Center on Budget and Policy Priorities

820 First Street NE, Suite 510
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

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PROPOSED "BUSINESS ACTIVITY TAX NEXUS" LEGISLATION WOULD SERIOUSLY UNDERMINE STATE TAXES ON CORPORATE PROFITS AND HARM THE ECONOMY

By Michael Mazerov

Appendix: What Kind of Tax-Avoidance Opportunities Would BATSA Open Up?

In lobbying for BATSA's enactment, organizations representing major multistate corporations claim their goal is to invalidate state laws that impose a business activity tax (BAT) on a business with no "physical presence" in the state. This claim, however, is highly misleading. BATSA would also create numerous nexus "safe harbors" — types of *clear and substantial physical presence* a business could have in a state without having to pay a BAT.

Expanding an Existing Federal Limit on State Taxing Authority

Several of the new nexus safe harbors take the form of an expansion of an existing federal law, Public Law 86-272. Enacted in 1959, it was intended to be a temporary moratorium on states' ability to impose corporate profits taxes on certain out-of-state corporations, but it was never repealed.[1] P.L. 86-272 decrees that a state may not impose a corporate profits tax on an out-of-state corporation if the firm meets three conditions:

- its only activity within the state is soliciting orders for the sale of physical goods;
- it approves the orders at an out-of-state office; and
- it ships or delivers the goods into the purchaser's state from another state.

P.L. 86-272 clearly represents a nexus safe harbor: it allows corporations to have an *unlimited* number of salespeople in a state at *all times* yet remain exempt from income tax if the salespeople work out of home offices or visit from out of state.[2] In the law's absence, the regular presence of a salesperson in a state would obligate the corporation to pay some income tax to that state (assuming the corporation was profitable). The law also permits companies to provide their sales forces with company-owned cars, product samples, computers, furniture, and similar equipment yet remain exempt from income tax in the states where the salespeople solicit business.[3] Finally, P.L. 86-272 permits companies to have an unlimited number of their own trucks continuously plying the roads of a state loaded with an unlimited amount of goods en route to customers there without being liable for any corporate tax payment.

BATSA would expand the coverage of P.L. 86-272 in three significant ways.

Including Sales of Services and Intangible Property

First, BATSA would extend P.L. 86-272 — which deals only with the sale of physical goods — to include sales of services and intangible property. If BATSA were enacted, for example:

- A Delaware bank could send an unlimited number of loan officers into Maryland to encourage businesses to borrow from the bank, without having to pay Maryland tax on the profits it earns from its Maryland borrowers.[5]

- A New York-based television network could send an unlimited number of advertising salespeople to visit major corporations headquartered in other states to solicit the purchase of air time, without having to pay taxes in those states.

- A franchisor like Pizza Hut could enter a state an unlimited number of times to solicit sales of its franchises (a form of intangible property) to potential franchisees — for example, by renting a meeting room in a hotel to conduct a sales meeting — without owing any tax in the state.

Including Activities Besides Solicitation of Orders

Second, while P.L. 86-272 deals only with the solicitation of orders, BATSA would extend the law to cover four new activities:

- "furnishing of information to customers or affiliates in [the] state";

- "coverage of events," if the information gathered is "used or disseminated from a point outside the state";

- "gathering of information," if the information gathered is "used or disseminated from a point outside the state"; and

- "business activities directly related to . . . [the] potential or actual purchase of goods or services within the state if the final decision to purchase is made outside the state."

A company could conduct these activities for an unlimited number of days each year with an unlimited number of employees — and could furnish them with any equipment necessary to carry out these activities — without establishing nexus, provided they worked out of their homes. For example:

- A local TV station could permanently base reporters in a neighboring state within its media market so long as the footage was relayed to the home-state broadcasting facility for transmission to viewers. The station could furnish the reporters with a mobile broadcasting van and video cameras so long as the equipment was stored in a garage at one of the reporters' homes.

- A fast-food franchisor could send an unlimited number of employees to its franchisees' restaurants for an unlimited number of days to inspect compliance with company standards.[6]

- A bank could permanently base employees in a state to investigate the credit-worthiness of potential borrowers.[7]

- A corporation could permanently base an unlimited number of employees in a state to recruit new employees or purchase supplies or equipment for their employer.

In each of these examples, the firm would be exempt from the state's business activity taxes despite the police and fire protection, roads and other infrastructure, and other services provided to company employees and property.

