STATEMENT OF
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BEFORE THE

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
OF THE COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 3220
THE BUSINESS ACTIVITY TAX SIMPLIFICATION ACT OF 2003

May 13, 2004

Mr. Chairman, Congressman Watt, and Members of the Subcommittee:

Thank you for this opportunity to address the Subcommittee concerning H.R. 3220, the Business Activity Tax Simplification Act. I want to especially thank you, Mr. Chairman, for holding this hearing on this important legislation affecting the American economy and to thank Congressmen Goodlatte and Boucher for their steadfast leadership in championing business activity tax simplification for several years now. I am Arthur Rosen, a member of the international law firm of McDermott, Will & Emery. Many of my partners at McDermott and I have been deeply involved in many of the relevant state tax issues for decades, having successfully represented the taxpayers in such landmark Supreme Court cases as *Quill*, *ASARCO*, and *Woolworth*. I am here today representing the Coalition for Rational and Fair Taxation ("CRAFT"), which is a diverse coalition of some of America's major corporations involved in interstate commerce, including technology companies, broadcasters, interstate direct retailers, publishers, financial services businesses, traditional manufacturers, and multistate entertainment and service businesses. The businesses maintain locations throughout the United States.

My comments today will focus on why a bright-line, quantifiable physical presence nexus standard, as is provided in H.R. 3220, is the appropriate standard for state and local taxation of out-of-state businesses and why modernization of Public Law 86-272, as H.R. 3220 would accomplish, is essential to the U.S. economy. CRAFT strongly supports H.R. 3220 and respectfully urges your approval of this legislation for consideration by the full Congress and ultimate enactment. We believe that it is essential for Congress to act to provide clear guidance to the states in the area of state taxing jurisdiction, remove the drag that the current climate of uncertainty places on American businesses, and thereby protect American jobs and enhance the U.S. economy.

Overview

The principal motivation for the adoption of the United States Constitution as a replacement to the Articles of Confederation was a desire to establish and ensure the maintenance of a single, integrated, robust American economy. This is reflected in the Commerce Clause, which provides Congress with the authority to safeguard the free flow of interstate commerce. Perhaps the hallmark of American federalism is this assignment of authority to the federal government (along with responsibility for foreign affairs and the national monetary/fiscal system). Legislation regarding states and localities imposing, regulating, or removing tax burdens placed on transactions in interstate commerce is not only within Congress' realm of authority, it is also – I respectfully submit – Congress' responsibility. In addition to the Commerce Clause, this issue is also informed by the Due Process Clause of the Fourteenth Amendment. In the context of the Due Process Clause, the Supreme Court has determined that, in the area of state taxation, "the simple but controlling question is whether the state has given anything for which it can ask return."[1]

Unfortunately, some state revenue departments have been creating barriers to interstate commerce by aggressively attempting to impose direct taxes on businesses located in other states that have little or no connection to their state. Some state revenue departments have even asserted that they can tax a business that merely has customers in the state based on the recently-minted notion of "economic nexus." Such behavior is entirely logical on the part of the taxing state because it has every incentive to try collecting as much revenue as possible from businesses that play no part in the taxing state's society. But this country has long stood against such taxation without representation. And worse, the "economic nexus" concept flies in the face of the current state of business activity taxation, which is largely based on the notion that a business should only be subject to tax by a state from which the business receives benefits and protections. And worse still, it creates significant uncertainty that has a chilling effect on interstate economic activity, dampening business expansion and job growth. As a practicing attorney, I regularly advise businesses that ultimately decide not to engage in a particular transaction in another state out of concern that they might become subject to tax liability in that state. It is entirely appropriate for Congress to intervene to prevent individual states from erecting such barriers to trade, and to protect and promote the free flow of commerce between the states for the benefit of the U.S. economy.[2]

Confronted with aggressive – and often constitutionally questionable (as I will discuss in detail later) – efforts of state revenue departments to tax their income when they have little or no presence in the jurisdiction, American businesses are faced with a difficult choice. They can oppose the tax – but then must bear substantial litigation costs to do so. Or, they can knuckle under to the state revenue departments and pay the asserted tax – but then they risk being subject to multiple taxation. Unfortunately, the latter choice is sometimes made, especially since some state revenue departments are making increasing use of "hardball" tactics, a topic on which I would truly relish elaborating at another time or in another forum. Moreover, the compliance burdens of state business activity taxation can be immense. Think of an interstate business with

[1] *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435 (1940).
[2] *See e.g.* Diann L. Smith, *Supreme Court Would Uphold P.L. 86-272* (letter to the editors), 25 State Tax Notes 135 (July 8, 2002) (discussing the authority of Congress to regulate interstate commerce).

customers in all 50 states. If economic nexus were the standard, that business would be faced with having to file an income or franchise tax return with every state and pay license or similar taxes to thousands upon thousands of localities.

There can be no doubt that the rapid growth of e-commerce continues to drastically alter the shape of the American and global economies. As businesses adapt to the "new order" of conducting business, efforts by state revenue departments to expand their taxing jurisdiction to cover activities conducted in other jurisdictions constitute a significant burden on the business community's ability to carry on business. Left unchecked, this attempted expansion of the states' taxing power will have a chilling effect on the entire economy as tax burdens, compliance costs, litigation, and uncertainty escalate. Clearly, the time is ripe for Congress to consider when state and local governments should and should not be permitted to require out-of-state businesses to pay business activity taxes. It appears eminently fair and reasonable for Congress to provide relief from unfair and unreasonable impositions of income and franchise taxes on out-of-state businesses that have little or no physical connection with the state or locality.

