

INTRODUCTION OF THE BUSINESS
ACTIVITY TAX SIMPLIFICATION
ACT OF 2008

HON. RICK BOUCHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 2008

Mr. BOUCHER. Madam Speaker, I rise to introduce the Business Activity Tax Simplification Act of 2008, a measure that will bring much needed clarification to the circumstances under which states may impose taxes on out of state businesses. This is a bipartisan measure in the principal sponsorship of which I am pleased to be joined by my Virginia colleague BOB GOODLATTE. We are joined in sponsorship of the measure by Mr. CHABOT, Mr. ARTUR DAVIS, Mr. FEENEY, Mr. GALLEGLY, Ms. HERSETH SANDLIN, Ms. JACKSON-LEE, Mr. HANK JOHNSON, Ms. LOFGREN, Mr. PENCE, Mr. BOBBY SCOTT, and Mr. WEXLER, many with whom we are pleased to serve on the House Judiciary Committee.

Traditionally, states and localities have levied corporate income, franchise and other taxes only on those businesses that have a physical presence in the taxing jurisdiction. The growth of the Internet and other forms of advanced communications has made it possible for businesses to conduct a broad range of transactions without the constraints of geopolitical boundaries. As a result, some states have attempted to expand their tax base by assessing business activity taxes against out-of-state companies that have customers but no property or employees in the taxing state. Both large and small companies are facing an increasingly unpredictable tax environment, which hinders business expansion and threatens the continued development of e-commerce.

The measure we are introducing today will bring certainty to the increasingly chaotic tax environment for businesses by clarifying that the states cannot attempt to tax the income of a company that has no physical presence within the taxing state's borders. Our legislation sets forth clear, specific standards to govern when businesses should be obliged to pay business activity taxes to a state. Generally, a business must use employees or services in a state for 15 days or more in a calendar year before it is liable to pay business activity taxes to that jurisdiction.

The Business Activity Tax Simplification Act also modernizes a law which Congress enacted forty-nine years ago that set clear, uniform standards for when states could tax out-of-state businesses based upon the solicitation of orders for specified kinds of sales. Reflecting the economy of its time, the scope of Public Law 86-272 was limited to income taxes on the sale of tangible personal property. Our nation's economy has changed dramatically over the past half-century, and the statute must be modernized to apply equally to the sale of intangible property and services, and to other business activity taxes.

I want to emphasize that the Business Activity Tax Simplification Act does not diminish the ability of states and localities to collect tax revenue. Rather, it rationalizes and makes more predictable the process of doing so.

The lack of clarity in current law has led to sometimes absurd results. A collection agent with the New Jersey Department of Taxation

stopped a refrigerated truck loaded with product belonging to Smithfield Foods, a company headquartered in my state of Virginia, on the New Jersey turnpike. The agent held the truck and its driver for several hours and demanded that, to release the truck, Smithfield had to wire \$150,000 immediately to the New Jersey Department of Taxation. The agent claimed that he had the right to hold the truck and its contents because Smithfield had failed properly to file New Jersey tax returns.

Smithfield informed the New Jersey agent that his claim was unfounded. It explained that Public Law 86-272 protected it from New Jersey income taxation because it only engaged in solicitation by advertising in New Jersey and had no physical operations in the state. The agent refused to accept this explanation; however, he finally agreed to release the truck and its driver in return for \$8,000.

Smithfield appealed this aggressive and incorrect application of Public Law 86-272 to the New Jersey State tax commissioner. Ultimately, New Jersey accepted Smithfield's contention that it has no physical presence in the state and is, therefore, not subject to New Jersey income tax. It issued Smithfield a refund and an apology for its roadside justice system, but not before Smithfield had invested much time and expense in resolving a situation which should not have arisen. Our measure will help avoid such scenarios in the future by clarifying the physical presence standard embodied in Public Law 86-272.

New Jersey has used similar tactics against out-of-state companies selling intangible goods to its residents, a situation not covered by Public Law 86-272. It has argued that a mom-and-pop South Carolina software company, with no physical presence in any states besides South Carolina and Georgia, owes a minimum of \$600 per year in corporate income taxes and fees based only on the sale of licensed software to a New Jersey entity, and that the company would owe such tax every year that its software was in use in the state, even for those years in which the company had no income from any customer in New Jersey.

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

Several states attempt to assess business activity taxes on out-of-state credit card companies based solely on the fact that people use the companies' credit cards in the taxing jurisdiction and enjoy the "substantial privilege of carrying on business" in the state.

Some localities have attempted to impose personal property taxes on property orbiting in space. For example, Los Angeles County attempted to impose a property tax on a county-based company which owned eight communications satellites permanently orbiting in space. The city of Virginia Beach, Virginia, also attempted to impose personal property taxes on three transponders attached to satellites orbiting in space which were owned by a city-based cable company. If states were to use the same approach to impose business activity taxes, on the basis that a satellite orbiting above the state creates a physical presence there or because a business generates

income in a state because its satellite passes over the state, there would be significant consequences for many industries.

