



AMERICANS FOR TAX REFORM

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ATR WILL RATE FOR HR 1956, “BUSINESS ACTIVITY TAX SIMPLIFICATION ACT”

This week, the House of Representatives will vote on HR 1956, the Business Activity Tax Simplification Act (BATSA), introduced by Congressmen Bob Goodlatte (R-VA) and Rick Boucher (D-VA).

ATR considers this legislation a top priority for taxpayers since state and local governments have overreached their bounds in taxing companies when there is absolutely no physical presence of those companies in the state. BATSA will provide greater certainty to taxpayers and will slow the overreaching tax grab of state and local governments. **As such, ATR will rate this vote in our annual congressional ratings.**

As part of a new strategy to raise tax revenues, state and local governments have begun to overreach their boundaries and impede interstate commerce. ATR often receives calls from taxpayers informing us of state governments seeking to tax simple licensing of software to trucks delivering goods and being impounded if tax payments are not made on the spot. Simply put, these taxing practices are now interfering with interstate commerce and are have a deleterious effect on the free flow of goods and services.

Passage of BATSA enacts definite and specific standards to govern when states may impose business activity taxes on companies. Under BATSA states may not assess business activity taxes on companies that do not have a physical presence in the taxing jurisdiction.

Under this legislation, the federal government will receive additional tax revenue but ATR does not consider this a tax increase. The increase in federal revenue is the result of companies having less state and local taxes to deduct on their federal income tax return. Hence, this legislation is a net tax cut for taxpayers. But more importantly, BATSA will end the shell game being played by state and local governments to impede interstate commerce and provide greater certainty for taxpayers.

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Governor is telling business to beware

By PAUL [MULSHINE](#)
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Perhaps you've heard that media campaign in which Gov. James E. McGreevey uses \$5 million of our money to lure businesses to New Jersey.

"With new state incentives, new training and a whole new attitude, New Jersey means business," McGreevey chirps.

Sounds great, but he doesn't explain that this "whole new attitude" is a rotten one. CFO Magazine recently surveyed corporate [tax](#) officials to determine which state's business [tax](#) system is the "least fair and predictable." We won.

"New Jersey was the falling star of CFO's [tax](#) survey," the article said. "The Garden State's grab bag of [tax](#)-law changes in July 2002 . . . earned it the label of the state with the most unfair and unpredictable [tax](#) environment."

C.J. Horne knew that already. Horne is a businessman who hasn't set foot in Jersey in 20 years and probably never will again. Yet New Jersey is trying to claim that the small [software](#) business he runs out of his house in Seneca, S.C., is a New Jersey business. It therefore must pay New Jersey a minimum \$600 in corporate [taxes](#) and fees every year - even if it never again sells anything in New Jersey.

Sounds loony, I know. But Horne is just one of thousands of out-of-state business people who have been dunned for [taxes](#) by McGreevey's Division of Taxation. Horne's troubles began a few years ago when he got a call from officials at an Atlantic City casino. They wanted to license a \$695 [software](#) package he created that handles employee paperwork. He dropped the disk in the mail and forgot about it.

The McGreevey administration didn't forget. [Tax](#) officials have been combing through lists of companies that sell to New Jersey companies and sending letters informing them that they must register as New Jersey corporations. A 1959 federal law protects against exactly this sort of interstate harassment. But McGreevey's people claim to have found a few wrinkles in that law. They claim the authority to declare that virtually any corporation in any state becomes a New Jersey corporation the minute it ships a product here.

The theory is that most of these companies will simply pay that \$600 annual charge rather than spend the tens of thousands it would cost to challenge this in court. But \$600 is a lot of money to Horne, so he's decided to fight. When he got his letter from New Jersey, he sent a few letters of his own to members of Congress. He pointed out that New Jersey seems to be violating not only

that 1959 law but a decision in our [tax](#) court last year that prohibited the state from taxing out-of-state companies.

"New Jersey is just simply out of control," Horne told me when I called him. "They basically said the hell with the Congress; we're going to shoot first and ask questions later. If you make just one penny of income there, they come after you." And they don't let go.

New Jersey officials have told Horne that the mere presence of a piece of his [software](#) in New Jersey creates what is called a "nexus," a legal term denoting a physical presence. As long as a casino uses his [software](#), he has a nexus in New Jersey, they said. And as long as he has a nexus in New Jersey, he has to pay New Jersey \$600 a year.

"New Jersey wants \$600 a year even if I have zero sales," he told me, an assertion confirmed by state officials. They argued that his is an extreme case. But an accountant I spoke to told me that it is nothing of the sort. Under McGreevey, New Jersey has become notorious for stretching the definition of "nexus" to go after companies that have no physical connection to the state.

This may be good politics, but it's bad policy. Those business executives don't vote in New Jersey. But they did get to vote in that CFO magazine survey. Businessmen all over the state agree with that article, said Guy Gregg, a Republican assemblyman who was until recently the owner of a small business.

"This is not a political group," he said of the financial officers cited in the magazine. "This is a respectable group of national financial officers. This is a group of people who say, 'We want to put a new plant somewhere. Where will we go? Absolutely not New Jersey.' And I can't blame them."

The taxation and regulation in this state are suffocating, said Gregg. He recently sold his restaurant in Chester for that reason. He calls it the "Kenny Rogers Syndrome," quoting that song about the dying gambler.

"You've got to know when to walk away and know when to run," said Gregg. And you better run far. As the governor said in those ads, New Jersey means business. Just ask C.J. Horne.

Paul Mulshine is a Star-Ledger columnist.