Consistent with principles enumerated by the majority of the federal Advisory Commission on Electronic Commerce ("ACEC"),[3] and earlier by the Congressional Willis Commission in 1965, the Business Activity Tax Simplification Act is designed to address the issue of when a state should have authority to impose a direct tax on a business that has no or merely a minimal connection with the state. This issue has become increasingly pressing as the U.S. and global economies have become less goods-focused and more service-oriented and as the use of modern technology has proliferated throughout the country and the world. H.R. 3220 applies to state and local business activity taxes, which are direct taxes such as corporate income taxes, gross receipts taxes, franchise taxes, gross profits taxes, and capital stock taxes that are imposed on businesses engaged in interstate commerce. H.R. 3220 does not apply to other taxes, like personal income taxes,[4] gross premium taxes imposed on insurance companies, or transaction taxes measured by gross receipts, such as the New Mexico Gross Receipts and Compensating Tax Act.[5]

The underlying principle of this legislation is that states and localities that provide benefits and protections to a business, like education, roads, fire and police protection, water, sewer, etc., should be the ones who receive the benefit of that business' taxes, rather than a remote state that provides no services to the business. By imposing a physical presence standard for business activity taxes, H.R. 3220 ensures that state tax impositions are appropriately borne only by those businesses that receive such benefits and protection from the taxing state. H.R. 3220 does so in a manner that ensures that the business community continues to pay its fair share of tax but that puts a stop to new and unfair tax impositions. Perhaps most important, H.R. 3220's physical presence nexus standard is entirely consistent with the jurisdictional standard that the federal government uses in tax treaties with its trading partners. In fact, creating

[3] *See* Special Subcomm. on State Taxation of Interstate Commerce of the House Comm. on the Judiciary of the U.S. House of Representatives, "State Taxation of Interstate Commerce," H.R. Rep. No. 1480, 88th Cong., 2d Sess. (1964); H.R. Reps. Nos. 565 and 952, 89th Cong. (1965); and Advisory Commission on Electronic Commerce, "Report to Congress," pp. 17-20 (April 2000), respectively.

[4] In addition, nothing in H.R. 3220 affects the responsibilities of an employer to withhold personal income taxes paid to resident and nonresident employees earning income in a state or to pay employment or unemployment taxes.

[5] N.M. STAT. § 7-9-1 *et seq*.

consistency with the international standards of business taxation is vital to eliminating uncertainty and promoting the growth of the U.S. economy.

Background

The question of when a state has the authority to impose a tax directly on a business domiciled outside the state has been asked for decades.[6] In 1959, the Supreme Court ruled that a corporation with several sales people assigned to an office located in the State of Minnesota could be subjected to that state's direct tax scheme.[7] Prior to that time, there had been a "well-settled rule, stated in *Norton Co. v. Illinois Dept. of Revenue*, 340 U.S. 534 (1951), that solicitation in interstate commerce was protected from taxation in the State where the solicitation took place."[8] The Supreme Court's 1959 decision in *Northwestern States Portland Cement*, coupled with the Court's refusal to hear two other cases[9] (where the taxpayers, which did not maintain offices in the state, conducted activities in the state that were limited to mere solicitation of orders by visiting salespeople), cast some doubt on that "well-settled rule" and fueled significant concern within the business community that the states could tax out-of-state businesses with unfettered authority, thereby imposing significant costs on businesses and harm to the U.S. economy in general. As a result, Congress responded rapidly, enacting Public Law 86-272 a mere six months later. Public Law 86-272 prohibits states and localities from imposing income taxes on a business whose activities within the state are limited to soliciting sales of tangible personal property, if those orders are accepted outside the state and the goods are shipped or delivered into the state from outside the state.[10] Subsequently, the Congressional Willis Commission studied this and other interstate tax issues and concluded that, among other things, a business should not be subject to a direct tax imposition by a state in which it merely had customers.[11]

In recent years, certain states and organizations of state tax collectors have been advocating the position that a state has the right to impose tax on a business that merely has customers there, even if the business has no physical presence in the state whatsoever.[12] The business community, in contrast, believes that a state can impose direct taxes only on businesses

[6] *See*, *e.g.*, Walter Hellerstein, *State Taxation of Interstate Business: Perspectives on Two Centuries of Constitutional Adjudication*, 41 Tax Law. 37 (1987).
[7] *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959).
[8] *Wisconsin Dep't of Revenue v. William Wrigley Jr. Co.*, 505 U.S. 214, 238 (1992) (Kennedy, J., dissenting).
[9] *Brown Forman Distillers Corp. v. Collector of Revenue*, 101 So.2d 70 (La. 1958), *appeal dismissed and cert. denied*, 359 U.S. 28 (1959); *International Shoe Co. v. Fontenot*, 107 So.2d 640 (La. 1958), *cert. denied*, 359 U.S. 984 (1959).
[10] P.L. No. 86-272, 73 Stat. 555 (codified at 15 U.S.C. §§ 381 *et seq*.).
[11] Special Subcomm. on State Taxation of Interstate Commerce of the House Comm. on the Judiciary of the U.S. House of Representatives, "State Taxation of Interstate Commerce," H.R. Rep. No. 1480, 88th Cong., 2d Sess. (1964); H.R. Reps. Nos. 565 and 952, 89th Cong. (1965), Vol. 1, Part VI., ch. 39, 42. *See also* W. Val Oveson, *Lessons in State Tax Simplification*, 2002 State Tax Today 18-39 (Jan. 20, 2002).
[12] A survey conducted by BNA Tax Analysts demonstrates the extent to which the states are asserting the right to impose tax on out-of-state businesses based on so-called "economic nexus" grounds. *Special Report: 2004 Survey of State Tax Departments*, 11 Multistate Tax. Rep't 4, pp. S-9 - S-43, at S-36, S-37 (April 23, 2004). *See also Ensuring the Equity, Integrity and Viability of Multistate Tax Systems*, Multistate Tax Commission Policy Statement 01-2 (October 17, 2002). *Accord* Letter from Elizabeth Harchenko, Director, Oregon Department of Revenue, to Senator Ron Wyden (July 16, 2001). *See also* Doug Sheppard, *The Certainty of Disagreement on Business Activity Tax Nexus*, 25 State Tax Notes 420 (Aug. 5, 2002).

that have a physical presence in the state.[13] While the taxpayers' position has repeatedly been upheld, the state courts and tribunals have rendered non-uniform decisions on this issue.[14] Unfortunately, the Supreme Court has not granted writs of certiorari in relevant cases.[15]

The bottom line is that businesses should pay tax where they *earn* income. It may be true, as certain state tax collectors assert, that without sales there can be no income. While this may make for a nice sound bite, it simply is not relevant. Income is earned where an individual or business entity employs its labor and capital, *i.e.*, where he, she, or it actually performs work.[16] In fact, as early as 1919, the Attorney General of the State of New York pointed out that "the work done, *rather than the person paying for it*, should be regarded as the 'source' of income."[17] For example, suppose an individual spends three years working in his or her home building a new sophisticated machine. To accomplish this, the individual uses a large of amount of equipment and employees in his or her home state. When the inventing, designing, and manufacturing are completed, the individual then engages in a nationwide advertising program to market the sale of the machine. If the ultimate buyer happens to be located in a neighboring state (or for that matter in a state across the country), there is absolutely no reason why the buyer's state should be able to impose tax on the individual selling the item – the individual *earned* the income in his or her home state.

