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Beyond BATSA: State Taxation Without State Boundaries?

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Beyond BATSA: State Taxation Without State Boundaries?

Neil V. Birkhoff*

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I. Introduction

In his Note, *Beyond BATSA: Getting Serious About State Corporate Tax Reform*,¹ Quinn Ryan provides us with the following: (1) an overview of the problem of diminishing state corporate tax revenues;² (2) the basic legal principles applicable in administering state corporate income taxes;³ and (3) a history of the development of state tax nexus standards.⁴ Ryan uses the Business Activity Tax Simplification Act of 2009⁵ (BATSA) to point out where reform is necessary and argues that BATSA is not the answer.⁶ While Ryan notes the myriad of problems with corporate income tax apportionment

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1. Quinn T. Ryan, *Beyond BATSA: Getting Serious About State Corporate Tax Reform*, 67 WASH. & LEE L. REV. 275 (2010).

2. *Id.* at 278–80.

3. *Id.* at 280–301.

4. *Id.* at 301–07.

5. Business Activity Tax Simplification Act of 2009 (BATSA), H.R. 1083, 111th Cong.

6. Ryan, *supra* note 1, at 320–25.

statutes,⁷ he leaves the mechanics of a uniform system for another Note.⁸ My only comment on apportionment, then, is that as an old Jeffersonian, I would prefer to see a state-by-state adoption of a uniform apportionment statute rather than having Congress federalize state tax codes with a mandated federal standard.

The core of Ryan's Note is an argument for the economic presence standard for state tax nexus in lieu of the physical presence standard.⁹ While I find Ryan's analysis and arguments quite interesting, I am unpersuaded. Again, my Jeffersonian side balks at the idea of breaking down state geographic boundaries. More to the point, I do not believe the physical presence standard to be as problematic as Ryan contends, nor do I see the economic presence standard as being any less problematic (perhaps, even, the economic presence standard is more problematic for small businesses and the internet-based economy).

Let me follow Ryan's lead: This Comment, first, looks at the history of the physical presence standard for state tax nexus and, second, compares and contrasts the physical presence standard with the economic presence standard.

II. Historical Context

As any law student who did not sleep through Constitutional Law would know, the Constitution was drafted to address, among other things, the problem of the federal government having no power to stop states from creating trade barriers between each other. States' power over commerce, "guided by inexperience and jealousy, began to show itself in iniquitous laws and impolitic measures . . . , destructive to the harmony of the States, and fatal to their commercial interests abroad. This was the immediate cause, that led to the forming of a convention."¹⁰ The new Constitution granted to Congress the power "to regulate Commerce . . . among the several States"—the Commerce Clause.¹¹ Congress and the courts, therefore, have the authority to strike down laws that adversely affect interstate commerce, including state tax laws.¹²

7. *Id.* at 280–85.

8. *Id.* at 311 nn.194–95, 313 nn.209–11 and accompanying text.

9. *Id.* at 307–10.

10. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 224 (1824) (Johnson, J., concurring).

11. U.S. CONST. art. I, § 8, cl. 3.

12. The federal courts may act when Congress is silent under the Dormant, or Negative, Commerce Clause. *See, e.g., Willson v. Black Bird Creek Marsh Co.*, 27 U.S. (2 Pet.) 245, 252 (1829) ("We do not think that the act . . . can . . . be considered as repugnant to the power to regulate commerce in its dormant state, or as being in conflict with any law passed on the

The Supreme Court initially declared that states could not tax or impede interstate commerce at all: "A State is . . . precluded from taking any action which may fairly be deemed to have the effect of impeding the free flow of trade between States."¹³ The Court began its move away from that standard in the 1950s, when it treated almost identical taxes differently based on "magic words" in the statute. By example, an annual license tax imposed on the in-state gross receipts of an out-of-state company was invalidated as discriminating against interstate commerce, while an identical tax imposed as a franchise tax on in-state going concern value, measured by in-state gross receipts, was upheld.¹⁴

In *Complete Auto Transit, Inc. v. Brady*,¹⁵ the Court abandoned its formal standard and announced four factors the courts should examine when determining whether a tax on interstate commerce is valid: (1) whether a sufficient connection between the taxpayer and the state exists; (2) whether the state taxes beyond its fair share of the taxpayer's income; (3) whether the state imposes burdens on out-of-state taxpayers but not in-state taxpayers; and (4) whether the tax is fairly related to services provided to the taxpayer by the state.¹⁶ This is the four-pronged *Complete Auto* test.

