SIFMA
Securities Industry and Financial Markets Association

Statement of the Securities Industry and Financial Markets Association
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Commercial and Administrative Law
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H.R. 5267, the Business Activity Tax Simplification Act

The Securities Industry and Financial Markets Association (SIFMA)[1] supports H.R. 5267, the *Business Activity Tax Simplification Act* ("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

[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2005, the industry generated an estimated $322.4 billion in domestic revenue and an estimated $474 billion in global revenues.

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. 5267 will provide certainty in interstate commerce to both businesses and to state and local governments. SIFMA urges Congress to act on this important legislation.