Proponents of the so-called "economic nexus" standard argue that the states provide benefits for the welfare of society as a whole and, therefore, the states should be able to collect business activity taxes from all U.S. businesses, wherever located. Such an argument is not only ludicrous, but it ignores the fact that businesses (and individuals) are members of the American society and pay federal taxes for such general benefits and protections. Nevertheless, some argue that states have spent significant amounts of revenue to maintain an infrastructure for interstate commerce and court systems that the nation can utilize, not to mention spending trillions of dollars over the years to provide education to their populations. This argument continues with the incredible example of the student who benefits from his or her state's education funding who may someday work for an out-of-state company; apparently, the out-of-

[13] *See Jurisdiction to Tax – Constitutional*, Council of State Taxation Policy Statement of 2001-2002; *The Internet Tax Fairness Act of 2001: Hearing on H.R. 2526 Before the Subcommittee on Commercial and Administrative Law of the House Comm. on the Judiciary*, 107th Cong. (2001) (statements of Arthur Rosen on Behalf of the Coalition for Rational and Fair Taxation; Stanley Sokul, Member, Advisory Commission On Electronic Commerce, on Behalf of the Direct Marketing Association and the Internet Tax Fairness Coalition). *See also* Scott D. Smith and Sharlene E. Amitay, *Economic Nexus: An Unworkable Standard for Jurisdiction*, 25 State Tax Notes 787 (Sept. 9, 2002).

[14] *See Lanco Inc. v. Director, Div. of Tax'n*, N.J. Tax Ct., No. 005329-97 (Oct. 23, 2003); *A&F Trademark, Inc. v. Tolson*, No. 02-CV-007467 (Wake Co. Super. Ct. 2003); *Acme Royalty Co. v. Missouri Dir. of* Revenue, 2002 Mo. LEXIS 107 (Mo. 2002); *Rylander v. Bandag Licensing Corp.*, Tex. App. Ct., No. 03-99-004217-CV (May 11, 2000); *J.C. Penney National Bank v. Johnson*, 19 S.W.3d 831, 836 (Tenn. Ct. App. 1999); *Cerro Copper Prods., Inc.*, No. F-94-444, 1995 Ala. Tax LEXIS 211 (Ala. Dep't of Revenue Dec. 11, 1995); *Geoffrey, Inc. v. South Carolina Tax Comm'n*, 437 S.E.2d 13 (S.C. 1993); and *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435 (1940).

[15] *Comptroller of the Treasury v. SYL, Inc.; Crown Cork & Seal Co. (Del.), Inc.*, 825 A.2d 399 (Md. 2003), *cert. denied* 2003 U.S. LEXIS 8044 (2003) and 2003 U.S. LEXIS 9221 (2003); *J.C. Penney National Bank v. Johnson*, 19 S.W.3d 831 (Tenn. Ct. App. 1999), *cert. denied*, 531 U.S. 927 (2000); *Geoffrey, Inc. v. South Carolina Tax Comm'n*, 437 S.E.2d 13, *cert. denied*, 510 U.S. 992 (1993).

[16] As noted by one state tax expert, "'[i]ncome,' we were told long ago, 'may be defined as the gain derived from capital, from labor, or from both combined.'" W. Hellerstein, *On the Proposed Single-Factor Formula in Michigan*, State Tax Notes, Oct. 2, 1995, at 1000 (quoting *Eisner v. Macomber*, 252 U.S. 189, 207 (1920)).

[17] Op. N.Y. Att'y Gen. 301 (May 29, 1919) (emphasis added).

state company would then receive benefits that had been provided by that employee's former state and should therefore bear some of the burden by paying tax to the state that provided that education. The absurdity of this position should be clear. Should U.S. companies that have hired people educated in England have to pay taxes to the Queen? Should every business automatically be obligated to pay taxes to all 50 states, in anticipation of the possibility, however remote, that they may at some undefined future point hire a person who was educated in the taxing state? No one can argue that the states do not play an important role in interstate commerce, that an educated public is not an element of a fruitful society and marketplace, or even that a court system does not help to promote order. But this simply cannot be a basis for states to impose tax on all businesses in the nation. Imposing business activity taxes on every out-of-state business is truly "taxation without representation."

The business activity tax concepts in H.R. 3220 are similar to the recommendations of the majority report issued by the Advisory Commission on Electronic Commerce. The ACEC majority report endorsed a nexus standard similar to what was included in prior legislative proposals such as H.R. 2526, 107th Cong. (2001) and S. 664, 107th Cong. (2001). Specifically, the ACEC majority report concluded that a company should have some level of physical presence before a state could impose business activity tax reporting and payment obligations on it and that certain activities would not be considered physical presence for this purpose and specifically carved them out from nexus consideration.[18] Consistent with this conclusion, H.R. 3220 provides for a bright-line physical presence standard that recognizes that certain instances of "presence" are qualitatively *de minimis*.[19] As a result, H.R. 3220 is more conservative and actually provides states with more opportunity to tax interstate commerce than would be available under the ACEC majority report recommendation.

The Business Activity Tax Simplification Act provides simple and identifiable standards that will significantly minimize litigation by establishing clear rules for *all* states, thereby freeing scarce resources for more productive uses both in and out of government. It is unlikely that H.R. 3220 will end all controversies, and no statute can ever do that. However, any statute that adds nationwide clarification obviously reduces the amount of controversy and litigation by narrowing the areas of dispute. For example, in the 45 years since its enactment in 1959, Public Law 86-272 has generated relatively few cases, perhaps a score or two. On the other hand, areas outside its coverage have been litigated extensively and at great expense. Recent litigation has focused on what the appropriate nexus standard for business activity taxes actually is; there is no indication that this issue will be settled absent Congressional action.

