IMPACT OF H.R. 1956, BUSINESS ACTIVITY TAX SIMPLIFICATION ACT OF 2005, ON STATES

September 26, 2005

Executive Summary

On April 28, 2005, H.R. 1956, the "Business Activity Tax Simplification Act of 2005" was introduced in Congress by Representatives Rick Boucher and Bob Goodlatte of Virginia. The bill would impose a federal physical presence standard for determining when a state can impose a business activity tax (BAT). In order to determine the impact of a bright-line nexus for state business activity taxes, the National Governors Association worked with the Federation of Tax Administrators (FTA) and the Multi-state Tax Commission (MTC) to survey state revenue agencies asking them to estimate the impact of such legislation on their respective state.[1]

All of the 34 states responding to the survey have stated that the legislation would adversely affect their business activity tax (BAT) revenue. The range of taxes affected is broad and includes gross receipts, gross income (including Washington State's Business and Occupation Tax), taxes imposed on vendors for the privilege of doing business, taxes on receipts of public utilities, and taxes imposed in lieu of net income taxes and similar types of taxes. Based on information from responding states, H.R. 1956 would reduce BAT revenues by an average of 10.4%. Extrapolating to all states, H.R. 1956 would cost states and localities an estimated *$6.6 billion annually*.

Examples provided by responding states indicate H.R. 1956 would upset settled law regarding state business activities of numerous industries including publishing, interstate trucking, general and customized manufacturing, the sale of distributorships, licensing of trademarks, and leasing of computer hardware and software. Sellers of services and intangibles would come under a new physical presence standard that exceeds the provisions in PL 86-272 for sellers of tangible personal property. This extension, along with other provisions in the bill, would create new opportunities for businesses to structure their operations so as to avoid most state business activity taxes entirely. Certain provisions, (e.g., the ability for other parties to perform work on the company's behalf, the 21 day exemption, and carve outs for specific industries) present likely sources of revenue impact.

Although the sponsors have indicated their bill would achieve the goal of creating legal certainty that would minimize litigation, it appears that H.R. 1956 could have the opposite effect. Opportunities for businesses to reorganize in order to avoid taxes would shift the areas of litigation to new ground. The reorganizations and perhaps physical relocations would also burden the economy as businesses expend resources for non-productive purposes. In addition, H.R. 1956 would legalize certain tax sheltering practices and income shifting methods that several states consider questionable.

In this survey, state revenue estimators were asked to estimate the revenue impact on their state in three ways – the static effect, dynamic effect, and compliance effect. A static effect captures how the new law would allow some companies, currently filing, to be free to stop filing. The dynamic or behavioral effect asks what happens to revenue when companies restructure or change operations to use the provisions of H.R. 1956 to minimize their BAT liability. The

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[1] This survey was originally conducted in response to a virtually identical bill introduced during the 108th Congress, H.R. 3220, the "Business Activity Tax Simplification Act of 2003." Because of the similarity between the two bills, several states used their original estimates to calculate the impact of H.R. 1956.

compliance effect is the loss of anticipated revenue from enforcement efforts to curb current illegal tax sheltering or income shifting activities that would be made legal if the bill were to become law. The estimates for the dynamic effect are somewhat larger than for the static effect, although the dynamic effect includes a wider range of estimates, representing less certainty. The compliance effect is significantly smaller than the static or dynamic estimates.

As the report indicates, the federally mandated physical presence standard in H.R. 1956 would have a significant impact on the revenues of nearly every state. The bill's extension of the physical presence standard beyond tangible personal property sales, and its addition of carve outs and exemptions for certain industries and practices, only increase its adverse impact. Governors urge Congress to oppose H.R. 1956 and leave decisions regarding state revenues to the states.

I. Introduction and Draft Description of Survey

On April 28, 2005, H.R. 1956, titled the "Business Activity Tax Simplification Act of 2005" was introduced in Congress by Representatives Rick Boucher and Bob Goodlatte of Virginia. This bill is strikingly similar to H.R.3220, the "Business Activity Tax Simplification Act of 2003." introduced by Representatives Boucher and Goodlatte on October 1, 2003. The purposes of this proposed legislation, according to Representative Bob Goodlatte of Virginia are:

- To provide a "bright line" that clarifies state and local authority to collect business activity taxes from out-of-state entities.
- To set specific standards to govern when businesses should be obliged to pay business activity taxes to a state. Specifically, the legislation establishes a "physical presence" test such that an out-of-state company must have a physical presence in a state before the state can impose franchise taxes, business license taxes, and other business activity taxes.
- To ensure fairness, minimize litigation, and create the kind of legally certain and stable business climate that encourages businesses to make investments, expand interstate commerce, specifically electronic commerce, grow the economy and create new jobs.
- To ensure that states and localities are fairly compensated when they provide services to businesses with a physical presence in the state.[2]

Although the underlying premise – a uniform state business activity tax jurisdictional standard – may be desirable to some, this bill would, if enacted, have adverse impacts on state and local governments. In-depth analysis of this bill reveals that preemption of state and local authority would expand in four dimensions:

1) The bill would expand the type of taxes preempted from income taxes to a wide variety of state and local business activity taxes.
2) The bill would expand the range of businesses benefiting from the preemption of state and local authority from only businesses selling tangible goods to all businesses making sales, including the sale of services and intangibles.
3) The bill would impose new, broad restrictions on state jurisdictional authority for state and local business activity taxes by establishing a general physical presence standard of nexus for such taxes; and
4) The bill would provide for a wide variety of exceptions to physical presence: temporary and permanent physical activities in a state that would allow business entities to be exempt from a state and local business activity tax even if they had a physical presence in a jurisdiction.

The taxes affected by this proposed legislation include corporate income taxes and other business activity taxes (transactions taxes are not affected by the bill). Other business activity taxes include:[3]

[2] Remarks of Representative Bob Goodlatte, reprinted in ***State Tax Notes***, Doc 2005-9147, May 3, 2005, Tax Analysts, Inc., Arlington, VA

[3] H.R. 1956 Section 4(1) and 4(2)(A) and 4(2) (B).

- A tax imposed on or measured by gross receipts, gross income, or gross profits;
- A business license tax;
- A business and occupation tax;
- A franchise tax;
- A single business tax or a capital stock tax;
- Any other tax imposed by a state on a business for the right to do business in that state or measured by the amount of, or economic results of, business or related activity conducted in that state. [4]

Taxes on gross receipts, gross income, or gross profits include Washington State's Business and Occupation Tax, taxes imposed on vendors for the privilege of doing business at retail, taxes on receipts of public utilities and taxes imposed in lieu of net income taxes and similar types of taxes.[5] Business license taxes and business and occupation taxes include taxes and fees which are imposed on persons and businesses not domiciled in a state for the privilege of conducting business in that state. For example, a state may impose a license tax on out-of-state financial services companies, electricity marketers, and similar types of businesses for the privilege of conducting business in that state, regardless of whether these businesses have a physical presence, as defined in H.R. 1956, in that state. Local governments in that state that impose taxes similar to the ones illustrated above would be similarly prohibited from imposing these taxes. In 2004, state and local business activity taxes, using the definition of these taxes contained in the bill were $89.8 billion; or, 9.7 percent of state and local government tax revenues ($925.5 billion). In 2003, the estimated level of business activity taxes was $99.8 billion – 10.4 percent of state and local tax revenues – $964.2 billion.[6]

H.R. 1956 treats an individual's or an employee's presence in a state as not constituting physical presence if the individual or employee is in the state for 21 days or less, *for any purpose*. Similarly, a firm can have any amount of property in a state for 21 days or less and not have physical presence in a state. This proposed legislation would expand both the number and quality of contacts that an entity or individual can have in a state and still be exempt from that state's taxation. Some of the safe harbors would permit businesses to own property (in some cases, real property) in this state, for extended periods of time, without incurring a state tax liability. Additionally, H.R. 1956 would legalize certain tax shelters or income shifting methods that a number of states consider questionable.

Desirability of Physical Presence as the Nexus Standard for Business Activity Taxes
As Congressman Goodlatte correctly notes, the growth of the Internet increasingly enables companies to conduct transactions without the constraint of geopolitical boundaries. The growth of remote interstate business-to-business and business-to-consumer transactions raises questions

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[4] Note that such taxes need not be levied on all businesses, but may be taxes for the right of doing business or earning income from particular activities. Examples include utility gross receipts taxes levied for the right of conducting telecommunications, electrical supply or similar activities.

[5] Insurance gross premiums taxes are not included in the possible list of state taxes that may be preempted by H.R. 1956 because it was concluded by MTC legal staff that these taxes were protected by the McCarran-Ferguson Act.

[6] U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Products Accounts, http://www.bea.doc.gov/bea/dn/nipaweb/TableView.asp#Mid

over where multi-state companies should be required to pay corporate income and other business activity taxes.[7] Proponents of a physical presence based nexus standard assert that:

> "…Public Law 86-272 must be modernized to address the shift in the focus of the economy from goods to services and intangibles, the increased burdens being imposed by local taxing jurisdictions, and the proliferation of non-income based business activity taxes."[8]

Furthermore, the proponents of a physical presence based nexus standard assert that business firms receive benefits from state and local governments only in those states in which they have a physical presence, and that the business activity taxes imposed on firms with physical presence will adequately compensate those governments for the services provided to local businesses.[9]

There are, however, compelling arguments against a physical presence based nexus standard for business activity taxes in general and against H.R. 1956 in particular. Professor Charles McLure of the Hoover Institution Stanford University, argues that Public Law 86-272 does not provide a desirable basis for state business activity nexus. In an article in the December 2000 ***National Tax Journal***, Professor McLure states:

> "Current rules for determining income tax nexus fail miserably. P.L. 86-272 has been justified as needed to limit extra-territorial taxation and interference with interstate commerce, but it has no conceptual foundation. Instead it reflects the exercise of raw political power and prevents the assertion of nexus by states that should be able to collect income taxes from corporations deriving income from within their borders."[10]

The argument that *only* those business firms physically located in a state receive any benefits from state expenditures and therefore should not be required to pay business activity taxes in those states in which they do not have physical presence is not true. The Economics of Public Finance literature has a long history of defining and classifying types of public services and the most economically efficient ways of financing those expenditures. For example, the benefits of state and local expenditures shows that the benefits of those expenditures often "spillover" to other jurisdictions and accrue over long periods of time, thus making it nearly impossible to assign specific benefits to specific businesses or individuals.[11] In such cases, these generalized benefits are usually financed by generalized taxes, such as income taxes or other taxes measured by ability to pay.

