

# **Support the Business Activity Tax Simplification Act**

## ***H.R. 1083 Ensures Tax Fairness and Clarity***

### **BACKGROUND**

Increasingly, state and local taxing officials are attempting to apply “economic nexus” standards in an aggressive effort to collect business activity taxes from businesses that are based in other states, even though such businesses receive no appreciable benefits from the taxing jurisdiction. In the last two years, some state tax enforcement agencies have demanded that boat manufacturers pay millions of dollars in back-taxes, interest, and fines in states where they had unknowingly established nexus. The complexity and cost of understanding and complying with these inconsistent and vague nexus rules is detrimental to interstate commerce and hurts marine manufacturers doing business across state lines.

Attempts by state and local taxing officials to apply nexus has led to considerable unfairness and uncertainty and generated contentious, widespread litigation. This uncertainty has hindered business expansion as businesses shy away from expanding their presence in other states or constructing otherwise inefficient business structures for fear of exposure to unfair tax burdens. Clear and equitable jurisdictional standards consistent with constitutional principles must be implemented to reduce complexity. Left unchecked, this taxation without representation and unwarranted expansion of the state and local authority to impose business activity taxes will have a chilling effect on the entire economy, including marine manufacturers, as tax burdens, compliance costs, litigation, and uncertainty escalate.

On June 24, 2008 the House Judiciary Commercial and Administrative Law Subcommittee held a hearing on H.R. 5267, the Business Activity Tax Simplification Act. Mark Ducharme of Monterey Boats, an NMMA member, testified at the hearing about his experiences being repeatedly held up by back taxes by three states where his company had no physical presence.

### **ISSUE**

Because states continue to aggressively expand their tax jurisdiction over businesses not within their states, NMMA urges Congress to pass national legislation, the Business Activity Tax Simplification Act (BATSA), to modernize state business activity tax laws. NMMA believes that its members should continue to pay business activity taxes in those states where they have established physical, “bricks and mortar” presence and where they receive direct benefits and protections.

- **BATSA Clarifies “Physical Presence.”** BATSA would codify the majority view among state courts and tribunals that the Constitution requires a business to have a physical presence in a state before that business can be subjected to a state’s business activity tax. The legislation is designed to clarify “physical presence” so businesses will know which activities trigger nexus in a state, significantly reducing room for interpretation of presence, hopefully to the point that a “bricks and mortar” facility would be required in a state before a company would be liable for state income, franchise or sales taxes. Because so many boat manufacturers conduct business across state lines without ever establishing physical presence, BATSA would save boat manufacturers millions in state taxes levied upon, for example, warranty repairs and ownership transfers among dealers.
- **BATSA Ensures Tax Fairness.** The legislation would ensure fairness, minimize litigation, create the kind of legally certain and stable business climate that encourages businesses to make investments, expand interstate commerce, grow the economy, and create new jobs. BATSA would also ensure a level playing field for taxpayers by using a bright-line standard analogous to the permanent establishment standard used by the United States in international treaties.
- **BATSA is Bipartisan.** On February 13, 2009, Congressmen Rick Boucher (D-VA) and Bob Goodlatte (R-VA) introduced H.R. 1083, the Business Activity Tax Simplification Act (BATSA). The bill currently has 14 bipartisan co-sponsors.

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