

## IN LIGHT OF SUPREME COURT REFUSAL TO END DOUBLE AND TRIPLE TAXATION OF BUSINESSES, CRAPO AND SCHUMER UNVEIL LEGISLATION TO PROVIDE RELIEF

*Varying Mix of State Tax Laws Leading to Multiple Taxes on Same Income - More and More Companies Pay Business Activity Taxes Based on Physical Location and Customers' Locations Schumer & Crapo Introduce Business Activity Tax Simplification Act (BATSA) To Mandate Consistent, National Taxing Standards Senators: The Physical Presence Standard Should Be Codified*

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Following the Supreme Court's refusal last week to hear two cases relating to multiple layers of tax on multi-state businesses, today U.S. Senators Mike Crapo (R-Idaho) and Charles E. Schumer (D-New York) announced legislation that would relieve impacted businesses from the burden of double taxation, which results from a varying mix of state tax laws. At issue is whether companies, in addition to being taxed in the state where physically located, should also be subject to business activity taxes where they solicit business or have customers, even if they do not have employees or physical location in the state.

The Schumer-Crapo legislation, known as the Business Activity Tax Simplification Act (BATSA), codifies the physical presence standard, which is common practice for the imposition of sales and use taxes but not for income taxes. This bill would thus eliminate one type of double taxation and its resulting chilling effect on interstate commerce.

"Businesses should not be punished with double taxation simply because their products reach beyond state borders," said Schumer. "At a minimum, this is a huge administrative burden. In the worst case scenario, these differing state tax treatments will drive businesses to states with more favorable laws. Either way, the effect on commerce is debilitating."

Crapo said, "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."

In recent years, states that impose taxes based on economic presence have caused widespread litigation and stifled commerce. With a dizzying maze of state and local tax rules – some enacted by legislatures and others imposed by state revenue authorities and upheld by state courts – simplification is desperately needed, according to Crapo and Schumer.

The legislation will have positive benefits for companies big and small. For smaller businesses facing different taxing standards in different states, BATSA would eliminate costly litigation and administrative issues. For larger companies that have customers throughout the country, the legislation creates clarity and reduces the likelihood of double taxation. For the states, the bill creates a uniform taxing standard that permits them to compete on a level playing field for business activity and jobs, while establishing a predictable and relatively easily discernable tax base.

On June 18, 2007, the Supreme Court denied certiorari in two cases that challenged the constitutionality of taxing companies with no physical presence in a state, making the Schumer-Crapo legislation even more necessary. In addition to ignoring the tax imbalance, the court's inaction has emboldened at least one state to introduce new legislation that would allow it to levy taxes on based economic presence – and states could follow suit if Congress

doesn't act, noted both Senators.

"In short, this is no longer a theoretical discussion," Schumer said. "I believe that Congress has a duty to prevent some states from impeding the free flow and development of interstate commerce and to prevent double taxation."

The Schumer-Crapo legislation updates current law by codifying the physical presence standard, requiring a business to have a physical presence, such as employees or property, in the state before it can be subject to state business activity taxes. The bill establishes a bright-line standard that will eliminate any confusion for both state tax administrators and businesses as to the circumstances under which businesses are subject to state business activity tax (BAT). Under BATSA, mere economic activity – such as in-state customers – would be insufficient for a state to impose income and other business activity taxes on out of state businesses. Firm guidance on what activities can be conducted within a state that will trigger that state's taxing power will provide certainty to tax administrators and business, reduce multiple taxation of the same income, and will reduce compliance and enforcement costs for states and businesses alike.