Furthermore, firms with little or no physical presence in a state generally pay very little in the way of state and local business activity taxes to those jurisdictions.[12] Government benefits to business firms with a physical presence within a state are largely financed through property taxes

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[7] Goodlatte, *op. cit.*
[8] www.batsa.org.
[9] Remarks of Representative Bob Goodlatte, reprinted in ***State Tax Notes***, Doc 2005-9147, ***op. cit.***
[10] Charles McLure, "Implementing State Corporate Income Taxes in the Digital Age," ***National Tax Journal***, Volume LIII, No. 4, Part 3, December 2000, p. 1297.
[11] Wallace E. Oates, "An Essay on Fiscal Federalism," ***Journal of Economic Literature***, Vol. 37, September 1999, p. 1128.
[12] http://www.batsa.org/FAQ.htm#ANS17

on the business' real and tangible property and by sales/use taxes on the purchase of business inputs. Nationally, these taxes account for 38.6 and 24.8 percent relatively of state and local taxes imposed on businesses in fiscal year 2003. Business activity taxes in contrast accounted for 18.0 percent of state and local taxes imposed on businesses in that year.[13]

Even if Congress chooses to limit the nexus standard for business activity taxes to a physical presence based standard, the question arises: is enactment of H.R. 1956 the best method of achieving that goal? Supporters of H.R. 1956 assert that enactment of this bill would not result in any significant loss of revenues to states because businesses would not restructure in order to take advantage of the safe harbors contained in the bill.[14] However, a recent analysis by the Congressional Research Service on H.R. 3220 from the 108th Congress notes that:

> "The new regulations as proposed in H.R. 3220 would have exacerbated the underlying inefficiencies because the threshold for business — the 21-day rule, higher than currently exists in most states — would increase opportunities for tax planning leading to more "nowhere income." In addition, expanding the number of transactions that are covered by P.L. 86-272 would have expanded the opportunities for tax planning and thus tax avoidance and possibly evasion." [15]

Preliminary Findings

A major finding of this survey is that if H.R. 1956 is enacted, the bill would upset settled law regarding state business activity taxation of numerous industries, including publishing, interstate trucking, general and customized manufacturing, the sale of distributorships, licensing of trademarks, and leasing of computer hardware and software.

If H.R. 1956 is enacted the estimated revenue impact in fiscal year 2007, for the 34 states that have responded to the survey would range from approximately $3.3 billion, or approximately 8.2 percent of projected business activity tax revenues in that year to $5.5 billion, or approximately 12.7 percent of projected business activity tax revenues. The "best" estimate of the impact is approximately $4.6 billion, or approximately 10.4 percent of projected business activity tax revenues in that year. Applying these proportionate revenue impacts to all states, the projected revenue impact in fiscal 2007 would range from $4.7 billion to $8.0 billion; the "best" estimate would be $6.6 billion. The estimated revenue impacts would range from 8.2 percent of projected business activity tax revenue in fiscal year 2007 to 13.8 percent; the "best" estimate would be 11.4 percent (See Table 1).

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[13] Robert Cline, William Fox, Tom Neubig, and Andrew Phillips, "Total State and Local Business Taxes: A 50-State Study of the Taxes Paid by Business in Fiscal 2003," ***State Tax Notes***, Document 2004-1774, Tax Analysts, Inc., Arlington, VA, March 1, 2004, p. 738.

[14] http://www.batsa.org/FAQ.htm#ANS16

[15] Steven Maguire, ***State Corporate Income Taxes: A Description and Analysis***, CRS Report for Congress, Order Code RL32297, updated March 9, 2005, p.14.

Table 1: Estimated Revenue Impact of H.R. 1956 Fiscal Year 2007			
	Estimated Impact: Fiscal Year 2007		
Effect	Minimum Impact	Best Estimate	Maximum Impact
	(Millions)		
Total Effect	***$4,718.6***	***$6,588.3***	***$7,968.1***
Static Effect	2,216.7	2,639.4	3,061.5
Dynamic Effect	2,124.4	3,463.4	4,403.9
Compliance Effect	364.7	366.7	368.1
Effect	(Percent of Projected Business Activity Taxes)		
Total Effect	8.2%	11.4%	13.8%
Static Effect	3.3	4.1	4.7
Dynamic Effect	3.5	5.6	7.1
Compliance Effect	0.6	0.6	0.6
Sources: Multistate Tax Commission estimates based on State Revenue Agency responses to survey of potential impact of H.R. 1956 in fiscal year 2007; and, U.S. Department of Commerce, Bureau of the Census Bureau of Economic Analysis.			

Beyond the effect on revenue, H.R. 1956, if enacted, would cause a significant, but unmeasured burden on the economy. The special provisions of the bill would most likely induce a number of firms to reorganize in order to take advantage of those provisions. These reorganizations absorb the resources of the firms but would not result in greater efficiency or productivity. Furthermore, if business firms alter the location of existing plant and/or personnel to take advantage of the provisions of this bill, the result is economically inefficient locations of production.

Description of Survey

On April 23, 2004, the FTA and MTC sent a survey to each state asking them to estimate the impact of a federal physical presence standard, on their state. As of this date, 34 states have responded to the BAT survey. The survey instrument contains background explanation and staff analysis of the legislation, and four response sections:

1. *Section I. Legal and Enforcement Analysis*. This section asks for a complete list of each state's statutes and regulations that would be overturned if H.R. 1956 were enacted. The section consists of three parts:

Part A. – Identification of the type of tax to which the regulation or statute applies and the citation of the applicable provision.

Part B. – Provision of a brief factual description of court cases affected, including the type of tax and the amount of income and tax involved.

Part C. – Examples of current enforcement activity that would be precluded by H.R. 1956.

2. *Section II. The Revenue Estimate*. This section asks for estimates of the revenue impact of H.R. 1956 on each state. It asks state revenue estimators to estimate the impact on their state in three ways:
   - *Static effect*: Some companies that currently comply with state BAT laws would, under the new nexus standards, be free to stop filing.
   - *Dynamic or Behavioral effect*: Estimates the revenue effect when companies restructure or change operations to use the provisions of H.R. 1956 to minimize their BAT liability.
   - *Compliance effect*: The loss of anticipated revenue from enforcement efforts to curb current tax sheltering or income shifting activity.

Guidelines for estimating the revenue impact on state and local governments are included in this part.

3. *Section III. Case Study Examples of Inequitable Taxpayer Results That Would be Created by H.R. 1956.*

4. *Section IV. State Responses to Examples of "Horror" Stories Raised by Proponents of Physical Presence Nexus Standard.*

The remainder of this analysis presents the preliminary findings from state responses to two sections of the survey. First is the legal analysis portion, corresponding to Section I of the survey. Second is the revenue impact analysis, corresponding to Section II of the survey.

II: Preliminary Estimates of the Legal Impact of H.R. 1956

Preliminary Findings

This section summarizes the likely effects of H.R. 1956 on the states' existing authority under the Commerce Clause and/or PL 86-272 to impose a business activity tax on a multistate business. For the most part, the cases described below were identified by the states responding to the H.R. 1956 survey as likely to be affected should H.R. 1956 become law. In preparing this analysis, we have relied on the facts as determined in each case, rather than construct hypothetical factual scenarios against which the effects of H.R. 1956 are measured. Accordingly, this section is intended to present a real world analysis of H.R. 1956 by explaining how the results of actual cases are likely to be affected by the bill.

1. **H.R. 1956 will preempt the states' authority to impose a business activity tax on a company operating through a wholly owned dependent contractor.**

Currently, a business that solicits or makes sales through an independent contractor is within the PL 86-272 safe harbor. In order to be considered an independent contractor, the representative must have more than one principal. The RDA case described below is indicative of how H.R. 1956 would interact with current state law.

RDA is a Delaware corporation headquartered in New York State. It publishes and sells Reader's Digest. All sale orders are accepted and filled outside California. RDA does not own, lease or maintain any facilities or bank accounts in California, and has no California employees. Under these facts, the California FTB conceded that PL 86-272 preempted California from taxing RDA.

RDS&S, a wholly owned subsidiary of RDA, is a Delaware corporation that was headquartered in New York during the years at issue. RDS&S maintained two offices in California during the tax years in question and was subject to California franchise tax.

RDS&S solicited sales of advertising in domestic and foreign editions of Reader's Digest, on behalf of RDA and RDA subsidiaries that publish various editions of the magazine. It also solicited advertising sales on behalf of at least four foreign companies (in which RDA had no ownership interest) that published foreign language editions of Reader's Digest.

RDS&S was the only entity that sold or solicited the sale of advertising in the United States for any edition of Reader's Digest. RDA required all subsidiaries and foreign companies publishing the magazine to use RDS&S as their advertising broker in the United States. RDS&S did not solicit advertising sales on behalf of any publication other than Reader's Digest.

