

110TH CONGRESS
2D SESSION

S. 3670

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

Mr. BUNNING introduced the following bill; which was read twice and referred
to the Committee on Commerce, Science, and Transportation

A BILL

To regulate certain State and local taxation of electronic
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. MINIMUM JURISDICTIONAL STANDARD FOR**
4 **STATE AND LOCAL TAXES ON ELECTRONIC**
5 **COMMERCE.**

6 (a) IN GENERAL.—No taxing authority of a State
7 shall have power to require the collection and remittance
8 of a State tax by any person resulting from the electronic
9 commerce of such person unless such person has a phys-

1 ical presence in the State during the taxable period with
2 respect to which the tax is imposed.

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 electronic commerce in the State in-
7 cludes 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 electronic commerce in the State, if such agent
15 does not perform the same services in the State
16 for any 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) entering into an agreement to share
23 revenue generated by an electronic commerce
24 presence owned or maintained by a person who
25 is physically present in a State;

1 (B) presence in a State for less than 15
2 days in a taxable year (or a greater number of
3 days if provided by State law); and

4 (C) presence in a State to conduct limited
5 or transient business activity.

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

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

17 (e) EXCEPTIONS.—

18 (1) DOMESTIC BUSINESS ENTITIES AND INDI-
19 VIDUALS DOMICILED IN, OR RESIDENTS OF, THE
20 STATE.—Subsection (a) shall not apply with respect
21 to—

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

1 (B) an individual who is domiciled in, or a
2 resident of, the State in which the tax is im-
3 posed.

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

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

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

21 (1) ELECTRONIC COMMERCE.—The term “elec-
22 tronic commerce” has the meaning given that term
23 in section 1105(3) of the Internet Tax Freedom Act
24 (47 U.S.C. 151 note).

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

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.—For pur-
9 poses of subsection (b)(1)(C), the leasing or owning
10 of tangible personal property does not include the
11 leasing or licensing of computer software.

12 (h) EFFECTIVE DATE.—This section shall apply with
13 respect to taxable periods beginning on or after January
14 1, 2009.

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