

Union Calendar No. 173

112TH CONGRESS
1ST SESSION

H. R. 1439

[Report No. 112-257]

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2011

Mr. GOODLATTE (for himself, Mr. SCOTT of Virginia, Mr. DUNCAN of South Carolina, and Ms. JACKSON LEE of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 21, 2011

Additional sponsors: Mr. THOMPSON of Mississippi, Mr. DUNCAN of Tennessee, Mr. HASTINGS of Florida, Mr. JOHNSON of Georgia, Mr. COBLE, Mr. JORDAN, Mr. SENSENBRENNER, Mr. CHABOT, and Mr. DANIEL E. LUNGREN of California

OCTOBER 21, 2011

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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 2011”.

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

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

17 (2) in subsection (a)(1), by striking “by such
18 person” and all that follows and inserting “(which
19 are sent outside the State for approval or rejection)
20 or customers by such person, or his representative,
21 in such State for sales or transactions, which are—

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

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

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

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

8 “(3) the furnishing of information to customers
9 or affiliates in such State, or the coverage of events
10 or other gathering of information in such State by
11 such person, or his representative, which information
12 is used or disseminated from a point outside the
13 State; and

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

18 (5) by striking subsection (c) and inserting the
19 following new subsection:

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

24 “(1) by reason of sales or transactions in such
25 State, the solicitation of orders for sales or trans-

1 actions in such State, the furnishing of information
2 to customers or affiliates in such State, or the cov-
3 erage of events or other gathering of information in
4 such State, on behalf of such person by one or more
5 independent contractors;

6 “(2) by reason of the maintenance of an office
7 in such State by one or more independent contrac-
8 tors whose activities on behalf of such person in
9 such State are limited to making sales or fulfilling
10 transactions, soliciting order for sales or trans-
11 actions, the furnishing of information to customers
12 or affiliates, and/or the coverage of events or other
13 gathering of information; or

14 “(3) by reason of the furnishing of information
15 to an independent contractor by such person ancil-
16 lary to the solicitation of orders or transactions by
17 the independent contractor on behalf of such per-
18 son.”; and

19 (6) in subsection (d)(1)—

20 (A) by inserting “or fulfilling transactions”
21 after “selling”; and

22 (B) by striking “the sale of, tangible per-
23 sonal property” and inserting “a sale or trans-
24 action, furnishing information, or covering
25 events, or otherwise gathering information”.

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

9 “SEC. 105. For taxable periods beginning on or after
10 January 1, 2012, the prohibitions of section 101 that
11 apply with respect to net income taxes shall also apply
12 with respect to each other business activity tax, as defined
13 in section 5(a)(2) of the Business Activity Tax Simplifica-
14 tion Act of 2011. A State or political subdivision thereof
15 may not assess or collect any tax which by reason of this
16 section the State or political subdivision may not impose.”.

17 **SEC. 3. MINIMUM JURISDICTIONAL STANDARD FOR STATE**
18 **AND LOCAL NET INCOME TAXES AND OTHER**
19 **BUSINESS ACTIVITY TAXES.**

20 (a) IN GENERAL.—No taxing authority of a State
21 shall have power to impose, assess, or collect a net income
22 tax or other business activity tax on any person relating
23 to such person’s activities in interstate commerce unless
24 such person has a physical presence in the State during

1 the taxable period with respect to which the tax is im-
2 posed.

3 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

4 (1) IN GENERAL.—For purposes of subsection
5 (a), a person has a physical presence in a State only
6 if such person’s business activities in the State in-
7 clude any of the following during such person’s tax-
8 able year:

9 (A) Being an individual physically in the
10 State, or assigning one or more employees to be
11 in the State.

12 (B) Using the services of an agent (exclud-
13 ing an employee) to establish or maintain the
14 market in the State, if such agent does not per-
15 form business services in the State for any
16 other person during such taxable year.

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

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

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

1 (B) presence in a State to conduct limited
2 or transient business activity.

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

8 (d) MINIMUM JURISDICTIONAL STANDARD.—This
9 section provides for minimum jurisdictional standards and
10 shall not be construed to modify, affect, or supersede the
11 authority of a State or any other provision of Federal law
12 allowing persons to conduct greater activities without the
13 imposition of tax jurisdiction.

14 (e) 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), a lim-
7 ited liability company (classified as a partnership for
8 Federal income tax purposes), a trust, an estate, or
9 any other similar entity, if the entity has a physical
10 presence in the State in which the tax 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 enact a law and
14 bring an enforcement action under such law or exist-
15 ing law against a person or persons or an entity or
16 entities, including but not limited to related persons
17 or entities, that is or are engaged in an illegal activ-
18 ity, a sham transaction, or an actual abuse in its or
19 their business activities in order to ensure a proper
20 reflection of its or their tax liabilities, nor shall it
21 supersede the authority of a State to require com-
22 bined reporting.

23 **SEC. 4. GROUP RETURNS.**

24 If, in computing the net income tax or other business
25 activity tax liability of a person for a taxable year, the

1 net income or other economic results of affiliated persons
2 is taken into account, the portion of such combined or con-
3 solidated net income or other economic results that may
4 be subject to tax by the State shall be computed using
5 the methodology that is generally applicable to businesses
6 conducting similar business activities and, if that generally
7 applicable methodology employs an apportionment for-
8 mula, the denominator or denominators of that formula
9 shall include the aggregate factors of all persons whose
10 net income or other economic results are included in such
11 combined or consolidated net income or other economic re-
12 sults and the numerator or numerators shall include the
13 factors attributable to the state of only those persons that
14 are themselves subject to taxation by the State pursuant
15 to the provisions of this Act and subject to all other legal
16 constraints on State taxation of interstate or foreign com-
17 merce.

18 **SEC. 5. DEFINITIONS AND EFFECTIVE DATE.**

19 (a) DEFINITIONS.—For purposes of this Act:

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. Each corporation that is a
18 member of a group of affiliated corporations, wheth-
19 er unitary or not, is itself a separate “person.”

20 (4) STATE.—The term “State” means any of
21 the several States, the District of Columbia, or any
22 territory or possession of the United States, or any
23 political subdivision of any of the foregoing.

24 (5) TANGIBLE PERSONAL PROPERTY.—For pur-
25 poses of section 3(b)(1)(C), the leasing or owning of

1 tangible personal property does not include the leas-
2 ing or licensing of computer software.

3 (b) EFFECTIVE DATE.—This Act shall apply with re-
4 spect to taxable periods beginning on or after January 1,
5 2012.

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