RDA reviewed and executed the RDS&S lease in California and administratively oversaw the properties of RDA subsidiaries. RDA performed accounting functions, administered the employee benefit plans and purchased all insurance for RDS&S. In its consolidated financial statements, RDA eliminated all "intercompany" net sales and operating revenue between RDS&S and RDA and its other affiliates, asserting that RDS&S was part of RDA's unitary business.

In *Reader's Digest Association, Inc. v. Franchise Tax Board,* 94 Cal. App. 4th 1240, 115 Cal. Rptr. 2d 53 (CA Ct. App. 2001), *review denied,* 2002 Cal. LEXIS 1786 (CA 2002), the California Court of Appeal ruled that RDS&S was not acting as an independent contractor within the meaning of PL 86-872 in selling advertising for RDA and other affiliates of RDA. Therefore, the Court held that RDA's income and sales factors were properly included in the unitary business apportionment formula on the California franchise tax return.

H.R. 1956 would overrule *Reader's Digest.* Section 3(b)(2) of the bill would allow a business to escape business activity tax in a state if it uses the services of another person to establish and maintain its market in the state, as long as the person performs similar functions on behalf of at least one other business entity during the taxable year. There is no requirement in H.R. 1956 that the business entities are unrelated or that the person is an independent contractor. Therefore, under the facts of *Reader's Digest,* California would be preempted from imposing its corporate franchise tax on RDA, notwithstanding that RDS&S only sold advertising on behalf of Reader's Digest and that, at least in the United States, all of RDS&S' clients were RDA affiliates.

2. H.R. 1956 will substantially preempt the states' authority to impose a properly apportioned income tax on interstate motor carriers.

McAdams, an Arkansas corporation, was an ICC-certified irregular route motor common carrier transporting commodities in interstate commerce. For the tax years in question, McAdams' percent of total miles traveled in Virginia to total miles traveled ranged from 1.23% to 3.14%. On average, its deliveries into Virginia from points outside the state ranged from 35 to 51 during the tax years at issue. Its pick-ups in Virginia for delivery outside the state during this period ranged from 1 to 9 per year. There were no intrastate pick-ups or deliveries and the interstate pick-ups and deliveries which either began or ended in Virginia constituted only 5% of the miles McAdams traveled within the state. The remaining 95 percent of the miles McAdams traveled in Virginia were "bridge miles."[16]

Virginia imposes a corporate income tax on the Virginia taxable income of every foreign corporation having income from Virginia sources. Income can be derived either from the ownership of any interest in real or tangible personal property in the state, or from a business, trade, profession or occupation carried on in the state. In the case of motor carriers, any carrier which travels less than 50,000 miles annually through Virginia or which makes fewer than twelve round trips annually into the state is excluded from the tax. McAdams exceeded these *de minimis* amounts in each of the years in question.

In applying its income tax to the income derived by interstate motor carriers within Virginia, the state uses an apportionment formula, the numerator of which is the total miles traveled in Virginia for the tax year and the denominator of which is the total miles traveled everywhere that year.

In *Virginia Department of Taxation v. B.J. McAdams, Inc.,* 227 Va. 548, 317 S.E.2d 788 (1984), the Virginia Supreme Court ruled that a properly apportioned income tax imposed on interstate motor carriers was consistent with the Commerce Clause.

In ruling that the Virginia tax was consistent with the Commerce Clause, the Virginia Supreme Court found sufficient nexus to impose the tax because of McAdams' use of the Virginia highway system, and the state's provision of police protection and similar benefits to the taxpayer.

H.R. 1956 would upset settled law in Virginia and in most states regarding the income taxation of interstate motor carriers doing business within the taxing state. The 21 day rule in Section 3(b) (1) and (2) would preempt a state from imposing a business activity tax on an interstate motor carrier that was present in the state for no more than 21 days in the taxable year, acting either through employees or through another person. Furthermore, if the interstate motor carrier utilized the services of another person who performed similar functions on behalf of at least one additional business entity during the taxable year, the state would be preempted from imposing business activity taxes on the carrier even if the other person were present in the taxing state for more than 21 days. (Section 3(b) (2)). As a result, an interstate motor carrier could structure

[10] "Bridge miles" consist of miles driven through a state from an origin outside the state to a destination outside the state, without any pick-ups or deliveries within the state.

itself so that its delivery affiliate performed similar functions exclusively for affiliated entities and immunize its entire income from state taxation.[17]

3. H.R. 1956 would overrule established precedent by allowing businesses to engage in activities that are not ancillary to solicitation without incurring business active tax liability.

The United States Supreme Court has ruled that activities that are not ancillary to sales solicitation – those activities that serve an independent business function apart from their connection to the soliciting of orders – do not come within the safe harbor from taxation established by PL 86-272. *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.,* 506 U.S. 214 (1992). Accordingly, such activities as a salesman's replacing stale product for a retailer, a salesman's storage of product other than samples or replacing product for the retailer for consideration all serve independent business functions apart from their connection to the soliciting of orders and take the business out of the PL 86-272 safe harbor.

H.R. 1956 would effectively overrule *Wrigley* because of the 21 day rule and/or excluding from the definition of "physical presence," persons performing similar functions on behalf of one additional business entity other than the taxpayer.

In *Chattanooga Glass Company v. Strickland,* 244 Ga. 603, 261 S.E. 2d 599 (1979), the Georgia Supreme Court ruled that an out-of-state bottle manufacturer exceeded the protection of PL 86-272 by engaging in certain in-state activities that were not incidental to solicitation. Among those activities were: (1) one or two visits to Georgia per year by the company's customer service personnel to, among other things, remedy customer problems with previously purchased bottles, (2) maintaining property in Georgia, in the form of containers to store broken glass for later use as raw material in the company's glass manufacturing operations, and (3) purchasing the broken glass for use as raw material. Any of these activities would be viewed as not ancillary to solicitation under the *Wrigley* test, whether or not performed by sales personnel.

H.R. 1956, Section 3(b) (1) (A) would allow Chattanooga Glass to remedy customer problems under these facts, because the employees were not present in the state for more than 21 days. Furthermore, the company could exceed the 21 day limit by forming an affiliate to resolve such problems, and still not create the requisite physical presence required by the bill, as long as the affiliate performed similar functions on behalf of one additional business entity, including another affiliate. Section 3(b)(2). Section 3(b)(3) (c), in conjunction with Section 3(b)(2), would allow the company to maintain containers for broken glass within the State and to purchase broken glass in Georgia without incurring business activity tax liability, as both activities can be viewed as establishing or maintaining a market in the state by securing a source of raw material.

4. H.R. 1956 would upset longstanding settled law by extending PL 86-272 to taxes other than taxes on or measured by net income.

[17] The delivery affiliate itself would remain subject to state taxation, as long as it was present in the state for more than 21 days in a taxable year. But the corporate tax base would be substantially reduced.

Currently, PL 86-262 only applies to a "net income tax" which is defined as a tax imposed on or measured by net income. H.R. 1956 would greatly expand the range of state taxes preempted by PL 86-272. In addition to the net income tax, H.R. 1956 also applies to the other business activity taxes defined in Section 4(2) (A) of the bill. If enacted into law, this would have a profound effect on settled law regarding nexus to impose a state business activity tax other than a net income tax.

For example, the Washington business and occupation tax is imposed on "the act or privilege of engaging in business activities" in the state. The tax applies to the following activities in Washington: extracting raw materials, manufacturing, or making wholesale or retail sales. The measure of the selling tax is the "gross proceeds of sale" and the measure of the manufacturing tax is the value of the manufactured products.

In *Tyler Pipe Industries v. Washington Department of Revenue,* 483 U.S. 232 (1987), the United States Supreme Court ruled that the presence of one independent contractor soliciting sales from within the state was sufficient to establish nexus for Washington to impose its B&O tax on an out-of-state manufacturer. Tyler maintained no office, owned no property and had no resident employees in Washington. The solicitation of business in Washington was directed by executives whose offices were outside the State and by one in-state independent contractor.

H.R. 1956 would allow an out-of-state company to easily avoid Washington's B&O tax under the facts of *Tyler Pipe.* First, the Washington B&O tax would clearly be considered a business activity tax under H.R. 1956 Section 4(2) (A) (i), (iii) and (vi). If the independent contractor performed sales solicitation services for one additional business entity during the taxable year, Washington would be preempted from imposing its B&O tax on the company, even if Tyler Pipe utilized the services of the contractor 52 weeks per year. Section 3(b)(2).

Michigan's single business tax (SBT) would also be included in the definition of "other business tax" in Section 4(2)(A). Doing so would reverse longstanding current law. In *Gillette Company v. Michigan Department of Treasury,* 198 Mich. App. 303, 497 N.W. 2d 595 (MI Ct. App. 1993), *appeal denied,* 519 N.W. 2d 156, *reconsideration denied,* 521 N.W. 2d 612 (MI 1994), *cert. denied,* 513 U.S. 1103 (1995), the Michigan Court of Appeals ruled that Michigan's single-business tax was not a tax imposed on or measured by net income. Therefore, the tax was not included within the definition of "net income tax" set forth in PL 86-272.

H.R. 1956 Section 4(2) (A) (v) explicitly includes a single business tax within the definition of "other business activity tax" covered by the bill. As Gillette's activities in Michigan were limited to the solicitation of orders that were accepted and filled from outside the state, Section 2(a) of the bill would preempt Michigan from imposing its SBT on Gillette, thereby overruling the decision of the Michigan Court of Appeals.[18]

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[18] The extension of PL 86 -272 to business activity taxes other than a net income tax would have broader ramifications than merely extending the statute's protection of solicitation activity to those taxes. As the discussion of *Chattanooga Glass* makes clear in the net income tax context, extending the statute's protection to other taxes will have similar consequences for those taxes where the business engages in substantial activities that are clearly not ancillary to solicitation.

