stopped a refrigerated truck loaded with product belonging to Smithfield Foods, a company headquartered in my state of Virginia, on the New Jersey turnpike. The agent held the truck and its driver for several hours and demanded that, to release the truck, Smithfield had to wire $150,000 immediately to the New Jersey Department of Taxation. The agent claimed that he had the right to hold the truck and its contents because Smithfield had failed properly to file New Jersey tax returns.

Smithfield informed the New Jersey agent that his claim was unfounded because of the Public Law 86–272 protected it from New Jersey income taxation because it only engaged in solicitation by advertising in New Jersey and had no physical operations in the state. The agent refused to accept this explanation; however, he finally agreed to release the truck and its driver in return for $8,000.

Smithfield appealed this aggressive and incorrect application of Public Law 86–272 to the New Jersey State tax commissioner. Ultimately, New Jersey accepted Smithfield’s contention that it has no physical presence in the taxing jurisdiction and is, therefore, not subject to New Jersey income tax. It issued Smithfield a refund and an apology for its roadside justice system, but not before Smithfield had invested much time and expense in resolving a situation which should not have arisen. Our measure will help avoid such scenarios in the future by clarifying the physical presence standard embodied in Public Law 86–272.

New Jersey has used similar tactics against out-of-state companies selling intangible goods to its residents, a situation not covered by Public Law 86–272. It has argued that a mom-and-pop South Carolina software company, with no physical presence in any states besides South Carolina and Georgia, owes a minimum of $600 per year in corporate income taxes and fees based only on the sale of licensed software to a New Jersey entity, and that the company would owe such tax every year that its software was in use in the state, even for those years in which the company had no income from any customer in New Jersey.

The Louisiana Department of Revenue has threatened to assess business activity taxes on several out-of-state companies based merely on the fact that they broadcast programming into the state, arguing that the companies are exploiting the Louisiana market because the programming is seen or heard by individuals in Louisiana.

Several states attempt to assess business activity taxes on out-of-state credit card companies based solely on the fact that people use the companies’ credit cards in the taxing jurisdiction and enjoy the “substantial privilege of carrying on business” in the state.

Some localities have attempted to impose personal property taxes on property orbiting in space. For example, Los Angeles County attempted to impose a property tax on a county-based company which owned eight communications satellites permanently orbiting in space. The city of Virginia Beach, Virginia, also attempted to impose personal property taxes on three transponders attached to satellites orbiting in space which were owned by a city-based cable company. If states were to require the collection of these business activity taxes, on the basis that a satellite orbits above the state creates a physical presence there or because a business generates income in a state because its satellite passes over the state, there would be significant consequences for many industries.

The Business Activity Tax Simplification Act offers Members the opportunity to put an end to nonsensical situations like these. In doing so, we will provide certainty for U.S. businesses and to states thereby fostering economic growth and development. I thank Mr. GOODLATTE and the original cosponsors of the Business Activity Tax Simplification Act for their support, and I urge each of our colleagues to join with us in passing this bi-partisan measure.

RECOGNIZING THOMAS K. FLEMING FOR HIS YEARS OF SERVICE TO THE NORTH RICHLAND HILLS, TEXAS COMMUNITY

HON. MICHAEL C. BURGESS OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 2008

Mr. BURGESS. Madam Speaker, I rise today to recognize Thomas K. Fleming, Mr. Fleming, of North Richland Hills, Texas, after 13 years of service, has recently retired from S.C.O.R.E., the Service Corps of Retired Executives.

Mr. Fleming helped to establish the local North Richland Hills chapter of S.C.O.R.E. in 1995. Under his leadership, S.C.O.R.E. has offered small business seminars and one-on-one counseling to owners and prospective owners of small businesses at the North Richland Hills Public Library for more than a decade.

Under Mr. Fleming’s leadership, S.C.O.R.E. has helped thousands of small business owners in the North Richland Hills area by giving them expert, no-cost, confidential counseling to improve the chances of their small business success. The local economy owes many thanks to Mr. Fleming’s guidance.

While his time with S.C.O.R.E. is coming to a close, I am confident Mr. Fleming will continue to enrich the city of North Richland Hills as a devoted resident. I am privileged to join his family, friends, and coworkers in extending my sincere congratulations on his retirement.

Again, Madam Speaker, I am proud to recognize Thomas K. Fleming for his diligent work as a dedicated serviceman to his local community. I am honored to acknowledge such a committed and altruistic citizen. It is the servant leadership of Mr. Fleming, and those like him, which truly makes our nation great.

HONORING SUPER BOWL XLII CHAMPIONS THE NEW YORK GIANTS

HON. CHARLES B. RANGEL OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 2008

Mr. RANGEL. Madam Speaker, today I rise on behalf of the New York Delegation to congratulate the champions of the football world, the New York Giants. They successfully defeated the perfect New England Patriots 17–14 in Super Bowl XLII in one of the biggest