

115TH CONGRESS
2D SESSION

H. R. 6978

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2018

Mr. CHABOT (for himself and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

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 2018”.

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 subsection (a), by striking “either, or
6 both,” 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 the representative
11 of such person, in such State for sales or trans-
12 actions, which are—

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

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

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

21 (4) in subsection (a), by adding at the end the
22 following:

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

1 such person, or his representative, which information
2 is used or disseminated from a point outside the
3 State;

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

8 “(5) by reason of sales or transactions of a dig-
9 ital good or a digital service.”;

10 (5) by striking subsection (c) and inserting the
11 following:

12 “(c) For purposes of subsection (a), a person shall
13 not be considered to have engaged in business activities
14 within a State during any taxable year merely—

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

22 “(2) by reason of the maintenance of an office
23 in such State by one or more independent contrac-
24 tors whose activities on behalf of such person in
25 such State are limited to making sales or fulfilling

1 transactions, soliciting orders for sales or trans-
2 actions, the furnishing of information to customers
3 or affiliates, or the coverage of events or other gath-
4 ering of information; or

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

10 (6) in subsection (d)(1)—

11 (A) by inserting “or fulfilling transactions”
12 after “selling”; and

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

17 (b) APPLICATION OF PROHIBITIONS TO OTHER BUSI-
18 NESS ACTIVITY TAXES.—Title I of the Act entitled “An
19 Act relating to the power of the States to impose net in-
20 come taxes on income derived from interstate commerce,
21 and authorizing studies by congressional committees of
22 matters pertaining thereto”, approved September 14,
23 1959 (15 U.S.C. 381 et seq.), is amended by adding at
24 the end the following:

1 “SEC. 105. For taxable periods beginning on or after
2 January 1, 2019, the prohibitions of section 101 that
3 apply with respect to net income taxes shall also apply
4 with respect to each other business activity tax, as defined
5 in section 5(a)(2) of the Business Activity Tax Simplifica-
6 tion Act of 2018. A State or political subdivision thereof
7 may not assess or collect any tax which by reason of this
8 section the State or political subdivision may not impose.

9 “SEC. 106. For purposes of this title—

10 “(1) the term ‘digital good’ means any software
11 or other good that is delivered or transferred elec-
12 tronically, including sounds, images, data, facts, or
13 combinations thereof, maintained in digital format,
14 where such software or other good is the true object
15 of the transaction, rather than the activity or service
16 performed to create such software or other good,
17 that results in the delivery to the customer of a com-
18 plete copy of such software or other good, with the
19 right to use permanently or for a specified period,
20 and includes as an incidental component charges for
21 the delivery or transfer of such software or other
22 good; and

23 “(2) the term ‘digital service’ means any service
24 that is provided electronically, including but not lim-
25 ited to audio services, data processing, cloud com-

1 puting, the provision of remote access to or use of
2 a digital good, and includes as an incidental compo-
3 nent charges for the electronic provision of the dig-
4 ital service to the customer.”.

5 **SEC. 3. MINIMUM JURISDICTIONAL STANDARD FOR STATE**
6 **AND LOCAL NET INCOME TAXES AND OTHER**
7 **BUSINESS ACTIVITY TAXES.**

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

15 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

16 (1) IN GENERAL.—For purposes of subsection
17 (a), a person has a physical presence in a State only
18 if such person’s business activities in the State in-
19 clude any of the following during such person’s tax-
20 able year:

21 (A) Being an individual physically in the
22 State, or assigning one or more employees to be
23 in the State.

24 (B) Using the services of an agent (exclud-
25 ing an employee) to establish or maintain the

1 market in the State if such agent does not per-
2 form business services in the State for any
3 other person during such taxable year.

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

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

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

12 (B) presence in a State to conduct limited
13 or transient business activity.

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

19 (d) MINIMUM JURISDICTIONAL STANDARD.—This
20 section provides for minimum jurisdictional standards and
21 shall not be construed to modify, affect, or supersede the
22 authority of a State or any other provision of Federal law
23 allowing persons to conduct greater activities without the
24 imposition of tax jurisdiction.

25 (e) EXCEPTIONS.—

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

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

9 (B) an individual who is domiciled in, or a
10 resident of, the State in which the tax is im-
11 posed.

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

22 (3) PRESERVATION OF AUTHORITY.—This sec-
23 tion shall not be construed—

24 (A) to modify, affect, or supersede the au-
25 thority of a State to enact a law and bring an

1 enforcement action under such law or existing
2 law against a person or entity, including related
3 person or entity, that is engaged in an illegal
4 activity, a sham transaction, or an actual abuse
5 in its business activities in order to ensure a
6 proper reflection of its tax liabilities; or

7 (B) to supersede the authority of a State
8 to require combined reporting.

9 **SEC. 4. GROUP RETURNS.**

10 If, in computing the net income tax or other business
11 activity tax liability of a person for a taxable year, the
12 net income or other economic results of affiliated persons
13 is taken into account, the portion of such combined or con-
14 solidated net income or other economic results that may
15 be subject to tax by the State shall be computed using
16 the methodology that is generally applicable to businesses
17 conducting similar business activities and, if that generally
18 applicable methodology employs an apportionment for-
19 mula, the denominator or denominators of that formula
20 shall include the aggregate factors of all persons whose
21 net income or other economic results are included in such
22 combined or consolidated net income or other economic re-
23 sults and the numerator or numerators shall include the
24 factors attributable to the State of only those persons that
25 are themselves subject to taxation by the State pursuant

1 to the provisions of this Act and subject to all other legal
2 constraints on State taxation of interstate or foreign com-
3 merce.

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

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

6 (1) NET INCOME TAX.—The term “net income
7 tax” has the meaning given that term for the pur-
8 poses of the Act entitled “An Act relating to the
9 power of the States to impose net income taxes on
10 income derived from interstate commerce, and au-
11 thorizing studies by congressional committees of
12 matters pertaining thereto”, approved September
13 14, 1959 (15 U.S.C. 381 et seq.).

14 (2) OTHER BUSINESS ACTIVITY TAX.—

15 (A) IN GENERAL.—The term “other busi-
16 ness activity tax” means any tax in the nature
17 of a net income tax or tax measured by the
18 amount of, or economic results of, business or
19 related activity conducted in the State.

20 (B) EXCLUSION.—The term “other busi-
21 ness activity tax” does not include a sales tax,
22 a use tax, or a similar transaction tax, imposed
23 on the sale or acquisition of goods or services,
24 whether or not denominated a tax imposed on
25 the privilege of doing business.

1 (3) PERSON.—The term “person” has the
2 meaning given such term by section 1 of title 1 of
3 the United States Code. Each corporation that is a
4 member of a group of affiliated corporations, wheth-
5 er unitary or not, is itself a separate “person”.

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

10 (5) TANGIBLE PERSONAL PROPERTY.—For pur-
11 poses of section 3(b)(1)(C), the leasing or owning of
12 tangible personal property does not include the leas-
13 ing or licensing of computer software.

14 (b) EFFECTIVE DATE.—This Act shall apply with re-
15 spect to taxable periods beginning on or after January 1,
16 2019.

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