5. H.R. 1956 would substantially preclude a state from levying a business activity tax on or as a result of a sale of an intangible.

Section 2(a) of H.R. 1956 extends the protection of PL 86-272 to the solicitation of services or intangibles, thereby expanding the existing safe harbor for sellers of tangible personal property to the entire economy.

In *Amway Corporation, Inc. v. Missouri Director of Revenue,* 794 S.W. 2d 666 (1990), the Missouri Supreme Court held that the sale of distributorships by Amway, a Michigan corporation, exceeded the safe harbor established by PL 86-272 for the solicitation of orders for tangible personal property. The Court found a distributorship to be a license sold for a fee by Amway for "the right to service … customers and sponsor … distributors." The Court further found the sale of such a right to constitute a nonexclusive franchise the sale of which is the sale of intangible personal property. As of 1980, the last tax year at issue, Amway had more than 35,000 Missouri distributors and realized more than $175,000 in income from the sale of Amway distributorships in Missouri.

H.R. 1956 would effectively overrule *Amway* because the State would be preempted from imposing a business activity tax on the sale of distributorships.

In addition, given the physical presence requirement of Section 3(b), a number of cases that have ruled that physical presence is not required for a state to have corporate income tax nexus with a Delaware trademark holding company would be overruled if the bill were to be enacted. *Geoffrey, Inc. v. South Carolina Tax Commission,* 437 S.E. 2d 13 (S.C.), *cert. denied,* 510 U.S. 992 (1993); *A&F Trademark, Inc., et al., v. North Carolina Secretary of Revenue,* 605 S.E. 2d 187 (NC Ct. App. 2004). The amount of "nowhere income" realized by PICs (passive investment companies) is enormous. For example, the local operating companies in *A&F Trademark* had claimed state income tax deductions of $301,067,619 in royalties and $ 122,031,344 in interest paid to PICs in 1994, accounting for 100% of the taxpayers' income for that year.

6. H.R. 1956 arguably may preempt a state from imposing a vendor sales tax.

H.R. 1956, Section 4(2) (B) excludes a transaction tax from the definition of "other business activity tax." But Section 4(2)(A)(i) specifically includes a tax imposed on or measured by gross receipts within the definition of "other business activity tax." In addition, Section 4(2)(A)(vi) includes within the definition of "other business activity tax" any tax imposed by a state on a business "for the right to do business in that state or measured by the amount of, or economic results of, business or related activity in that state." This creates an ambiguity as to whether a vendor sales tax is included within the definition of "other business activity tax." At the very least, this ambiguity will lead to litigation in those states that impose a gross receipts tax on a vendor for the privilege of engaging in retail sales.

Arizona imposes a privilege tax "measured by the amount or volume of business transacted .. on account of … business activity, and in the amounts to be determined by the application of rates

against values, gross proceeds of sales or gross income ….” A.R.S. §42-5008A (2004). The tax is not a direct tax upon goods one sells; rather, it is a tax directly and specifically for the privilege of conducting business within Arizona. *Arizona Department of Revenue v. Robinson's Hardware,* 149 Ariz. 589, 721 P.2d 137 (AZ Ct. App. 1986). The Arizona retail transaction privilege tax appears to come within the scope of H.R. 1956, Sections 4(2) (A) (i) and (vi). If so, H.R. 1956 would arguably overrule *Arizona Department of Revenue v. O'Connor, Cavanaugh, Anderson, Killingsworth & Beshears,* 192 Ariz. 200, 963 P. 2d 279 (AZ Ct. App. 1997).

In *O'Connor,* the Arizona Court of Appeals ruled that an Indiana manufacturer of custom office furniture had sufficient nexus with Arizona for the state to impose its retail transaction privilege tax. Between February 1985 and April 1989, Dunbar, the Indiana furniture manufacturer, entered into eighteen contracts to manufacture, sell and install office furniture for a Phoenix law firm. Dunbar employees delivered the furniture, usually in Dunbar trucks, and installed it in the Phoenix law office. In addition, Dunbar dispatched employees to Arizona on three occasions over the life of a three-year warranty to perform warranty services. On two of those occasions, Dunbar employees spent a week or more at the firm's new offices to correct the problems.

On these facts, it is likely that Dunbar's employees did not spend more than 21 days in Arizona in any taxable year. If H.R. 1956 applies to Arizona's retail transaction privilege tax, Arizona would therefore be precluded from imposing its tax under Section 3(b) (1). In any event, an out-of-state vendor could easily restructure itself so as to provide delivery and installation services through another person under Section 3(b)(2) and engage in those activities on a tax-free basis even if those persons were present in Arizona for more than 21 days in a taxable year.

Furthermore, an out-of-state vendor can maintain tangible leased property in the taxing state indefinitely without exceeding the protection of H.R. 1956, as long as that property is used to furnish a service to the owner or lessee by another person. Section 3(b)(3)(A). This would arguably overrule the holding of the Arizona Court of Appeals in *Arizona Department of Revenue v. Care Computer Systems, Inc.,* 197 Ariz. 414, 4 P.3d 469 (AZ Ct. App. 2000).

Care Computer is a Washington corporation that sells and licenses computer hardware and software to nursing homes. During the audit period, Care engaged in approximately 180 transactions with Arizona nursing homes. The vast majority of Care's Arizona transactions were conducted by mail or telefax. Two of the transactions were leases and the rest were sales. One lease was for a general ledger program; the other was for three programs and a computer. At the end of both lease terms, the lessees bought the leased goods, and Care credited 75% of the lease payments to the sales prices. Total rental payments for the two transactions were $ 24,208.86.

Care had one salesperson assigned to Arizona who operated from California. He visited Arizona on seven occasions during the audit period, averaging one- to two-day visits each time. In addition, Care conducted training for its Arizona nursing home customers on 80 widely separated days of the 1370 days covered by the audit from July 1987 through March 1991, or an average of 24 days per year.[19]

[19] The 24 day average is not broken down by taxable year. It is quite possible that Care's training personnel were not present in Arizona in excess of 21 days per taxable year.

Care charged a license fee for its leased products. Approximately $105,000 of Care's income from Arizona transactions during the audit period consisted of software licensing fees.

Based on the above facts, the Arizona Court of Appeals found sufficient nexus for Arizona to impose the retail transaction privilege tax. If H.R. 1956 were to be enacted, the continued authority of *Care Computer* would be in doubt. It would be easy enough for a company to reorganize itself such that in-state training would be performed by another person within the meaning of Section 3(b)(2). The property would then be within the safe harbor of Section 3(b)(3) (a) as it would be used to furnish a service to the lessee of the property by another person.

Conclusion

If H.R. 1956 is enacted, there is substantial reason to believe that the bill would upset settled law regarding state business activity taxation of numerous industries, including publishing, interstate trucking, general and customized manufacturing, the sale of distributorships, licensing of trademarks, and leasing of computer hardware and software.

III: Preliminary Estimates of the Revenue Impact of H.R. 1956

1. Preliminary Findings:

Based on the results from the 34 responding states to date, the "best" estimate of the impact for ***all*** states in fiscal year 2007 is $6.6 billion.[20] The total effect in fiscal year 2007 is the sum of three effects, static effect, dynamic effect, and compliance effect, which are described below. Using the best estimates of state revenue agency personnel, the projected revenue impacts are: $3.0 billion; $4.2 billion; and $443 million from the static effect, the dynamic effect, and the compliance effect respectively.

The estimated total revenue impact of H.R. 1956 in fiscal year 2007 would range from $5.5 billion to $9.4 billion. The estimates of the static effect range from $2.5 billion to more than $3.5 billion; $3.0 billion is the best estimate. This relatively narrow range of the expected impact is based on the judgment of state revenue estimating personnel from their examination of business income tax returns. Conversely, the relatively wide range ($2.5 billion to $5.3 billion) of the estimated revenue impact resulting from expected changes in the response of business firms to the change in tax law – the dynamic effect – is based on state revenue agency staff projections of

[20] This estimate was derived by multiplying the estimate of the revenue impact of H.R. 1956 as a proportion of projected business activity tax revenues, as reported by the states, (14.1 percent) by the projected business activity tax revenue for all states in fiscal year 2007 – $57.7 billion. Business activity taxes are defined as: corporate franchise taxes, corporate income taxes, and Business and Occupation Taxes (Washington State), Single Business Tax (Michigan) and Use Tax in Illinois. These taxes were chosen to represent all business activity taxes because they were the ones estimated by the responding states. A more detailed explanation of how the weighted average was obtained is presented in the APPENDIX.

The estimates for U.S. business activity tax collections in 2007 were derived by projecting business activity tax revenues for fiscal years 1999, 2000, 2001, 2002 and 2003 through 2007 using straight line trends and growth trends and averaging those results. Data for state business activity taxes are from the U.S. Bureau of the Census***, State Tax Collections*** for the various years.

business responses to H.R. 1956. The range of estimates of the compliance effect (approximately $418 million to approximately $445 million) is based on current enforcement actions that would not be taken if H.R. 1956 were to become law.[21]

State revenue agency personnel were asked to estimate the revenue impact of H.R. 1956 on their state's revenue in fiscal year 2007 and beyond. Fiscal year 2007 was chosen as the target year because it was assumed that, if enacted, H.R. 1956 would be in effect for fiscal years 2005 and beyond; and, that the revenue effects would not be significant until two years after the law was enacted. This time frame was considered sufficient for business firms to reorganize their operations in order to take advantage of the protections offered by H.R. 1956 to reduce their state business activity tax liabilities. However, preliminary responses from some states indicate that the revenue impact could increase significantly for fiscal years 2009 and beyond. For example, seven states, California, Delaware, Kentucky, New Jersey, Tennessee, Washington, and Wisconsin, provided estimates of the revenue impact for fiscal year 2009 as well as 2007. Using those states' "best" estimates, the total revenue impact for those states would increase from $1.8 billion to $2.5 billion – or 40.5 percent.

