

STATEMENT OF THE NEW YORK BANKERS ASSOCIATION

BEFORE THE HOUSE SUBCOMMITTEE ON COMMERCIAL AND
ADMINISTRATIVE LAW

COMMITTEE ON THE JUDICIARY

ON H.R. 1083, THE BUSINESS ACTIVITY TAX SIMPLIFICATION ACT

FEBRUARY 4, 2010

The New York Bankers Association appreciates the opportunity to submit this statement for the record of the hearing of the Judiciary Committee's Subcommittee on Commercial and Administrative Law on H.R. 1083, the Business Activity Tax Simplification Act of 2008. The New York Bankers Association strongly supports this legislation that would clarify and modernize the rules governing a state's ability to impose income taxes on companies that have no physical presence in the state. Our Association is comprised of the community, regional and money center commercial banks and savings institutions doing business in the State of New York. Our members hold aggregate assets in excess of \$9 trillion and employ more than 250,000 New Yorkers.

This legislation will clarify that states may not tax out-of-state intangible property or services. Current law clearly precludes state taxation of out-of-state tangible personal property and real estate. The bill will also require that an entity have a physical presence in a state in order to subject the entity to the state's taxing jurisdiction. The bill sets forth criteria for determining whether a physical presence exists.

This legislation will clarify situations in which a state can constitutionally tax out-of-state corporations. It is particularly important for a State like New York that sells vast amounts of financial services in other states. The physical presence standard contained in the bill is one that the United States Supreme Court has recognized as an appropriate nexus for state taxation.

In recent years, an increasing number of states have enacted legislation taxing business activities that occur outside their physical jurisdiction and that bear only a remote relationship to the taxing states. In the financial services arena, these enactments have largely focused on taxing loan and investment relationships entered into by residents of the taxing states with non-resident business entities whose only relationship with the taxing state is the use of instruments of interstate commerce, such as the Internet, the United States Postal Service and the telephone to transact business with their customers. These states have been characterized as "market states," because they attempt to tax the market for goods and services, rather than the physical entity that provides the goods or services.

This system of taxation is clearly a burden on interstate commerce and falls squarely within the jurisdiction of Congress to address. The home states of companies being taxed by market states already tax the profits of these companies, resulting either in double taxation or in a reduction in revenue for home states. With the increased reliance by customers on the Internet, the taxation of out-of-state residents and businesses will

clearly become a more and more attractive means to enhance a state's revenue. It can therefore be expected that, without Congressional oversight, attempts to tax companies without a physical presence in a state will continue to increase.

H.R. 1083 draws a clear distinction between allowable and impermissible taxation by a state of the intangible activities of out-of-state residents and businesses. We strongly urge that the legislation be enacted.