The Business Activity Tax Simplification Act offers Members the opportunity to put an end to nonsensical situations like these. In doing so, we will provide certainty to both U.S. businesses and to states, thereby fostering economic growth and development. I thank Mr. GOODLATTE and the original cosponsors of the Business Activity Tax Simplification Act for their support, and I urge each of our colleagues to join with us in passing this bipartisan measure.

RECOGNIZING THOMAS K. FLEMING
FOR HIS YEARS OF SERVICE
TO THE NORTH RICHLAND
HILLS, TEXAS COMMUNITY

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 2008

Mr. BURGESS. Madam Speaker, I rise today to recognize Thomas K. Fleming. Mr. Fleming, of North Richland Hills, Texas, after 13 years of service, has recently retired from S.C.O.R.E., the Service Corps of Retired Executives.

Mr. Fleming helped to establish the local North Richland Hills chapter of S.C.O.R.E. in 1995. Under his leadership, S.C.O.R.E. has offered small business seminars and one-on-one counseling to owners and prospective owners of small businesses at the North Richland Hills Public Library for more than a decade.

Under Mr. Fleming's leadership, S.C.O.R.E. has helped thousands of small business owners in the North Richland Hills area by giving them expert, no-cost, confidential counseling to improve the chances of their small business success. The local economy owes many thanks to Mr. Fleming's guidance.

While his time with S.C.O.R.E. is coming to a close, I am confident Mr. Fleming will continue to enrich the city of North Richland Hills as a devoted resident. I am privileged to join his family, friends, and coworkers in extending my sincere congratulations on his retirement.

Again, Madam Speaker, I am proud to recognize Thomas K. Fleming for his diligent work as a dedicated serviceman to his local community. I am honored to acknowledge such a committed and altruistic citizen. It is the servant leadership of Mr. Fleming, and those like him, which truly makes our nation great.

HONORING SUPER BOWL XLII
CHAMPIONS THE NEW YORK GIANTS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 2008

Mr. RANGEL. Madam Speaker, today I rise on behalf of the New York Delegation to congratulate the champions of the football world, the New York Giants. They successfully defeated the perfect New England Patriots 17-14 in Super Bowl XLII in one of the biggest

upsets in Super Bowl history in Glendale, Arizona on February 3, 2008.

New Yorkers were first introduced to professional football and the New York Football Giants in my congressional district, sharing their games with the city's baseball Giants in the Polo Grounds. From those magnificent days on 155th Street and 8th Avenue until today, the Giants have always brought us memorable games. Deep-rooted enthusiasts remember the famed Sneaker Game when the team, playing in 9 degree weather, switched to basketball shoes to increase traction in the icy turf Frankfurt Yellowjackets in 1925. They recall how the G-men sailed to Super Bowl victory in 1986 under the powerful running game of Joe Morris, the pressure of Lawrence Taylor and near-perfection of quarterback Phil Simms. Football fans everywhere will also recall how the Giants won their second Super Bowl in a dramatic 20–19 victory over the Buffalo Bills.

In Super Bowl XLII, the Giants have once again provided fans with another dramatic victory. This time it was against arguably one of the greatest offenses that the game has seen, an undefeated veteran team who was widely expected to win their fourth championship of the decade. Yet the Giants remained resilient. Just like they overcame an early 0–2 start to their season, they overcame early mistakes to keep it close. And then when it mattered the most, they came up with a perfect answer for the perfect Patriots: a frantic 12-play, 83-yard drive, led by quarterback Eli Manning, that featured a dazzling leaping catch by David Tyree and key plays by running back Brandon Jacobs, as well as receivers Steve Smith and Plaxico Burress.

Because of their team effort, the Giants now become the first NFC wild card team to win a Super Bowl. I extend my heartfelt congratulations to the entire team who placed with such valor and heart. Especially to the recipient of the Most Valuable Player Award, quarterback Eli Manning who has shown tremendous growth and has matched the successes of his brother, Indianapolis Colts quarterback Paton Manning.

I also salute the co-owners, the Mara and Tisch families and their coaches—Head Coach Tom Coughlin, Offensive Coordinator Kevin Gilbride, Defensive Coordinator Steve Spagnuolo, Special Teams Coordinator Tom Quinn, and the rest of the coaching staff for their commitment, expertise and leadership. Coughlin, a highly successful head coach at Boston College and with the Jacksonville Jaguars, and a former Giants assistant, was hired as the 16th head coach in Giants history. This victory is Coughlin's first appearance in a Super Bowl as a head coach.

History will always have a special place for Coughlin's New York Football Giants. They are truly an inspirational team whose victory will live forever in Super Bowl lore.

HONORING WILLIAM H. LEWIS JR.

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 2008

Mr. PALLONE. Madam Speaker, I would like to honor a friend and colleague William H. Lewis, Jr. of Neptune, New Jersey who passed away on Monday, January 28. Bill was

a remarkable man who dedicated his life to public service. He will be greatly missed by his family, his friends and the entire New Jersey community he served.