The nexus requirement—the first prong of *Complete Auto*—was amplified by the Court in *National Geographic Society v. California Board of Equalization*,¹⁷ when it reaffirmed a rule from the earlier case of *National Bellas Hess, Inc. v. Department of Revenue*.¹⁸

subject.").

13. *Freeman v. Hewit*, 329 U.S. 249, 252 (1946); see also *Leloup v. Port of Mobile*, 127 U.S. 640, 648 (1888) ("[N]o State has the right to lay a tax on interstate commerce in any form . . . and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress.").

14. See *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 284 (1977) (comparing *Railway Express Agency v. Virginia*, 347 U.S. 359 (1954), and *Railway Express Agency v. Virginia*, 358 U.S. 434 (1959)).

15. See *id.* at 289 (affirming Supreme Court of Mississippi's holding that Mississippi sales tax on privilege of doing business in the state to motor carriers' activity was not unconstitutional based on a four factor standard).

16. See *id.* at 279 ("[Precedent dictates that a court should] sustain[] a tax against Commerce Clause challenge when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.").

17. *Nat'l Geographic Soc'y v. Cal. Bd. of Equalization*, 430 U.S. 551, 562 (1977) (concluding that "the Society's continuous presence in California in offices that solicit advertising for its magazine provides a sufficient nexus to justify that State's imposition upon the Society of the duty to act as collector of the use tax").

18. *Nat'l Bellas Hess, Inc. v. Dep't of Revenue*, 386 U.S. 753, 758–60 (1967) (holding that Illinois had no power to impose liability on out-of-state mail order firm to collect use taxes

In order to uphold the power of Illinois to impose use tax burdens on National in this case, we would have to repudiate totally the sharp distinction . . . between mail order sellers with retail outlets, solicitors, or property within a State, and those who do no more than communicate with customers in the State by mail or common carrier as part of a general interstate business.¹⁹

Thus, if a company has no offices, no employees, or no other property in a state, it lacks nexus to the taxing state under *Complete Auto* and cannot be subject to taxation.

The *Bellas Hess* Court noted practical concerns:

If Illinois can impose such burdens, so can every other State, and so, indeed, can every municipality, every school district, and every other political subdivision throughout the Nation with power to impose sales and use taxes. The many variations in rates of tax, in allowable exemptions, and in administrative and record-keeping requirements could entangle National's interstate business in a virtual welter of complicated obligations to local jurisdictions with no legitimate claim to impose "a fair share of the cost of the local government."²⁰

In other words, the Court was concerned about the danger that mail-order companies would be subject to multiple taxations and a heavy administrative burden, and that practical concern enforced the Court's determination that states had no legitimate power to impose tax obligations on companies that were not physically present in the state.

III. *Where We Are*—Quill

Finding the physical presence rule of *Bellas Hess* formalistic and outmoded, some state courts simply disregarded the decision:

The economic, social, and commercial landscape upon which *Bellas Hess* was premised no longer exists, save perhaps in the fertile imaginations of attorneys representing mail order interests. . . . The burgeoning technological advances of the 1970's and 1980's have created revolutionary communications abilities and marketing methods which were undreamed of in 1967."²¹

imposed by state law).

19. *Id.* at 758.

20. *Id.* at 759–60.

21. *State v. Quill Corp.*, 470 N.W.2d 203, 208 (N.D. 1991), *rev'd*, *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

In 1992, in *Quill Corp. v. North Dakota*,²² the Supreme Court considered the "new economy" criticisms of *Bellas Hess*, but then reaffirmed the physical presence rule.²³ The case involved a Delaware office supplies company with some \$1 million in sales to 3,000 customers in North Dakota, but no employees or property in the state.²⁴ Ultimately, the Court rejected the move toward an economic presence standard, with the Court giving several reasons for its decision.²⁵

The Court emphasized the nexus requirement of *Complete Auto*.²⁶ By requiring a connection between a taxing state and a company, nexus "ensure[s] that state taxation does not unduly burden interstate commerce."²⁷ In North Dakota, any company that advertised three times in the state became obligated to collect taxes for the state,²⁸ and the Court found that obligation a burden on interstate commerce.²⁹

