

# H.R. 1956 and Corporate Tax Sheltering

## Major Elements of H.R. 1956

- *Modernization of Public Law 86-272.* Public Law 86-272 would be amended to apply to all sales and transactions, not just sales of tangible personal property and to all business activity taxes, not just net income taxes.
- *Physical Presence Nexus.* States and localities would be authorized to impose direct business activity taxes only on those businesses that have a physical presence (employees, agents, or property) within the taxing jurisdiction.

## Major Elements of H.R. 1956 (continued)

- *Taxable Activities.* States and localities would be authorized to impose business activity taxes only on companies that lease or own property, employ employees, or use the services of an in-state person in a taxing jurisdiction.
- *De Minimis Standards.* H.R. 1956 includes:
  - A quantitative *de minimis* standard that would allow a business to maintain certain property and employees in a taxing jurisdiction for up to **21 days** in a taxable year
  - A qualitative *de minimis* standard that would exempt those activities where a business is merely acting as a customer in a State (i.e., patronizing the local market instead of exploiting it). This would encompass, e.g., visiting current and prospective suppliers, attending conferences, seminars or media events, *utilizing an in-State manufacturer or processor, or having testing performed in the State.*

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## Major Elements of H.R. 1956 (continued)

- *Exceptions:* The qualitative and quantitative *de minimis* standards are not applicable to businesses whose traveling employees make sales or perform services that physically affect real property within a State or to athletes and other entertainers that perform in a State.
- *Attribution of Presence:* The activities and/or presence of an in-state person may be attributable to a business only when the in-state person performs activities that enhance or maintain the market in the state for the out-of-state business, *unless the in-state person performs similar functions for at least one other business*

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## Taxes Affected by H.R. 1956

- Corporate income taxes
- 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.

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## Tax Shelter Examples

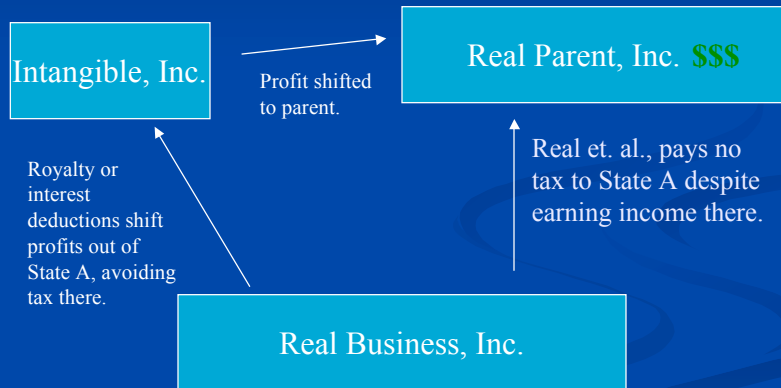
- Four types of tax shelters will be examined as a sample of a large and growing body of tax shelter techniques.
- A physical presence standard plays a key role in triggering tax sheltering.
- H.R. 1956 will multiply these problems.

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## Tax Shelter A: Shifting Income through Intangible Assets



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## Notes: Tax Shelter A

- Real Parent does business in State A through Real Business
- Real Parent establishes an Intangible Holding Company (IHC) in a state, or off-shore tax haven, that imposes little or no tax on income from intangible assets
- IHC holds trademarks, logos, etc., used by Real Business in State A. Real Business pays IHC a royalty for use of intangible assets.
- Real Business in State A borrows from IHC and pays interest to IHC
- IHC pays dividend to Real Parent

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## Impact of H.R. 1956 for Tax Shelter A

- H.R. 1956 would prohibit states from asserting nexus against intangible holding companies—domestic or international.
- H.R. 1956 would obligate most large and medium sized companies to consider using intangible holding companies.

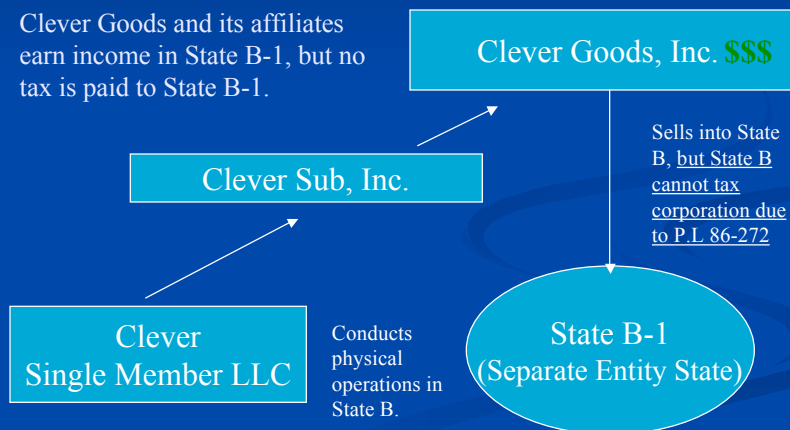
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## Tax Shelter B-1: Shifting Income through P.L. 86-272 & LLC: Separate Entity States

Clever Goods and its affiliates earn income in State B-1, but no tax is paid to State B-1.



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## Notes: Tax Shelter B-1

- Clever Goods, Inc., a Delaware Corporation, owns a 99 percent Limited Partnership interest in Clever Single Member LLC operating in State B-1.
- Clever Sub, Inc. owns a 1 percent General Partnership interest in Clever Single Member LLC operating in State B-1.
- Without an entity-level tax, 99 percent of the income earned in State B-1 will be shifted to the parent company.

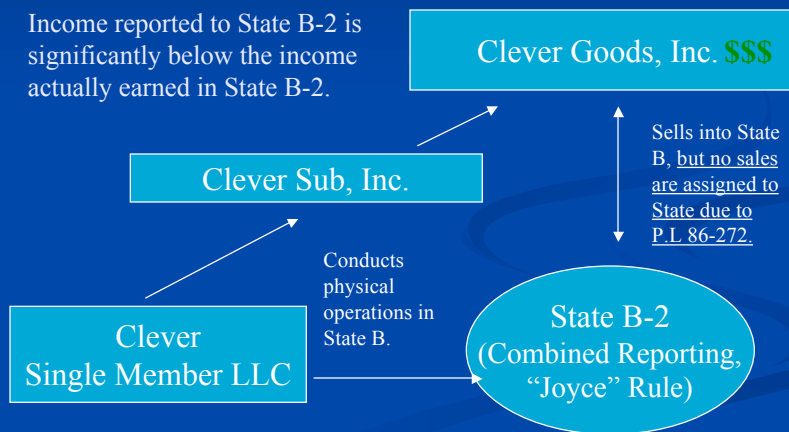
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## Tax Shelter B-2: Shifting Income through P.L. 86-272 & LLC: Combined Reporting States

Income reported to State B-2 is significantly below the income actually earned in State B-2.



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## Notes on Tax Shelter B-2

- Clever Goods, Inc. sells products into State B-2 through Clever Single Member LLC.
- Clever Sub, Inc. owns Clever SMLLC.
- State B-2, a combined reporting state using the *Joyce* rule can combine the apportionment factors of Clever Sub, Inc. and Clever SMLLC.

