

# House Study Bill 716

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 \_\_\_\_\_  
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:  
5 TLSB 6896HC 80  
6 mg/gg/14

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1 1 Section 1. NEW SECTION. 422.125 SHORT TITLE.  
1 2 This division shall be known as and may be cited as the  
1 3 "Business Activity Tax Simplification Act".  
1 4 Sec. 2. NEW SECTION. 422.126 BUSINESS ACTIVITY TAX ==  
1 5 DEFINITION.  
1 6 1. As used in this division, unless the context otherwise  
1 7 requires, a "business activity tax" means any of the  
1 8 following:  
1 9 a. A tax imposed on, or measured by, net income.  
1 10 b. A tax imposed on, or measured by, gross receipts, gross  
1 11 income, or gross profits.  
1 12 c. A business license tax.  
1 13 d. A business and occupation tax.  
1 14 e. A franchise tax.  
1 15 f. A single business tax or a capital stock tax.  
1 16 g. Any other tax imposed by Iowa on a business for the  
1 17 right to do business in the state or measured by the amount  
1 18 of, or economic results of, business or related activity  
1 19 conducted in the state.  
1 20 "Business activity tax" does not include a transaction tax.  
1 21 2. Business activity taxes to which this division applies  
1 22 include, but are not limited to, all of the following:  
1 23 a. Personal income tax under chapter 422, division II.  
1 24 b. Corporate income tax under chapter 422, division III.  
1 25 c. Franchise tax on financial institutions under chapter  
1 26 422, division V.  
1 27 3. Gross premiums tax on insurance companies or  
1 28 associations under chapters 432, 432A, 518, and 518A are not  
1 29 business activity taxes to which this division applies.  
1 30 Sec. 3. NEW SECTION. 422.127 APPLICATION OF PUBLIC LAW  
1 31 86=272.  
1 32 The principal behind Pub. L. No. 86=272, 15 U.S.C. } 381 et  
1 33 seq., relating to the ability of states to impose a net income  
1 34 tax on income derived from interstate commerce, shall apply to  
1 35 the authority of Iowa to impose a business activity tax with  
2 1 respect to all sales and not solely to sales of tangible  
2 2 property.  
2 3 Sec. 4. NEW SECTION. 422.128 STANDARD FOR BUSINESS  
2 4 ACTIVITY TAXES.  
2 5 1. IN GENERAL. Except as otherwise provided in this  
2 6 division, a person shall not be subject to a business activity  
2 7 tax imposed by this state unless that person has a physical  
2 8 presence in this state during the taxable period with respect  
2 9 to which the tax is imposed.  
2 10 2. REQUIREMENTS FOR PHYSICAL PRESENCE. Except as  
2 11 otherwise provided in this division, for the purposes of  
2 12 subsection 1, a person has a physical presence in this state  
2 13 only if that person's business activities within this state  
2 14 include any of the following:  
2 15 a. Being an individual physically located within this  
2 16 state, or assigning one or more employees to be in this state,  
2 17 on more than twenty-one days. However, the following shall be  
2 18 disregarded in determining whether this twenty-one-day maximum  
2 19 time limit has been exceeded:  
2 20 (1) Activities in connection with a possible purchase of  
2 21 goods or services for the business.

2 22 (2) Gathering news and covering events for print,  
2 23 broadcast, or other distribution through the media.  
2 24 (3) Meeting government officials for purposes other than  
2 25 selling goods or services.  
2 26 (4) Participation in educational or training conferences,  
2 27 seminars, or other similar functions.  
2 28 (5) Participating in charitable activities.

2 29 b. Using the services of another person, except an  
2 30 employee, in this state on more than twenty-one days to  
2 31 establish or maintain the market in this state, unless that  
2 32 other person performs similar functions on behalf of at least  
2 33 one additional business entity during the taxable year.

2 34 c. The leasing or owning of tangible personal property or  
2 35 real property in this state on more than twenty-one days.  
3 1 However, the following shall be disregarded in determining  
3 2 whether the twenty-one-day maximum time limit has been  
3 3 exceeded:

3 4 (1) Tangible property located in this state for purposes  
3 5 of being assembled, manufactured, processed, or tested by  
3 6 another person for the benefit of the owner or lessee, or used  
3 7 to furnish a service to the owner or lessee by another person.

3 8 (2) Marketing or promotional materials distributed in this  
3 9 state using mail or a common carrier, or as inserts in or  
3 10 components of publications.

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

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

3 19 4. EXCEPTIONS. The following are exceptions to the  
3 20 provisions of subsection 1 or 2, as specified:

3 21 a. PERSONS DOMICILED IN THE STATE. Subsection 1 does not  
3 22 apply with respect to either of the following:

3 23 (1) A person, other than an individual, who is  
3 24 incorporated or formed under the laws of this state or  
3 25 commercially domiciled in this state.

3 26 (2) An individual who is domiciled in this state.

3 27 b. EXCEPTION RELATING TO CERTAIN EVENTS. With respect to  
3 28 the taxation of any of the following, subsection 2 shall be  
3 29 read to require a physical presence of only one day in this  
3 30 state in any of the following circumstances:

3 31 (1) A live performance in this state before a live  
3 32 audience of more than one hundred individuals.

3 33 (2) A live sporting event in this state before more than  
3 34 one hundred spectators present at the event.

3 35 (3) The sale within this state of tangible personal  
4 1 property, where delivery of the property originates and is  
4 2 completed within the state.

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

4 5 c. TAXATION OF PARTNERS AND SIMILAR PERSONS. If this  
4 6 state is not prohibited by this section from taxing an entity  
4 7 that is a partnership, S corporation, limited liability  
4 8 company, trust, or an estate, or other similar entity, this  
4 9 state is also not prohibited by this section from taxing the  
4 10 owners or beneficiaries of such entity.

4 11 Sec. 5. APPLICABILITY DATE. This Act applies to taxable  
4 12 years beginning on or after January 1, 2005.

4 13 EXPLANATION

4 14 This bill provides that beginning January 1, 2005, no  
4 15 person shall be subject to a business activity tax imposed by  
4 16 Iowa unless such person has a physical presence in the state  
4 17 of more than 21 days, unless the person is an entertainer or  
4 18 sports participant who attends a one-day event in Iowa where  
4 19 the audience totals at least 100 people. The 21-day maximum  
4 20 period also does not apply to sales of property originated and  
4 21 completed in this state or the performance of services to real  
4 22 property within this state. In counting the 21-day maximum  
4 23 period, activities that involve possible purchase of goods,  
4 24 gathering or covering of media events, meeting government  
4 25 officials, or participating in educational or training  
4 26 seminars or charitable events are not counted. The physical  
4 27 presence requirement does not apply if the business is  
4 28 incorporated or formed under Iowa laws or is commercially  
4 29 domiciled in Iowa or the individual is domiciled in Iowa.

4 30 A business activity tax is a net income tax, gross receipts  
4 31 or profits tax, business license tax, franchise tax, business  
4 32 and occupation tax, single business tax, capital stock tax, or

4 33 other tax on the right to do business in Iowa or a tax  
4 34 measured on business activity conducted in Iowa. This tax  
4 35 would include, but it not limited to, Iowa's individual income  
5 1 tax, corporate income tax, and franchise tax on financial  
5 2 institutions. The gross insurance premiums tax would not be  
5 3 considered a business activity tax.  
5 4 The bill applies to taxable years beginning on or after  
5 5 January 1, 2005.  
5 6 LSB 6896HC 80  
5 7 mg/gg/14