Extending P.L. 86-272 to Include Other Business Activity Taxes

Third, BATSA would extend the protections of P.L. 86-272 (including the four new activities) to taxes other than corporate income taxes. Such taxes would include the following, most of which substitute for a state corporate income tax:

- the Washington (state) Business and Occupations Tax, the Ohio Commercial Activities Tax, and the Delaware Merchants' and Manufacturers' License Tax (all of which are broad-based taxes on business gross receipts),

- the New Hampshire Business Enterprise Tax (a form of value-added tax), and

- the Texas Franchise Tax and Michigan Business Tax (modified gross-receipts taxes that allow deductions from gross receipts for certain business expenses).

The adverse impact of BATSA on the revenues of these states would be much larger than in other states because they are not now subject to P.L. 86-272 and therefore *are* currently imposing these taxes on the many corporations that have salespeople within their borders soliciting orders of goods.

The 14-Day Physical Presence Safe Harbor

In order to interact with their customers and produce goods and services, many kinds of businesses need to send employees and equipment into states in which they do not actually maintain offices, factories, or other permanent facilities. For example, an equipment manufacturer may visit its customers to install and troubleshoot its products, a construction company may send heavy equipment to a building site, and advertising agency personnel may meet at a client's office to plan a campaign.

Under current law, these kinds of activities would almost certainly obligate a company to pay the state's corporate income tax or other BAT, if the state chose to impose it.[8] Under BATSA, however, companies in the above examples could arrange their affairs to avoid income tax liability to any state in which they did not maintain a permanent, “brick-and-mortar” facility. This is because BATSA would permit a company to place any amount of property and any number of employees in a state to conduct any activity it wishes, without creating nexus, as long as the property or equipment remains in the state for 14 or fewer days per tax year.

Moreover, this provision effectively would allow many corporations to keep an unlimited amount of equipment and employees in a state for far *longer* than 14 days without creating nexus. This is because the 14-day limit applies to each individual corporation as a legal entity, including corporations that are subsidiaries of other corporations. For example:

- A movie studio that needed to shoot three different movies in a particular state for 14 days each in a particular year could incorporate each of the three productions separately. When the movies were completed, the subsidiaries would be merged back into the parent.

- A company that needed to have employees in a state for more than 14 days per year in order to repair customers’ computers could avoid establishing nexus outside its home state by incorporating a number of subsidiaries to employ its repair personnel and assign repair tasks to particular subsidiaries on a rotating basis to keep all of them below the 14-day limit.

There is nothing far-fetched about these scenarios. Corporations already go to great lengths to shelter their profits from state taxation by forming new subsidiaries:

- Thousands of corporations have incurred significant accounting and legal expenses to incorporate and operate “intangible holding company” subsidiaries. The North Carolina *Limited* case cited in the body of this report revealed that The Limited established nine separate Delaware subsidiaries to hold title to the trademarks of the various retail chains it owned.[9]

- Over 1,300 corporations, including Dell Computer and former “Baby Bell” company SBC Communications, created new limited partnership subsidiaries to take advantage of a self-imposed nexus limitation on out-of-state corporate partners Texas enacted in the early 1990s.[10]

- A number of states and the U.S. Government Accountability Office have documented a widespread corporate practice of “SUTA [State Unemployment Tax Act] dumping.” In its most common form, corporations create new subsidiaries and transfer their employees to them to take advantage of lower unemployment tax rates for which new corporations typically are eligible. GAO documented that this strategy has been widely marketed by certain accounting and consulting firms, which apparently see it as a legal way to minimize their state unemployment taxes.[11] Congress recognized SUTA dumping as an abusive tax shelter and enacted legislation in 2004 that bans it.[12] Businesses quickly found ways around the ban, however, and SUTA dumping remains a serious problem.[13]

- There is considerable evidence that well-known Internet retailer Amazon.com has separately incorporated its distribution warehouses in order to avoid establishing sales tax nexus in the states in which they are located.[14]

In short, BATSA’s 14-day safe harbor would allow many sophisticated multistate corporations to avoid having a business activity tax liability in many or all states in which they have customers.

Firms could maintain substantial numbers of employees and substantial amounts of equipment in a state on a continuously rotating basis without creating BAT nexus.

This ability belies proponents' fundamental rationale for BATSA: that "if a business is not physically present in a jurisdiction, it is therefore not receiving any benefits or protections from the jurisdiction, and it should not be required to pay tax to that jurisdiction."[15] Clearly, a corporation that maintains personnel and property in a state for extended periods of time is receiving benefits and protections from that state — whether or not it maintains a "brick and mortar" facility there.

