

Mr. Crapo: Thank you, Mr. President.

And I'd like to thank my colleague from New York, Senator Schumer, for the work he's done on this bill. He shares my grave concerns about the devastating impact that legal interpretations of Public Law 86-272 are having on foreign and interstate commerce. I'm pleased that we can work together in a bipartisan effort to make changes to a law that is in serious need of updating and clarification in view of the more service-oriented economy we have today driven in large part by modern technology's profound transformation of business transactions. This is why we're introducing the "Business Activity Tax Simplification Act of 2007" or "BATSA" today.

Congress has a Constitutional responsibility to ensure that interstate commerce is not unduly burdened by state actions, including unfair and burdensome taxation of such commerce. Public Law 86-272 was enacted almost fifty years ago, for just these purposes. Ways of conducting multi-state business have changed, and, in the absence of any clarifying legislation, some state courts have interpreted taxation activity under an "economic presence" approach. This approach does not reflect the intent or spirit of the Commerce Clause of the Constitution; furthermore, it creates a climate of uncertainty that inhibits business expansion and innovation. Businesses have to take into account the very real possibility that they will be taxed multiple times for the same business activity. These "business activity taxes" are certainly appropriate when a business has a physical presence in a state; these taxes are inappropriate when imposed by a state where that business's customer happens to reside, but in which the business has no physical presence.

States' efforts to impose improper business activity taxes have been furthered by the Supreme Court's recent silence on this issue. Recent state court rulings are in conflict with the high Court's ruling in *Quill Corp. v. North Dakota* in 1992. In that ruling, the Supreme Court prohibited states from forcing out-of-state corporations to collect sales and use taxes unless such corporation had a physical presence in the taxing state. As my colleague from New York pointed out a few minutes ago, state courts in both New Jersey and West Virginia have held that the physical presence test in *Quill* only applies to sales and use taxes, not business activity taxes. I share my colleague's deep concern with the fact that the appeals of these two cases to the Supreme Court were denied certiorari just last week. This denial underscores the urgency of BATSA.

This effort by a large number of states to impose business activity taxes based on economic presence has the potential to open a Pandora's Box of negative implications for businesses. Without clarification by Congress, states will be free to enact revenue-raising nexus legislation and policies that, by definition, will not and cannot take into account the national impact of such activities. The eleventh-hour enactment of economic nexus legislation by the New Hampshire State Legislature just days after the Supreme Court denial of certiorari in the New Jersey and West Virginia cases is a sign of things to come. For many businesses, this will serve as a death knell for growth and expansion.

BATSA will help clarify the intent of Public Law 86-272. BATSA codifies the "physical presence" standard and will eliminate confusion for state tax administrators and businesses alike. It's consistent with current law and the notion that a tax should not be imposed by a state unless that state provides benefits or protections to the taxpayer. BATSA clarifies that an out-of-state business must have nexus under **both** the Due Process Clause and the Commerce Clause. This standard is also consistent with the standards we have in place with regard to our trading partners abroad.

BATSA modernizes Public Law 86-272 by extending the protections under that law to include solicitation activities performed in connection with all sales and transactions, not just tangible personal property. BATSA applies to all business activity taxes, not just net income taxes. This includes gross receipts taxes, gross profits taxes, single business taxes, franchise taxes,

capital stock taxes and business and occupation taxes. It does **not** apply to transaction taxes such as sales and use taxes.

BATSA protects the free flow of information, critical in our modern era of Internet business and protects the activities where the business is a consumer in that state. And, as my colleague, Senator Schumer, rightly pointed out, it's counterintuitive to impose taxes on an out-of-state company purchasing goods or services from an in-state company, since the out-of-state company isn't generating any revenue for the state.

BATSA upholds the approach of disregarding certain de minimus activities codified in Public Law 86-272.

States have argued that BATSA will result in substantial lost state tax revenue. In fact, according to the Congressional Budget Office, the projected total loss of revenue to states from BATSA in year one of enactment represents just .2 (point two) percent of all state and local taxes paid by businesses in 2005. And the CBO cost estimate is actually less than the cost claimed by the National Governor's Association in its own revenue estimates.

I'll tell you what BATSA does not do. BATSA does not help large companies avoid paying their fair share of state taxes, stating explicitly that states retain the authority to adopt or continue to use anti-tax avoidance compliance tools. It expressly endorses statutory and regulatory tools at states' disposal to combat tax abuse. Industry and activity-specific safe harbors included in prior bills do not exist in this legislation.

In the glaring absence of Supreme Court clarification on *Quill Corp. v. North Dakota*, and in the presence of confusing state court interpretations of that decision and ongoing, and legally-creative revenue-raising schemes by states, it's imperative that Congress act now to preserve the free flow of commerce between states. The Business Activity Tax Simplification Act of 2007 provides that clarification. BATSA ensures that one standard of taxation applies for taxing multi-state companies, so that companies are not unjustly taxed multiple times by different states on the same income. I hope that our colleagues here in the Senate will support this important legislation that will protect the business expansion in our country that keeps our economy competitive and thriving.

I yield the floor.