Congress of the United States
Washington, DC 20515

April 27, 2005

A COMMONSENSE SOLUTION TO NONSENSICAL TAX SCHEMES

Dear Colleague:

There's no denying that ensuring that businesses have a degree of certainty with respect to their state tax liability is essential to a strong national economy. Unfortunately, state assessments of taxes against out-of-state companies increasingly fail to comport with established precedent or even basic notions of fairness.

Do you believe that the tax environment described by the following stories is likely to help foster business investment and our economy?

- A husband and wife own a small software company in South Carolina (annual sales of approximately $100,000) and sell software out of their home to customers located in many states throughout our nation. The software sales include a license agreement between the company and the purchaser; however, the company has no physical presence in any state except South Carolina and Georgia. Recently, New Jersey revenue authorities asserted that the software licenses created sufficient contact with the state to justify imposing business activity taxes on the company. Despite the fact that the company's annual revenue from customers in New Jersey over the past few years has been as low as $49, New Jersey's claim against the company would require it to pay a $500 per year minimum corporate tax and a $100 per year corporate registration fee.

- The Louisiana Department of Revenue has threatened to assess business activity taxes on several out-of-state companies based on the fact that those companies broadcast programming into the state. The Department's rationale is that these out-of-state companies are exploiting the Louisiana market because the programming is seen or heard by individuals in Louisiana.

- According to a recent survey, 16 states assert that an out-of-state company with nothing more than a website on someone else's server in the state has a sufficient connection to the state to justify imposing business activity taxes on the out-of-state company. The same survey indicates that 11 states believe that an out-of-state company that lists a telephone number in a local phone book located in the state has a sufficient nexus with the state to justify taxation.

- A recent survey shows that eight states take the position that a business whose trucks merely pass through the state six or even fewer times in a year – without picking up or delivering goods – has sufficient connections with the state to justify imposing business activity taxes on that company.

If your answer to the question above is "NO," then help create a tax environment that *does* encourage investment and innovation. Tomorrow, we will be re-introducing our bipartisan "Business Activity Tax Simplification Act," which codifies the kind of clear, bright line rules companies need to make the important business and investment decisions that will enable them to innovate and grow across state lines. By requiring a "physical presence" before a jurisdiction can tax an out-of-state business, this legislation will help eliminate the current maze of business activity tax regulations that stifle the growth of good companies.

To cosponsor this important legislation, or to get more information, please contact Branden Ritchie in Congressman Bob Goodlatte's office at x55431, or Amy Levine in Congressman Rick Boucher's office at x53861.

Bob Goodlatte
Bob Goodlatte
Member of Congress

Rick Boucher
Rick Boucher
Member of Congress