H.R. 3220's Provisions

Codification of the Physical Presence Standard. H.R. 3220 provides that, pursuant to Congress' Commerce Clause authority, a state or locality may not impose business activity taxes on businesses that do not have a "physical presence" within the jurisdiction. The requisite

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[18] *See* Advisory Commission on Electronic Commerce, *Report to Congress*, pp. 21-22 (April 2000).

[19] H.R. 2526 and S. 664 from the previous Congress were drafted "negatively," defining "substantial physical presence" by what it was not, *i.e.,* the activities protected by the safe harbors recommended by the ACEC majority. In response to state revenue departments' criticisms of this "negative" definition, H.R. 3220 was drafted to positively define what is a "physical presence" for purposes of allowing states to impose business activity taxes on out-of-state businesses (among other refinements).

degree of physical presence (employees, property, or the use of third parties to perform certain activities) is set at greater than 21 days during a taxable year, with certain specified incidences of presence being disregarded as qualitatively *de minimis*.

The 21-day quantitative *de minimis* threshold is measured by each day that a business assigns one or more employees in the state, uses the services of certain third parties in the state, or has certain property in the state. For example, a business that sends only four employees into a state together for ten days will not have physical presence. On the other hand, a business that sends one employee into a state on twenty-two different days during a taxable year will have physical presence in that state. Taxpayer compliance and state revenue department administration of this standard would thus be quite simple and straightforward.

There are two exceptions to the 21-day rule that apply to those who really do earn their income during shorter visits to the state. The first exception ensures that businesses engaging in actual selling of tangible personal property through the use of traveling employees, *e.g.*, businesses that hold "tent sales" or "off the truck sales," or in performing certain services to real property in the state through the use of traveling employees, *e.g.*, migrant painters or roofers, are subject to state and local business activity taxes. The second exception is targeted at athletes, musicians, and other entertainers. Such persons are not eligible for the *de minimis* exceptions (and, thus, are subject to tax by the jurisdiction in which they perform). Both of these exceptions are consistent with the underlying intent of H.R. 3220 that businesses pay tax where income is actually earned.

For a qualitative *de minimis* standard, H.R. 3220 provides that certain property or certain activities engaged in by a business' employees within the jurisdiction's boundaries will not be considered in determining whether a business has the requisite physical presence in the jurisdiction. This approach of disregarding certain activities for nexus purposes has already been recognized in Public Law 86-272, where Congress determined that mere solicitation is qualitatively *de minimis* relative to the benefits that protecting such activities offers to the U.S. economy. The protected activities are limited to situations where the business is *patronizing* the local market (*i.e.*, being a customer), and thereby generating economic activity in the state that produces other tax revenues for the state, rather than *exploiting* that market (many states have issued rulings, albeit inconsistent and *ad hoc* in nature, recognizing this principle), including ancillary property and activities. This encompasses 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.

In the area of attributing one business' physical presence in a state to another, H.R. 3220 provides that an out-of-state business will have a physical presence in a state if that business uses the services of an in-state person, on more than 21 days, to perform services that establish or maintain the nonresident business' market in that state, unless the in-state person performs similar functions for more than one business during the year. The ownership relationship between the out-of-state person and the in-state person is irrelevant for purposes of this provision. By limiting attribution of nexus only to situations involving market enhancing activities, H.R. 3220 not only more accurately reflects the economics of a transaction or business, but is also consistent with the current state of the law. Expanding attribution any further would undermine the principles of fairness and equity in taxation. To the extent that a separate company is conducting business in a state, its own income is subject to tax in that state.

As an example, suppose an out-of-state sales company uses an affiliated manufacturer in a state to manufacture a product that the out-of-state business will sell outside of the state of manufacture. The manufacturer is conducting a business activity within the state and there is no doubt that it should be subject to tax by the state. That state will receive tax revenues commensurate with the manufacturing activities that actually occur in the state; the tax revenues will be based on the compensation, set at fair market value, that the manufacturer receives from the out-of-state sales company for its manufacturing services. As for the out-of-state sales company, its selling activities constitute a separate business activity that takes place outside of the state of manufacture. The selling activity generates a certain amount of income (*i.e.*, the sales price of the product less what the selling company paid to the manufacturer for its services) that will be subject to tax in the jurisdictions where the activities actually take place, *i.e.*, where the sales activities add value in the economic stream. Putting this example in a global context, attempts by the state of manufacture to tax the out-of-state sales company would be akin to Taiwan attempting to impose tax on the sales income of every American business that contracts with a Taiwanese manufacturer to make products to be sold in the United States. Clearly, it is simply too attenuated to argue that using the services of the in-state manufacturer subjects the out-of-state business to tax as well.

<u>Modernization of Public Law 86-272</u>. As I mentioned earlier, our economy has undergone significant changes in the 45 years since Public Law 86-272 was enacted. In addition to codifying the physical presence nexus standard, the Business Activity Tax Simplification Act extends the longstanding protections of Public Law 86-272 to *all* sales, not just to sales of tangible personal property, in recognition of those changes, specifically, the change in the focus of the American economy from goods to services and the increased importance of intangible property in the marketplace.

The Business Activity Tax Simplification Act also modernizes Public Law 86-272 by addressing the efforts of some aggressive states to avoid the restrictions imposed by Congress in Public Law 86-272 by establishing taxes on business activity that are measured by means other than the net income of the business. Two examples of these new state business activity taxes are the Michigan Single Business Tax, which imposes a tax on a company's business activities in the state, not on net income, and the New Jersey Corporation Business Tax, which was amended effective in 2002 to impose a gross profits/gross receipts tax. What is most distressing about the New Jersey amendments is that, after June 2006, these "gross" taxes will apply *only* to businesses protected by Public Law 86-272. In other words, New Jersey has effectively circumvented the congressional policy decision underlying the enactment of Public Law 86-272 by imposing a non-income tax only on those businesses that would otherwise be protected by the Public Law. While other states may not enact such a targeted end-run around Public Law 86-272, it is likely that states will increasingly turn to non-income based business activity taxes, especially in light of the states' current fiscal situations. For example, last year, Kentucky's Governor Paul Patton proposed a budget that would replace Kentucky's corporate income tax with a "business activity tax" that would tax a company's payroll paid in Kentucky and gross receipts from sales in Kentucky, even those of out-of-state businesses.[20] While the Kentucky legislature ultimately did not adopt Governor Patton's budget, non-income business activity taxes have clearly become an alternative that more states have begun to consider seriously. H.R. 3220 addresses this by ensuring that Public Law 86-272 covers *all* business activity taxes, not just net income taxes.