After a second valiant fight with cancer, Bill died at the Jersey Shore University Medical Center. Born in New York City on November 27, 1939, he lived a fulfilling and diversified life in which he found great successes in so many areas.

Bill was an enthusiastic educator for almost 30 years. Along with his wife, Bill started teaching in Harrisburg, Pennsylvania, before they would move back to New Jersey to his childhood roots, where he then taught at Shore Regional High School, in West Long Branch. He was also an adored football and track coach and a local advocate at the West Side Community Center in Asbury Park.

During his days at Shore Regional, Bill would become a local Monmouth County Education Association president, working hard to protect teacher's rights. When Bill retired from teaching 18 years ago, he would continue advocating for children in New Jersey outside of the classroom. He became a full-time activist for the New Jersey Education Association, where he worked to advance and protect the rights, benefits, and interests of its members, and promote a quality system of public education for all students. It was in this capacity that I had the honor of working closely with Bill. Together we worked to help New Jersey students achieve excellence.

Bill is survived by a son, William David Lewis and a daughter, Michele Lewis, as well as other loving extended family members. His loving wife, Laura Oxley Lewis predeceased Bill, whom he lost almost 6 years ago to her own bout with cancer.

Madam Speaker, Bill Lewis was a devoted advocate for children and public education. He was a strong champion for New Jersey's children, working tirelessly to provide them with better opportunities and life choices. My thoughts and prayers are with his family and friends during this trying time.

REMEMBERING THE VICTIMS OF GENOCIDE IN BOSNIA

HON. JOHN W. OLVER

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 2008

Mr. OLVER. Madam Speaker, I rise today in remembrance of the victims of genocide in Bosnia. I would particularly like to draw the attention of this body to the atrocities perpetrated by Serb forces against the Bosniak and Croat populations in eastern Bosnia. Eastern Bosnia became the site of a number of atrocities long before the name Srebrenica became known worldwide. The aggression perpetrated against the newly independent and sovereign Bosnia and the genocide of its Bosniak population took one of its earliest and most vicious forms with the attacks of Serb forces on eastern Bosnia in 1992. The multi-ethnic and multi-religious character of eastern Bosnia was systematically destroyed beginning in April 1992.

The historic town of Visegrad epitomizes what happened in eastern Bosnia in 1992. The assault on Visegrad started on April 6, 1992 when Serb military units began shelling

Visegrad and several of the nearby Bosnian Muslim villages. With the takeover of Visegrad, Serb forces unleashed a campaign of terror against the Bosniak and Croat population of Visegrad. Every day men, women and children were killed on a famous bridge on the Drina and their bodies were dumped into the river. Many of the Bosniak men and women were arrested and detained at various locations in the town. Serb soldiers raped women and inflicted terror on civilians. Looting and destruction of Bosniak and Croat property occurred daily and mosques in Visegrad were destroyed.

As the journalist Ed Vulliamy described in *The Guardian*: "For centuries, although wars had crisscrossed the Drina, Visegrad has remained a town two-thirds Bosnian Muslim and one-third Bosnian Serb. The communities entwined, few caring who was what. But in the spring of 1992, a hurricane of violence was unleashed by Bosnian Serbs against their Muslim neighbors in Visegrad, with similar attacks along the Drina valley and other parts of Bosnia. Visegrad is one of hundreds of forgotten names . . . As elsewhere, the pogrom was carried out on orders from the Bosnian Serb leader Radovan Karadzic and his military counterpart General Ratko Mladic, both still wanted for genocide." By the end of 1992, the Bosniak and Croat communities in Visegrad were effectively "cleansed" through killings and deportations. Some survivors of the initial attacks on eastern Bosnia found their way into the three Bosnian government-held enclaves and United Nations-declared "safe havens" of Srebrenica, Zepa and Gorazde. The tragic fate of these "safe havens" is well known. The fate of Visegrad and the pattern of genocidal violence was similar in other eastern Bosnian towns such as Bijeljina, Zvornik and Foca.

As we prepare to mark another anniversary of the beginning of genocidal violence in eastern Bosnia and as we prepare to commemorate the 13th anniversary of Srebrenica, let us remember the victims of Visegrad and other Visegrads throughout Bosnia.

INTRODUCTION OF LEGISLATION TO AWARD THE CONGRESSIONAL GOLD MEDAL

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 2008

Mr. UDALL of New Mexico. Madam Speaker, I rise today to proudly introduce legislation to award the Congressional Gold Medal to some of the most valiant and courageous soldiers who have ever fought for our Nation—the troops who battled and were prisoners of war at Bataan during World War II.

Nearly seven decades ago, the United States responded to the attacks on Pearl Harbor by declaring war—and more than 5,000 miles away in the Philippines, thousands of American soldiers, many of whom were from my State of New Mexico, found themselves on the frontline of this global fight. For 4 months, in the face of overwhelming odds and without ready supplies or reinforcements, these troops fought and died for their Nation. Their efforts not only provided the U.S. with much needed stories of heroism during a dire, dark time of the war, their sacrifice also substantively provided much needed time for U.S. and Allied