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## Notes on Tax Shelter B-2 (continued)

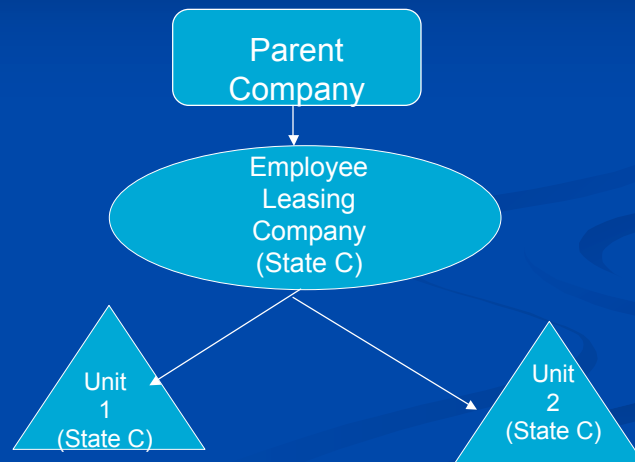
- Sales of products of Clever Goods, Inc. into State B-2 are not sourced to State B-2 because of P.L. 86-272.
- Income earned in State B-2 is greater than the income reported to State B-2.

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## Tax Shelter C-1: Use of In-State Contractors



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## Notes Tax Shelter C-1

- Parent Company, (not in State C), a manufacturer sells products into State C through a wholesale distributor (Unit 1) and maintains products after sale through (Unit 2).
- Parent Company's income from selling into State C is subject to State C's income tax.
- Under H.R. 1956, Parent Co. would

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## Notes Tax Shelter C-1(continued)

not have nexus in State C if it uses the services of a person (not an employee) if that person provides similar services to two or more business entities

- Parent Co. uses Employee Leasing Co. to staff Units 1 and 2.
- Parent Co. would have no employees in State C.
- Property used by leased employees could

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## Notes Tax Shelter C-1(continued)

be considered ancillary property.

- Sales of Parent Co. into State C would not be sourced to State C.
- Employee Leasing Co. and Units 1 and 2 would have nexus in State C.
- If Employee Leasing Co. is an affiliate of Parent Co., aggressive transfer pricing of employment services would reduce income of Units 1 and 2 in State C.

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## Tax Shelter C-1 (continued)

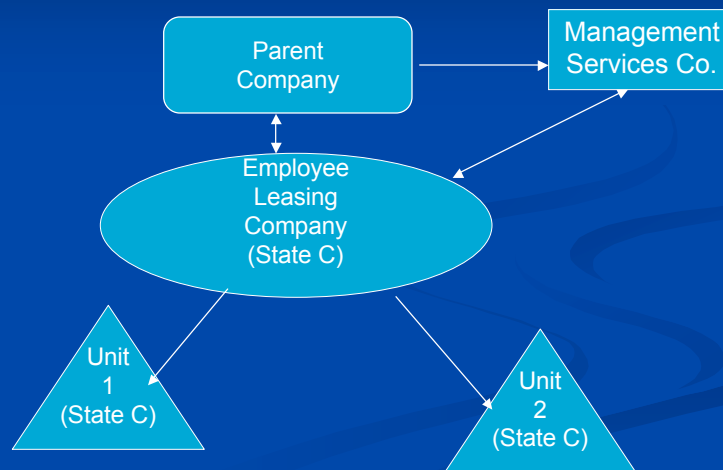
- Out-of-state operating companies can use in-state contractors for sales and marketing, manufacturing, after sale warranty work, product testing, etc.
- ✓ Separate entity states will be affected and combined reporting states using *Joyce* rules would also be affected.

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## Tax Shelter C-2: Use of In-State Contractors



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## Notes: Tax Shelter C-2

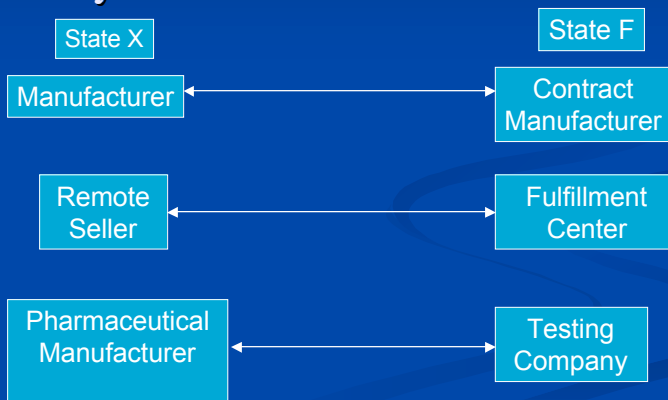
- Parent Company sets up a Management Services Company outside of State C to own Employment Contractor in State C.
- Income of the Employment Contractor in State C can be reduced by payment of a management fee to the Management Services Company not in State C.

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## Tax Shelter D: Having Tangible Property in a State but Not Having “Physical Presence” in a State



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## Notes: Tax Shelter D

- An out-of-state owner will not have physical presence in a state if the only property in the state is being assembled, manufactured, processed, or tested by a person in the state for the benefit of the owner (H.R. 1956, page 5).
- Marketing or promotional materials distributed in a state using mail, a common carrier, or inserts

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## Notes: Tax Shelter D (continued)

or components of publications will not create physical presence in a state. (H.R. 1956, p.5).

- An out-of-state company can have sales into a state but not be subject to that state's business activity tax if the only property in that state meets these criteria.
- Example 1-Use of Contract Manufacturer-Company in State X can have employees

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## Notes: Tax Shelter D (continued)

in State F monitor work of contract manufacturer and have property in State F and have no physical presence in State F.

- Example 2-Use of Fulfillment Center: Remote seller can have sales in State F and not have physical presence if only property in State F is being processed, by a third party.

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## Notes: Tax Shelter D (continued)

- Example 3-Product Testing: Pharmaceutical manufacturer can have sales in State F if only property in State F is subject to testing, for example, clinical trials.

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## Other Activities in a State That Would Not Create Physical Presence

- Lobbying public officials.
- Coverage of news events by media.
- For-profit training companies.

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## Impact of H.R 1956 on State Business Activity Taxes

- H.R. 1956 will significantly expand the activities that companies can undertake without creating nexus in a state.
- H.R. 1956 will allow companies to own property in a state and employees on a temporary or permanent basis and not create nexus.
- Separate entity states will be affected to a

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## Impact of H.R 1956 on State Business Activity Taxes (continued)

greater extent than combined reporting states.

- Combined reporting states, using the Joyce rule, will be affected as well as separate entity states.
- Combined reporting states will face issue of treatment of property and payroll in a state by companies that do not have nexus.

