impose net income
10 taxes on income derived from interstate commerce, and
11 authorizing studies by congressional committees of mat-
12 ters pertaining thereto”, approved September 14, 1959
13 (15 U.S.C. 381 et seq.) is amended—

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



1 “or transactions, which orders are sent outside the
2 State for approval or rejection and, if approved,
3 are—

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

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

10 and”;

11 (2) in subsection (c)—

12 (A) by inserting “or fulfilling transactions”
13 after “making sales”;

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

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

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

21 (b) APPLICATION OF PROHIBITIONS TO OTHER BUSI-
22 NESS ACTIVITY TAXES.—Title I of the Act entitled “An
23 Act relating to the power of the States to impose net in-
24 come taxes on income derived from interstate commerce,
25 and authorizing studies by congressional committees of



1 matters pertaining thereto”, approved September 14,
2 1959 (15 U.S.C. 381 et seq.) is amended by adding at
3 the end the following:

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

15 (c) EFFECTIVE DATE OF SUBSECTION (a) AMEND-
16 MENTS.—The amendments made by subsection (a) shall
17 apply with respect to the imposition, assessment, and col-
18 lection of taxes for taxable periods beginning on or after
19 the first day of the first calendar year that begins after
20 the date of the enactment of the Business Activity Tax
21 Simplification Act of 2005.



1 **SEC. 3. JURISDICTIONAL STANDARD FOR STATE AND**
2 **LOCAL NET INCOME TAXES AND OTHER BUSI-**
3 **NESS ACTIVITY TAXES.**

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

11 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—For
12 the purposes of subsection (a), a person has a physical
13 presence in a State only if such person's business activities
14 in the State include any of the following, collectively and
15 on more than 21 days in the aggregate, during such per-
16 son's taxable year:

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

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

25 (B) Gathering news for print, broadcast,
26 or other distribution through the news media.



1 (C) Meeting government officials for pur-
2 poses other than selling goods or services, for
3 consumption by such government.

4 (D) Merely attending educational or train-
5 ing conferences, seminars or other similar func-
6 tions.

7 (E) Nonprofit participation in charitable
8 activities.

9 (2) Using the services of another person, except
10 an employee, in the State to establish or maintain
11 the market in the State unless such other person is
12 subject to the direction and control of, and acts on
13 behalf of, the person using the services and such
14 other person performs business activities on behalf
15 of at least one additional person during the taxable
16 year.

17 (3) The leasing or owning of tangible personal
18 property or of real property in the State, except that
19 the following shall be excluded in determining wheth-
20 er such 21-day limit has been exceeded:

21 (A) Tangible personal property located in
22 the State for purposes of being assembled, man-
23 ufactured, processed, or tested by another per-
24 son for the benefit of the owner or lessee, or



1 used to furnish a service to the owner or lessee
2 by another person.

3 (B) Marketing or promotional materials
4 distributed in the State.

5 (C) Any property to the extent used ancil-
6 lary to an activity excluded from the computa-
7 tion of the 21-day period based on paragraph
8 (1) or (2).

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

14 (d) EXCEPTIONS.—

15 (1) DOMESTIC BUSINESS ENTITIES AND INDI-
16 VIDUALS DOMICILED IN, OR RESIDENTS OF, THE
17 STATE.—Subsection (a) does not apply with respect
18 to—

19 (A) a person (other than an individual)
20 that is incorporated or formed under the laws
21 of the State (or domiciled in the State) in which
22 the tax is imposed; or

23 (B) an individual who is domiciled in, or a
24 resident of, the State in which the tax is im-
25 posed.



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

11 (3) PRESERVATION OF AUTHORITY.—This sec-
12 tion shall not be construed to modify, affect, or su-
13 persede the authority of a State to bring an enforce-
14 ment action against a person or entity that may be
15 engaged in an illegal activity, a sham transaction, or
16 any perceived or actual abuse in its business activi-
17 ties if such enforcement action does not modify, af-
18 fect, or supersede the operation of any provision of
19 this Act or of any other Federal law.

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



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

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

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

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

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

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

22 **SEC. 4. DEFINITIONS.**

23 The following definitions apply in this Act:

24 (1) NET INCOME TAX.—The term “net income
25 tax” has the meaning given that term for the pur-



1 poses of the Act entitled “An Act relating to the
2 power of the States to impose net income taxes on
3 income derived from interstate commerce, and au-
4 thorizing studies by congressional committees of
5 matters pertaining thereto”, approved September
6 14, 1959 (15 U.S.C. 381 et seq.).

7 (2) OTHER BUSINESS ACTIVITY TAX.—

8 (A) The term “other business activity tax”
9 means—

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

13 (ii) a business license tax;

14 (iii) a business and occupation tax;

15 (iv) a franchise tax;

16 (v) a single business tax or a capital
17 stock tax; or

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

23 (B) The term “other business activity tax”
24 does not include a sales tax, a use tax, or a
25 similar tax, imposed as the result of the sale or



1 acquisition of goods or services, whether or not
2 denominated a tax imposed on the privilege of
3 doing business.

4 (3) STATE.—The term “State” means any of
5 the several States, the District of Columbia, or any
6 territory or possession of the United States, or any
7 political subdivision of any of the foregoing.

8 (4) TANGIBLE PERSONAL PROPERTY.—The
9 term “tangible personal property” does not include
10 computer software that is owned and licensed by the
11 owner to another person.

12 **SEC. 5. EFFECTIVE DATE.**

13 Except as provided otherwise in this Act, this Act ap-
14 plies with respect to taxable periods beginning on and
15 after the first day of the first year that begins after the
16 date of enactment of this Act.