The Court discussed "the continuing value of a bright-line rule."³⁰ The physical presence rule "firmly establishes the boundaries of legitimate state authority to impose a duty to collect sales and use taxes and reduces litigation concerning those taxes."³¹ The Court further stated: "The continuing value of a bright-line rule in this area and the doctrine and principles of *stare decisis* indicate that the *Bellas Hess* rule remains good law."³²

Justice Scalia noted that the only litigation in twenty-five years of applying *Bellas Hess* involved state efforts to overrule it: "[C]oncern that reaffirmance of *Bellas Hess* will lead to a flurry of litigation over the meaning of 'physical presence,' seems to me contradicted by 25 years of experience under the decision."³³ The majority had stated the following: "A bright-line rule in the area of sales and use taxes also encourages settled expectations and, in doing

22. See *Quill Corp. v. North Dakota*, 504 U.S. 298, 320 (1992) (reversing the North Dakota Supreme Court and finding North Dakota's enforcement of its use of tax against Quill placed an unconstitutional burden on interstate commerce).

23. *Id.* at 310–12.

24. *Id.* at 302.

25. *Id.* at 305–20.

26. *Id.* at 313.

27. *Id.*

28. *Id.* at 302–03.

29. *Id.* at 313 n.6.

30. *Id.* at 317.

31. *Id.* at 315.

32. *Id.* at 317.

33. *Id.* at 321 (Scalia, J., concurring) (citations omitted).

so, fosters investment by businesses and individuals."³⁴ Justices Scalia, Kennedy, and Thomas were not persuaded to upset those expectations: "Having affirmatively suggested that the 'physical presence' rule could be reconciled with our new jurisprudence, we ought not visit economic hardship upon those who took us at our word."³⁵

The Court clarified that the physical presence rule is a Commerce Clause concept and that Due Process Clause arguments are governed by the minimum contacts rule of personal jurisdiction: "The requirements of due process are met irrespective of a corporation's lack of physical presence in the taxing State."³⁶ While *Quill Corp.* had sufficient minimum contacts under the Due Process Clause, its lack of physical presence meant there was insufficient nexus to be within the taxing power of the state under the Commerce Clause.

Because the physical presence test is based on the Commerce Clause, the Court noted that Congress could change the test if it wished: "No matter how we evaluate the burdens that use taxes impose on interstate commerce, Congress remains free to disagree with our conclusions."³⁷ More to the point, Justice Scalia declared: "Congress has the final say over regulation of interstate commerce, and it can change the rule of *Bellas Hess* by simply saying so."³⁸

IV. *Brave New Mess*

Ryan joins a long list of critics of the physical presence rule, reaffirmed in *Quill*. "[S]ales tax equity can be fully achieved only if *Quill*'s anachronistic physical presence test is either judicially or legislatively overruled."³⁹ Those criticisms have their genesis in the dissents in *Bellas Hess* and *Quill*, and champion the concept of "economic nexus." "Economic nexus" refers to the assertion of jurisdiction based on something other than physical presence in the taxing state. The term first appeared in the *Bellas Hess* dissent, where Justice Fortas argued that nexus exists if an "out-of-state company is engaged in exploiting the local market on a regular, systematic, large-scale basis."⁴⁰ The

34. *Id.* at 316 (majority opinion).

35. *Id.* at 321 (Scalia, J., concurring).

36. *Id.* at 308 (majority opinion).

37. *Id.* at 318.

38. *Id.* at 320 (Scalia, J., concurring).

39. John A. Swain, *Cybertaxation and the Commerce Clause: Entity Isolation or Affiliate Nexus?*, 75 S. CAL. L. REV. 419, 473 (2002).