**Table 2**  
**Revenue Impact of H.R. 1956: Reported by Respondent States: Fiscal Year 2007**  
**Best Estimates**

	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated BAT Revenues
(millions of Dollars)					
All States	\$1,800.3	\$2,429.3	\$253.3	\$4,576.3	\$44,271.3
Combined Reporting States	179.7	283.5	14.9	541.0	19,953.7
Separate Entity States	1,243.1	1,490.2	165.3	2,929.2	18,660.6
Michigan & Washington State	377.5	655.3	73.1	1,106.1	5,657.1
Percent of BAT Revenues					
All States	4.07%	5.40%	0.57%	10.34%	
Combined Reporting States	0.90	1.42	0.07	2.71	
Separate Entity States	6.66	7.99	0.89	15.70	
Michigan & Washington State	6.67	11.59	1.29	19.55	

**Table 1**  
**Revenue Impact of H.R. 1956: Reported by Respondent States: Fiscal Year 2007**  
**Minimum Impact**

	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated BAT Revenues
	(millions of Dollars)				
All States	\$1,479.9	\$1,507.6	\$252.3	\$3,318.2	\$44,271.3
Combined Reporting States	167.4	217.9	14.9	461.6	19,953.7
Separate Entity States	972.1	886.5	164.3	2,044.9	18,660.5
Michigan & Washington State	335.3	403.2	73.1	811.6	5,657.1
	Percent of BAT Revenues				
All States	3.33%	3.41%	0.57%	7.50%	
Combined Reporting States	0.84	1.09	0.07	2.31	
Separate Entity States	5.21	4.75	0.88	10.96	
Michigan & Washington State	5.93	7.13	1.29	14.35	

**Table 3**  
**Revenue Impact of H.R. 1956: Reported by Respondent States: Fiscal Year 2007**  
**Maximum Impact**

	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated BAT Revenues
	(millions of Dollars)				
All States	\$2,078.9	\$3,115.6	\$254.3	\$5,552.2	\$44,271.3
Combined Reporting States	200.8	346.4	14.9	626.6	19,953.7
Separate Entity States	1,456.7	1,863.4	166.3	3,525.4	18,660.6
Michigan & Washington State	421.3	905.8	73.1	1,400.2	5,657.1
	Percent of BAT Revenues				
All States	4.70%	7.04%	0.57%	12.54%	
Combined Reporting States	1.01	1.74	0.07	3.14	
Separate Entity States	7.81	9.99	0.89	18.89	
Michigan & Washington State	7.45	16.01	1.29	24.75	



**Table 4**  
**Estimated Revenue Impact of H.R. 1956: All States, Fiscal Year 2007**  
**Minimum Impact**

	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated BAT Revenues
(millions of Dollars)					
All States	\$2,115.0	\$2,095.7	\$359.5	\$4,672.0	\$57,693.8
Combined Reporting States	178.8	232.7	15.9	492.9	21,307.5
Separate Entity States	1,600.9	1,459.8	270.6	3,367.5	30,729.1
Michigan & Washington State	335.3	403.2	73.1	811.6	5,657.1
Percent of BAT Revenues					
All States	3.67%	3.63%	0.62%	8.10%	
Combined Reporting States	0.84	1.09	0.07	2.31	
Separate Entity States	5.21	4.75	0.88	10.96	
Michigan & Washington State	5.93	7.13	1.29	14.35	

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**Table 5**  
**Estimated Revenue Impact of H.R. 1956: All States, Fiscal Year 2007**  
**Best Estimates**

	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated BAT Revenues
(millions of Dollars)					
All States	\$2,616.5	\$3,412.3	\$361.2	\$6,507.4	\$57,693.8
Combined Reporting States	191.9	302.8	15.9	577.7	21,307.5
Separate Entity States	2,047.1	2,454.0	272.2	4,823.6	30,729.1
Michigan & Washington State	377.5	655.5	73.1	1,106.1	5,657.1
Percent of BAT Revenues					
All States	4.54%	5.91%	0.63%	11.28%	
Combined Reporting States	0.90	1.42	0.07	2.71	
Separate Entity States	6.66	7.99	0.89	15.70	
Michigan & Washington State	6.67	11.59	1.29	19.55	

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<b>Table 6</b>					
<b>Estimated Revenue Impact of H.R. 1956: All States, Fiscal Year 2007</b>					
<b>Maximum Impact</b>					
	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated BAT Revenues
(millions of Dollars)					
All States	\$3,034.6	\$4,344.3	\$362.8	\$7,874.7	\$57,693.8
Combined Reporting States	214.5	369.9	15.9	669.1	21,307.5
Separate Entity States	2,398.8	3,068.5	273.9	5,805.5	30,729.1
Michigan & Washington State	421.3	905.8	73.1	1,400.2	5,657.1
Percent of BAT Revenues					
All States	5.26%	7.53%	0.63%	13.65%	
Combined Reporting States	1.01	1.74	0.07	3.14	
Separate Entity States	7.81	9.99	0.89	18.89	
Michigan & Washington State	7.45	16.01	1.29	24.75	

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# **Analysis of State Responses to Survey on Impact of H.R. 1956**

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Presented at the FTA Revenue Estimating Conference  
October 12, 2005  
Oklahoma City, OK

## Abstract

*In May of 2004, The Multistate Tax Commission, the National Governors' Association, and the Federation of Tax Administrators surveyed state revenue agencies on their estimates of how H.R. 3220, the "Business Activity Tax Simplification Act of 2003" would affect the legal structure and revenues in their respective states. 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 – H.R. 1956 – is strikingly similar to H.R. 3220 introduced by these Congressmen on October 1, 2003. Although the results shown here are based on the survey of state revenue agencies regarding the estimated impact of H.R. 3220 on their respective states, because of the similarity between the two bills, we believe that the results would apply to H.R. 1956. All of the 34 states responding to the survey, **Estimating Potential Revenue Impact of H.R. 1956 on State and Local Business Activity Taxes**, have told the MTC that H.R. 1956 would adversely impact their business activity tax revenue, this at a time when state budgets are faced with continuing challenges, including some that are relatively new. 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 at retail, taxes on receipts of public utilities, taxes imposed in lieu of net income taxes and similar types of taxes. The estimates of the responding states is that the revenue impact of H.R. 1956 (based on the results of the survey on the impacts of H.R. 1956), in fiscal year 2007, will range from \$3.3 billion to \$5.6 billion. The best estimate is \$4.6 billion. Extrapolating to all states, the estimated lost revenue for states and localities would range from \$4.7 billion to \$7.8 billion; the best estimate would be \$6.5 billion. These estimates imply a loss of business activity tax revenue in 2007 of a minimum of 8.1 percent to 13.6 percent; the best estimate would be 11.3 percent.*

## I Introduction and Preliminary Findings

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 – H.R. 1956 – 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, an original sponsor of this bill, 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.<sup>1</sup>

Although the underlying premise – a uniform state business activity tax jurisdictional standard -- may be desirable, 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 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:<sup>2</sup>

- 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.<sup>3</sup>

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

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<sup>1</sup> Remarks of Representative Bob Goodlatte, reprinted in *State Tax Notes*, Doc 2005-9147, May 3, 2005, Tax Analysts, Inc., Arlington, VA

<sup>2</sup> H.R. 1956 Section 4(1) and 4(2)(A) and 4(2) (B).

