

Before the
House Judiciary Subcommittee on Commercial and Administrative Law
Hearing on “State Taxation – The Role of Congress in Defining Nexus”

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Chairman Cohen, Ranking Member Franks and Members of the Subcommittee, on behalf of the Consumer Electronics Association (CEA), thank you for the opportunity to submit written testimony concerning state taxation nexus issues.

CEA is the principal U.S. trade association representing the \$161 billion consumer electronics industry. We are also the owners and producers of America’s largest annual event, the International CES, held every January in Las Vegas, Nevada.

Our more than 2,200 members are involved in the design, development, manufacturing, distribution and integration of audio, video, in-vehicle electronics, wireless and landline communication, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels.

While CEA’s members include virtually all of America’s top technology companies as well as many of the leading retailers, more than half of our members are small businesses.

I appeared before this same Subcommittee nearly two years ago on the levying of business activity taxes by certain states on companies that lack a physical presence in said state, and the critical impact it is having on businesses across our country. I regret to report the problem has only worsened since then. In 2008, I detailed how American businesses faced a host of new problems, from skyrocketing energy costs to the uncertain availability of investment capital. Today in 2010, I need not spend much time detailing the even further challenges facing American businesses, such as the ongoing recession and the collapse of the financial sector.

But today this Subcommittee has a rare but real opportunity to help struggling businesses across our country: stop individual states from using dubious “economic nexus” theories to levy income and franchise taxes against companies that have customers but no physical presence in the taxing state. These taxes harm businesses – especially small businesses, and violate the U.S.

Constitution by unduly burdening the free flow of interstate commerce. On an everyday level – beyond questions over the constitutionality of such a practice, these taxes cause massive compliance costs, when these funds today would be better put to use hiring additional workers or investing in new technologies that will grow their individual business and the American economy as a whole.

Without such a clarification by Congress or the U.S. Supreme Court, businesses will continue to face an unclear business environment with no way of estimating where and when they will be taxed. Business expansion is chilled as a result when it is most needed now. Companies will also face the risk of duplicative taxation, as they also pay increasing legitimate taxes to the states in which they are domiciled.

It is time for Congress to step in and assume its constitutional responsibility to ensure that commerce is not harmed by unfair taxation. CEA strongly supports H.R. 1083, The Business Activity Tax Simplification Act of 2009, which would provide the much needed relief to American businesses. We applaud the leadership of Representatives Rick Boucher (D-VA) and Bob Goodlatte (R-VA) in introducing this important legislation. H.R. 1083 will provide clarity by providing a bright line definition of physical presence. Most importantly, it will provide relief to business by clearly preempting states from taxing corporations with no physical presence.

Our members are good corporate citizens, and we are not asking for relief from legitimate taxation. We are asking to restore a simple principle: a tax should not be imposed by a state unless that state provides benefits or protections to the taxpayer. H.R. 1083 provides that only businesses receiving state and local benefits derived from such taxation like education, transportation, fire and police, should be subject to such taxes. Furthermore, the legislation will not impact states' ability to collect income or other legitimate taxes from its residents.

Therefore, I respectfully urge you again to say no to taxation without representation and mark-up and pass the Business Activity Tax Simplification Act of 2009.

Thank you.