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June 20, 2008

Chairman John Conyers, Jr.  
Chairwoman Linda Sanchez  
House Judiciary Committee and  
Subcommittee on Commercial and Administrative Law  
United States House of Representatives  
Washington, DC 20515-0539

Re: H.R. 5267, Business Activity Tax Simplification Act of 2008

Dear Chairman Conyers & Chairwoman Sanchez:

On behalf of the California Bankers Association, I am writing to ask that you support H.R. 5267, *The Business Activity Tax Simplification Act*. This legislation expands the federal prohibition against state taxation of interstate commerce to include taxation of out-of-state transactions involving all forms of property, including intangible personal property and services. In addition, H.R. 5267 codifies existing law by reaffirming the rules on state taxation of an out-of-state entity and creates definitive criteria for determining that a person or business has a physical presence in a state.

In 1959, Congress attempted to clarify nexus standards for state and local business activity taxes by enacting P.L.86-272, (15 U.S.C. 381 et seq.). In doing so, Congress established that in order for a business to have nexus in a particular state, it must have a physical presence within that state. In P.L. 86-272, Congress outlined the activities that do not trigger nexus. P.L. 86-272 prohibits a state from imposing an income tax on a company whose activities consist only of the solicitation and subsequent sale of tangible personal property delivered outside the state by a common carrier. However, P.L. 86-272 does not define "solicitation" and its application is limited to the net income derived from the sale of tangible personal property. As a result, a patchwork of state laws and regulations has been adopted to independently establish nexus for business activities that are not covered under P.L. 86-272.

In addition, the United States Supreme Court further addressed the matter of nexus in *Quill v. North Dakota* in 1992. The Court held that under the Commerce Clause of the U.S. Constitution, the state of North Dakota could not impose a sales tax on an out-of-state vendor who sold goods to residents but had no physical presence in the state. However, because the term "physical presence" was not well defined by the Supreme Court, states have sought enactment of their own legislation.

This year, legislation was introduced in the California legislature to redefine nexus to include a "retailer engaged in business in this state" that has substantial nexus with this state for purposes of the

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Commerce Clause. Importantly, this legislation eliminated the safe harbor rule that the mere presence of a company's internet server in the state in and of itself will not trigger the obligation to collect California sales and use tax. These independent legislative attempts to redefine nexus, the constitutionality of which will surely be challenged before the courts, lead to costly litigation for states, further depleting them of revenue.

Established more than 115 years ago, the California Bankers Association (CBA) is one of the largest state banking trade associations in the country. CBA leads the way in developing relevant educational and legislative solutions to some of California's more pressing financial and banking issues, including adult financial empowerment, identity theft, financial privacy, and elder financial abuse. CBA's membership includes more than 300 of California's commercial, industrial and community banks and savings associations.

On behalf of the California Bankers Association, I ask for your support in passing H.R. 5267. We thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Lane", with a long horizontal flourish extending to the right.

Jason Lane  
VP/Government Relations