

110TH CONGRESS
1ST SESSION

S. 1726

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

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2007

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

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 2007”.

6 **SEC. 2. MODERNIZATION OF PUBLIC LAW 86-272.**

7 (a) SOLICITATIONS WITH RESPECT TO SALES AND
8 TRANSACTIONS OF OTHER THAN TANGIBLE PERSONAL
9 PROPERTY.—Section 101 of the Act entitled “An Act re-
10 lating to the power of the States to impose net income

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

5 (1) in section (a), by striking “either, or both,”
6 and inserting “any one or more”;

7 (2) in subsection (a)(1), by striking “by such
8 person” and all that follows and inserting “(which
9 are sent outside the State for approval or rejection)
10 or customers by such person, or his representative,
11 in such State for sales or transactions, which are—

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

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

18 (3) in subsection (a)(2), by striking the period
19 at the end and inserting a semicolon;

20 (4) in subsection (a), by adding at the end the
21 following new paragraphs:

22 “(3) the furnishing of information to customers
23 or affiliates in such State, or the coverage of events
24 or other gathering of information in such State by
25 such person, or his representative, which information

1 is used or disseminated from a point outside the
2 State; and

3 “(4) those business activities directly related to
4 such person’s potential or actual purchase of goods
5 or services within the State if the final decision to
6 purchase is made outside the State.”;

7 (5) by striking subsection (c) and inserting the
8 following new subsection:

9 “(c) For purposes of subsection (a) of this section,
10 a person shall not be considered to have engaged in busi-
11 ness activities within a State during any taxable year
12 merely—

13 “(1) by reason of sales or transactions in such
14 State, the solicitation of orders for sales or trans-
15 actions in such State, the furnishing of information
16 to customers or affiliates in such State, or the cov-
17 erage of events or other gathering of information in
18 such State, on behalf of such person by one or more
19 independent contractors;

20 “(2) by reason of the maintenance of an office
21 in such State by one or more independent contrac-
22 tors whose activities on behalf of such person in
23 such State consist solely of making sales or fulfilling
24 transactions, soliciting order for sales or trans-
25 actions, the furnishing of information to customers

1 or affiliates, or the coverage of events or other gath-
 2 ering of information; or

3 “(3) by reason of the furnishing of information
 4 to an independent contractor by such person ancil-
 5 lary to the solicitation of orders or transactions by
 6 the independent contractor on behalf of such per-
 7 son.”; and

8 (6) in subsection (d)(1)—

9 (A) by inserting “or fulfilling trans-
 10 actions,” after “selling”; and

11 (B) by striking “the sale of, tangible per-
 12 sonal property” and inserting “a sale or trans-
 13 action, furnishing information, or covering
 14 events, or otherwise gathering information”.

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,
 21 1959 (15 U.S.C. 381 et seq.) is amended by adding at
 22 the end the following:

23 “SEC. 105. For taxable periods beginning on or after
 24 January 1, 2008, the prohibitions of section 101 that
 25 apply with respect to net income taxes shall also apply

1 with respect to each other business activity tax, as defined
 2 in section 3(g) of the Business Activity Tax Simplification
 3 Act of 2007. A State or political subdivision thereof may
 4 not assess or collect any tax which by reason of this sec-
 5 tion the State or political subdivision may not impose.”.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply with respect to the imposition, as-
 8 sessment, and collection of taxes for taxable periods begin-
 9 ning on or after January 1, 2008.

10 **SEC. 3. MINIMUM JURISDICTIONAL STANDARD FOR STATE**
 11 **AND LOCAL NET INCOME TAXES AND OTHER**
 12 **BUSINESS ACTIVITY TAXES.**

13 (a) IN GENERAL.—No taxing authority of a State
 14 shall have power to impose, assess, or collect a net income
 15 tax or other business activity tax on any person relating
 16 to such person’s activities in interstate commerce unless
 17 such person has a physical presence in the State during
 18 the taxable period with respect to which the tax is im-
 19 posed.