40. *Nat'l Bellas Hess, Inc. v. Dep't of Revenue*, 386 U.S. 753, 763 (1967) (Fortas, J., dissenting).

concept relies upon factors such as "the frequency, quantity and systematic nature of a taxpayer's economic contacts with a state" to determine if there is sufficient nexus to subject the activity to that state's taxation.⁴¹ The arguments for the economic presence have been summed up with the following declaration: "*Taxable activity should imply nexus . . .*"⁴²

Some lower courts have adopted economic nexus. In *Geoffrey, Inc. v. South Carolina Tax Commission*,⁴³ South Carolina imposed a corporate income tax on Geoffrey, Inc. (Geoffrey), a Delaware company with no employees, offices, or property in the state.⁴⁴ Geoffrey held the trademarks of its parent, Toys "R" Us, Inc., and leased those trademarks back to its parent for a royalty.⁴⁵ The result was that much of the profit earned in South Carolina Toys "R" Us stores was paid to the subsidiary, which paid lower taxes in Delaware.⁴⁶ The South Carolina Supreme Court upheld the taxation of Geoffrey, ruling that it had accounts receivable in South Carolina—and therefore nexus existed.⁴⁷ Geoffrey had "contemplated and purposefully sought the benefit of economic contact with" South Carolina.⁴⁸ The primary reason for finding nexus, however, was that Geoffrey had licensed intangibles in the state: "It is well settled that the taxpayer need not have a tangible, physical presence in a state for income to be taxable there. The presence of intangible property alone is sufficient to establish nexus."⁴⁹ Other states have joined South Carolina in using the in-state "presence" of intangibles to justify the taxation of out-of-state companies.⁵⁰

41. Christina R. Edson, Quill's *Constitutional Jurisprudence and Tax Nexus Standards in an Age of Electronic Commerce*, 49 *TAX LAW.* 893, 945 (1996).

42. Charles E. McLure, Jr., *Taxation of Electronic Commerce: Economic Objectives, Technological Constraints, and Tax Laws*, 52 *TAX L. REV.* 269, 395 (1997).

43. *Geoffrey, Inc. v. S.C. Tax Comm'n*, 437 S.E.2d 13, 19 (S.C. 1993), *cert. denied*, 510 U.S. 992 (1993) (sustaining a state tax on plaintiff's royalty income and finding the state tax not violative of the Due Process Clause or the Commerce Clause).

44. *Id.* at 15.

45. *Id.*

46. *Id.*

47. *See id.* at 16 ("[W]e find that the 'minimum connection' required by due process also is satisfied by the presence of Geoffrey's intangible property in this State."); *id.* at 18 ("We hold that by licensing intangibles for use in this State and deriving income from their use here, Geoffrey has a 'substantial nexus' with South Carolina.")

48. *Id.* at 16.

49. *Id.* at 18.

50. *See, e.g., A & F Trademark, Inc. v. Tolson*, 605 S.E.2d 187, 195 (N.C. Ct. App. 2004), *cert. denied*, 126 S. Ct. 353 (2005) ("[W]e hold that under facts such as these where a wholly-owned subsidiary licenses trademarks to a related retail company operating stores located within North Carolina, there exists a substantial nexus with the State sufficient to satisfy

And now we have the standard applied by West Virginia in *Tax Commissioner v. MBNA America Bank, N.A.*,⁵¹ that a nonpresent company is subject to taxation simply if it has customers present in the state. The state court had ruled, "MBNA's systematic and continuous business activity in this State produced significant gross receipts attributable to its West Virginia customers which indicate a significant economic presence sufficient to meet the substantial nexus prong of *Complete Auto*."⁵² The court declared that *Quill*'s physical presence rule applies only to sales and use taxes and not to taxation and interstate commerce generally.⁵³ Other courts that have considered West Virginia's rule have rejected it,⁵⁴ aligning themselves with the dissent in *MBNA*.⁵⁵

In June 2007, the Supreme Court declined to review the case, which involved FIA Card Services (formerly MBNA America Bank and now owned by Bank of America).⁵⁶ Although the quarter-million dollars in issue in that case may not be considered much for a company with yearly profits over \$1 billion, MBNA paid taxes on all that income to the state where it was headquartered: Delaware. If the West Virginia standard were to be followed, and if every state were to impose similar taxes on every company, the negative impact on the economy would be obvious.

the Commerce Clause."); *Dep't of Revenue v. Gap (Apparel), Inc.*, 886 So.2d 459, 462 (La. Ct. App. 2004) ("[I]f the intangible property [in this case, trademarks] is used in another state in such a way as to become an integral part of a business carried on within the state, the intangible property acquires a 'business situs' in that state and is subject to taxation in that state.").