Safe Harbor for Hiring Firms to Do In-State Work

In 1960 the U.S. Supreme Court ruled that allowing a corporation to avoid nexus in a state by hiring an independent in-state business to solicit business there, rather than using its own employees, would "open the gates to a stampede of tax avoidance."[16] In its 1987 *Tyler Pipe* decision, the Court held that a state had the right to impose a business activity tax on an out-of-state corporation that had contracted with an independent contractor to conduct activities that were "significantly associated with the [out-of-state corporate] taxpayer's ability to establish and maintain a market in [the] state for [its] sales."

When, under the authority of these decisions, states impose a tax on an out-of-state corporation based on in-state activities that another business conducts on its behalf, this is often referred to as "attributional nexus." If states did *not* have this authority, corporations would have virtual free rein to avoid nexus in every state except the one in which they are headquartered. This is because a corporation can contract with an individual, an unrelated business, or one of its own subsidiaries to carry out almost any business function rather than have its own employees perform it.

In three different ways, BATSA would make it significantly harder for states to assert attributional nexus. The likely result, as the Supreme Court has predicted, would be massive corporate tax avoidance — above and beyond that resulting from the bill's other provisions.

The "Two Clients Loophole"

The most far-reaching of these provisions — and the one likely to do the most damage to state and local BAT revenues — decrees that a state may not subject an out-of-state corporation to a BAT on the basis of activities another business conducts on its behalf so long as the in-state business performs services on behalf of at least one additional client during the tax year. The provision, which applies to activities designed to "establish or maintain the market in the State" for sales by the out-of-state company, is effectively aimed at reversing the *Tyler Pipe* decision discussed above.[17]

This provision's enormous potential for harm arises from the fact that it applies even if all of the parties are related. A corporation can form two out-of-state subsidiaries that then "hire" a third subsidiary to conduct activity on their behalf in the state in which they wish to avoid nexus. For example:

- To maximize its ability to make sales throughout the United States, a Texas-based manufacturer of personal and network server computers needs to provide on-site repairs and set up local area networks for customers. Ordinarily, these tasks would establish BAT nexus for the firm, even if it hired another firm (or one of its subsidiaries) to perform them, since they help establish and maintain the company's market in that state. The corporation, however, wants to avoid establishing BAT nexus outside of Texas, a state that neither taxes corporate profits nor levies its franchise tax on services delivered outside the state. If the corporation can avoid establishing nexus outside of its home state, none of the profits it earns on non-Texas sales of its computers will be taxable *anywhere*.

Under BATSA, this would be easy to accomplish. The corporation would simply reorganize itself into three legal entities: one to provide the on-site repair and networking services, one to sell desktop computers, and one to sell server computers. Since the repair/networking subsidiary provides these services to more than one business (that is, to both the subsidiary that sells desktop computers and the subsidiary that sells servers), under BATSA those services no longer would create BAT nexus outside of Texas for the computer manufacturer. The states in which the customers are located could tax any profits earned by the repair/networking subsidiary but not the profits earned on the actual sale of the computers.

- An increasing number of retail chain stores are transforming themselves into "bricks and clicks" businesses by setting up subsidiaries to sell the same merchandise over the Internet that they sell in stores. These businesses are looking for ways to integrate their operations so that the stores facilitate greater purchases from the website, such as selling gift cards in stores that can be redeemed online and allowing in-store pickup of items purchased online. Under the *Tyler Pipe* decision, such activities create BAT nexus for the web subsidiary because they help the subsidiary establish and maintain a market in the state(s) where the stores are located.

  Under BATSA, however, the retail chain could split its web operation into two separate corporations and have each one sell a portion of the company's product lines. Under such a structure, the stores' activities would help establish and maintain the market in the state for more than one business (i.e., the two web subsidiaries), thereby bringing themselves under this nexus safe harbor in BATSA. The web subsidiaries, meanwhile, could contract with each other to share a common website, warehouses, and other operational requirements, so the corporation's out-of-pocket costs would not be substantial.

Of course, this provision of BATSA also would enable out-of-state corporations to use *independent* in-state corporations to help them establish and maintain a market within a particular state without creating BAT nexus:

- In some states, consumers can purchase electricity from independent power producers (sometimes located out of state) that own their own generating plants but contract with local utility companies to deliver electricity into customers' homes, read customers' meters, and bill customers. The activities performed by the local utility create nexus in the state for the out-of-state power generator because they are critical to its ability to establish and maintain a market in the state. Under BATSA, however, the power generators would no longer have BAT nexus in their customers' state(s) because local utilities typically deliver power for several independent generators. Even if a utility delivered power for only a single independent generator, the latter could easily avoid nexus by dividing itself into two legal entities, for example, one to sell power to businesses and one to sell power to residential customers.

