Multistate business taxation — North Dakota

Business Activity Tax Simplification Act of 2011

North Dakota Office of State Tax Commissioner
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October 19, 2011

Business activity taxes are levied by states on companies for the privilege of doing business in or earning income within a state, and include state corporate income taxes, gross receipts taxes, business license taxes, and business and occupation taxes. The Business Activity Tax Simplification Act of 2011 (or BATSA), introduced in the 112th Congress as H.R. 1439, would greatly restrict states' ability to tax in-state business activity, primarily in the following ways:

1. It would overturn the current "doing business" standard for levying these taxes, and substitute a "physical presence" standard. This would require a business to have physical presence in a state to be subject to the state's business activity tax. Currently the physical presence requirement only applies to sales and use taxes.

2. It would greatly expand the activities under law that a business can carry on in a state without becoming subject to its business activity tax. H.R. 1439 further expands protected activities to other income producing business transactions such as the sale of intangible property, provision of services and certain coverage of events.

3. While the claim is that the H.R. 1439 will simplify business activity taxes by creating a "physical presence" standard, it will...

- ***narrowly define and limit in-state business activities*** that constitute "physical presence" and create nexus.

- ***create an ambiguous nexus standard*** rather than a "bright-line" standard.

- ***expand multistate entities' ability to shelter income from state taxation*** by restructuring in-state operations and transactions, such as hiring contractors to perform activities in a state to maintain their market in the state. This would not only increase complexity, but also promote inefficiency and inequity, setting off a new round of litigation between businesses and state and local governments.

- ***give multistate businesses an unfair advantage over smaller in-state businesses*** through reduced or no state tax liability, resulting in the smaller in-state businesses shouldering a greater share of the taxes needed to maintain state services.

BATSA in its current form of H.R. 1439 is and, in its previous forms, has been opposed by the National Governors Association, the Multistate Tax Commission, and the Federation of Tax Administrators.