2. **Methods of Estimation:**

Revenue estimators projected the revenue impact of H.R. 1956 on their state by assuming that the impact would result from three simultaneously occurring effects:

- (*Static Effect*): Businesses that would no longer be subject to tax by the revenue estimator's state or localities under the new law because their physical presence in a state was below the threshold established by H.R. 1956 (21 days or fewer for property or personnel to be in a state); or, the firms engage in one of the protected activities.
- (*Dynamic Effect*): Businesses would, in response to the planning opportunities created by federal law, restructure or otherwise engage in tax planning to minimize their tax liability in the revenue estimator's state.
- (*Compliance Effect*): The loss of revenue that states had expected to gain from current enforcement activities with respect to non-complying businesses under current law, but which states would be barred from collecting because the federal law would bar further enforcement.

3. **Explanation and Examples of Effects:**

a) Static Effect – Estimating the Loss of Currently Collected Revenues

States can experience some immediate reduction in business activity tax revenue because some businesses that have no physical presence, or only minor physical presence. For example, businesses that may be seasonal or transient in nature, but are currently filing and remitting business activity taxes, will no longer be subject to business activity taxes because their level of

[21] The sum of the static effect, dynamic effect, and compliance effect will not add to the total effect because a few states provided estimates of the total effect only. No effort was made to allocate the total effect to each of the separate effects.

physical presence is below the level established by H.R. 1956 (21 days). Similarly, some businesses would be protected by the special protections offered by H.R. 1956, for example, their only physical presence is property being processed by a contract manufacturer, or their activity is limited to covering events for the media.

Estimates of the static effect were based on the assumption that those businesses that are currently remitting business activity taxes but have $0 or *de minimis* amounts of either property or payroll in the taxing state would not be subject to that state's business activity taxes. Revenue estimators used the dollar amounts of payroll or property in their state to estimate the impact of H.R. 1956 rather than the number of days each business had personnel or property in their state because the tax returns, and tax liabilities are based on the relative dollar levels of those factors. The de *minimis* level of the factors used to estimate the revenue impact is usually stated on the state response sheet. Not all states responding to the survey explicitly stated the level of payroll or property on which their estimate was based.

b) Dynamic Effect – Estimating the Loss of Revenues from Business Tax Planning Permitted by H.R. 1956

One example of the dynamic effect of H.R. 1956 is a company setting up an affiliate for marketing in a state. That affiliate would have a permanent physical presence in the state. The company could also establish two wholesale or producer affiliates corresponding to different product lines of the company, both serviced by the marketing affiliate and neither having a physical presence in a state. While the marketing affiliate would have a presence in the state, the rest of the business or corporate structure would not be subject to business activity taxes. Transfer prices could be set so as to minimize the tax paid by the marketing affiliate. Alternatively, the marketing representative in a state might be an independent contractor, with the same result of exempting from tax the company that has set up the two affiliates corresponding to more than one product line. The independent contractor would be taxable, but the corporation whose products are being sold would not be.

Another, but somewhat more complex, example involves an out-of-state holding company that operates a number of stores in a state. The holding company could establish a management company remote from the states in which the stores are located. Similarly, the holding company could establish a staffing company that leases employees to the operating units (stores). Income could be shifted out of the state in which the stores operate by paying a "management fee" to the management company. The staffing company would also pay a fee to the management company further siphoning income from the state in which the stores operate. Furthermore, senior managers from the management company can work in the state with the operating company for fewer than 21 days without creating nexus for the management company.

H.R. 1956 can also negatively affect future revenues of state and local gross receipts, gross profits, or similar taxes. A business can reorganize in such a way to source sales into a state through entities that do not have nexus and thus are exempt from taxation in that state. All other activities that create and maintain the market in the market states that go beyond the protections provided by H.R. 1956 can be placed into separate entities. For example, a business can set up a wholesale or distribution subsidiary outside of the jurisdiction of the market state. By selling to

independent contract marketers, as defined by H.R. 1956, in the market state, and through careful transfer pricing, the business can minimize its gross receipts tax liability in the market state.

There are other, more complex transactions and reorganizations that are available to many business firms. Because of the complexity of the dynamic effect, projecting the dynamic revenue impact estimates is a difficult process. This process requires revenue estimators to project the level of business activity taxes in the absence of H.R. 1956; and then to project how business taxpayers will respond to the new law.

An exposition of how multistate businesses can rearrange their organizations to take advantage of some of the provisions of legislation such as H.R. 1956 was presented by Joe Garrett of the Alabama Department of Revenue at MTC's 2004 Annual Meeting: http://www.mtc.gov/2004AnnualConferenceAgenda_files/Garrett.pdf.

c) Compliance Effect – Estimating the Loss of Anticipated Revenues from Compliance Activities that Would Be Blocked by H.R. 1956

Revenue estimators were asked to project the loss of future revenues from current enforcement efforts that would be blocked by H.R. 1956. These lost revenues would be in addition to the revenues lost from both the static and dynamic effects noted previously. For example, the estimator may project how much revenue the revenue estimator's state would lose in anticipated future revenue from enforcing a ruling in which the state court denied the tax effects of the use of intangible holding companies.

The compliance effect involves estimating revenues that are not yet in currently collected revenues, but are expected to be collected due to what the state considers to be sound compliance efforts. H.R. 1956 may result in legalizing activities that the revenue estimator's enforcement branch considers to be improper under current law and are now seeking to enforce. In these cases, H.R. 1956 will produce a loss of anticipated, but as yet not collected revenues.

4. State by State Estimates:

The respondent states were grouped into three categories: combined reporting states[22], separate entity states,[23] and special. Michigan and Washington State comprise the special category because their primary business activity taxes are the Single Business Tax and the Business and Occupation Tax respectively. For the percentage impact, the responses of the combined reporting states were added and that sum was divided by the sum of the corresponding responses for the estimated business activity taxes. As shown in Table 2 below, the minimum expected revenue impact of H.R. 1956 for the respondent states, as a percent of expected business activity tax revenue in 2007 is 7.6 percent. For combined reporting states, the expected impact is 2.3

[22] The combined reporting states are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Kansas, Maine, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Oregon, and Utah. Combined reporting is a state tax accounting in which the taxable income of a single or unitary business operating in several states is apportioned among the states. The taxable income of the separate legal entities is added together.

[23] In separate entity states, the taxable income of each legal entity is apportioned among the states in which it operates.

percent, for separate entity states the expected impact is 11.0 percent, and for the special states, the impact is 14.4 percent.

Table 2
Estimate of Revenue Impact of H.R. 1956 on Respondent States: Fiscal Year 2007

	Minimum Impact	Best Estimate	Maximum Impact	Minimum Impact	Best Estimate	Maximum Impact
Type of State	(millions)			(Percent of Business Activity Tax)		
All States	$3,300.2	$4,558.3	$5,534.2	7.6%	10.4%	12.7%
Combined Reporting	443.6	523.0	608.6	2.3	2.7	3.2
Separate Entity	2,044.9	2,929.2	3,525.4	11.0	15.7	18.9
Special States (MI & WA)	811.6	1,106.1	1,400.2	14.4	19.6	24.8

Table 3 below presents estimates of the total revenue impact on states of H.R. 1956 in fiscal year 2007. National estimates were derived by assuming that each of the non-responding states would be affected by H.R. 1956 to the same extent as states that have similar tax structures. Thus, the estimates for each of the non-respondent combined reporting states were obtained by multiplying their estimated business activity tax revenue in 2007 by the respective percentage estimates -- 2.3 percent for the minimum impact, 2.9 percent for the “best” estimate, and 3.4 percent for the maximum expected impact. A similar procedure was performed on the non-respondent separate entity states.

The estimates for non-respondent states were then added to the estimates provided by the respondent states to obtain a national estimate. The higher percent estimates for the United States (13.5% best estimate) relative to respondent states (11.4% best estimate) is due to the over-representation of combined reporting states among the responding states. State-by-state estimates of each of the separate effects (static, dynamic, and compliance, and total effect) for fiscal year 2007 are contained in APPENDIX Tables A, B, and C. Table A contains estimates of the minimum impact H.R. 1956 would have on states, Table B is the “best” estimate, and Table C contains estimates of the maximum impact of H.R. 1956.

5. Notes on the Preliminary Estimates

The estimates of the revenue impact of H.R. 1956 do not take into account some states use a “throwback” rule or a “throwout” rule to minimize “nowhere” income.[24] The “throwback” rule affects the sales factor of the apportionment formula when sales are made by a seller into a state which has no jurisdiction to impose an income tax on the seller. Those sales are assigned back to the state from which the goods sold have been shipped. The “throwout” rule is similar to the “throwback” rule – sales into states that do not have authority to impose an income tax on the seller are removed from both the numerator and denominator of the sales factor of the apportionment formula.

[24] Income that is not sourced to any state. This can occur when a seller of tangible personal property has no nexus in a destination state, or a state is limited by the U.S. Constitution or statute from imposing a tax.

Also, the estimates of the revenue impact of H.R. 1956 are just that, estimates. Any imprecision of the estimates arise from the need to anticipate how those affected by the legislation will react. As George Yin, Chief of Staff of the Joint Committee on Taxation, stated at a conference in Los Angeles on March 1, 2004 regarding the Joint Committee's staff estimates of the revenue impact of federal legislation:

> "… it's certainly a very imprecise process. There is some science involved in it and clearly some art involved in it -- no question about it." [25]

Despite the presence of "throwback" or "throwout" rules, and the imprecision of making these types of estimates, it is clear that, should H.R. 1956 be passed into law, there would be a significant revenue impact on state and local governments.