In sum, by effectively overruling the *Tyler Pipe* decision, BATSA would open enormous opportunities for corporations to shelter substantial shares of their profits from taxation by the states in which their customers are located.

Agents Not Involved in Selling Don't Establish Nexus

BATSA would also change current law by declaring that contracting with another company to conduct activities *not* related to selling or interacting with customers would *never* create nexus. Under current law, it is not entirely clear when non-customer-related activities performed by another party would create BAT nexus. Most experts likely would agree, however, that if the contract made the second party the actual legal agent of the company contracting for its services, such a contract would create nexus.

For example, imagine that a California manufacturer hires an unrelated Oregon business to continuously perform quality control checks on its behalf at an Oregon plant run by a third company that assembles a key component of the California manufacturer's products. The Oregon quality-control business has the authority to sign off that the components meet the California manufacturer's specifications and to stop shipment of the products if they do not. Under this scenario, the presence of the quality-control business in Oregon would likely be sufficient to create BAT nexus there for the California manufacturer.

Under BATSA, however, the California manufacturer would avoid nexus in Oregon because the activities conducted by the quality-control subcontractor do not involve "establishing and maintaining the market" for *sales* by the *manufacturer*. In short, any purchasing-related activities (as opposed to selling-related activities) conducted in a state by a third party would no longer be nexus-creating under BATSA — even where the very same activities would be nexus-creating if the corporation's own employees conducted them.[20]

In-State Presence of Agents Also Qualifies for the 14-Day Safe Harbor

Finally, BATSA allows an in-state business to conduct any activity on behalf an out-of-state corporation in a state for 14 days per year without creating BAT nexus for the latter. This provision is consistent with the BATSA provision allowing a company to have its *own* employees and property in a state for up to 14 days for any purpose without creating nexus. Nevertheless, it also inherently creates a new nexus safe harbor.

New Safe Harbor for In-State Storage of Inventory

P.L. 86-272 contains the following provision:

> [A] person shall not be considered to have engaged in business activities within a State . . . by reason of the maintenance of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, of tangible personal property.

This provision appears primarily intended to ensure that no state could assert attributional nexus over an out-of-state manufacturer based on its having engaged the services of an independent "manufacturers' rep" firm to solicit sales on its behalf. (This is a common mechanism by which manufacturers solicit business throughout the country.[21]) The nexus protection applies even if the manufacturers' rep firm maintains an actual physical office within the state.

BATSA would expand this safe harbor, allowing an independent contractor to use an in-state office for the purpose of "fulfilling transactions" on behalf of an out-of-state corporation without establishing nexus for the latter.

Manufacturers, Internet retailers, and other sellers of goods commonly store inventories of finished products at "fulfillment" or "logistics" warehouses operated by independent companies. The warehouses ship the products to the sellers' customers on demand. Under current law, this activity unquestionably establishes BAT nexus for the sellers in a state in which a warehouse is located because the sellers continue to own the inventory and thus have a "physical presence" there.

BATSA, however, states that the use of a third-party "office" to "fulfill transactions" would *not* establish nexus, and this strongly implies that inventory storage at a third party fulfillment warehouse would not establish nexus either. As noted above, BATSA's attributional nexus language would *already* bar a state from asserting nexus over an out-of-state manufacturer that hired an in-state agent to fulfill orders if the agent did so on behalf of at least two separate businesses. Third-party-operated warehouses virtually always have multiple customers. Thus, if the language were not intended to provide nexus protection for the actual storage of the inventory, it would not be needed.

At least one highly-credentialed state tax practitioner has interpreted this provision as "Expanding P.L. 86-272 [to] exempt . . . *storage of inventory* with an independent contractor."[22] This provision may also explain, in part, why UPS, which has a fulfillment arm, supports BATSA.[23]

In sum, it appears that this BATSA provision is designed to allow an out-of-state corporation to store an unlimited amount of inventory for delivery to its customers at a third-party-operated warehouse without thereby establishing BAT nexus in the state where the warehouse is located.

The "Limited or Transient Business Activity" Safe Harbor

Finally, BATSA states that a corporation's physical "presence in State to conduct limited or transient business activity" does not create BAT nexus. Since BATSA does not define "limited" or "transient," it is impossible to know what activities the sponsors intend this safe harbor to cover.