<sup>3</sup> 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.

receipts of public utilities, taxes imposed in lieu of net income taxes and similar types of taxes.<sup>4</sup> 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 may 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 H.R. 1956, 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.<sup>5</sup>

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. Our estimates of revenue impact discussion include examples of how businesses could use H.R. 1956 to shelter income.

#### *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 over where multi-state companies should be required to pay corporate income and other business activity taxes.<sup>6</sup> 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.”<sup>7</sup>

<sup>4</sup> 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.

<sup>5</sup> 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>

<sup>6</sup> Goodlatte, *op. cit.*

<sup>7</sup> [www.batsa.org](http://www.batsa.org).

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.<sup>8</sup>

There are, however, 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, a noted expert in public finance 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.”<sup>9</sup>

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, Oates, using a broad definition of the benefits of state and local expenditures shows that the benefits of those expenditures often “spillover” to other jurisdiction, and often accrue over long time periods of time thus making it nearly impossible to assign specific benefits to specific businesses or individuals.<sup>10</sup> 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 do not currently pay much state and local business activity taxes to those jurisdictions.<sup>11</sup> The benefits to business firms with a physical presence within a state would most likely be financed by property taxes on the business’ real and tangible property and by sales/use taxes on the purchase of business inputs. Nationally, the latter taxes accounted for 38.6 percent and 24.8 percent of state and local taxes imposed on businesses in fiscal year 2003. Business activity taxes accounted for 18.0 percent of state and local taxes imposed on businesses in that year.<sup>12</sup>

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<sup>8</sup> Remarks of Representative Bob Goodlatte, reprinted in *State Tax Notes*, Doc 2005-9147, *op. cit.*

<sup>9</sup> Charles McLure, “Implementing State Corporate Income Taxes in the Digital Age,” *National Tax Journal*, Volume LIII, No. 4, Part 3, December 2000, p. 1297.

<sup>10</sup> Wallace E. Oates, “An Essay on Fiscal Federalism,” *Journal of Economic Literature*, Vol. 37, September 1999, p. 1128.

<sup>11</sup> <http://www.batsa.org/FAQ.htm#ANS17>

<sup>12</sup> 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.

Even if it is determined that a physical presence based nexus standard for business activity taxes is the proper nexus 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.<sup>13</sup> However, a recent analysis by the Congressional Research Service on H.R. 3220, the predecessor bill to H.R. 1956, 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.”<sup>14</sup>

### *Preliminary Findings*

This report summarizes the responses to the survey of the impact of H.R. 1956 on states which have been received from 34 state revenue departments to date. A major finding 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.

In addition, 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 7.5 percent of projected business activity tax revenues in that year to \$5.6 billion, or approximately 12.5 percent of projected business activity tax revenues. The “best” estimate of the impact is approximately \$4.6 billion, or approximately 10.3 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 \$7.9 billion; the “best” estimate would be \$6.5 billion. The estimated revenue impacts would range from 8.1 percent of projected business activity tax revenue in fiscal year 2007 to 13.6 percent; the “best” estimate would be 11.3 percent (See Table 1 below).

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.

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<sup>13</sup> <http://www.batsa.org/FAQ.htm#ANS16>

<sup>14</sup> Steven Maguire, *State Corporate Income Taxes: A Description and Analysis*, CRS Report for Congress, Order Code RL32297, updated March 9, 2005, p.14.



<b>Table 1: Estimated Revenue Impact of H.R. 1956 Fiscal Year 2007</b>			
Effect	Estimated Impact: Fiscal Year 2007		
	Minimum Impact	Best Estimate	Maximum Impact
(Millions)			
Total Effect	<b>\$4,672.0</b>	<b>\$6,507.4</b>	<b>\$7,874.7</b>
Static Effect	2,115.0	2,616.5	3,034.6
Dynamic Effect	2,095.7	3,412.3	4,344.3
Compliance Effect	359.5	361.2	362.8
(Percent of Projected Business Activity Taxes)			
Total Effect	8.1%	11.3%	13.6%
Static Effect	3.7	4.5	5.3
Dynamic Effect	3.6	5.9	7.5
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.			

The remainder of this analysis presents a description of the survey and preliminary findings of the revenue impact from state responses to the survey. The revenue impact analysis, corresponds to Section II of the survey. These are followed by a summary and conclusion, and appendices.

## II Description of Survey

On April 23, 2004, the FTA and MTC sent a survey to each state asking them to estimate the impact of H.R. 1956 on their state. As of this date, 33 states have responded to the BAT survey on the impact of H.R. 1956. The survey instrument contains background explanation and staff analysis of H.R. 1956, 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. This 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. This section 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. This section asks for State responses to examples of “horror” stories raised by proponents of the physical presence nexus standard.*

The responses from Sections III and IV of the survey were not compiled because the responses were too idiosyncratic.

### **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 \$6.5 billion.<sup>15</sup> 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: \$2.6 billion; \$3.4 billion; and \$361 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 \$4.7 billion to \$7.8 billion. The estimates of the static effect range from \$2.1 billion to more than \$3.0 billion; \$2.6 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 (\$2.1 billion to \$4.3 billion) of the

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<sup>15</sup> 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.

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 business responses to this bill. The range of estimates of the compliance effect (approximately \$360 million to approximately \$363 million) is based on current enforcement actions that would not be taken if H.R. 1956 were to become law.<sup>16</sup>

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,

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<sup>16</sup> 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.

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 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, the 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 excellent 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](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<sup>17</sup>, separate entity,<sup>18</sup> 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

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<sup>17</sup> 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.

<sup>18</sup> In separate entity states, the taxable income of each legal entity is apportioned among the states in which it operates.

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

Type of State	Minimum Impact	Best Estimate	Maximum Impact	Minimum Impact	Best Estimate	Maximum Impact
	(millions)			(Percent of Business Activity Tax)		
All States	\$3,318.2	\$4,576.3	\$5,552.2	7.6%	10.3%	12.7%
Combined Reporting	461.6	541.0	626.6	2.3	2.7	3.1
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. Estimates for those states that have not yet responded to the survey are in italics. The 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. In the absence of specific knowledge of each of the non-respondent states tax structure and economy, this assumption may not provide precise estimates.

