



**Statement of the Securities Industry and Financial Markets Association
Submitted to the House Judiciary Subcommittee on
Commercial and Administrative Law
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H.R. 1439, the Business Activity Tax Simplification Act

The Securities Industry and Financial Markets Association¹ supports H.R. 1439 the *Business Activity Tax Simplification Act of 2011* (BATSA). This important legislation would provide necessary clarity regarding the application of state or local government business activity taxes to companies that do not have a physical presence in the taxing jurisdiction. The bill would provide this clarity by establishing bright lines specifying the amount of physical presence in the jurisdiction needed to trigger tax liability.

In 1992, the U.S. Supreme Court ruled in *Quill Corp. v. North Dakota* that a state could not require an out-of-state business to collect sales and use tax unless that business has a “substantial nexus” within the taxing state. At that time, the Supreme Court declined to explicitly rule on the nexus standard as applied to business activity taxes. Many tax experts inferred that the same standard logically should be applied in the case of the direct imposition of business activity taxes. Unfortunately, over time, state and local governments have increasingly sought to define “substantial nexus” much more expansively, leading to costly litigation and uncertainty for both business taxpayers and state and local governments.

More recently, the U.S. Supreme Court refused to review two lower court cases that challenged the constitutionality of state efforts to tax out-of-state companies based on “economic presence” rather than “physical presence.” Refusal to review these cases has added to the existing uncertainty and increased the need for Congressional action to clarify when a state can tax a business with little or no physical presence in the state.

BATSA removes confusion and the potential for double taxation inherent in the absence of clear rules specifying when state or local governments can impose business activity taxes. This is particularly important to the financial services industry because some jurisdictions seek to impose business activity taxes on companies that have no physical presence in the state but that increasingly serve customers remotely through mail and the internet.

By establishing clear and consistent bright-line standards, H.R. 1439 will provide certainty in interstate commerce to both businesses and to state and local governments. SIFMA urges Congress to act on this important legislation.

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.