One legal analyst fears that this provision could become a "black hole" swallowing state and local BAT revenues.[24] He points out that the dictionary definitions of these terms would provide strong grounds for exempting from business activity taxes any corporation that either enters a state on a temporary basis or that does not engage in the state in the full set of activities comprising its business:

> With the terms "limited" and "transient" neither defined in the bill nor possessed of any accepted meanings in tax law, courts would look to dictionary definitions for their meaning.

> "Limited" is defined in *Black's Law Dictionary* as "restricted; bounded; prescribed. Confined within positive bounds; restricted in duration, extent, or scope." "Transient" is defined in *Black's* as "Passing across, as from one thing or person to another; passing with time of short duration; not permanent; not lasting."
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> . . . [A] company's activity could be permanent but limited in scope, or unlimited in scope but not permanent, and still be protected from taxation. . . . For example, a corporation whose charter or application to conduct business in the state indicates that it will engage only in banking activities and nothing else (so that its activities are "limited," as "restricted in . . . scope") could be protected from taxation even if in the state permanently, as could a corporation whose charter or application indicates that it will engage in every activity in the state that a corporation may legally perform, but will do so only for 10 years (so that its activities are "transient," as "not permanent").[25]

At the very least, since BATSA already contains a separate, across-the-board safe harbor for any level of activity conducted in a state for 14 days, it is logical to assume that this provision is intended to provide corporations with an opportunity to enter a state temporarily to engage in business activities for longer periods of time than that.

It is also easy to foresee this provision being used as a catch-all "insurance policy" against any adverse court interpretations of other vague provisions of the legislation. For example, a company storing inventory at a third-party fulfillment warehouse in a state would likely claim that such storage is a protected "limited" activity just in case a judge were inclined to interpret the vague "fulfilling transactions" language discussed in the previous section as *not* providing a safe harbor from nexus.

Enacting BATSA with this provision intact would spur both continuous litigation and divergent decisions in the state courts that would hear the cases. It is simply inconceivable that BATSA proponents can continue to describe the bill as establishing a bright-line, nationally uniform nexus standard after having included this safe harbor in the latest version of the legislation.

Conclusion

BATSA would stimulate a wave of new corporate tax sheltering activity by making it much harder for states and localities to tax out-of-state corporations that have a substantial physical presence within their borders and benefit from state and local services. By exploiting the numerous safe harbors outlined above, out-of-state corporations could avoid paying their fair share of taxes, significantly weakening state and local revenue systems.

Notes

[1] Like BATSA itself, P.L. 86-272 applies to all income taxes imposed on all types of businesses and individual "sole proprietors." For the sake of readability (and because BATSA's most significant revenue impact would be on corporate tax payments), this report generally refers to corporate income or profits taxes.

[2] A company-owned office, even if used just for solicitation of orders, is not protected by P.L. 86-272, so a state is free to impose a corporate income tax on an out-of-state corporation with such an office within its borders.

[3] Despite continuous litigation, more than 30 years elapsed after the enactment of P.L. 86-272 before the U.S. Supreme Court gave any guidance as to what activities were encompassed in the law's safe harbor for "solicitation" — the key term in the law that Congress nonetheless had not seen fit to define. In its 1992 decision in *Wrigley* v. *Wisconsin*, the Court made clear that activities "entirely ancillary to solicitation" (such as the presence of property used by salesmen) were also protected by P.L. 86-272.

[5] Arguably these loan officers also would be free to solicit *deposits* from the Maryland businesses, since another safe harbor in the bill states that the presence of employees to negotiate the purchase of goods and services for the business also does not establish nexus. Deposits could be characterized as intangible goods or services purchased by banks through the payment of interest.

[6] A franchisor would argue that inspecting franchisee compliance with a franchise agreement is a form of "gathering information" that would be "used" at its out-of-state headquarters to formulate remedial action. A franchisor would similarly argue that conducting on-state training of franchisee employees (another common activity) would not be nexus-creating because it satisfies BATSA's safe harbor for "furnishing of information to customers or affiliates in a state."

[7] A bank would argue that in-state investigation of the credit-worthiness of a borrower would be protected by BATSA's safe harbor for the "gathering of information."

[8] That would be true even of a seller of services newly covered by BATSA's expanded version of P.L. 86-272, since both performing services in a state and engaging in almost any kind of post-sales interaction with a customer are beyond P.L. 86-272's nexus safe harbor for "solicitation of orders."

