

MAR 31 2004

WAYS & MEANS CALENDAR

HOUSE FILE 2564

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 716)

Passed House, Date _____ Passed Senate, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to the standards applicable for purposes of
 2 imposing an Iowa business activity tax and including an
 3 applicability date provision.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HF 2564

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1 Section 1. NEW SECTION. 422.125 SHORT TITLE.

2 This division shall be known as and may be cited as the
3 "Business Activity Tax Simplification Act".

4 Sec. 2. NEW SECTION. 422.126 BUSINESS ACTIVITY TAX --
5 DEFINITION.

6 1. As used in this division, unless the context otherwise
7 requires, a "business activity tax" means any of the
8 following:

- 9 a. A tax imposed on, or measured by, net income.
- 10 b. A tax imposed on, or measured by, gross receipts, gross
11 income, or gross profits.
- 12 c. A business license tax.
- 13 d. A business and occupation tax.
- 14 e. A franchise tax.
- 15 f. A single business tax or a capital stock tax.
- 16 g. Any other tax imposed by Iowa on a business for the
17 right to do business in the state or measured by the amount
18 of, or economic results of, business or related activity
19 conducted in the state.

20 "Business activity tax" does not include a transaction tax.

21 2. Business activity taxes to which this division applies
22 include, but are not limited to, all of the following:

- 23 a. Corporate income tax under chapter 422, division III.
- 24 b. Franchise tax on financial institutions under chapter
25 422, division V.

26 3. Gross premiums tax on insurance companies or
27 associations under chapters 432, 432A, 518, and 518A are not
28 business activity taxes to which this division applies.

29 4. Personal income tax under chapter 422, division II, is
30 not a business activity tax to which this division applies.

31 Sec. 3. NEW SECTION. 422.127 APPLICATION OF PUBLIC LAW
32 86-272.

33 The principal behind Pub. L. No. 86-272, 15 U.S.C. § 381 et
34 seq., relating to the ability of states to impose a net income
35 tax on income derived from interstate commerce, shall apply to

1 the authority of Iowa to impose a business activity tax with
2 respect to all sales and not solely to sales of tangible
3 property.

4 Sec. 4. NEW SECTION. 422.128 STANDARD FOR BUSINESS
5 ACTIVITY TAXES.

6 1. IN GENERAL. Except as otherwise provided in this
7 division, a person shall not be subject to a business activity
8 tax imposed by this state unless that person has a physical
9 presence in this state during the taxable period with respect
10 to which the tax is imposed.

11 2. REQUIREMENTS FOR PHYSICAL PRESENCE. Except as
12 otherwise provided in this division, for the purposes of
13 subsection 1, a person has a physical presence in this state
14 only if that person's business activities within this state
15 include any of the following:

16 a. Being an individual physically located within this
17 state, or assigning an employee to be in this state, on more
18 than five days. However, the following shall be disregarded
19 in determining whether this five-day maximum time limit has
20 been exceeded:

21 (1) Activities in connection with a possible purchase of
22 goods or services for the business.

23 (2) Gathering news and covering events for print,
24 broadcast, or other distribution through the media.

25 (3) Meeting government officials for purposes other than
26 selling goods or services.

27 (4) Participation in educational or training conferences,
28 seminars, or other similar functions.

29 (5) Participating in charitable activities.

30 b. Using the services of another person, except an
31 employee, in this state on more than five days to establish or
32 maintain the market in this state, unless that other person
33 performs similar functions on behalf of at least one
34 additional business entity during the taxable year.

35 c. The leasing or owning of tangible personal property or

1 real property in this state on more than five days. However,
2 the following shall be disregarded in determining whether the
3 five-day maximum time limit has been exceeded:

4 (1) Tangible property located in this state for purposes
5 of being assembled, manufactured, processed, or tested by
6 another person for the benefit of the owner or lessee, or used
7 to furnish a service to the owner or lessee by another person.

8 (2) Marketing or promotional materials distributed in this
9 state using mail or a common carrier, or as inserts in or
10 components of publications.

11 (3) Any property to the extent used ancillary to an
12 activity excluded from the computation of the five-day maximum
13 time period under paragraph "a" or "b".

14 3. TAXABLE PERIODS NOT A YEAR. If the taxable period of
15 the taxpayer for which the tax is imposed is not a year, then
16 any requirements expressed in days in subsection 2 for
17 establishing physical presence under this division shall be
18 adjusted proportionately to reflect the actual taxable period.

19 4. EXCEPTIONS. The following are exceptions to the
20 provisions of subsection 1 or 2, as specified:

21 a. PERSONS DOMICILED IN THE STATE. Subsection 1 does not
22 apply with respect to either of the following:

23 (1) A person, other than an individual, who is
24 incorporated or formed under the laws of this state or
25 commercially domiciled in this state.

26 (2) An individual who is domiciled in this state.

27 b. EXCEPTION RELATING TO CERTAIN EVENTS. With respect to
28 the taxation of any of the following, subsection 2 shall be
29 read to require a physical presence of only one day in this
30 state in any of the following circumstances:

31 (1) A live performance in this state before a live
32 audience of more than one hundred individuals.

33 (2) A live sporting event in this state before more than
34 one hundred spectators present at the event.

35 (3) The sale within this state of tangible personal

1 property, where delivery of the property originates and is
2 completed within the state.

3 (4) The performance of services to real property within
4 the state.