State	Estimated Revenue Impact of H.R. 3220: Fiscal Year 2007 <sup>1</sup>			Estimated Business Activity Tax Revenue F.Y. 2007 <sup>2</sup>	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)		
<b>United States</b>	<i>\$4,672.0</i>	<i>\$6,507.4</i>	<i>\$7,874.7</i>	<i>\$57,693.8</i>	<i>8.1%</i>	<i>11.3%</i>	<i>13.6%</i>
<i>Alabama</i>	<i>110.5</i>	<i>158.3</i>	<i>190.5</i>	<i>1,008.6</i>	<i>11.0</i>	<i>15.7</i>	<i>18.9</i>
Alaska	5.1	5.1	5.1	505.0	1.0	1.0	1.0
<i>Arizona</i>	<i>12.4</i>	<i>14.5</i>	<i>16.8</i>	<i>536.6</i>	<i>2.3</i>	<i>2.7</i>	<i>3.1</i>
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
<i>Colorado</i>	<i>6.4</i>	<i>7.5</i>	<i>8.7</i>	<i>277.0</i>	<i>2.3</i>	<i>2.7</i>	<i>3.1</i>
Connecticut	101.9	119.4	136.8	381.7	26.7	31.3	35.8

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

State	Estimated Revenue Impact of H.R. 3220: Fiscal Year 2007 <sup>1</sup>			Estimated Business Activity Tax Rev- enue F.Y. 2007 <sup>2</sup>	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)		
Delaware	22.0	30.5	30.5	298.1	7.4	10.2	13.1
<i>District of Columbia</i>	56.5	81.0	97.5	515.9	11.0	15.7	18.9
<i>Florida</i>	419.7	601.2	723.6	3,830.7	11.0	15.7	18.9
Georgia	30.9	30.9	30.9	511.2	6.0	6.0	6.0
<i>Hawaii</i>	4.5	5.0	5.8	194.2	2.3	2.7	3.2
Idaho	8.0	8.0	8.0	1,009.1	0.8	0.8	0.8
Illinois	109.0	91.0	109.0	9,207.1	1.2	1.1	1.2
<i>Indiana</i>	103.5	148.2	1784.4	944.3	11.0	15.7	18.9
Iowa	45.0	46.0	46.0	200.0	22.5	23.0	23.5
Kansas	31.5	63.0	31.2	218.5	14.4	28.8	10.9
Kentucky	125.2	212.4	259.3	593.4	21.1	35.8	43.7
<i>Louisiana</i>	56.9	81.5	98.1	519.3	11.0	15.7	18.9
<i>Maine</i>	3.0	3.5	4.1	130.2	2.3	2.7	3.1
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
<i>Mississippi</i>	51.9	74.3	89.5	473.5	11.0	15.7	18.9
Missouri	173.6	173.6	173.6	437.1	39.7	39.7	39.7
Montana	3.0	4.5	6.0	79.2	3.8	5.7	7.6
<i>Nebraska</i>	3.5	4.2	4.8	153.3	2.3	2.7	3.1
<i>Nevada</i>	7.0	10.1	12.1	64.3	11.0	15.7	18.9
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
<i>New Mexico</i>	16.2	23.1	27.9	147.5	11.0	15.7	18.9
<i>New York</i>	439.0	628.8	756.8	4,005.7	11.0	15.7	18.9
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	43.5	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

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

State	Estimated Revenue Impact of H.R. 3220: Fiscal Year 2007 <sup>1</sup>			Estimated Business Activity Tax Revenue F.Y. 2007 <sup>2</sup>	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)		
<i>Rhode Island</i>	<i>21.1</i>	<i>30.3</i>	<i>36.4</i>	<i>192.9</i>	<i>11.0</i>	<i>15.7</i>	<i>18.9</i>
<i>South Carolina</i>	<i>39.1</i>	<i>55.9</i>	<i>67.3</i>	<i>356.4</i>	<i>11.0</i>	<i>15.7</i>	<i>18.9</i>
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
<i>Vermont</i> <sup>3</sup>	<i>1.7</i>	<i>1.9</i>	<i>2.2</i>	<i>71.4</i>	<i>2.3</i>	<i>2.7</i>	<i>3.1</i>
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
<i>Wyoming</i>	<i>1.1</i>	<i>1.6</i>	<i>1.9</i>	<i>10.3</i>	<i>11.0</i>	<i>15.7</i>	<i>18.9</i>

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. Vermont is considered a Combined Reporting State.

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

Thus, the estimates for each of the non-respondent combined reporting states (Arizona, Colorado, Hawaii, Maine, and Nebraska) were obtained by multiplying their estimated business activity tax revenue in 2007 by the respective percentage estimates shown in Table 2 – 2.3 percent for the minimum impact, 2.7 percent for the “best” estimate, and 3.1 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 an estimate of the 51 jurisdiction impact. The higher percent estimates for the United States (11.3% best estimate) relative to respondent states (10.3% 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 may be overstated to an unknown extent because some states use a “throwback” rule or a “throwout” rule to minimize “nowhere” income.<sup>19</sup> 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.

Also, the estimates of the revenue impact of H.R. 1956 are imprecise, as are any estimate of the revenue impact of any piece of legislation. The 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.”<sup>20</sup>

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.

## 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.

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<sup>19</sup> 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.

<sup>20</sup> Kenneth A. Gary, “Yin Explains JCT Revenue Estimating Efforts,” *Tax Notes*, Tax Analyst, Inc., TNT 42-6, Arlington, VA, March 2, 2004.

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, (and probably greater amounts in later years) – 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.

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 creates artificial barriers to the most efficient locations of investment and employment resulting in lower rates of economic growth, and imposes 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:

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

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

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

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

$BAT_{nri}$  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:

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

Where:

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

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

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

<b>Appendix TABLE1A</b> <b>Estimated Revenue Impact of H.R. 1956 by State: Minimum Impact</b> <b>Fiscal Year 2007</b> <b>Dollar Amounts in Millions</b>						
State	Static Effect (1)	Dynamic Effect (2)	Compliance Effect (3)	Total Effect (4)	Estimated Business Activity Tax Revenue <sup>1</sup> (5)	Effect of H.R.3220 on BAT (6)
				(1)+(2)+(3)		(4)/(5)
<i>United States*</i>	\$2,115.0	\$2,095.7	\$359.5	\$4,672.0	\$57,693.8	8.1%
Responding States	\$1,474.9	\$1,507.6	\$252.3	\$3,318.2	\$44,271.3	7.5
<i>Alabama</i>	52.5	47.9	8.9	110.5	1,008.6	11.0
<i>Alaska</i> <sup>2</sup>	5.1	n.r.	n.r.	5.1	505.0	1.0
<i>Arizona</i>	4.5	5.9	0.4	12.4	536.6	2.3
<i>Arkansas</i> <sup>3</sup>	6.0	57.0	n.r.	63.0	256.0	24.6
<i>California</i> <sup>4,5</sup>	n.r.	150.0	n.r.	150.0	7,344.0	2.0
<i>Colorado</i>	2.3	3.0	0.2	6.4	277.0	2.3
<i>Connecticut</i> <sup>6</sup>	75.2	26.8	n.r.	101.9	381.7	26.7
<i>Delaware</i> <sup>7</sup>	n.r.	n.r.	n.r.	22.0	298.1	7.4
<i>District of Columbia</i>	26.9	24.5	4.5	56.5	515.9	11.0
<i>Florida</i>	199.5	181.9	33.7	419.7	3,830.7	11.0
<i>Georgia</i> <sup>8</sup>	30.9	n.r.	n.r.	30.9	511.2	6.0
<i>Hawaii</i>	1.5	2.2	0.1	4.5	194.2	2.3
<i>Idaho</i> <sup>4</sup>	8.0	n.r.	n.r.	8.0	1,009.1	0.8
<i>Illinois</i> <sup>9</sup>	109.0	n.r.	n.r.	109.0	9,207.1	1.2
<i>Indiana</i>	49.2	44.9	8.3	103.5	944.3	11.0
<i>Iowa</i> <sup>4</sup>	10.0	30.0	5.0	45.0	200.0	22.5
<i>Kansas</i> <sup>8</sup>	2.2	29.3	n.r.	31.5	218.5	14.4
<i>Kentucky</i> <sup>10</sup>	39.1	86.1	n.r.	125.2	593.4	21.1
<i>Louisiana</i>	27.1	24.7	4.6	56.9	519.3	11.0
<i>Maine</i>	1.1	1.4	0.1	3.0	130.2	2.3
<i>Maryland</i> <sup>11</sup>	66.7	39.7	n.r.	106.4	397.0	26.8
<i>Massachusetts</i> <sup>12</sup>	91.0	n.r.	n.r.	91.0	1,572.0	5.8
<i>Michigan</i> <sup>13</sup>	239.1	150.9	27.5	417.5	2,113.3	19.8
<i>Minnesota</i> <sup>4</sup>	30.0	7.5	9.7	47.1	621.5	7.6
<i>Mississippi</i>	24.7	22.5	4.2	51.9	473.5	11.0
<i>Missouri</i> <sup>8</sup>	173.6	n.r.	n.r.	173.6	437.1	39.7
<i>Montana</i> <sup>4,14</sup>	n.r.	n.r.	n.r.	3.0	79.2	3.8
<i>Nebraska</i>	1.3	1.7	0.1	3.5	153.3	2.3
<i>Nevada</i>	3.3	3.1	0.6	7.0	64.3	11.0
<i>New Hampshire</i> <sup>15</sup>	n.r.	n.r.	n.r.	58.4	281.0	20.8
<i>New Jersey</i> <sup>16</sup>	219.0	150.0	29.3	398.3	2,791.0	14.3

<b>Appendix TABLE1A</b> <b>Estimated Revenue Impact of H.R. 1956 by State: Minimum Impact</b> <b>Fiscal Year 2007</b> <b>Dollar Amounts in Millions</b>						
State	Static Effect (1)	Dynamic Effect (2)	Compliance Effect (3)	Total Effect (4)	Estimated Business Activity Tax Revenue <sup>1</sup> (5)	Effect of H.R.3220 on BAT (6)
				(1)+(2)+(3)		(4)/(5)
<i>New Mexico</i>	7.7	7.0	1.3	16.2	147.5	11.0
<i>New York</i>	208.7	190.3	35.3	439.0	4,005.7	11.0
North Carolina <sup>17</sup>	8.5	50.0	n.r.	58.5	1,352.5	4.3
North Dakota <sup>18</sup>	3.3	n.r.	0.2	3.5	46.0	7.6
Ohio <sup>19</sup>	40.0	131.0	n.r.	171.0	1,022.0	16.7
Oklahoma <sup>4,20</sup>	3.2	28.6	n.r.	31.8	172.0	18.5
Oregon <sup>21</sup>	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
<i>Rhode Island</i>	10.0	9.2	1.7	21.1	192.9	11.0
<i>South Carolina</i>	18.6	16.9	3.1	39.1	356.4	11.0
South Dakota <sup>22</sup>	0.1	6.4	n.r.	6.5	94.3	6.9
Tennessee <sup>23</sup>	46.0	145.1	n.r.	191.1	1,457.3	13.1
Texas <sup>24</sup>	25.0	70.0	130.0	225.0	2,000.0	11.3
Utah <sup>3</sup>	0.7	1.7	0.4	2.8	260.0	1.1
<i>Vermont</i>	0.6	0.8	0.1	1.7	71.7	2.3
Virginia <sup>25</sup>	0.0	0.0	0.0	0.0	420.2	0.0
Washington <sup>26</sup>	96.2	252.3	45.6	394.1	3,543.8	11.1
West Virginia <sup>4</sup>	56.4	45.8	n.r.	102.2	199.8	51.2
Wisconsin	30.0	20.0	n.r.	50.0	577.0	8.7
<i>Wyoming</i>	0.5	0.5	0.1	1.1	10.3	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.]

<p align="center"><b>Appendix TABLE1A</b>  <b>Estimated Revenue Impact of H.R. 1956 by State: Minimum Impact</b>  <b>Fiscal Year 2007</b>  <b>Dollar Amounts in Millions</b></p>						
	Static Effect (1)	Dynamic Effect (2)	Compliance Effect (3)	Total Effect (4)	Estimated Business Activity Tax Revenue <sup>1</sup> (5)	Effect of H.R.3220 on BAT (6)
State				(1)+(2)+(3)		(4)/(5)
<p>11. Corporate income tax only. Assumes dynamic effect of H.R. 3220 would be 10 percent of estimated 2007 corporate income tax revenues.</p> <p>12. Fiscal year 2006. Includes General business corporations tax, and financial institutions tax.</p> <p>13. Single Business Tax only.</p> <p>14. Midpoints of estimated range of impacts. BAT revenue for 2007 estimated by the Multistate Tax Commission.</p> <p>15. Includes Business Profits Tax, Business Enterprise Tax, and Communications Excise Tax. Estimates based on analysis of H.R. 2526, July 2002.</p> <p>16. Includes corporate net income tax and Alternative Minimum Tax.</p> <p>17. Includes corporate income, franchise, and personal income taxes.</p> <p>18. Corporate income taxes and gross receipts taxes on telecommunications.</p> <p>19. Corporate income (franchise) tax, tax on dealers of intangibles, and pass-through entities.</p> <p>20. Estimates of compliance effect included in static effect estimates.</p> <p>21. State only. Corporate income and excise taxes only.</p> <p>22. Bank Tax only</p> <p>23. Includes Excise &amp; Franchise Tax, Local Business Tax, and Professional Privilege Tax.</p> <p>24. Corporate Franchise Tax only.</p> <p>25. Reported only minor revenue impact because physical presence is nexus standard.</p> <p>26. State and local Business &amp; Occupation Tax and State and local Public Utility Taxes.</p>						