<u>Federalism</u>

Contrary to the arguments of some opponents of clarifying standards for state business activity taxes, considerations of federalism support passing this legislation. As discussed earlier, the Founding Fathers, by discarding the Articles of Confederation and establishing a single national economy, intended for Congress to protect the free flow of commerce among the states against efforts by individual states to set up barriers to this trade. Congress itself has recognized this numerous times in the context of state taxation and has exercised its responsibilities repeatedly by enacting laws that limit the states' authority to impose taxes that would unreasonably burden interstate commerce. Of course, there is the obvious precedent of Public Law 86-272, the statute that H.R. 3220 would modernize. A few other examples include:[21]

> – the Federal Aviation Act, which prohibits states and localities from levying a ticket tax, head charge, or gross receipts tax on individuals traveling by air; provides that airline employees may be taxed only in their state of residence and the state in which they perform at least fifty percent of their duties; allows only states in which an aircraft takes off or lands to tax the aircraft or an activity or service on the aircraft; and prohibits state "flyover" taxes;
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> – the Mobile Telecommunications Sourcing Act, which prohibits states from taxing mobile telecommunications service unless the state is the user's place of primary use of the service;
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> – the Amtrak Reauthorization Act of 1997, which prohibits states from taxing Amtrak ticket sales or gross receipts;
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> – Public Law 104-95, which prohibits states from taxing pension income unless the pensioner resides in that state;
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> – the ICC Termination Act of 1995, which prohibits states from taxing interstate bus tickets;
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> – the Miscellaneous Revenue Act of 1981, which prohibits states and localities from imposing property taxes on air carriers' property at a higher rate than that which is imposed on other commercial or industrial property in the state;

[20] *See Securing Kentucky's Future*, State of Kentucky, Office of the State Budget Director (January 2003).
[21] For a detailed list of instances where Congress has exercised its authority under the Commerce Clause, *see* Frank Shafroth, *The Road Since Philadelphia*, 30 State Tax Notes 155 (October 13, 2003).

– the Railroad Regulatory Reform and Revitalization Act of 1976 (the "4R Act"), which prohibits states from imposing differing taxes on railroad property;[22] and

– the Soldiers and Sailors Civil Relief Act of 1940, which limits state taxation of members of the Armed Forces to the member's state of residence, prohibiting different states in which the member may be stationed from also taxing that member.

There is a definite tension between a state's authority to tax and the authority of Congress to regulate interstate commerce. However, the very adoption of the Constitution was itself a backlash against the ability of states to impede commerce between the states; in adopting the Constitution, which expressly grants Congress the authority to regulate interstate commerce, the states relinquished a portion of their sovereignty.[23] Moreover, the Supreme Court has explicitly noted Congress' role in the area of multistate taxation.[24]

H.R. 3220 strikes the correct balance between state autonomy/sovereignty and the regulation of interstate commerce. H.R. 3220 merely codifies current jurisdictional standards for *when* a business may impose a tax; the bill does nothing to determine *how* a state may tax businesses that are properly subject to its taxing jurisdiction. A state remains free to determine what type of tax to impose, be it an income tax, a gross receipts tax, a value added tax, or a capital stock tax; to determine how to apportion the income that is taxed in the state, be it a single- or three-factor formula based on property, payroll and/or sales; to set the rate at which the tax chosen will be imposed; to determine whether or not to follow federal taxable income, *e.g.*, to choose whether to decouple from federal bonus depreciation; to provide credits or deductions for certain types of expenses; and so on.

On the other hand, the economic nexus standard (*i.e.*, establishing the requisite nexus based solely on a business having a customer in the taxing jurisdiction) asserts that a business is liable for a business activity tax if that business has derived revenue or income from a customer in a state – even though the business has conducted no activities in the state (*i.e.*, has had no property or employees located in that state). Keeping in mind that every buyer in a transaction in a free market economy benefits from the transaction as much as the seller, the economic nexus standard effectively imposes a toll charge on out-of-state businesses for exchanging cash for property (or for the provision of a service). Such a tax acts as a tariff on interstate commerce and creates exactly the problem that existed under the Articles of Confederation and that led to the adoption of the Constitution. Under the Articles of Confederation, state taxes and duties impeded interstate commerce as states began enacting their own tariffs and taxing interstate

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[22] In fact, the United States District Court for the District of Wyoming recently determined that Wyoming's coal transportation tax singles out and discriminates against railroads in violation of the 4R Act. *Burlington N. and Santa Fe Ry. Co. v. Atwood*, D. Wyo., No. 00-CV-108-J, slip op. (D. Wyo. 2003).

[23] *See* Adam D. Thierer, *A Delicate Balance: Federalism, Interstate Commerce, and Economic Freedom in the Technological Age*, The Heritage Foundation (1998) (citing Alexander Hamilton, *Federalist No. 22*).

[24] *Barclay's Bank PLC v. Franchise Tax Bd. of Cal.*, 512 U.S. 298 (1994); *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). *See also* Eugene F. Corrigan, *Searching for the Truth*, 26 State Tax Notes 677, (Dec. 9, 2002) ("No amount of state legislation of any kind can extend a state's taxing jurisdiction beyond the limits set by the Supreme Court; and that Court has, for all practical purposes, washed its hands of the matter, deferring it to Congress.")

commerce, thereby putting up trade barriers to free trade.[25] This led to some states retaliating by banning products from other states. By effectively imposing such toll charges, the economic nexus standard would clearly have a negative impact on interstate commerce.