5 Sec. 5. APPLICABILITY DATE. This Act applies to taxable
6 years beginning on or after January 1, 2005.

7 EXPLANATION

8 This bill provides that beginning January 1, 2005, no
9 person shall be subject to a business activity tax imposed by
10 Iowa unless such person has a physical presence in the state
11 of more than five days, unless the person is an entertainer or
12 sports participant who attends a one-day event in Iowa where
13 the audience totals at least 100 people. The five-day maximum
14 period also does not apply to sales of property originated and
15 completed in this state or the performance of services to real
16 property within this state. In counting the five-day maximum
17 period, activities that involve possible purchase of goods,
18 gathering or covering of media events, meeting government
19 officials, or participating in educational or training
20 seminars or charitable events are not counted. The physical
21 presence requirement does not apply if the business is
22 incorporated or formed under Iowa laws or is commercially
23 domiciled in Iowa or the individual is domiciled in Iowa.

24 A business activity tax is a net income tax, gross receipts
25 or profits tax, business license tax, franchise tax, business
26 and occupation tax, single business tax, capital stock tax, or
27 other tax on the right to do business in Iowa or a tax
28 measured on business activity conducted in Iowa. This tax
29 would include, but is not limited to, Iowa's corporate income
30 tax and franchise tax on financial institutions. The gross
31 insurance premiums tax and personal income tax would not be
32 considered business activity taxes.

33 The bill applies to taxable years beginning on or after
34 January 1, 2005.

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SF 02564 ind by HSB 716
WAYS AND MEANS

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON VAN FOSSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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17 right to do business in the state or measured by the amount
18 of, or economic results of, business or related activity
19 conducted in the state.

20 "Business activity tax" does not include a transaction tax.

21 2. Business activity taxes to which this division applies
22 include, but are not limited to, all of the following:

23 a. Personal income tax under chapter 422, division II.

24 b. Corporate income tax under chapter 422, division III.

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9 to which the tax is imposed.

10 2. REQUIREMENTS FOR PHYSICAL PRESENCE. Except as
11 otherwise provided in this division, for the purposes of
12 subsection 1, a person has a physical presence in this state
13 only if that person's business activities within this state
14 include any of the following:

15 a. Being an individual physically located within this
16 state, or assigning one or more employees to be in this state,
17 on more than twenty-one days. However, the following shall be
18 disregarded in determining whether this twenty-one-day maximum
19 time limit has been exceeded:

20 (1) Activities in connection with a possible purchase of
21 goods or services for the business.

22 (2) Gathering news and covering events for print,
23 broadcast, or other distribution through the media.

24 (3) Meeting government officials for purposes other than
25 selling goods or services.

26 (4) Participation in educational or training conferences,
27 seminars, or other similar functions.

28 (5) Participating in charitable activities.

29 b. Using the services of another person, except an
30 employee, in this state on more than twenty-one days to
31 establish or maintain the market in this state, unless that
32 other person performs similar functions on behalf of at least
33 one additional business entity during the taxable year.

34 c. The leasing or owning of tangible personal property or
35 real property in this state on more than twenty-one days.

1 However, the following shall be disregarded in determining
2 whether the twenty-one-day maximum time limit has been
3 exceeded:

4 (1) Tangible property located in this state for purposes
5 of being assembled, manufactured, processed, or tested by
6 another person for the benefit of the owner or lessee, or used
7 to furnish a service to the owner or lessee by another person.

8 (2) Marketing or promotional materials distributed in this
9 state using mail or a common carrier, or as inserts in or
10 components of publications.

11 (3) Any property to the extent used ancillary to an
12 activity excluded from the computation of the twenty-one-day
13 maximum time period under paragraph "a" or "b".

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15 the taxpayer for which the tax is imposed is not a year, then
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32 audience of more than one hundred individuals.

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34 one hundred spectators present at the event.

35 (3) The sale within this state of tangible personal

1 property, where delivery of the property originates and is
2 completed within the state.

3 (4) The performance of services to real property within
4 the state.

5 c. TAXATION OF PARTNERS AND SIMILAR PERSONS. If this
6 state is not prohibited by this section from taxing an entity
7 that is a partnership, S corporation, limited liability
8 company, trust, or an estate, or other similar entity, this
9 state is also not prohibited by this section from taxing the
10 owners or beneficiaries of such entity.

11 Sec. 5. APPLICABILITY DATE. This Act applies to taxable
12 years beginning on or after January 1, 2005.

13 EXPLANATION

14 This bill provides that beginning January 1, 2005, no
15 person shall be subject to a business activity tax imposed by
16 Iowa unless such person has a physical presence in the state
17 of more than 21 days, unless the person is an entertainer or
18 sports participant who attends a one-day event in Iowa where
19 the audience totals at least 100 people. The 21-day maximum
20 period also does not apply to sales of property originated and
21 completed in this state or the performance of services to real
22 property within this state. In counting the 21-day maximum
23 period, activities that involve possible purchase of goods,
24 gathering or covering of media events, meeting government
25 officials, or participating in educational or training
26 seminars or charitable events are not counted. The physical
27 presence requirement does not apply if the business is
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31 or profits tax, business license tax, franchise tax, business
32 and occupation tax, single business tax, capital stock tax, or
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34 measured on business activity conducted in Iowa. This tax
35 would include, but it not limited to, Iowa's individual income

1 tax, corporate income tax, and franchise tax on financial
2 institutions. The gross insurance premiums tax would not be
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