Appendix TABLE 1B						
Estimated Revenue Impact of H.R. 1956 by State: Best Estimates						
Fiscal Year 2007						
Dollar Amounts in Millions						
State	Static Effect (1)	Dynamic Effect (2)	Compliance Effect (3)	Total Effect (4)	Estimated Business Activity Tax Revenue <sup>1</sup> (5)	Effect of H.R.3220 on BAT (6)
				(1)+(2)+(3)		(4)/(5)
United States*	\$2,616.5	\$3,412.3	\$361.2	\$6,507.4	\$57,693.8	11.3%
Responding States	\$1,800.3	\$2,429.3	\$253.3	\$4,576.3	\$44,271.3	10.3%
<i>Alabama</i>	67.2	80.5	8.9	158.3	1,008.6	15.7
<i>Alaska</i> <sup>2</sup>	5.1	n.r.	n.r.	5.1	505.0	1.0
<i>Arizona</i>	4.8	7.6	0.4	14.5	536.6	2.7
<i>Arkansas</i> <sup>3</sup>	9.5	83.0	n.r.	92.5	256.0	36.1
<i>California</i> <sup>4,5</sup>	n.r.	150.0	n.r.	150.0	7,344.0	2.0
<i>Colorado</i>	2.5	3.9	0.2	7.5	277.0	2.7
<i>Connecticut</i> <sup>6</sup>	88.1	31.2	n.r.	119.4	381.7	31.3
<i>Delaware</i> <sup>7</sup>	n.r.	n.r.	n.r.	30.5	298.1	10.2
<i>District of Columbia</i>	34.4	41.2	4.6	81.0	515.9	15.7
<i>Florida</i>	255.1	305.9	33.9	601.2	3,830.7	15.7
<i>Georgia</i> <sup>8</sup>	30.9	n.r.	n.r.	30.9	511.2	6.0
<i>Hawaii</i>	1.7	2.6	0.1	5.0	194.2	2.7
<i>Idaho</i> <sup>4</sup>	8.0	n.r.	n.r.	8.0	1,009.1	0.8
<i>Illinois</i> <sup>9</sup>	91.0	n.r.	n.r.	91.0	9,207.1	1.1
<i>Indiana</i>	62.9	75.4	8.4	148.2	944.3	15.7
<i>Iowa</i> <sup>4</sup>	10.0	30.0	6.0	46.0	200.0	23.0
<i>Kansas</i> <sup>8</sup>	4.4	58.6	n.r.	63.0	218.5	28.8
<i>Kentucky</i> <sup>10</sup>	65.7	146.7	n.r.	212.4	593.4	35.8
<i>Louisiana</i>	34.6	41.5	4.6	81.5	519.3	15.7
<i>Maine</i>	1.2	1.9	0.1	3.5	130.2	2.7
<i>Maryland</i> <sup>11</sup>	66.7	39.7	n.r.	106.4	397.0	26.8
<i>Massachusetts</i> <sup>12</sup>	137.0	n.r.	n.r.	137.0	1,572.0	8.7
<i>Michigan</i> <sup>13</sup>	239.1	150.9	27.5	417.5	2,113.3	19.8
<i>Minnesota</i> <sup>4</sup>	37.3	7.5	9.7	54.4	621.5	8.8
<i>Mississippi</i>	31.5	37.8	4.2	74.3	473.5	15.7
<i>Missouri</i> <sup>8</sup>	173.6	n.r.	n.r.	173.6	437.1	39.7
<i>Montana</i> <sup>4,14</sup>	n.r.	n.r.	n.r.	4.5	79.2	5.7
<i>Nebraska</i>	1.4	2.2	0.1	4.2	153.3	2.7
<i>Nevada</i>	4.3	5.1	0.6	10.1	64.3	15.7
<i>New Hampshire</i> <sup>15</sup>	n.r.	n.r.	n.r.	58.4	281.0	20.8
<i>New Jersey</i> <sup>16</sup>	219.0	150.0	29.3	398.3	2,791.0	14.3
<i>New Mexico</i>	9.8	11.8	1.3	23.1	147.5	15.7

<b>Appendix TABLE 1B</b> <b>Estimated Revenue Impact of H.R. 1956 by State: Best Estimates</b> <b>Fiscal Year 2007</b> <b>Dollar Amounts in Millions</b>						
State	Static Effect (1)	Dynamic Effect (2)	Compliance Effect (3)	Total Effect (4)	Estimated Business Activity Tax Revenue <sup>1</sup> (5)	Effect of H.R.3220 on BAT (6)
				(1)+(2)+(3)		(4)/(5)
<i>New York</i>	266.9	319.9	35.5	628.8	4,005.7	15.7
North Carolina <sup>17</sup>	8.5	337.0	n.r.	345.5	1,352.5	25.5
North Dakota <sup>18</sup>	5.0	n.r.	0.2	5.2	46.0	11.2
Ohio <sup>19</sup>	40.0	258.0	n.r.	298.0	1,022.0	29.2
Oklahoma <sup>4,20</sup>	3.2	28.6	n.r.	31.8	172.0	18.5
Oregon <sup>21</sup>	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
<i>Rhode Island</i>	12.8	15.4	1.7	30.3	192.9	15.7
<i>South Carolina</i>	23.7	28.5	3.2	55.9	356.4	15.7
South Dakota <sup>22</sup>	0.1	6.4	n.r.	6.5	94.3	6.9
Tennessee <sup>23</sup>	55.7	179.1	n.r.	234.8	1,457.3	16.1
Texas <sup>24</sup>	155.0	125.0	130.0	410.0	2,000.0	20.5
Utah <sup>3</sup>	1.5	2.0	0.4	3.9	260.0	1.5
<i>Vermont</i>	0.6	1.0	0.1	1.9	71.4	2.7
Virginia <sup>25</sup>	0.0	0.0	0.0	0.0	420.2	0.0
Washington <sup>26</sup>	138.4	504.6	45.6	688.6	3,543.8	19.4
West Virginia <sup>4</sup>	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
<i>Wyoming</i>	0.7	0.8	0.1	1.6	10.3	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.



<b>Appendix TABLE 1B</b> <b>Estimated Revenue Impact of H.R. 1956 by State: Best Estimates</b> <b>Fiscal Year 2007</b> <b>Dollar Amounts in Millions</b>						
State	Static Effect	Dynamic Effect	Compliance Effect	Total Effect	Estimated Business Activity Tax Revenue <sup>1</sup>	Effect of H.R.3220 on BAT
	(1)	(2)	(3)	(4)	(5)	(6)
				(1)+(2)+(3)		(4)/(5)
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.						
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.						