20 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

21 (1) IN GENERAL.—For purposes of subsection
 22 (a), a person has a physical presence in a State only
 23 if such person’s business activities in the State in-
 24 clude any of the following during such person’s tax-
 25 able year:

1 (A) Being an individual physically in the
2 State, or assigning one or more employees to be
3 in the State.

4 (B) Using the services of an agent (exclud-
5 ing an employee) to establish or maintain the
6 market in the State, if such agent does not per-
7 form business services in the State for any
8 other person during such taxable year.

9 (C) The leasing or owning of tangible per-
10 sonal property or of real property in the State.

11 (2) DE MINIMIS PHYSICAL PRESENCE.—For
12 purposes of this section, the term “physical pres-
13 ence” shall not include—

14 (A) presence in a State for less than 15
15 days in a taxable year (or a greater number of
16 days if provided by State law); or

17 (B) presence in a State to conduct limited
18 or transient business activity.

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

24 (d) MINIMUM JURISDICTIONAL STANDARD.—This
25 section provides for minimum jurisdictional standards and

1 shall not be construed to modify, affect, or supersede the
2 authority of a State or any other provision of Federal law
3 allowing persons to conduct greater activities without the
4 imposition of tax jurisdiction.

5 (e) EXCEPTIONS.—

6 (1) DOMESTIC BUSINESS ENTITIES AND INDI-
7 VIDUALS DOMICILED IN, OR RESIDENTS OF, THE
8 STATE.—Subsection (a) does not apply with respect
9 to—

10 (A) a person (other than an individual)
11 that is incorporated or formed under the laws
12 of the State (or domiciled in the State) in which
13 the tax is imposed; or

14 (B) an individual who is domiciled in, or a
15 resident of, the State in which the tax is im-
16 posed.

17 (2) TAXATION OF PARTNERS AND SIMILAR PER-
18 SONS.—This section shall not be construed to modify
19 or affect any State business activity tax liability of
20 an owner or beneficiary of an entity that is a part-
21 nership, an S corporation (as defined in section
22 1361 of the Internal Revenue Code of 1986), a lim-
23 ited liability company (classified as a partnership for
24 Federal income tax purposes), a trust, an estate, or

1 any other similar entity, if the entity has a physical
2 presence in the State in which the tax is imposed.

3 (3) PRESERVATION OF AUTHORITY.—This sec-
4 tion shall not be construed to modify, affect, or su-
5 percede the authority of a State to bring an enforce-
6 ment action against a person or entity that may be
7 engaged in an illegal activity, a sham transaction, or
8 any perceived or actual abuse in its business activi-
9 ties if such enforcement action does not modify, af-
10 fect, or supersede the operation of any provision of
11 this section or of any other Federal law.

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

19 (g) DEFINITIONS, ETC.—For purposes of this section:

20 (1) NET INCOME TAX.—The term “net income
21 tax” has the meaning given that term for the pur-
22 poses of the Act entitled “An Act relating to the
23 power of the States to impose net income taxes on
24 income derived from interstate commerce, and au-
25 thorizing studies by congressional committees of

1 matters pertaining thereto”, approved September
2 14, 1959 (15 U.S.C. 381 et seq.).

3 (2) OTHER BUSINESS ACTIVITY TAX.—

4 (A) IN GENERAL.—The term “other busi-
5 ness activity tax” means any tax in the nature
6 of a net income tax or tax measured by the
7 amount of, or economic results of, business or
8 related activity conducted in the State.

9 (B) EXCLUSION.—The term “other busi-
10 ness activity tax” does not include a sales tax,
11 a use tax, or a similar transaction tax, imposed
12 on the sale or acquisition of goods or services,
13 whether or not denominated a tax imposed on
14 the privilege of doing business.

15 (3) PERSON.—The term “person” has the
16 meaning given such term by section 1 of title 1 of
17 the United States Code.

18 (4) 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, or any
21 political subdivision of any of the foregoing.

22 (5) TANGIBLE PERSONAL PROPERTY.—For pur-
23 poses of subsection (b)(1)(C), the leasing or owning
24 of tangible personal property does not include the
25 leasing or licensing of computer software.

1 (h) EFFECTIVE DATE.—This section shall apply with
2 respect to taxable periods beginning on or after January
3 1, 2008.

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