<u>Comparison to Current Common Law</u>

The physical presence nexus standard in H.R. 3220 is consistent with the current state of the law. An out-of-state business must have nexus under *both* the Constitution's Due Process Clause and its Commerce Clause before a state has the authority to impose tax on that business. The Supreme Court has determined that the Commerce Clause requires the existence of a "substantial nexus" between the taxing state and a putative taxpayer for all state taxes, whereas the Due Process Clause requires only a "minimum" connection. In *Quill*, the Supreme Court determined, in the context of a business collecting sales and use taxes from its customers, that the substantial nexus requirement could be satisfied only by the taxpayer having a physical presence in the state; the Court refrained from articulating the appropriate measure for business activity taxes.[26] This is because under the American legal system, a court only has the authority and responsibility to address the case before it. The Supreme Court has not granted a writ of *certiorari* for a case that would permit it to address the business activity tax nexus issue. So what constitutes substantial nexus for business activity taxes?[27]

Since the Court has not yet ruled on this issue, we must use clear logic and review what state courts and tribunals have recently decided. The answer is clear: if non-*de minimis* physical presence is the test for a mere collection and remission situation such as is the case for sales and use taxes, physical presence must be, at a bare minimum, the appropriate test for the imposition of business activity taxes. Indeed, the standard for business activity taxes should, if anything, be *higher* than the standard for sales taxes for at least two reasons. First, a business activity tax is an actual direct tax (and not a mere obligation to collect tax from someone else) and the consequent greater economic burden should require a greater connection (as the Supreme Court seems to have recognized in *National Geographic Society v. Board of Equalization*).[28] Second, the risk of multiple taxation is higher for income taxes than for sales and use taxes. Sales and use taxes typically involve only two jurisdictions (the state of origin and the state of destination). However, corporate business activities often create contacts with many states. Most of the state-level decisions on this issue have concluded that there is no principled reason for there to be any

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[25] *See*, *e.g.*, *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 11 (1824); *Quill v. North Dakota*, 504 U.S. 298, 313 (1992).
[26] *Quill Corp. v. North Dakota,* 504 U.S. 298 (1992).
[27] Opponents of a physical presence standard cite *International Harvester*, a 1944 United States Supreme Court case, as support for their position that economic nexus is appropriate. *See International Harvester Co. v. Wisconsin Dep't of Taxation*, 322 U.S. 435 (1944). Reliance on this case is simply not appropriate because to do so ignores a full 60 years of subsequent jurisprudence (*e.g.*, *Complete Auto Transit Inc. v. Brady*, 430 U.S. 274 (1977) and *Quill*). But even more fundamentally, the case involved a Due Process analysis and never considered the requirements of the Commerce Clause. In addition, when read in the proper context, it is clear that *International Harvester* does not endorse an economic presence standard for business activity taxes. In fact, *International Harvester* concerned the ability of Wisconsin to require a corporation with a physical presence in the state to withhold tax on dividends that it paid to its shareholders. Further, the imposition of liability on the corporation can be seen as merely a delayed income tax on the physically present corporation. Clearly, this case is not to be relied upon to determine the appropriate nexus standard for business activity taxes.
[28] *National Geographic Society v. Board of Equalization*, 430 U.S. 551 (1977).

lower standard for business activity taxes than for sales and use taxes.[29] Finally, the complexities, intricacies, and inconsistencies among business activity taxes easily overshadow the administrative difficulties related to sales and use tax**.**

Effect on State Revenues

There simply is no basis for any contention that H.R. 3220 could lead to any significant loss of state revenues. H.R. 3220 does not depart to any significant degree from what is now being done in the states. This has recently been confirmed by the former executive director of the Multistate Tax Commission.[30] Outside the context of passive investment companies,[31] state revenue departments simply have not been successful in their attempts to assert economic nexus to impose tax on businesses that do not have a physical presence in the state.

H.R. 3220 would have no effect on taxes derived from businesses that maintain a facility in the jurisdiction for more than 21 days during the taxable year. Clearly, state and local governments derive most – if not virtually all – of their business activity tax revenue from such businesses. The amount of revenue received by taxing jurisdictions from those businesses that maintain no office, store, warehouse, or other facility – or even inventory – in the jurisdiction at all must truly be minimal.

Consider first states that impose a net income tax to which Public Law 86-272 applies. It is difficult for tax practitioners, corporate tax managers, and several government officials that were queried to believe that these states are actually collecting any material amount of revenue from businesses that have no office in the state and have non-solicitation employees in the state for zero to 21 days during the year. There simply cannot be many businesses paying such taxes and, thus, any revenue loss would be negligible.

Consider next those states, such as Michigan, New Jersey, Texas, and Washington, that impose business activity taxes that are not solely based on net income and, thus, are not covered by Public Law 86-272. These states are currently able to collect revenue from out-of-state businesses that do not themselves maintain an office or other facility in the state but that employ individuals in the state who perform solicitation in that state. Modernizing Public Law 86-272 to

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[29] This includes *Lanco Inc. v. Director, Div. of Tax'n*, N.J. Tax Ct., No. 005329-97 (Oct. 23, 2003); *J.C. Penney National Bank v. Johnson*, 19 S.W.3d 831 (Tenn. Ct. App. 1999), *cert. denied*, 531 U.S. 927 (2000); *America Online v. Johnson*, No. 97-3786-III, Tenn. Chancery Ct. (Mar. 13, 2001); *Cerro Copper Prods., Inc.*, No. F-94-444, 1995 Ala. Tax LEXIS 211 (Ala. Dep't of Revenue Dec. 11, 1995), *reh'g denied*, 1996 Ala. Tax LEXIS 17 (Ala Dep't of Revenue Jan. 29, 1996) (*But see Lanzi v. State of Alabama Department of Revenue*, Ala. Dep't of Rev., Admin. L. Div., No. INC. 02-721 (Sept. 26, 2003)).

[30] "It seems to me that the states need to face the reality that most of them are generally incapable of enforcing the 'doing business' standard anyway; in almost all cases they really fall back on the physical presence test as a practical matter. To the extent that they try to go beyond that test to reach out-of-state businesses for income tax jurisdiction purposes, they spend inordinate amounts of time and effort via bloated legal staffs that provide grounds for criticism of government in general – and with mixed success, at best. In short, it may be that the states would be forgoing the collection of corporate income taxes that they do not and cannot collect anyway." Eugene Corrigan, *States Should Consider Trade-Off on Remote-Sales Problem* (letter to the editor), 27 State Tax Notes 523 (Feb. 10, 2003).

[31] It is interesting to note that the states have now moved on to using other, more effective attacks against passive investment companies, such as the economic substance and *alter ego* arguments, combined reporting, and the denial of the relevant deductions. *See* Mitchell J. Tropin, *States Moving Away From 'Geoffrey,' Using Sham Arguments, 'Attribution' Nexus*, Daily Tax Report, No. 27 (Feb. 10, 2003).

cover non-income taxes clearly means that such states will no longer be able to collect this revenue. The amount of tax paid by such businesses, however, again must be minimal because it is unlikely that businesses are paying business activity tax to states in which they only have a fleeting presence.