<b>Appendix TABLE 1C</b> <b>Estimated Revenue Impact of H.R. 1956 by State: Maximum Impact</b> <b>Fiscal Year 2007</b> <b>Dollar Amounts in Millions</b>						
State	Static Effect (1)	Dynamic Effect (2)	Compliance Effect (3)	Total Effect (4)	Estimated Business Activity Tax Revenue <sup>1</sup> (5)	Effect of H.R.3220 on BAT (6)
				(1)+(2)+(3)		(4)/(5)
<i>United States*</i>	\$3,034.6	\$4,344.3	\$362.8	\$7,874.7	\$57,693.8	13.6%
Responding States	\$2,078.9	\$3,115.6	\$254.3	\$5,552.2	\$44,271.3	12.5%
<i>Alabama</i>	78.7	100.7	9.0	190.5	1,008.6	18.9
<i>Alaska</i> <sup>2</sup>	5.1	n.r.	n.r.	5.1	505.0	1.0
<i>Arizona</i>	5.4	9.3	0.4	16.8	536.6	3.1
<i>Arkansas</i> <sup>3</sup>	12.0	84.0	n.r.	96.0	256.0	37.5
<i>California</i> <sup>4,5</sup>	n.r.	150.0	n.r.	150.0	7,344.0	2.0
<i>Colorado</i>	2.8	4.8	0.2	8.7	277.0	3.1
<i>Connecticut</i> <sup>6</sup>	101.1	35.7	n.r.	136.8	381.7	35.8
<i>Delaware</i> <sup>7</sup>	n.r.	n.r.	n.r.	30.5	298.1	13.1
<i>District of Columbia</i>	40.3	51.5	4.6	97.5	515.9	18.9
<i>Florida</i>	299.0	382.5	34.1	723.6	3,830.7	18.9
<i>Georgia</i> <sup>8</sup>	30.9	n.r.	n.r.	30.9	511.2	6.0
<i>Hawaii</i>	1.9	3.2	0.1	5.8	194.2	3.2
<i>Idaho</i> <sup>4</sup>	8.0	n.r.	n.r.	8.0	1,009.1	0.8
<i>Illinois</i> <sup>9</sup>	109.0	n.r.	n.r.	109.0	9,207.1	1.2
<i>Indiana</i>	73.7	94.3	8.4	1784.4	944.3	18.9
<i>Iowa</i> <sup>4</sup>	10.0	30.0	6.0	46.0	200.0	23.5
<i>Kansas</i> <sup>8</sup>	5.7	25.5	n.r.	31.2	218.5	10.9
<i>Kentucky</i> <sup>10</sup>	80.6	178.7	n.r.	259.3	593.4	43.7
<i>Louisiana</i>	40.5	51.9	4.6	98.1	519.3	18.9
<i>Maine</i>	1.3	2.3	0.1	4.1	130.2	3.1
<i>Maryland</i> <sup>11</sup>	66.7	39.7	n.r.	106.4	397.0	26.8
<i>Massachusetts</i> <sup>12</sup>	183.0	n.r.	n.r.	183.0	1,572.0	11.6
<i>Michigan</i> <sup>13</sup>	239.1	150.9	27.5	417.5	2,113.3	19.8
<i>Minnesota</i> <sup>4</sup>	50.0	7.5	9.7	67.1	621.5	10.8
<i>Mississippi</i>	37.0	47.3	4.2	89.5	473.5	18.9
<i>Missouri</i> <sup>8</sup>	173.6	n.r.	n.r.	173.6	437.1	39.7
<i>Montana</i> <sup>4,14</sup>	n.r.	n.r.	n.r.	6.0	79.2	7.6
<i>Nebraska</i>	1.5	2.7	0.1	4.8	153.3	3.1
<i>Nevada</i>	5.0	6.4	0.6	12.1	64.3	18.9
<i>New Hampshire</i> <sup>15</sup>	n.r.	n.r.	n.r.	58.4	281.0	20.8
<i>New Jersey</i> <sup>16</sup>	219.0	150.0	29.3	398.3	2,791.0	14.3
<i>New Mexico</i>	11.5	14.7	1.3	27.9	147.5	18.9

<b>Appendix TABLE 1C</b> <b>Estimated Revenue Impact of H.R. 1956 by State: Maximum Impact</b> <b>Fiscal Year 2007</b> <b>Dollar Amounts in Millions</b>						
State	Static Effect (1)	Dynamic Effect (2)	Compliance Effect (3)	Total Effect (4)	Estimated Business Activity Tax Revenue <sup>1</sup> (5)	Effect of H.R.3220 on BAT (6)
				(1)+(2)+(3)		(4)/(5)
<i>New York</i>	312.7	400.0	35.7	756.8	4,005.7	18.9
North Carolina <sup>17</sup>	8.5	337.0	n.r.	345.5	1,352.5	34.8
North Dakota <sup>18</sup>	6.6	n.r.	0.2	6.8	46.0	14.8
Ohio <sup>19</sup>	40.0	385.0	n.r.	425.0	1,022.0	41.6
Oklahoma <sup>4,20</sup>	3.2	28.6	n.r.	31.8	172.0	18.5
Oregon <sup>21</sup>	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
<i>Rhode Island</i>	15.1	19.3	1.7	36.4	192.9	18.9
<i>South Carolina</i>	27.8	35.6	3.2	67.3	356.4	18.9
South Dakota <sup>22</sup>	0.1	6.4	n.r.	6.5	94.3	6.9
Tennessee <sup>23</sup>	62.3	232.6	n.r.	294.9	1,457.3	20.2
Texas <sup>24</sup>	255.0	145.5	130.0	530.5	2,000.0	26.5
Utah <sup>3</sup>	2.4	3.0	0.4	5.8	260.0	2.2
<i>Vermont</i>	0.7	1.2	0.1	2.2	71.4	3.1
Virginia <sup>25</sup>	0.0	0.0	0.0	0.0	420.2	0.0
Washington <sup>26</sup>	182.2	754.9	45.6	982.7	3,543.8	27.7
West Virginia <sup>4</sup>	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
<i>Wyoming</i>	0.8	1.0	0.1	1.9	10.3	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.

<p align="center"><b>Appendix TABLE 1C</b>  <b>Estimated Revenue Impact of H.R. 1956 by State: Maximum Impact</b>  <b>Fiscal Year 2007</b>  <b>Dollar Amounts in Millions</b></p>						
	Static Effect (1)	Dynamic Effect (2)	Compliance Effect (3)	Total Effect (4)	Estimated Business Activity Tax Revenue <sup>1</sup> (5)	Effect of H.R.3220 on BAT (6)
State				(1)+(2)+(3)		(4)/(5)
<p>11. Corporate income tax only. Assumes dynamic effect of H.R. 3220 would be 10 percent of estimated 2007 corporate income tax revenues.</p> <p>12. Fiscal year 2006. Includes General business corporations tax, and financial institutions tax.</p> <p>13. Single Business Tax only.</p> <p>14. Midpoints of estimated range of impacts. BAT revenue for 2007 estimated by the Multistate Tax Commission.</p> <p>15. Includes Business Profits Tax, Business Enterprise Tax, and Communications Excise Tax. Estimates based on analysis of H.R. 2526, July 2002.</p> <p>16. Includes corporate net income tax and Alternative Minimum Tax.</p> <p>17. Includes corporate income, franchise, and personal income taxes.</p> <p>18. Corporate income taxes and gross receipts taxes on telecommunications.</p> <p>19. Corporate income (franchise) tax, tax on dealers of intangibles, and pass-through entities.</p> <p>20. Estimates of compliance effect included in static effect estimates.</p> <p>21. State only. Corporate income and excise taxes only.</p> <p>22. Bank Tax only</p> <p>23. Includes Excise &amp; Franchise Tax, Local Business Tax, and Professional Privilege Tax.</p> <p>24. Corporate Franchise Tax only.</p> <p>25. Reported only minor revenue impact because physical presence is nexus standard.</p> <p>26. State and local Business &amp; Occupation Tax and State and local Public Utility Taxes.</p>						