TABLE 3
Estimated Revenue Impact of H.R. 1956 by State
Fiscal Year 2007

State	Estimated Revenue Impact of H.R. 1956: Fiscal Year 2007[1]			Estimated Business Activity Tax Revenue F.Y. 2007[2]	Revenue Impact as Percent of Business Activity Tax Revenue		
	Minimum Impact	Best Estimate of Impact	Maximum Impact		Minimum Impact	Best Estimate of Impact	Maximum Impact
	(millions)				(Percent)		
United States	***$4,718.6***	***$6,588.3***	***$7,968.1***	***$57,693.8***	***8.2%***	***11.4%***	***13.8%***
Alaska	5.1	5.1	5.1	505.0	1.0	1.0	1.0
Arkansas	63.0	92.5	96.0	256.0	24.6	36.1	37.5
California	150.0	150.0	150.0	7,344.0	2.0	2.0	2.0
Connecticut	101.9	119.4	136.8	381.7	26.7	31.3	35.8
Delaware	22.0	30.5	30.5	298.1	7.4	10.2	13.1
Georgia	30.9	30.9	30.9	511.2	6.0	6.0	6.0
Idaho	8.0	8.0	*8.0*	*1,009.1*	0.8	0.8	0.8
Illinois	91.0	91.0	91.0	8,564.3	1.1	1.1	1.1
Iowa	45.0	46.0	46.0	200.0	22.5	23.0	23.5
Kansas	31.2	31.2	31.2	286.1	10.9	10.9	10.9
Kentucky	125.2	212.4	259.3	593.4	21.1	35.8	43.7
Maryland	106.4	106.4	106.4	397.0	26.8	26.8	26.8
Massachusetts	91.0	137.0	183.0	1,572.0	5.8	8.7	11.6
Michigan	417.5	417.5	417.5	2,113.3	19.8	19.8	19.8
Minnesota	47.1	54.4	67.1	621.5	7.6	8.8	10.8
Missouri	173.6	173.6	173.6	437.1	39.7	39.7	39.7

[25] Kenneth A. Gary, "Yin Explains JCT Revenue Estimating Efforts," ***Tax Notes***, Tax Analyst, Inc., TNT 42-6, Arlington, VA, March 2, 2004.

TABLE 3
Estimated Revenue Impact of H.R. 1956 by State
Fiscal Year 2007

State	Estimated Revenue Impact of H.R. 1956: Fiscal Year 2007[1]			Estimated Business Activity Tax Revenue F.Y. 2007[2]	Revenue Impact as Percent of Business Activity Tax Revenue		
	Minimum Impact	Best Estimate of Impact	Maximum Impact		Minimum Impact	Best Estimate of Impact	Maximum Impact
	(millions)				(Percent)		
Montana	3.0	4.5	6.0	79.2	3.8	5.7	7.6
New Hampshire	58.4	58.4	58.4	281.0	20.8	20.8	20.8
New Jersey	398.3	398.3	398.3	2,791.0	14.3	14.3	14.3
North Carolina	58.5	345.5	345.5	1,352.5	4.3	25.5	34.8
North Dakota	3.5	5.2	6.8	46.0	7.6	11.2	14.8
Ohio	171.0	298.0	425.0	1,022.0	16.7	29.2	41.6
Oklahoma	31.8	31.8	31.8	172.0	18.5	18.5	18.5
Oregon	35.3	90.7	179.2	314.7	13.7	35.1	55.4
Pennsylvania	51.5	77.8	92.6	3,928.0	1.3	2.0	2.4
South Dakota	6.5	6.5	6.5	94.3	6.9	6.9	6.9
Tennessee	191.1	234.8	294.9	1,457.3	13.1	16.1	20.2
Texas	225.0	410.0	530.5	2,000.0	11.3	20.5	26.5
Utah	2.8	3.9	5.8	260.0	1.1	1.5	2.2
Virginia	0.0	0.0	0.0	420.2	0.0	0.0	0.0
Washington	394.1	688.6	982.7	3,543.8	11.1	19.4	27.7
West Virginia	102.2	127.8	153.3	199.8	51.2	64.0	76.7
Wisconsin	50.0	50.0	50.0	577.0	8.7	8.7	8.7
Other combined reporting states	32.6	38.5	49.5	1421.7	2.3	2.7	3.2
Other separate entity states	1385.7	1984.3	2592.1	12660.2	11.0	15.7	18.9

1. Data in italics were estimated by the Multistate Tax Commission.

2. Includes Corporate income taxes, corporate franchise taxes, Single Business Tax (MI), Business and Occupation Tax (WA), Use Tax, (IL) and Public utility gross receipts taxes

3. Other combined reporting states: Arizona, Colorado, Hawaii, Maine, Nebraska, Vermont.
4. Other separate entity states: Alabama, D.C., Florida, Indiana, Louisiana, Mississippi, Nevada, New Mexico, New York, Rhode Island, South Carolina, Wyoming.

Source: APPENDIX Tables 1A, 1B, and 1C.

TABLE 3 **Estimated Revenue Impact of H.R. 1956 by State** **Fiscal Year 2007**							
	Estimated Revenue Impact of H.R. 1956: Fiscal Year 2007[1]			Estimated Business Activity Tax Revenue F.Y. 2007[2]	Revenue Impact as Percent of Business Activity Tax Revenue		
State	Minimum Impact	Best Estimate of Impact	Maximum Impact		Minimum Impact	Best Estimate of Impact	Maximum Impact
	(millions)				(Percent)		

IV: Summary and Conclusion

The sponsors of H.R. 1956 assert that this proposed legislation would establish clear rules regarding state and local government authority to impose business activity taxes on businesses engaged in interstate commerce. According to the proponents of this legislation, such clarity would bring certainty for businesses regarding their potential tax liabilities when making business investment decisions. Reduction of uncertainty would, in the opinion of the sponsors, lead to greater investment and job growth. Similarly, the sponsors assert that states would benefit from greater certainty regarding their authority to impose business activity taxes on firms engaged in interstate commerce. One beneficial outcome of this legislation, in the opinion of the proponents of this legislation, would be reduced litigation over nexus.

However, as shown in section II of this report, responses by state revenue agency legal staffs show that they are uncertain as to how their statutes and regulations relating to their "doing business" standards would mesh with H.R. 1956. This uncertainty could result in *more* litigation regarding state authority to impose business activity taxes.

The "bright line" test, proposed by the sponsors of this legislation, for determining whether a state has the authority to impose its business activity tax on a firm is based on a concept of physical presence – property or personnel in a state for 21 days or more. A physical presence test for state and local authority to impose business activity taxes would result in non-neutrality in the tax treatment of local businesses relative to businesses without the minimum level of physical presence for nexus. Long-term trends show that the economy is becoming more service oriented and less oriented toward manufacturing and mercantile activities. Physical presence, however measured, is becoming less important for the delivery of services and intangibles. Thus, if business activity taxes are to tax income in a reasonable approximation where the income is earned, physical presence is essentially irrelevant. Furthermore, technological innovations such as the Internet allow merchants to sell their products and services anywhere without a physical presence in many of the locations in which they do business. Local businesses would be at a tax disadvantage relative to remote firms as they compete for the same market.

Some may argue that local business receives a greater level of benefits from local governments and thus should bear higher taxes. A valid counterargument is that the benefits of local government that benefit businesses directly – public infrastructure, and fire and police protection -- are paid by businesses primarily through taxes on the value of business property and on use taxes on their purchases of inputs. These taxes are imposed only on local businesses.

In addition, this physical presence standard may create more record keeping for companies as they must be cognizant of when their property or personnel cross the physical presence standard. State revenue agencies would also need to have access to those records in order to determine whether a firm meets the physical presence test. This is an added cost for both the business sector and revenue agencies.

Finally, H.R. 1956 would have a significant adverse revenue impact on state governments – between $4.7 billion and $8.0 billion in 2007 – at a time when state and local governments are faced with rising costs of Medicaid, homeland security, and education. State and local

governments would be forced to increase other taxes, decrease expenditures, or find combinations of tax increases and expenditure cuts to make up for lost revenues.

In conclusion, enactment of H.R. 1956 into law would not necessarily result in greater certainty for businesses and states but could create more confusion and litigation regarding state authority to impose business activity taxes. In addition, the bill create would artificial barriers to the most efficient locations of investment and employment resulting in lower rates of economic growth, and impose significant fiscal costs on state and local government.

APPENDIX

Estimates of Business Activity Tax Revenue for Non-Respondent States, Fiscal Year 2007

As noted in the text, estimates of the revenue impact for the non-respondent states were derived by multiplying the estimated revenue impact of the static effect as a proportion of business activity tax revenue, the estimated revenue impact of the dynamic effect as a proportion of business activity tax revenue, the estimated revenue impact of the compliance effect as a proportion of business activity tax revenue, and the estimated revenue impact of the total effect as a proportion of business activity tax revenue of the respondent states. The respondent and non-respondent states were classified as combined reporting states, separate entity states, and "special states (WA & MI). The estimated revenue impact for each non-respondent separate entity state was derived by dividing each of the revenue impacts (static effect, dynamic effect, compliance effect, and total impact) of all respondent separate entity states by the sum of the business activity tax revenue for those states (see Table 1) and multiplying by the estimated business activity tax revenue of the non-respondent state. The same estimating procedure was used to estimate the revenue impact for non-responding combined reporting states. In mathematical notation, for a non-respondent separate entity state, the static effect is:

$$\mathbf{S_{nri} = \{\Sigma S_{ri}/\Sigma BAT_{ri}\} * BAT_{nri}}$$

Where: $\mathbf{S_{nri}}$ is the static effect in nonrespondent state, i

$\mathbf{\Sigma S_{ri}}$ is the sum of the static revenue impact of the respondent states

$\mathbf{\Sigma BAT_{ri}}$ is the sum of business activity tax revenue of the respondent states and

$\mathbf{BAT_{nri}}$ is the estimate business activity tax revenue for nonrespondent state i.

