

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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### Business Activities Tax Simplification Act

Did you know that the Evergreen Freedom Foundation--which is connected to the Kochs--was the corporate co-chair in 2011?"

#### Summary

Direct state and local taxes on business, also known as "business activity taxes," such as income, franchise, net worth, business license, business and occupation, single business, capital stock, and like taxes, impose great burdens on businesses engaged in interstate commerce. To ensure a healthy national economy, states need to simplify business activities taxes to ensure that only businesses with physical presence in a state will be required to remit these taxes.

#### Model Legislation

{Title, enacting clause, etc.}

**Section 1. {Short Title}** This Act may be cited as the "Business Activity Tax Simplification Act."

#### Section 2. {Application of Public Law 86-272}

(a) SOLICITATIONS WITH RESPECT TO SALES OF OTHER THAN TANGIBLE PERSONAL PROPERTY; TAXES AFFECTED - The Act entitled "An Act relating to the power of the States to impose net income taxes on income derived from interstate commerce, and authorizing studies by congressional committees of matters pertaining thereto", approved September 14, 1959 (15 U.S.C. 381 et seq.) applies to [State's] jurisdiction to impose any business activity tax, as defined in section 4 of this Act, with respect to all sales and not solely to sales "of tangible personal property".

#### Section 3. {Jurisdictional Standard for Business Activity Taxes}

(a) IN GENERAL- Except as otherwise provided by this Act, no person shall be subject to a business activity tax imposed by [State] unless such person has a physical presence in [State] during the taxable period with respect to which the tax is imposed.

(b) REQUIREMENTS FOR PHYSICAL PRESENCE- Except as otherwise provided by this Act, for the purposes of subsection (a), a person has a physical presence in [State] only if such person's business activities within [State] include any of the following during the person's taxable year:

(1) Being an individual physically within [State], or assigning one or more employees to be in [State], on more than 21 days. However, the following shall be disregarded in determining whether such 21-day limit has been exceeded:

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

### ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

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

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

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

(E) Participating in charitable activities.

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

(3) The leasing or owning of tangible personal property or real property in [State] on more than 21 days. However, the following shall be disregarded in determining whether such 21-day limit has been exceeded:

(A) Tangible property located in [State] for purposes of being assembled, manufactured, processed, or tested by another person for the benefit of the owner or lessee, or used to furnish a service to the owner or lessee by another person.

(B) Marketing or promotional materials distributed in [State] using mail or a common carrier, or as inserts in or components of publications.

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

(c) TAXABLE PERIODS NOT CONSISTING OF A YEAR- If the taxable period for which the tax is imposed is not a year, then any requirements expressed in days for establishing physical presence under this Act shall be adjusted pro rata accordingly.

(d) EXCEPTIONS-

(1) DOMESTIC BUSINESS ENTITIES AND INDIVIDUALS DOMICILED IN [STATE] - Subsection (a) does not apply with respect to--

(A) a person (other than an individual) that is incorporated or formed under the laws of [State] or commercially domiciled in [State]; or

(B) an individual who is domiciled in [State].

[OPTIONAL]

(2) EXCEPTION RELATING TO CERTAIN PERFORMANCES AND SPORTING EVENTS- With respect to the taxation of one of the following, subsection (b) shall be read by substituting "one day" for "more than 21 days":

(A) A live performance in [State], before a live audience of more than 100 individuals.

(B) A live sporting event in [State] before more than 100 spectators present at the event.

[OPTIONAL]

(3) CERTAIN ACTIVITIES- With respect to the following, subsection (b) shall be read by

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substituting “one day” for “more than 21 days”:

(A) The sale within [State] of tangible personal property, where delivery of the property originates and is completed within [State].

(B) The performance of services to real property within [State].

[OPTIONAL]

(4) TAXATION OF PARTNERS AND SIMILAR PERSONS- If [State] is not prohibited by this section from taxing an entity that is a partnership, a Subchapter S corporation, a limited liability company, a trust, or an estate, or another similar entity, [State] is also not prohibited by this section from taxing the owners or beneficiaries of the entity.

[Applicable only if State law imposes the tax not on the entity itself but on the entity's owners or beneficiaries, whether or not they are in the State, with respect to their ownership interest in the entity.]

**Section 4. {Definitions}** The following definitions apply in this Act:

(1) BUSINESS ACTIVITY TAX-

(A) The term “business activity tax” means--

(i) a tax imposed on, or measured by, net income;

(ii) a tax imposed on or measured by gross receipts, gross income, or gross profits;

(iii) a business license tax;

(iv) a business and occupation tax;

(v) a franchise tax;

(vi) a single business tax or a capital stock tax; or

(vii) any other tax imposed [State] on a business for the right to do business in [State] or measured by the amount of, or economic results of, business or related activity conducted in [State].

(B) The term “business activity tax” does not include a transaction tax.

[Alternative] (A) The term “business activity tax” means—

(i) [Include all taxes that fall under the above categories]

(2) PERSON-

(A) The term “person” includes—

(i) an individual;

(ii) an estate;

(iii) a trust;

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(iv) a corporation;

(v) a partnership;

(vi) a limited liability company; and

(vii) any other entity otherwise subject to tax in [State].

#### **Section 5. {General Matters}**

(a) RULE OF CONSTRUCTION- The limitation on the power of [State] imposed by section 3 does not affect any other limitation on that power imposed by other law.

(b) EFFECTIVE DATE- This Act applies with respect to taxable periods beginning on and after the first day of the first year that begins after the date of enactment of this Act.

*Adopted by the Tax and Fiscal Policy Task Force at the States and Nation Policy Summit, December 11, 2003. Approved by the full ALEC Board of Directors January, 2004.*

**Center for Media and  
Democracy's quick summary**

This act would limit corporate and individual taxes to persons or businesses that have a physical presence (nexus) in the state and redefines physical presence to restrict the reach of state tax laws.

**About Us and ALEC EXPOSED.** The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish [www.PRWatch.org](http://www.PRWatch.org), [www.SourceWatch.org](http://www.SourceWatch.org), and now [www.ALECexposed.org](http://www.ALECexposed.org). For more information contact: [editor@prwatch.org](mailto:editor@prwatch.org) or 608-260-9713.