

**TESTIMONY OF CONGRESSMAN BOB GOODLATTE
SUBCOMMITTEE ON COURTS, COMMERCIAL AND
ADMINISTRATIVE LAW
HEARING ON THE
“BUSINESS ACTIVITY TAX SIMPLIFICATION ACT”
APRIL 13, 2011**

Chairman Coble, Ranking Member Cohen and members of the Subcommittee, thank you for inviting me to testify today about the Business Activity Tax Simplification Act, which I introduced with my friend and colleague Representative Bobby Scott of Virginia. This legislation will provide a “bright line” test to clarify state and local authority to collect business activity taxes from out-of-state entities.

Many states and some local governments levy corporate income, franchise and other taxes on out-of-state companies that conduct business activities within their jurisdictions. While providing revenue for states, these taxes also serve to pay for the privilege of doing business in a state.

However, with the growth of the Internet, companies are increasingly able to conduct transactions without the constraint of geopolitical boundaries. The growth of the technology industry and interstate business-to-business and business-to-consumer transactions raise questions over where multi-state companies should be required to pay corporate income and other business activity taxes.

Over the past several years, a growing number of jurisdictions have sought to collect business activity taxes from businesses located in other states, even though those businesses receive no appreciable benefits from the taxing jurisdiction. This has led to unfairness and uncertainty, generated contentious, widespread litigation, and hindered business expansion, as businesses shy away from expanding their presence in other states for fear of exposure to unfair tax burdens.

We need a basic, fair, bright line rule in this area. Previous actions by the Supreme Court and Congress have laid the groundwork for such a “bright line” rule. In the landmark case of Quill Corp. v. North Dakota, the Supreme Court declared that a state cannot impose a tax on an out-of-state business unless that business has a “substantial nexus” with the taxing state. However, the Court did not define what constituted a “substantial nexus” for purposes of imposing business activity taxes.

In addition, over fifty years ago, Congress passed Public Law 86-272, which set clear, uniform standards for when states could and could not impose certain taxes on out-of-state businesses when the businesses’ activities in the state were nominal and only involved the solicitation of orders for sales of tangible property. However, the scope of Public Law 86-272 only extended to activities related to tangible personal property. Our nation’s economy has changed dramatically over the past fifty years, and this outdated statute needs to be modernized.

The Business Activity Tax Simplification Act updates the protections in P.L. 86-272 to reflect the changing nature of our economy by expanding the scope of those protections from just tangible personal property to include intangible property and services.

In addition, our legislation establishes a clear, uniform “physical presence” test such that an out-of-state company must have a physical presence in a state before the state can impose corporate net income taxes and other types of business activity taxes on that company.

In our current, challenging economic times, it is especially important to eliminate artificial, government-imposed barriers to small businesses. Small businesses are crucial to our economy and account for a significant majority of new product ideas and innovation. Small businesses are also central to the American dream of self-improvement and individual achievement, which is why it is so vital that Congress enact legislation that reduces the tax burdens that hinder small businesses and ultimately overall economic growth and job creation.

Unfortunately, small businesses are often the hardest hit when aggressive states and localities impose excessive tax burdens on out-of-state companies. These businesses do not have the resources to hire the teams of lawyers that many large corporations devote to tax compliance, and they are more likely to halt expansion to avoid uncertain tax obligations and litigation expenses.

The clarity that the Business Activity Tax Simplification Act will bring will ensure fairness, minimize litigation, and create the kind of legally certain and stable business climate that frees up funds for businesses of all sizes to make investments, expand interstate commerce, grow the economy and create new jobs.

At the same time, this legislation will protect the ability of states to ensure that they are fairly compensated when they provide services to businesses that do have physical presences in the state. In addition, the legislation expressly protects the ability of states to use all tools at their disposal to aggressively combat illegal activities, sham transactions, or any other abuses.

Thank you and I look forward to any questions you may have.