The procedure is repeated to estimate the dynamic impact, compliance impact, and total impact separately. The same procedures were used to estimate the revenue impacts on combined reporting states.

The estimated business activity tax revenue (BAT) for nonrespondent state (i) was derived by dividing each nonrespondent state's BAT in 2003 by the sum of the 2003 BAT for all nonrespondent states. The quotient was then multiplied by the difference between the estimated total BAT in fiscal year 2007 ($57.7 billion) and the sum of the BAT in 2007 of the respondent states ($43.6 billion). The difference between the BAT sums is $14.1 billion. Again, in mathematical notation the estimated 2007 BAT for a nonrespondent state is:

$$\mathbf{BAT_{nri}} = (\mathbf{BAT2003_{nri}/\Sigma BAT2003_{nri}}) * \mathbf{\$14.1\ billion}$$

Where:

$\mathbf{BAT_{nri}}$ is estimated business activity tax revenue of nonrespondent state (i) in 2007

$\mathbf{BAT2003_{nri}}$ is business activity tax revenue of nonrespondent state (i) in 2003

$\mathbf{\Sigma BAT2003_{nri}}$ is the sum of fiscal year 2003 business activity tax revenues of all nonrespondent states.

Appendix TABLE1A						
Estimated Revenue Impact of H.R. 1956 by State: Minimum Impact						
Fiscal Year 2007						
Dollar Amounts in Millions						
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)
*United States**	*$2,126.7*	*$2,124.4*	*$364.7*	*$4,718.6*	*$57,693.8*	*8.2%*
Responding States	$1,456.9	$1,507.6	$252.3	$3,300.26	$43,628.5	7.6%
Alaska[2]	5.1	n.r	n.r	5.1	505.0	1.0
Arkansas[3]	6.0	57.0	n.r.	63.0	256.0	24.6
California [4,5]	n.r	150.0	n.r.	150.0	7,344.0	2.0
Connecticut[6]	75.2	26.8	n.r.	101.9	381.7	26.7
Delaware[7]	n.r.	n.r.	n.r.	22.0	298.1	7.4
Georgia[8]	30.9	n.r.	n.r.	30.9	511.2	6.0
Idaho[4]	8.0	n.r.	n.r.	8.0	*1,009.1*	0.8
Illinois[9]	91.0	n.r.	n.r.	91.0	8,564.3	1.1
Iowa[4]	10.0	30.0	5.0	45.0	200.0	22.5
Kansas[8]	2.2	29.3	n.r.	31.5	218.5	14.4
Kentucky[10]	39.1	86.1	n.r.	125.2	593.4	21.1
Maryland[11]	66.7	39.7	n.r.	106.4	397.0	26.8
Massachusetts[12]	91.0	n.r.	n.r.	91.0	1,572.0	5.8
Michigan[13]	239.1	150.9	27.5	417.5	2,113.3	19.8
Minnesota[4]	30.0	7.5	9.7	47.1	621.5	7.6
Missouri[8]	173.6	n.r.	n.r.	173.6	437.1	39.7
Montana[4,14]	n.r.	n.r.	n.r.	3.0	79.2	3.8
New Hampshire[15]	n.r	n.r	n.r	58.4	281.0	20.8
New Jersey[16]	219.0	150.0	29.3	398.3	2,791.0	14.3
North Carolina[17]	8.5	50.0	n.r.	58.5	1,352.5	4.3
North Dakota[18]	3.3	n.r.	0.2	3.5	46.0	7.6
Ohio[19]	40.0	131.0	n.r.	171.0	1,022.0	16.7
Oklahoma[4,20]	3.2	28.6	n.r.	31.8	172.0	18.5
Oregon[21]	5.7	33.2	4.6	43.5	314.7	13.7
Pennsylvania	51.5	n.r	n.r	51.5	3,928.0	1.3
South Dakota[22]	0.1	6.4	n.r.	6.5	94.3	6.9
Tennessee[23]	46.0	145.1	n.r.	191.1	1,457.3	13.1
Texas[24]	25.0	70.0	130.0	225.0	2,000.0	11.3
Utah[3]	0.7	1.7	0.4	2.8	260.0	1.1
Virginia[25]	0.0	0.0	0.0	0.0	420.2	0.0

Appendix TABLE1A Estimated Revenue Impact of H.R. 1956 by State: Minimum Impact Fiscal Year 2007 Dollar Amounts in Millions						
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)
Washington[26]	96.2	252.3	45.6	394.1	3,543.8	11.1
West Virginia[4]	56.4	45.8	n.r.	102.2	199.8	51.2
Wisconsin	30.0	45.8	n.r.	50.0	577.0	8.7
Other combined reporting states	11.0	15.9	1.0	32.6	1421.7	2.3
Other separate entity states	735.5	612.6	122.4.	1470.5	12660	11.0

* Estimate of revenue impact of H.R. 3220 on all states based on state responses to survey.

Data in italics estimated by Multistate Tax Commission.

n.r. Not reported separately.
1. Excluding effects of H.R. 3220.
2. Corporate income and Fish Landing taxes.
3. Corporate income taxes only.
4. Corporate income and franchise taxes only. BAT revenue for 2007 in CA estimated by MTC.
5. Business Activity Tax for 2007 estimated by Multistate Tax Commission.
6. Includes Corporation Business Tax and Business Entity Tax.
7. Includes corporation income tax and gross receipts tax.
8. Includes Income Tax, franchise tax, and financial institutions tax. Georgia estimates are for 2003 only.
9. Includes Corporate Income and Replacement Tax, Use Tax, and Telecommunications Taxes."
10. Includes Corporate Income Tax, Corporate Franchise Tax, Bank Franchise Tax, Cigarette Taxes and fees, and Alcoholic Beverage Taxes.
11. Corporate income tax only. Assumes dynamic effect of H.R. 3220 would be 10 percent of estimated 2007 corporate income tax revenues.
12. Fiscal year 2006. Includes General business corporations tax, and financial institutions tax.
13. Single Business Tax only.
14. Midpoints of estimated range of impacts. BAT revenue for 2007 estimated by the Multistate Tax. Commission.
15. Includes Business Profits Tax, Business Enterprise Tax, and Communications Excise Tax. Estimates based on analysis of H.R. 2526, July 2002.
16. Includes corporate net income tax and Alternative Minimum Tax.
17. Includes corporate income, franchise, and personal income taxes.
18. Corporate income taxes and gross receipts taxes on telecommunications.
19. Corporate income (franchise) tax, tax on dealers of intangibles, and pass-through entities.
20. Estimates of compliance effect included in static effect estimates.

Appendix TABLE1A Estimated Revenue Impact of H.R. 1956 by State: Minimum Impact Fiscal Year 2007 Dollar Amounts in Millions						
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)

21. State only. Corporate income and excise taxes only.
22.Bank Tax only
23. Includes Excise & Franchise Tax, Local Business Tax, and Professional Privilege Tax.
24. Corporate Franchise Tax only.
25. Reported only minor revenue impact because physical presence is nexus standard.
26. State and local Business & Occupation Tax and State and local Public Utility Taxes.

Appendix TABLE 1B						
Estimated Revenue Impact of H.R. 1956 by State: Best Estimates						
Fiscal Year 2007						
Dollar Amounts in Millions						
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)
United States*	*$2,639.4*	*$3,463.4*	*$366.7*	*$6,588.3*	*$57,693.8*	*11.4%*
Responding States	$1,782.3	$2,429.3	$253.3	$4,558.3	$43,628.5	11.4%
Alaska[2]	5.1	n.r	n.r	5.1	505.0	1.0
Arkansas[3]	9.5	83.0	n.r.	92.5	256.0	36.1
California [4,5]	n.r	150.0	n.r.	150.0	7,344.0	2.0
Connecticut[6]	88.1	31.2	n.r.	119.4	381.7	31.3
Delaware[7]	n.r.	n.r.	n.r.	30.5	298.1	10.2
Georgia[8]	30.9	n.r.	n.r.	30.9	511.2	6.0
Idaho[4]	8.0	n.r.	n.r.	8.0	*1,009.1*	0.8
Illinois[9]	91.0	n.r.	n.r.	91.0	8,564.3	1.1
Iowa[4]	10.0	30.0	6.0	46.0	200.0	23.0
Kansas[8]	4.4	58.6	n.r.	63.0	218.5	28.8
Kentucky[10]	65.7	146.7	n.r.	212.4	593.4	35.8
Maryland[11]	66.7	39.7	n.r.	106.4	397.0	26.8
Massachusetts[12]	137.0	n.r.	n.r.	137.0	1,572.0	8.7
Michigan[13]	239.1	150.9	27.5	417.5	2,113.3	19.8
Minnesota[4]	37.3	7.5	9.7	54.4	621.5	8.8
Missouri[8]	173.6	n.r.	n.r.	173.6	437.1	39.7
Montana[4,14]	n.r.	n.r.	n.r.	4.5	79.2	5.7
New Hampshire[15]	n.r	n.r	n.r	58.4	281.0	20.8
New Jersey[16]	219.0	150.0	29.3	398.3	2,791.0	14.3
North Carolina[17]	8.5	337.0	n.r.	345.5	1,352.5	25.5
North Dakota[18]	5.0	n.r.	0.2	5.2	46.0	11.2
Ohio[19]	40.0	258.0	n.r.	298.0	1,022.0	29.2
Oklahoma[4,20]	3.2	28.6	n.r.	31.8	172.0	18.5
Oregon[21]	8.2	98.6	4.6	90.7	314.7	35.1
Pennsylvania	77.8	n.r.	n.r.	77.8	3,928.0	2.0
South Dakota[22]	0.1	6.4	n.r.	6.5	94.3	6.9
Tennessee[23]	55.7	179.1	n.r.	234.8	1,457.3	16.1
Texas[24]	155.0	125.0	130.0	410.0	2,000.0	20.5
Utah[3]	1.5	2.0	0.4	3.9	260.0	1.5
Virginia[25]	0.0	0.0	0.0	0.0	420.2	0.0

