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BOUCHER AND GOODLATTE REINTRODUCE BUSINESS ACTIVITY TAX CLARIFICATION LEGISLATION

(Washington, D.C.) - Congressmen Rick Boucher (D-VA) and Bob Goodlatte (R-VA) reintroduced today legislation to clarify the confusion surrounding when states can levy business activity taxes on out-of-state businesses.

Over the past several years, a growing number of states have sought to collect business activity taxes from businesses located in other states that have minimal contacts with the state seeking to impose the tax. Different states use different standards for determining what constitutes sufficient contacts with a state to justify taxing an out-of-state business. As a result, many businesses have shied away from expanding their presence into other states for fear of exposure to further taxation.

“Currently, no clear national standard exists to define a substantial nexus for the taxation of business activity by the states. This uncertainty has allowed some states to impose unfair taxes on businesses which have no physical presence in those states and do not benefit from the services provided by the tax revenue. The Business Activity Tax Simplification Act will rectify the unfairness which currently exists by clarifying that our Constitution requires a physical presence nexus standard. This standard ensures that states have the ability to tax businesses that benefit from services provided by the state, while businesses that have no physical presence in a state would be exempt from taxation on business activity in that state,” Boucher said.

“This legislation sets specific guidelines for when an out-of-state business may be charged a tax for doing business in a state,” Goodlatte said. **“Just because a website can be accessed by consumers in a certain state, doesn’t mean that state should be able to collect taxes from the website owner. This legislation focuses on allowing the Internet and the commerce that it facilitates to expand, by eliminating excessive taxes that harm on-line growth.”**

“The nexus provisions are necessary, common-sense clarifications that will benefit states and businesses by eliminating gray areas regarding what constitutes a substantial presence,” Goodlatte said. **“This legislation will ensure that businesses are not subject to double taxation at the state level, which will ultimately facilitate**

the continued growth of e-commerce, job creation and the overall strength of the American economy.”

The Congressmen pointed to numerous examples of aggressive state tax impositions against out-of-state companies. For example, some states take the position that a business whose trucks pass through the state six or fewer times in a year—without picking up or delivering goods within the state—has sufficient connections with the state to justify imposing business activity taxes on that company. Other states assert that having a website on a server in the state creates a sufficient connection to justify imposing these taxes. Additionally, some states believe that registering to do business in a state, or listing a phone number in a local phone book in that state is a sufficient connection to justify taxation.

The Business Activity Tax Simplification Act of 2009 is cosponsored by Congressmen Artur Davis (D-AL), Bachmann (R-MN), Herseth Sandlin (D-SD), Jones (R-NC), Bobby Scott (D-VA), Jordan (R-OH), Weiner (D-NY), Pence (R-IN), and Joe Wilson (R-SC). The legislation will be referred to the House Judiciary Committee, on which Boucher, Goodlatte and many of the other cosponsors serve.

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