

AMERICANS *for* TAX REFORM

Statement of

Grover G. Norquist
Americans for Tax Reform

House Committee on the Judiciary
Subcommittee on Regulatory Reform, Commercial
and Antitrust Law

Hearing on Tax Nexus

June 2, 2015

Chairman Marino, Ranking Member Johnson, and Members of the Subcommittee, thank you for the opportunity to testify before the Subcommittee today on behalf of all taxpayers. My name is Grover Norquist and I am the president of Americans for Tax Reform. Americans for Tax Reform advocates on behalf of taxpayers for a system in which taxes are simpler, flatter, more visible, and lower than they are today.

I am happy to lend a voice of support for the **Business Activity Tax Simplification Act**, the **Mobile Workforce Act** and for the **Digital Goods Services Fairness Act**. These bills codify clear boundaries as to a state's authority to tax individuals, businesses, and products. These boundaries prevent the taxman's arm from growing forever longer and from always coming back for seconds.

Our nation was founded to establish the principle – among others – that there be no taxation without representation. Without clarification of regulatory boundaries on interstate business and commerce, we are facing a return to taxation without representation. The bills being discussed today will lead to simpler, flatter and more visible tax codes.

Nexus is one of the most pressing issues in our tax structure. Nexus is the legal connection a state has with an individual, a business, or a vendor that gives the state the ability to compel tax collection on behalf of that state. As the digital and

physical world meld together appropriate boundaries need to be set on taxation authority to withstand regulatory overreach.

As individuals, businesses, and goods have become more mobile, more digital, some politicians think they have found the holy grail of tax collection: taxing people who can't vote against them or leave.

While the most obvious check on taxation without representation is our republican form of government, a critical check has also been established in states through the concept of "physical nexus." A person or business has to have some kind of physical presence – employees, own or lease property – within a state in order to be subject to the taxation authority of a state. California, for example, cannot just impose a business income tax on Florida businesses. Makes sense.

Disturbingly this protection hangs by a thread.

The state politicians' Holy Grail is the "economic nexus" theory. These standards, codified in many different forms across the country, grant nebulous authority to force out-of-state, non-residents to comply with a state's tax code. The gradual shift to economic nexus is an attempt by states to raise tax revenue beyond what their own economies and taxpayers can sustain.

Without codifying physical presence, states will continue to try to expand their tax base by assessing business, income, franchise, and sales taxes across borders on businesses that have customers, but no property or employees in the taxing state.

Shifting the cost of government to non-residents poses a direct threat to the principle of republican governance by the people. It also violates the “benefits principle” by pushing the tax burden onto those that receive no direct benefit from the state.

The bills before you today establish bright-line nexus standards that prevent states from reaching across their borders to force out-of-state businesses or individuals to comply with their tax codes – whether it be collecting, remitting, or paying taxes. Tax collectors audit. Tax collectors litigate. Tax collectors threaten. Individual recourse is at the ballot box or with our feet, but economic nexus laws take away that recourse.

The **Business Activity Tax Simplification Act** establishes a clear physical presence standard for taxing multistate businesses engaged in cross-border transactions. The bill will help to foster inter-state economic activity by eliminating the burden for businesses of having to comply with varying and complex state income tax laws.

The **Mobile Workforce State Income Tax Simplification Act** establishes a clear physical presence standard for employees engaged in cross-border work by keeping states from taxing most nonresident employees unless the employee is present and working in the state for more than 30 days during the year. This allows workers to work more efficiently with fewer hurdles, and keep more of their own paycheck.

The Digital Goods and Services Tax Fairness Act, adds a level of clarity when an activity falls outside of the traditional physical presence standard and could result in a product or service being taxed discriminatorily or by multiple states. This legislation will ensure that when a digital product is purchased, it is taxed once and only once. It takes the guesswork out of which state might tax what and how by sourcing the tax to the consumer's billing address.

Over the last several decades, Congressional action has been needed to prevent discriminatory taxes against specific industries. Not being considered today is **H.R. 1528, the End Discriminatory State Taxes for Automobile Renters Act (EDSTAR)** introduced by Representatives Sam Graves and Steve Cohen. If passed, EDSTAR would put an end to new, discriminatory state taxes on rental car companies and their customers. In terms of preventing states from exporting taxes on to people who could never vote in their elections, I hope this committee or another committee of jurisdiction will consider the merits of these bills as well.

In discussing nexus it would be remiss for me to not at least mention incarnations of online sales tax legislation that we have seen in the past, or expect to see in the future. In this instance I will simply say physical presence must be maintained not only in order to prevent state tax base expansion, but also to prevent states from exporting their lawsuits, tax liens, and other policing to non-residents.

To close on the happiest possible note, who doesn't absolutely love a permanent Internet tax moratorium? Can we just send that to the House floor today?