

110TH CONGRESS  
1ST SESSION

# S. 1726

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

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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

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## 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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