It is essential to keep in mind that H.R. 3220 is based on the principle that a business engaged in interstate commerce should pay its fair share of tax.[32] H.R. 3220 does not seek to reduce the tax burdens borne by businesses, but merely to ensure that tax is paid to the correct jurisdiction.

While on the topic of revenue impact, I would like to address the assertions of critics of the bill that H.R. 3220 would create significant revenue losses to the states.[33] As I just explained, it simply cannot be the case that H.R. 3220 would have more than a negligible revenue impact to the states. Charges by critics that the bill would have a significant fiscal effect are simply masking what is really going on, *i.e.*, that state revenue departments and their representatives do not want any legislative constraints on or oversight of their taxing authority – even when the legislative constraints are squarely within Congress' authority to regulate interstate commerce.

Moreover, the statements of revenue impact made by certain state revenue departments and their representatives have been shown to be highly unreliable because the "estimates" focus on *potential* effects from *hypothetical* restructurings by businesses, are based on *hypothetical* changes in state law, or cite to *potential* impacts on apportionment rules (which is an issue of how much to tax, not whether to tax). Such considerations do not make for a reliable or accurate revenue estimate; proper revenue estimates are based on revenues currently collected. In reality, there simply will be no material effect on the amount of revenue received by the states because H.R. 3220 seeks to maintain the status quo.

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[32] A recent study commissioned by the Council on State Taxation found that businesses (not including pass-through entities) paid $378.9 billion in state and local taxes in 2002, an amount that was considered to be at least business' fair share of tax. *See* Robert Cline, William Fox, Tom Neubig, and Andrew Phillips, *A Closer Examination of the Total State and Local Business Tax Burden*, 27 State Tax Notes 295 (Jan. 27, 2003).

[33] It is interesting that critics of proposals that address multistate taxation always counter with claims that the proposal will cause significant revenue loss to the states. *See, e.g., Corporate Tax Sheltering and The Impact On State Corporate Income Tax Revenue Collections,* Multistate Tax Commission (July 25, 2003); Dan Bucks, Elliott Dubin and Ken Beier, *Revenue Impact on State and Local Governments of Permanent Extension of the Internet Tax Freedom Act*, Multistate Tax Commission (Sept. 24, 2003); Michael Mazerov**,** *Making the Internet Tax Freedom Act Permanent in the Form Currently Proposed Would Lead to a Substantial Revenue Loss for States and Localities*, Center on Budget and Policy Priorities (October 20, 2003). Yet there is no reliable empirical evidence that states have actually lost revenue when measures affecting state taxation have been enacted. This certainly goes to the credibility (or lack thereof) of such claims. As an example of the unreliability of such claims, the National Conference of State Legislatures has expressed its concern over projections by some national organizations that the inclusion of telecommunications services in the Internet tax moratorium would cost the states $22 billion each year (an estimate representing the total revenue from all state and local telecommunication taxes in the 50 states from 1992); in a letter to Senator Alexander dated November 5, 2003, the Congressional Budget Office estimated that the actual revenue cost would be between $80 million and $120 million per year starting in 2007 – an estimate that is approximately 220 times smaller. *Accord* Congressional Budget Office Cost Estimate, H.R. 49, Internet Tax Nondiscrimination Act, as requested by the House Comm. on the Judiciary (July 21, 2003). In a November 4, 2003 action alert regarding S. 150, "The Internet Tax Non-Discrimination Act," the NCSL stated that "[t]he $20 billion estimation runs counter to expressed congressional intent and the provisions of the Manager's amendment and as a result threatens to seriously harm the credibility of state governments before Congress and the Administration."

Effect on International Taxation and American Competitiveness

Our country's own history and the federal government's position in the context of international taxation provide sufficient reason to establish a physical presence nexus standard. The United States and its tax treaty partners have, for decades, adopted and implemented a "permanent establishment" rule. The "permanent establishment" concept is a long-standing principle and has been extremely important to U.S. businesses and, thus, to the U.S. economy.

The "permanent establishment" rule provides that neither country that is a party to the treaty will impose an income tax on a business from the other country unless that business maintains a substantial physical presence in the taxing country. Using the U.S. Model Treaty provisions as an example, a foreign business must have a "fixed place of business [in the United States] through which the business of an enterprise is wholly or partly carried on" before the United States may impose a tax on that business.[34] Under this standard, neither a "rep office" staffed by a few people, nor a facility used for storage, nor the maintenance of goods or merchandise for processing by another business would rise to the level of being a "permanent establishment" in the United States sufficient for the imposition of federal income tax on that business.

A physical presence standard places an appropriate limit on states gaining taxation powers over out-of-state firms and conforms to common sense notions of fair play. It is significant that the OECD has recently studied the issue and preliminarily concluded that the "permanent establishment" rule should remain the proper standard for international tax treaties even with the proliferation of electronic commerce.[35] The policy reasons underlying such a conclusion are clear. Imagine for a moment that a foreign country tried to tax the profits of U.S. companies simply because the U.S. firms exported goods into that country. There is no doubt that the United States government and business community would be outraged. However, the economic nexus standard that the states would like to implement would have a similar effect on interstate commerce.

Unfortunately, it has been said that some smaller countries, citing the efforts of U.S. state revenue departments to impose direct taxes on any business that has customers within the state's borders, are now saying that they want to renegotiate their treaties with the United States so they can begin taxing every U.S. business that has a customer in their country. This would be a disaster for the U.S. economy. Enactment of H.R. 3220, which includes a nexus standard that is analogous to those found in U.S. tax treaties, is essential for ensuring that the current international system of taxation remains intact.

Interplay with State Tax Incentives

In recent years, states have been increasingly active (and competitive) in offering tax incentive packages to businesses to locate and/or expand their operations in that state. Such incentives are offered not only to entice businesses into a state but also to ensure that businesses

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[34] United States Model Income Tax Convention of September 20, 1996, Art. 5.

[35] *See Are The Current Treaty Rules For Taxing Business Profits Appropriate For E-Commerce?,* Organisation for Economic Co-operation and Development, Technical Advisory Group on Monitoring the Application of Existing Treaty Norms For Taxing Business Profits, Public Discussion Draft (Nov. 26, 2003).

already located in the state do not relocate to, or expand in, other jurisdictions. The in-state company receives the benefits and protections provided by the state and, absent the incentives, would therefore be properly subject to full taxation.

