

was soliciting sales. No one can deny that in the almost 50 years since, interstate commerce has taken on a whole new character. New technologies allow companies headquartered in one State to provide services to consumers across the country. The Internet is replacing bricks-and-mortar stores. Companies and consumers are increasingly linked across State lines.

The Business Activity Tax Simplification Act of 2007 addresses these changes over the last 48 years both modernizing Public Law 86-272 and codifying the physical presence standard. Our bill extends the protections of the 1959 law to include solicitation activities performed in connection with all sales and transactions, not just sales of tangible personal property. The bill protects the free flow of information, including broadcast signals from outside the State, from becoming the basis for taxation of out-of-State businesses.

BATSA also protects activities where the business is a consumer in the State. It makes little sense to impose tax on out-of-State businesses that purchases goods or services from an in-State company. Obviously, in this very common scenario, the out-of-State business is not using these goods or services to generate any revenue in the State. Why should they be subject to tax?

Most importantly, BATSA codifies the physical presence standard. States and localities can only impose business activity taxes on businesses within their jurisdiction that have employees in the State, or real or tangible personal property that is either leased or owned. It is consistent with current law and sound tax policy, which holds that a tax should not be imposed by a State unless that State provides benefits or protections to the taxpayer. Further, the physical presence standard is the basis for each and every one of our treaties with foreign nations—adoption of a more nebulous standard by the States undermines these international treaties.

We need to act now. Already, State legislatures are interpreting the court's denial of cert as an affirmation of their position that they are free to enact whatever policies affecting interstate commerce that are beneficial to their particular State revenue needs, regardless of the national impact. Because the court will not review their nexus standard and Congress has not acted, States now have an ideal opportunity to raise revenues from out-of-State corporations regardless of the national impact.

Only 3 days after the Supreme Court denied cert, the New Hampshire Assembly added an amendment to the State budget at 3:40 a.m. to allow the State to collect revenue from out-of-State businesses. The denial of cert thereby resulted almost immediately in a \$10 million to \$100 million windfall for New Hampshire. No one can deny that this was an extremely aggressive action;

why else would the legislature have taken such drastic measures to tack on this amendment it? the wee hours of the morning?

States are clearly overreaching in their efforts to collect these taxes, and it creates a difficult situation for businesses. It is laughable to think that a company would decide to cut off all transactions with individuals within a certain State to avoid similar laws. And so they will have to start paying taxes to States where they start generating no revenue, hiring no employees, and contributing nothing to the State's economy from their phantom presence aside from these taxes. But these companies are not going to stand idly by and be double-taxed; they will simply declare less income in their home States as a result.

I know that my legislation with Senator CRAPO has raised concerns in the past. The States have argued that BAT legislation represents an intrusion into their authority to govern. But I believe the contrary: A fundamental aspect of American federalism is that Congress has the authority and responsibility under the commerce clause to ensure that interstate commerce is not burdened by State actions.

In fact, the exercise of such congressional power is necessary in order to prevent excessive burdens from being placed on businesses engaged on interstate activity by virtue of their customer's residing in a particular State. Congress must act to ensure certainty, predictability, and fairness of taxation of multistate corporations. The lack of a bright-line physical presence standard encourages each State to act in its own self interest by taking action to maximize its revenues, regardless of the potential double taxation that results.

Let me address a few concerns that have been raised about the bill. Opponents claim that BATSA includes so many exceptions to the physical presence standard that large, multistate companies will utilize the legislation to ensure they pay minimum State tax nationwide. But our bill explicitly States that it preserves States' authority to adopt or continue to use their own tax compliance tools.

In response to those who say that this legislation will be a huge hit to State budgets, the figures just don't add up. There have been a number of studies done, but even the highest revenue estimate represents only a very small percentage of the total amount of business activity taxes collected by the States. The studies leave out one important fact, however: Companies affected by double-taxation are going to declare less income in their home States, if they have to pay taxes on that same income to another State.

Let me cite just one example from a company in my State. In 2005, Citigroup paid 63 percent of all its State and local taxes to New York State and New York City, all based on physical presence in the State and the city. As

more States follow the lead of New Hampshire, the city and State of New York will be getting less from Citibank, one way or another, as they won't want to be double taxed, once by New York because of our physical presence and again in New Hampshire and other States because they have customers in those States. This is why any revenue loss estimates from any city or State are overblown.

In short, this is no longer a theoretical discussion. Federal legislation is required to stop this food fight.

I believe that Congress has a duty to prevent some States from impeding the free flow and development of interstate commerce and to prevent double taxation. That is why I am asking my colleagues on both sides of the aisle, including the chairman and ranking member of the Finance Committee, to carefully consider this legislation.

Mr. CRAPO. Mr. President, I would like to thank my colleague from New York, Senator SCHUMER, for the work he has done on this bill. He shares my grave concerns about the devastating impact that legal interpretations of Public Law 86-272 are having on foreign and interstate commerce. I'm pleased that we can work together in a bipartisan effort to make changes to a law that is in serious need of updating and clarification in view of the more service-oriented economy we have today driven in large part by modern technology's profound transformation of business transactions. This is why we are introducing the Business Activity Tax Simplification Act of 2007, or BATSA, today.

Congress has a Constitutional responsibility to ensure that interstate commerce is not unduly burdened by State actions, including unfair and burdensome taxation of such commerce. Public Law 86-272 was enacted almost 50 years ago, for just these purposes. Ways of conducting multi-state business have changed, and, in the absence of any clarifying legislation, some state courts have interpreted taxation activity under an "economic presence" approach. This approach does not reflect the intent or spirit of the Commerce Clause of the Constitution; furthermore, it creates a climate of uncertainty that inhibits business expansion and innovation. Businesses have to take into account the very real possibility that they will be taxed multiple times for the same business activity. These "business activity taxes" are certainly appropriate when a business has a physical presence in a State; these taxes are inappropriate when imposed by a State where that business's customer happens to reside, but in which the business has no physical presence.

States' efforts to impose improper business activity taxes have been furthered by the Supreme Court's recent silence on this issue. Recent State court rulings are in conflict with the high Court's ruling in *Quill Corp. v. North Dakota* in 1992. In that ruling,