

Unions Urge "No" Vote on H.R. 1439, The "Business Activity Tax Simplification Act of 2011"

July 6, 2011

Dear Representative:

The undersigned labor unions urge you to oppose H.R. 1439, the "Business Activity Tax Simplification Act of 2011" (BATSA).

Our unions oppose this troubling proposal because it would impose an unfunded mandate and shrink state and local government tax revenues. Now is the wrong time to reduce state and local revenues. Several years ago, experts estimated these revenues would decline by at least \$3 billion to \$8 billion per year. Today, the revenue loss would be significantly larger. H.R. 1439 would limit state and local governments from determining and keeping their own tax systems, and it encourages and rewards businesses and large profitable corporations for making business decisions designed to aggressively avoid taxes. The Congressional Budget Office (CBO) has stated BATSA "would amend current law to prohibit state and local governments from taxing certain business activities that are currently taxable." H.R. 1439 is worse than its predecessors in prior Congresses. It now has an added provision limiting state authority to impose combined reporting, which previously would have partially counteracted the effects of earlier versions of this bill.

H.R. 1439 is designed to reduce business taxes now being paid to states and localities. It would prohibit states and localities from imposing existing taxes on legitimate business activity in the state and/or locality by creating a new physical presence rule, which would significantly weaken the "economic nexus" standard currently used. It would also prohibit states and localities from imposing certain business taxes on services, intangibles, media and financial services. While Public Law 86-272 currently prohibits jurisdictions from imposing taxes on the sale of goods, current law permits jurisdictions to impose taxes on the sales of services and intangibles. H.R. 1439 also prohibits states and localities from continuing to impose many existing business taxes. While Public Law 86-272 currently prohibits jurisdictions from imposing a corporate income tax, current law permits jurisdictions to impose other business taxes such as a gross sales tax or value added tax.

H.R. 1439 would inflict significant budget problems on state and local governments. Given the current revenue problems afflicting most states and localities, it is an especially bad time to preempt state and local tax authority and further reduce revenues. CBO's July 11, 2006 Cost Estimate for an earlier version of BATSA reported "the costs – in the form of forgone revenues – to state and local governments would exceed \$1 billion in the first full year after enactment and would likely grow to about \$3 billion, annually, by 2011." CBO also determined BATSA (then H.R. 1956) is an unfunded mandate – "by prohibiting state and local governments from taxing certain business activities, H.R. 1956 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA)." This unfunded mandate and \$3 billion annual loss would worsen state and local budget problems and force cuts to education, health care, job creation and other vital services. Worse, CBO reports revenue losses would be concentrated in several states – "while virtually all states would lose revenues, about 70% of the estimated losses would come from 10 states: California, Florida, Illinois, Michigan, New Jersey, New York, Pennsylvania, Tennessee, Texas and Washington."

Some corporations design their operations to avoid nexus in states where they earn profits and produce a self-serving paper trail of “nowhere” income – to try to prevent states from taxing their income. H.R. 1439 would protect these tax shelters, increase the quantity and dollar value of tax shelters and tax shielding, and reward these tax avoidance actions. Large profitable corporations will take advantage of these combined practices to shift the tax burden further onto state and local residents.

We urge Congress to oppose preempting state and local government taxing authority and prevent them from creating viable and equitable tax systems.

Sincerely,

American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Communication Workers of America (CWA)
International Federation of Professional and Technical Engineers (IFPTE)
National Education Association (NEA)
American Federation of Teachers (AFT)
Department for Professional Employees (DPE)
International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
International Association of Fire Fighters (IAFF)
Service Employees Union International (SEIU)