



**Statement of the Securities Industry and Financial Markets Association  
Submitted to the United States Senate Committee on Finance  
Full Committee Hearing**

**“Tax Reform: What It Means for State and Local Tax and Fiscal Policy”**

**April 25, 2012**

The Securities Industry and Financial Markets Association<sup>1</sup> supports the *Business Activity Tax Simplification Act* (BATSA) co-sponsored on a bipartisan basis by two members of this Committee in the 110<sup>th</sup> Congress and now pending in the House. This important legislation would establish clear rules for determining state tax jurisdiction. It would not reduce the revenue pie, nor would it necessarily reduce the amount of tax paid, but it would assure that our members’ income is taxed solely in the states where they do business. It would do so by establishing an easily administered and understood physical presence threshold for business activity taxation. This simple exercise of Congress’s power under the Commerce Clause would reduce costly state tax litigation, uncertainty, and the prospect of multiple taxation.

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 physical presence within the taxing state. At that time, the Supreme Court declined to specify the threshold that would trigger business activity taxes. Many tax experts argued that the physical presence standard should apply here as well. Unfortunately, over time, certain states have devised creative new legal theories on business tax nexus to claim an ever expanding share of interstate income, leading to costly litigation and uncertainty for business taxpayers and stimulating an unhealthy competition among the states to claim revenue share.

BATSA would sharply diminish confusion and the potential for multiple taxation that exists now because of absence of clear rules on business activity tax nexus. This is particularly important to the financial services industry, because some jurisdictions have sought 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.

It would not be unprecedented for Congress to act to protect interstate commerce by mediating a difference among states about how to divide the taxable income of multistate businesses. In 1959, when a Democratic majority of the U.S. House and Senate sent P.L. 86-272 to the desk of President Eisenhower, Congress was motivated by the same desire to establish clear and administrable rules to allow the expansion of interstate commerce. Senator Harry F. Byrd of Virginia, then Chairman of this Committee

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<sup>1</sup> 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>.



and a former governor himself, worried that states would “further encroach upon interstate commerce” if Congress failed to act.

Far from devastating state revenues as today’s critics claim, the enactment of P.L. 86-272 paved the way for an historic expansion of interstate sales of goods that benefited the states collectively and individually. Consumers have benefited greatly as well from the creation of a national market for the sale of goods. Static models of state revenue of the type generated by the Congressional Budget Office are incapable of capturing the demonstrable benefits of a stable tax and legal environment for interstate commerce, and, unfortunately, the benefits of the 1959 law have waned as our economy has shifted from a goods to a service economy. BATSA wisely expands this foundational law to cover non-physical products.

By establishing clear and consistent bright-line standards, BATSA will help to create jobs and revive our economy by providing certainty in interstate commerce to both businesses and to state and local governments. SIFMA urges the Senate Finance Committee to act on this important legislation.