51. *Tax Comm'r v. MBNA Am. Bank, N.A.*, 640 S.E.2d 226, 235–36 (W. Va. 2006), *cert. denied*, 551 U.S. 1141 (2007) (finding that a foreign credit card company, with its principal place of business and commercial domicile in Delaware, had a substantial economic presence in West Virginia, thereby establishing a "substantial nexus").

52. *Id.* at 236.

53. *Id.* at 232.

54. *See J.C. Penney Nat'l Bank v. Johnson*, 19 S.W.3d 831, 839–42 (Tenn. Ct. App. 1999) (finding insufficient nexus where an out-of-state bank had over 11,000 credit card accounts and a parent company physically in state); *Cerro Copper Prods., Inc. v. State of Ala. Dep't of Revenue*, Docket No. F. 94-444, 1995 WL 800114, at *3 (Ala. Dep't Rev. Dec. 11, 1995). ("As a practical matter, the same benefits of a bright-line, physical presence test cited in *Quill* for sales and use tax purposes would also apply equally to other types of taxes." (citations omitted)).

55. *See MBNA*, 640 S.E.2d at 236 (Benjamin, J., dissenting) ("In its opinion finding tax liability for an out-of-state corporation with no presence, tangible or intangible, in West Virginia on income realized out-of-state by that corporation for accounts kept out-of-state, the majority, in its opinion, boldly goes where no court has gone before.").

56. 551 U.S. 1141 (2007).

Perhaps the Court's decision not to review *MBNA* should be interpreted as the Court asking that Congress give the next word on the physical presence rule after *Quill*.

V. *Is the Cure Worse Than the Disease?*

What will be the result if the physical presence rule of *Quill* is jettisoned? The answer may well be a resulting area of law in which no one is sure what the rules are. Doctrine is developed case by case, and the facts of a particular case often preclude completeness or coherence; bad facts make bad law. "[T]he Court's ability to fine-tune an economic nexus rule is limited . . ."⁵⁷

Applying geography-based income taxes with a standard unrestricted by geography will mean multiple taxation and burdensome compliance costs. If a Virginia company sells a product on its website to a California purchaser via servers in Michigan and Utah, is the income attributable everywhere, nowhere, or somewhere in between? Economic nexus would seem to result in taxing the income from transactions everywhere; and even if that scenario seems absurd, taxing the income somewhere can be burdensome to figure out.

The *MBNA* court, again reaching for the zenith, or nadir, in tax reasoning, suggested the Commerce Clause itself is outdated: "The Framers' concept of commerce consisted of goods transported in horse-drawn, wooden-wheeled wagons or ships with sails. They lived in a world with no electricity, no indoor plumbing, . . . and no iPods."⁵⁸ Of course constitutional principles must be sufficiently flexible to apply to new circumstances, but hopefully the concept that state interests cannot burden interstate commerce remains a constant, despite the sophisticated new economy and technology.

The economic presence standard discriminates against e-commerce and necessarily favors bricks-and-mortar businesses:

If Congress enacts legislation that essentially overturns *Quill Corp.*, such legislation will create an undue burden by requiring many e-retailers to collect use taxes from hundreds of thousands of consumers nationwide and comply with thousands of different tax codes. Main Street retailers, however, need only comply with the tax code of the jurisdiction in which they conduct business. To reduce these costs, e-retailers would likely shift the burden to consumers by increasing prices. Moreover, imposing those

57. John A. Swain, *State Sales and Use Tax Jurisdiction: An Economic Nexus Standard for the Twenty-First Century*, 38 GA. L. REV. 343, 369 (2003).

58. Tax Comm'r v. *MBNA Am. Bank, N.A.*, 640 S.E.2d 226, 236 (W. Va. 2006).

administrative and financial burdens may force smaller online companies out of business or discourage businesses from engaging in e-commerce.⁵⁹

Under either the physical presence standard or the economic presence standard, a bricks-and-mortar store is concerned only about the tax system where it is physically located. Economic nexus, on the other hand, imposes additional obligations for each jurisdiction into which an item is sold; it is "effectively . . . an export duty on outbound commerce."⁶⁰ That export duty quickly becomes an excessive burden when you consider the different state rules that determine what is or is not taxed. For Ryan, and others, economic nexus is a way to end inequity between electronic and bricks-and-mortar retailers.⁶¹ But the practical effort will be that economic nexus rule will burden electronic commerce more than bricks-and-mortar businesses.

