

AMENDED IN ASSEMBLY APRIL 21, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2061**

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**Introduced by Assembly Member Haynes**

February 17, 2004

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An act to add Part 33 (commencing with Section 66001) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2061, as amended, Haynes. Taxation: limitation: presence.

Existing laws impose various taxes on persons, sales, or other activities in this state.

This bill would enact the Business Activity Tax Simplification Act pursuant to which no person, as defined, would be subject to a business activity tax, as defined, imposed by this state unless that person has a physical presence in this state during the taxable period with respect to which the tax is imposed.

This bill would take effect immediately as a tax levy, but would become operative as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Part 33 (commencing with Section 66001) is  
2 added to Division 2 of the Revenue and Taxation Code, to read:  
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1 PART 33. BUSINESS ACTIVITIES TAX SIMPLIFICATION  
2 ACT  
3

4 66001. This part may be cited as the “Business Activity Tax  
5 Simplification Act.”

6 66002. The act entitled “An Act relating to the power of the  
7 States to impose net income taxes on income derived from  
8 interstate commerce, and authorizing studies by congressional  
9 committees of matters pertaining thereto,” approved September  
10 14, 1959 (15 U.S.C. Sec. 381 et seq.), applies to California’s  
11 jurisdiction to impose any business activity tax, as defined in  
12 Section 66004, with respect to all sales and not solely to sales “of  
13 tangible personal property.”

14 66003. (a) Except as otherwise provided by this part, no  
15 person shall be subject to a business activity tax imposed by this  
16 state unless that person has a physical presence in this state during  
17 the taxable period with respect to which the tax is imposed.

18 (b) Except as otherwise provided by this part, for the purposes  
19 of subdivision (a), a person has a physical presence in this state  
20 only if that person’s business activities within this state include any  
21 of the following during the person’s taxable year:

22 (1) Being an individual physically within this state, or  
23 assigning one or more employees to be in this state, on more than  
24 21 days. However, the following shall be disregarded in  
25 determining whether the 21-day limit has been exceeded:

26 (A) Activities in connection with a possible purchase of goods  
27 or services for the business.

28 (B) Gathering news and covering events for print, broadcast, or  
29 other distribution through the media.

30 (C) Meeting government officials for purposes other than  
31 selling goods or services.

32 (D) Participation in educational or training conferences,  
33 seminars, or other similar functions.

34 (E) Participating in charitable activities.

35 (2) Using the services of another person, except an employee,  
36 in this state, on more than 21 days to establish or maintain the  
37 market in this state, unless that other person performs similar  
38 functions on behalf of at least one additional business entity during  
39 the taxable year.



1 (3) The leasing or owning of tangible personal property or real  
2 property in this state on more than 21 days. However, the  
3 following shall be disregarded in determining whether this 21-day  
4 limit has been exceeded:

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

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

12 (C) Any property to the extent used ancillary to an activity  
13 excluded from the computation of the 21-day period under  
14 paragraph (1) or (2).

15 (D) *The storing of materials, goods, or products in a public*  
16 *warehouse pursuant to a public warehouse contract.*

17 (c) If the taxable period for which the tax is imposed is not a full  
18 taxable year, then any requirements expressed in days for  
19 establishing physical presence under this part shall be adjusted pro  
20 rata accordingly.

21 (d) (1) Subdivision (a) does not apply with respect to either of  
22 the following:

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

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

27 (2) With respect to the taxation of either of the following,  
28 subdivision (b) shall be read by substituting “one day” for “more  
29 than 21 days”:

30 (A) A live performance in this state before a live audience of  
31 more than 100 individuals.

32 (B) A live sporting event in this state before more than 100  
33 spectators present at the event.

34 (3) With respect to the following, subdivision (b) shall be read  
35 by substituting “one day” for “more than 21 days”:

36 (A) The sale within this state of tangible personal property,  
37 where delivery of the property originates and is completed within  
38 this state.

39 (B) The performance of services to real property within this  
40 state.



1 (4) If this state is not prohibited by this section from taxing an  
2 entity that is a partnership, a Subchapter “S” corporation, a  
3 limited liability company, a trust, or an estate, or another similar  
4 entity, this state is also not prohibited by this section from taxing  
5 the owners or beneficiaries of the entity.

6 66004. (a) For purposes of this part:

7 (1) (A) “Business activity tax” means all of the following:

8 (i) A tax imposed on, or measured by, net income.

9 (ii) A tax imposed on or measured by gross receipts, gross  
10 income, or gross profits.

11 (iii) A business license tax.

12 (iv) A business and occupation tax.

13 (v) A franchise tax.

14 (vi) A single business tax or a capital stock tax.

15 (vii) Any other tax imposed in this state on a business for the  
16 right to do business in this state or measured by the amount of, or  
17 economic results of, business or related activity conducted in this  
18 state.

19 (B) “Business activity tax” does not include a transaction tax.

20 (2) (A) “Person” includes all of the following:

21 (i) An individual.

22 (ii) An estate.

23 (iii) A trust.

24 (iv) A corporation.

25 (v) A partnership.

26 (vi) A limited liability company.

27 (vii) Any other entity otherwise subject to tax in this state.

28 66005. (a) The limitation on the power of this state imposed  
29 by this part does not affect any other limitation on that power  
30 imposed by other law.

31 (b) This part applies with respect to taxable periods beginning  
32 on and after the first day of the first calendar year that begins after  
33 the date of enactment of this part.

34 SEC. 2. This act provides for a tax levy within the meaning of  
35 Article IV of the Constitution and shall go into immediate effect.

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