Appendix TABLE 1B Estimated Revenue Impact of H.R. 1956 by State: Best Estimates Fiscal Year 2007 Dollar Amounts in Millions						
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)
Washington[26]	138.4	504.6	45.6	688.6	3,543.8	19.4
West Virginia[4]	72.3	55.5	n.r.	127.8	199.8	64.0
Wisconsin	30.0	20.0	n.r.	50.0	577.0	8.7
Other combined reporting states	*11.7*	*21*	*1*	*33.7*	1421.7	*2.7*
Other separate entity states	*842.6*	*1009.9*	*112.2*	*1964.7*	12660	*15.7*
* Estimate of revenue impact of H.R. 3220 on all states based on state responses to survey.						
Data in italics estimated by Multistate Tax Commission.						
n.r. Not reported separately.						
1. Excluding effects of H.R. 3220.						
2. Corporate income and Fish Landing taxes.						
3. Corporate income taxes only.						
4. Corporate income and franchise taxes only. BAT revenue for 2007 in CA estimated by MTC.						
5. Business Activity Tax for 2007 estimated by Multistate Tax Commission.						
6. Includes Corporation Business Tax and Business Entity Tax.						
7. Includes corporation income tax and gross receipts tax.						
8. Includes Income Tax, franchise tax, and financial institutions tax. Georgia estimates are for 2003 only.						
9. Includes Corporate Income and Replacement Tax, Use Tax, and Telecommunications Taxes."						
10. Includes Corporate Income Tax, Corporate Franchise Tax, Bank Franchise Tax, Cigarette Taxes and fees, and Alcoholic Beverage Taxes.						
11. Corporate income tax only. Assumes dynamic effect of H.R. 3220 would be 10 percent of estimated 2007 corporate income tax revenues.						
12. Fiscal year 2006. Includes General business corporations tax, and financial institutions tax.						
13. Single Business Tax only.						
14. Midpoints of estimated range of impacts. BAT revenue for 2007 estimated by the Multistate Tax. Commission.						
15. Includes Business Profits Tax, Business Enterprise Tax, and Communications Excise Tax. Estimates based on analysis of H.R. 2526, July 2002.						
16. Includes corporate net income tax and Alternative Minimum Tax.						
17. Includes corporate income, franchise, and personal income taxes.						
18. Corporate income taxes and gross receipts taxes on telecommunications.						
19. Corporate income (franchise) tax, tax on dealers of intangibles, and pass-through entities.						

Appendix TABLE 1B						
Estimated Revenue Impact of H.R. 1956 by State: Best Estimates						
Fiscal Year 2007						
Dollar Amounts in Millions						
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)
20. Estimates of compliance effect included in static effect estimates.						
21. State only. Includes corporate income and excise taxes only.						
22.Bank Tax only						
23. Includes Excise & Franchise Tax, Local Business Tax, and Professional Privilege Tax.						
24. Corporate Franchise Tax only.						
25. Reported only minor revenue impact because physical presence is nexus standard.						
26. State and local Business & Occupation Tax and State and local Public Utility Taxes.						

Appendix TABLE 1C						
Estimated Revenue Impact of H.R. 1956 by State: Maximum Impact						
Fiscal Year 2007						
Dollar Amounts in Millions						
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)
*United States**	*$3,061.5*	*$4,403.9*	*$368.1*	*$7,968.1*	*$57,693.8*	*13.8%*
Responding States	$2,060.9	$3,115.6	$254.3	$5,534.2	$43,628.5	12.7%
Alaska[2]	5.1	n.r	n.r	5.1	505.0	1.0
Arkansas[3]	12.0	84.0	n.r.	96.0	256.0	37.5
California [4,5]	n.r	150.0	n.r.	150.0	7,344.0	2.0
Connecticut[6]	101.1	35.7	n.r.	136.8	381.7	35.8
Delaware[7]	n.r.	n.r.	n.r.	30.5	298.1	13.1
Georgia[8]	30.9	n.r.	n.r.	30.9	511.2	6.0
Idaho[4]	8.0	n.r.	n.r.	8.0	1,009.1	0.8
Illinois[9]	91.0	n.r.	n.r.	91.0	8,564.3	1.1
Iowa[4]	10.0	30.0	6.0	46.0	200.0	23.5
Kansas[8]	5.7	25.5	n.r.	31.2	286.1	10.9
Kentucky[10]	80.6	178.7	n.r.	259.3	593.4	43.7
Maryland[11]	66.7	39.7	n.r.	106.4	397.0	26.8
Massachusetts[12]	183.0	n.r.	n.r.	183.0	1,572.0	11.6
Michigan[13]	239.1	150.9	27.5	417.5	2,113.3	19.8
Minnesota[4]	50.0	7.5	9.7	67.1	621.5	10.8
Missouri[8]	173.6	n.r.	n.r.	173.6	437.1	39.7
Montana[4,14]	n.r.	n.r.	n.r.	6.0	79.2	7.6
New Hampshire[15]	n.r	n.r	n.r	58.4	281.0	20.8
New Jersey[16]	219.0	150.0	29.3	398.3	2,791.0	14.3
North Carolina[17]	8.5	337.0	n.r.	345.5	1,352.5	34.8
North Dakota[18]	6.6	n.r.	0.2	6.8	46.0	14.8
Ohio[19]	40.0	385.0	n.r.	425.0	1,022.0	41.6
Oklahoma[4,20]	3.2	28.6	n.r.	31.8	172.0	18.5
Oregon[21]	14.0	160.5	4.6	179.2	314.7	55.4
Pennsylvania	92.6	n.r.	n.r.	92.6	3,928.0	2.4
South Dakota[22]	0.1	6.4	n.r.	6.5	94.3	6.9
Tennessee[23]	62.3	232.6	n.r.	294.9	1,457.3	20.2
Texas[24]	255.0	145.5	130.0	530.5	2,000.0	26.5
Utah[3]	2.4	3.0	0.4	5.8	260.0	2.2
Virginia[25]	0.0	0.0	0.0	0.0	420.2	0.0
Washington[26]	182.2	754.9	45.6	982.7	3,543.8	27.7

Appendix TABLE 1C
Estimated Revenue Impact of H.R. 1956 by State: Maximum Impact
Fiscal Year 2007
Dollar Amounts in Millions

	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)
West Virginia[4]	88.1	65.2	n.r.	153.3	199.8	76.7
Wisconsin	30.0	20.0	n.r.	50.0	577.0	8.7
Other combined reporting states	*13.3*	*35.4*	*1*	*49.7*	1421.7	*3.2*
Other separate entity states	*989.8*	*1267.4*	*113.1*	*2370.3*	12660	*18.9*

* Estimate of revenue impact of H.R. 3220 on all states based on state responses to survey.

Data in italics estimated by Multistate Tax Commission.

n.r. Not reported separately.

1. Excluding effects of H.R. 3220.
2. Corporate income and Fish Landing taxes.
3. Corporate income taxes only.
4. Corporate income and franchise taxes only. BAT revenue for 2007 in CA estimated by MTC.
5. Business Activity Tax for 2007 estimated by Multistate Tax Commission.
6. Includes Corporation Business Tax and Business Entity Tax.
7. Includes corporation income tax and gross receipts tax.
8. Includes Income Tax, franchise tax, and financial institutions tax. Georgia estimates are for 2003 only.
9. Includes Corporate Income and Replacement Tax, Use Tax, and Telecommunications Taxes."
10. Includes Corporate Income Tax, Corporate Franchise Tax, Bank Franchise Tax, Cigarette Taxes and fees, and Alcoholic Beverage Taxes.
11. Corporate income tax only. Assumes dynamic effect of H.R. 3220 would be 10 percent of estimated 2007 corporate income tax revenues.
12. Fiscal year 2006. Includes General business corporations tax, and financial institutions tax.
13. Single Business Tax only.
14. Midpoints of estimated range of impacts. BAT revenue for 2007 estimated by the Multistate Tax. Commission.
15. Includes Business Profits Tax, Business Enterprise Tax, and Communications Excise Tax. Estimates based on analysis of H.R. 2526, July 2002.
16. Includes corporate net income tax and Alternative Minimum Tax.
17. Includes corporate income, franchise, and personal income taxes.
18. Corporate income taxes and gross receipts taxes on telecommunications.
19. Corporate income (franchise) tax, tax on dealers of intangibles, and pass-through entities.
20. Estimates of compliance effect included in static effect estimates.

Appendix TABLE 1C						
Estimated Revenue Impact of H.R. 1956 by State: Maximum Impact						
Fiscal Year 2007						
Dollar Amounts in Millions						
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue[1]	Effect of H.R.1956 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
State				(1)+(2)+(3)		(4)/(5)
21. State only. Corporate income and excise taxes only.						
22.Bank Tax only						
23. Includes Excise & Franchise Tax, Local Business Tax, and Professional Privilege Tax.						
24. Corporate Franchise Tax only.						
25. Reported only minor revenue impact because physical presence is nexus standard.						
26. State and local Business & Occupation Tax and State and local Public Utility Taxes.						