[9] *Secretary of Revenue of North Carolina* v. *A&F Trademark, Inc.*, et al., North Carolina Tax Review Board, May 7, 2002.

[10] See: Robert T. Garrett, "Business Lobbyists Thwarting Efforts to Close Tax Loophole," *Dallas Morning News*, May 12, 2003. In a 2003 letter to members of the National Conference of State Legislatures, a business coalition supporting BATSA questioned the relevance of this Texas experience to BAT nexus legislation, since the legislation itself would not have prevented Texas from shutting down this tax shelter. To reiterate, Texas' experience demonstrates that if artificial restrictions on taxing jurisdiction are created by *either* federal or state legislation, corporations will go to great lengths to restructure their operations to take advantage of any tax sheltering opportunities thereby created. As documented in this Appendix, the enactment of BATSA would create numerous such opportunities. The Texas Franchise Tax law was substantially overhauled in 2006 to forestall the use of limited partnerships as a mechanism of tax avoidance.

[11] See: U.S. General Accounting Office, *Unemployment Insurance: Survey of State Administrators and Contacts with Companies Promoting Tax Avoidance Policies*, GAO-03-819T, June 19, 2003.

[12] See: H.R. 3463, the "SUTA Dumping Prevention Act of 2004," signed into law by President Bush on August 9, 2004.

[13] See: Gary Perilloux, "Program Nabs More Tax Cheats," *The Advocate* (Baton Rouge), June 19, 2007.

[14] See: Lee Gomes, "Will Amazon Get a Visit from the Tax Man?" *Wall Street Journal*, June 25, 2008.

[15] Letter from the Council on State Taxation to members of the U.S. House of Representatives in support of H.R. 2526, July 16, 2002. H.R. 2526 was the version of BAT nexus legislation introduced in the 107th Congress.

[16] *Scripto* v. *Carson*, 1960.

[17] In *Tyler Pipe*, the Court held that hiring an independent representative in a state to solicit sales and conduct other activities that helped an out-of-state corporation create and maintain a market for its products was no different from having an employee in a state engaged in the same activities and did indeed establish BAT nexus for the out-of-state corporation. There was no suggestion whatsoever in the case that the holding would have been any different if the in-state representative had solicited sales on behalf of more than one out-of-state company; in fact, the evidence strongly suggests that it did. The *Tyler Pipe* decision of the Washington State Supreme Court, which the U.S. Supreme Court

reviewed, states that the Washington representative of Tyler Pipe was Ashe and Jones, Inc. of Seattle. Ashe and Jones was characterized by Tyler Pipe as an independent contractor, suggesting that it solicited Washington sales on behalf of multiple out-of-state businesses. Ashe and Jones appears to have been at that time a typical "manufacturers' representative" firm with multiple clients. The company certainly has multiple clients today, including Tyler Pipe. See: www.alliancesalesnw.com/alliancesalesnw_002.htm.

[20] This scenario would not necessarily fall into the previously discussed safe harbor for "activities directly related to. . . [the] potential or actual purchase of goods or services" because it involves quality control on goods that arguably have already been purchased.

[21] See the website of the Manufacturers' Agents National Association at www.manaonline.org.

[22] Deborah K. Rood, "State and Local Tax Issues," undated Powerpoint presentation; available at conferences/aicpa/org/materials/downloads/State_Local_Issues-Deborah_K%20Rood.pdf (emphasis added). Rood is a member of the State and Local Tax Technical Resources Panel of the Tax Division of the American Institute of Certified Public Accountants.

[23] See the list of corporate supporters of BATSA at www.batcoalition.org/about.html.

The trade association representing the third-party warehouse industry is not satisfied with the language under discussion here and is seeking broader and more explicit nexus protection in BATSA for corporations that store goods in their warehouses. (See: www.iwla.com/bat.) This is not surprising, since some corporations also store materials in third-party warehouses that are *not* shipped directly to customers (for example, materials requiring further processing), and language restricted to "fulfillment of transactions" likely would not protect such corporations from nexus. However, the industry's desire to obtain a blanket nexus exemption for storage of any type of goods in a third-party warehouse in no way obviates the value to many companies of BATSA's existing language on this issue.

[24] Matt Tomalis, "Some Fatal Flaws of S. 1726, H.R. 5267, and All BAT Nexus Bills," *State Tax Notes*, March 3, 2008, pp. 691-704. Tomalis is a staff attorney with the Federation of Tax Administrators.

[25] Tomalis, p. 695.