A less obvious tax incentive occurs when states adopt apportionment formulas that weight the sales factor more heavily than the property and payroll factors. If a state has a double-weighted sales factor or a single-factor apportionment formula based only on sales (which is increasingly popular among the states), in-state businesses enjoy a significant benefit over businesses that have little or no property or payroll in the state but that do have sales that are apportionable to the taxing state.

When combined with the economic nexus standard, states would actually be subsidizing such incentives for in-state businesses at the expense of out-of-state businesses that do not receive the benefits and protections provided by the state. Not only does this offend the basic principle of nondiscrimination that is required by the Commerce Clause of the U.S. Constitution,[36] but, in addition, it surely is misguided tax policy to make one party that is not really "in" the jurisdiction bear the tax burden of those persons who actually receive the benefits and protections of the government services that the taxes are funding.

Effect on American Job Retention and Growth

The U.S. economy has been making strong gains in the overall level of growth, with historically low inflation, home ownership at record levels, and household consumption expanding. These economic gains have been due in large part to the ongoing expansion in the productivity of U.S. workers and businesses. While productivity gains are unquestionably a good thing for the U.S. economy, the flip side is that U.S. businesses have proven capable of increasing output without expanding employment at the same rate as seen in most past recoveries. Therefore, responsible federal policymakers need to identify and rectify potential barriers to new job creation in America to ensure that our economic expansion creates the largest number of high-quality jobs.

The current level of uncertainty and ambiguity in the application of state-level taxes on U.S.-based businesses impedes new job creation. Businesses operating in the U.S. must deal with the ambiguity in the current nexus rules that govern when states have the right to impose direct taxes on businesses. Rather than a clear set of federal rules regarding when a business is subject to state taxes, the current environment is governed largely by the level of aggressiveness of state tax administrators and ongoing litigation. As I mentioned earlier, state tax officials have increasingly pushed the envelope in an effort to raise revenues from out-of-state enterprises. The uncertainty will only increase as states continue to assert jurisdiction over out-of-state businesses based on "economic nexus" principles.

It is noteworthy that this uncertainty is borne chiefly by businesses based in the United States. Investing in the creation of new plants, equipment, and jobs in other countries is actually encouraged by the ambiguity in nexus standards and the aggressiveness of state tax officials. When combined with the effect of bilateral tax treaties and the difficulty of collecting state-level

[36] *See*, *e.g.*, *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959) and *Armco, Inc. v. Hardesty*, 467 U.S. 638 (1984).

taxes from foreign enterprises, the uncertainty and ambiguity of state taxation has become another incentive that unnecessarily promotes new investment and job creation abroad.

Foreign business enterprises are often shocked to learn that while treaties may insulate them from federal taxation, state taxation can still be imposed. This factor, when combined with the ambiguity of current state tax nexus law and the aggressiveness of state tax administrators, has put a real damper on foreign investment. Even when a foreign business initially considers opening an active business in the United States and paying federal tax and state tax where it locates its property and employees, the specter of having to pay tax to every jurisdiction where it merely has customers is quite intimidating. Addressing the problems of state tax uncertainty and the risk of litigation costs clearly has the potential to encourage additional foreign investment in the U.S., thus creating new jobs throughout the country.

By providing a bright line, quantifiable physical presence standard, H.R. 3220 addresses the current level of uncertainty in the nexus rules that apply to direct business taxes by lowering litigation expenses for companies that operate facilities in the United States and by reducing the likelihood that they will be targeted by out-of-state tax authorities bent on raising revenues from businesses that do not have a presence in their state. H.R. 3220, while certainly not an answer to all the questions related to encouraging new job creation in America, will encourage businesses, whether based in America or overseas, to put new investment and create new jobs here in America rather than in another country.

Conclusion

The physical presence nexus standard provides a clear test that is consistent with the principles of current law and sound tax policy[37] and that is consistent with Public Law 86-272, a time-tested and valid Congressional policy. Physical presence is an accepted standard for determining nexus.[38] And a physical presence test for nexus is consistent with the established principle that a tax should not be imposed by a state unless that state provides benefits or protections to the taxpayer.

What the entire nexus issue boils down to is fairness. The bright-line physical presence nexus standard of H.R. 3220 provides the most fair and equitable standard. This is true primarily for two reasons. One, businesses have a reasonable expectation of taxation only when they are the recipients of the benefits and protections provided by the taxing jurisdiction. Two, a physical presence standard protects in-state businesses from "foreign tax" imposed by jurisdictions solely because of the business having customers located in the taxing jurisdiction. By providing clarity, the physical presence standard removes an impediment to investment in the United States. For

[37] Richard Pomp, who testified as a tax policy expert on behalf of the taxpayer in *Lanco Inc. v. Director, Div. of Tax'n*, N.J. Tax Ct., No. 005329-97 (Oct. 23, 2003), articulated "six principles of tax policy . . . as representing the values inherent in the commerce clause: desirability of a clear or "bright-line" test, consistency with settled expectations, reduction of litigation and promotion of interstate investment, non-discriminatory treatment of the service sector, avoidance of multiple taxation, and efficiency of administration." *Lanco Inc. v. Director, Div. of Tax'n*, N.J. Tax Ct., No. 005329-97 at 15-16 (Oct. 23, 2003). Professor Pomp concluded that a physical presence standard better advanced these principles than a standard based on economic nexus principles. *Id*. at 16.

[38] *See*, *e.g.*, *Quill Corp. v. North Dakota,* 504 U.S. 298 (1992) and *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967).

these reasons, the bill would benefit both U.S. businesses and consumers and, thus, the U.S. economy as a whole.

My comments only scratch the surface of why a physical presence nexus standard for business activity taxes and modernization of Public Law 86-272 is the right answer and why H.R. 3220 should therefore be enacted. But it is clear that H.R. 3220 warrants the full and enthusiastic support of the Subcommittee. Its enactment will ensure that the U.S. business community, and thus the U.S. economy, are not unduly burdened by unfair attempts at taxation without representation. H.R. 3220 will not cause any dislocations in any state's revenue sources. Thank you for your time, I welcome any questions.

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