"[U]nder any nexus analysis, multiple taxing jurisdictions may have power over a remote seller. To avoid multiple taxation only one state may actually exercise that power."⁶² The physical presence rule makes that easy; the economic nexus rule creates complexity. In *MBNA*, West Virginia sought to tax income already subject to Delaware income tax. Though the second prong of *Complete Auto* is intended to prevent a state from taxing beyond its fair share, multiple states nevertheless will assert that they are entitled to tax the income. States are unlikely to reach agreements on who gets what share. "Because of the tension in interests between money market states (states that are importers of financial services) and money center states (states that are net exporters of such services), any future agreement on a single method of allocating and apportioning income among financial institutions seems unlikely."⁶³ Economic nexus almost certainly means multiple taxation and unending litigation involving multiple states.

Physical presence in state taxation imposes some limits on how far state taxation power can extend. If an economic nexus rule is adopted, geographical limits become irrelevant, resulting in states unfairly subjecting nonresidents to excessive taxation.

59. Ryan J. Swartz, *The Imposition of Sales and Use Taxes on E-Commerce: A Taxing Dilemma for States and Remote Sellers*, 2 J. HIGH TECH. L. 143, 156 (2003), available at <http://www.jhtl.org/docs/pdf/RSWARTZV2N1N.pdf>.

60. Brian S. Masterson, Note, *Collecting Sales and Use Tax on Electronic Commerce: E-confusion or E-collection*, 79 N.C. L. REV. 203, 217 (2000).

61. See, e.g., Swain, *supra* note 57, at 345 ("If consumer purchases are to be taxed, then they all should be taxed to avoid discrimination and keep a level playing field.").

62. Masterson, *supra* note 60, at 215.

63. R. Todd Ervin, Comment, *State Taxation of Financial Institutions: Will Physical Presence or Economic Presence Win the Day?*, 19 VA. TAX REV. 515, 531 (2000).

Adopting an economic nexus standard would unsettle expectations and potentially threaten economic investments. "Taxpayers, mail-order and Internet alike, rely on [physical presence] for 'settled expectations' in tax planning and compliance, as do the states; any change in the standard would result in many taxpayers finding themselves taxable in far more states than they planned for."⁶⁴ The effect on e-commerce if an economic nexus standard were adopted, as noted above, could be extreme:

Just as the mail-order catalog business had grown prior to *Quill*, so the financial services industry has expanded Without the availability of such credit, a great amount of which often crosses state lines, the growth of electronic commerce will be substantially hindered. An economic presence test would threaten income taxation in each state where credit was offered and, therefore, might tend to discourage creditors—especially smaller, less wealthy creditors—from extending credit in multiple states.⁶⁵

In other words, any judicial acceptance of economic nexus would adversely affect e-commerce. A physical presence rule is the only nexus rule that avoids burdening interstate commerce.

VI. Conclusion

An economic nexus rule is inherently discriminatory against out-of-state business activity within the context of our state tax systems. As long as state tax systems are defined by geographical lines, the principles outlined in Ryan's Note would seem to require that taxes be imposed only on individuals and businesses within those geographical lines. If one advocates tax liability based on economic activity without regard to geography, the tax system should not be defined by geography.

Ryan's Note is a valuable addition to the discussion of state corporate tax reform. The Note provides an excellent overview of the development of the physical presence standard for state tax nexus as well as the development of the economic presence standard. The Note sets out a clear set of evaluative criteria to guide us through the reform process, and the Note focuses on the two key issues in state corporate income tax reform—the lack of uniformity in apportionment statutes and an appropriate standard for determining nexus. I agree that a more well-developed nexus standard would be useful and

64. Sidney S. Silhan, Note, *If It Ain't Broke Don't Fix It: An Argument for the Codification of the Quill Standard for Taxing Internet Commerce*, 76 CHI.-KENT L. REV. 671, 688 (2000).

65. Ervin, *supra* note 63, at 540–41.

welcomed by both state revenue departments and multi-state corporate taxpayers. For now, that standard should remain the physical presence standard. I applaud Ryan's outstanding effort, and look forward to his sequel on the Uniform Division of Income for Tax Purposes Act.⁶⁶

66. UNIF. DIV. OF INCOME FOR TAX PURPOSES ACT (1957).