U.S. House of Representatives
Committee on the Judiciary

Statement of Congressman Rick Boucher
Before the House Judiciary Committee
Subcommittee on Commercial and Administrative Law
Hearing of H.R. 5267,
The Business Activity Tax Simplification Act of 2008

June 24, 2008

Chairwoman Sanchez, I appreciate your conducting today's hearing on the Business Activity Tax Simplification Act, which I introduced with my Virginia colleague Bob Goodlatte.

The measure is cosponsored by 26 House Members, including our Committee colleagues Hank Johnson, Bobby Scott, Zoe Lofgren, Artur Davis, Sheila Jackson-Lee, Bob Wexler, Anthony Weiner, Elton Gallegly, Steve Chabot, Mike Pence, and Tom Feeney.

It is an urgently needed modernization of the 49-year-old federal statute that determines when states can impose state income taxes on the sale of tangible personal goods in the state.

Reflecting the economy of its time, that five decade old law only applies to state income taxes and only to the sale within the state of tangible personal property.

Over the years, states have adopted a series of business activity taxes that are proxies for the state income tax, including gross receipts taxes, licensing arrangements, and other charges which states frequently seek to impose on out of state companies.

And over the years, greater volumes of our national commerce have been in intangible products and services, such as financial services and software.

Our measure modernized the old law by expanding it to address not just state income taxes but business activity taxes as well.

We also make the circumstances under which these taxes can be imposed on out of state companies explicit with a bright line standard.

For 49 years the test has been whether the out of state company has a physical presence in the taxing state.

We keep that standard, but we provide a clearer definition of what constitutes physical presence. The bill provides certainty for the states and out of state companies alike by specifying that physical presence means having property or employees in the state for at least 15 days annually. If that test is met, state business activity taxes can be imposed on the sales that take place in the state.

In the absence of these needed changes, the current legal uncertainty is producing undesirable results.

- In Louisiana, the threat of business activity taxes has been raised against companies that have no physical presence in the state but broadcast advertisements into the state from out of state.
- Several states have attempted to impose business activity taxes on credit card companies located outside the state, based solely on the fact that in state

residents subscribe to the credit cards.

- New Jersey has held trucks belonging to companies with no physical presence in New Jersey that were passing through the state to make deliveries in another state until business activity taxes of tens of thousand of dollars were paid.

Many other equally troubling examples can be cited.

Our legislation is a needed modification of an old law which is appropriate to the realities of today's national commerce. It offers a certainty that should be welcome to both companies doing business across state lines and state taxing authorities alike.

I appreciate the Committee's focus on this timely matter and look forward to working with you as we take further steps.