



The Power of Direct
Relevance. Responsibility. Results.

Ron Barnes
Vice President, State Affairs

March 10, 2010

Senator Eileen M. Daily
Co-Chair, Finance, Revenue and Bonding Committee
Room 3700
Legislative Office Building
Hartford, CT 06106

Representative Cameron Staples
Co-Chair, Finance, Revenue and Bonding Committee
Room 3704
Legislative Office Building
Hartford, CT 06106-1591

Dear Senator Daily and Representative:

Respectfully I am writing to express the Direct Marketing Association's (DMA) opposition to HB 5481, which seeks to extend use tax collection obligations to retailers located outside the Connecticut who have no physical presence in the state. DMA is the largest trade association for companies engaged in direct marketing to consumers and businesses via catalogs and the Internet. Founded in 1917, the DMA today has over 3,100 member companies, including many Connecticut businesses. HB 5481 would amend the definition of the term "retailer" to include any out-of-state retailer whose website is commercially "linked" with the website of a Connecticut resident.

The scope of this legislative proposal is extraordinarily broad. For example, under this bill, if a Connecticut conservation group or youth organization placed a link on its website that enables members to make purchases from an out-of-state mail order or Internet company at a discount, and the Connecticut organization receives some form of consideration for agreeing to the link on its website, on those facts alone, the remote seller would be deemed to be a Connecticut "retailer" with all of the tax obligations associated with that status. This is an expansion of the Connecticut tax system across state borders to businesses that have no physical presence in the state. Such an aggressive expansion of tax jurisdiction should be rejected by the Legislature for the following reasons:

- The expanded definition of "retailer" is an attempted end-run around the Commerce Clause of the United States Constitution (Art. I, § 8, cl. 3), as it has been consistently interpreted and applied by the United States Supreme Court;
- The proposal is bad tax policy and will invite retaliatory legislation by other states;

- The legislation would be detrimental to Connecticut's economy and to its leadership in the field of electronic commerce.

The Direct Marketing Association's concerns are explained in greater detail below.

The Legislation Would Violate The Commerce Clause of the United States Constitution

The United State Supreme Court has been consistent, and unwavering, in holding that a state cannot impose sales/use tax collection obligations on out-of-state vendors unless those retailers have a "physical presence" in the taxing state. *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); ("Whether or not a State may compel a vendor to collect a sales or use tax may turn on the presence of a small sales force, plant or office") See also *National Bellas Hess v. Dep't of Revenue*, 386 U.S. 753 (1967). In both of these decisions, the United States Supreme Court explained that the furthest permissible extension of a state's taxing power over an out-of-state retailer was set forth in *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960). In that case, the taxpayer retained ten wholesalers, jobbers and salesmen who directly and continuously conducted in-state solicitation of customers and physically took orders from buyers within the taxing state. The Court found that such feet-on-the-street sales activity was sufficient to constitute the requisite "physical presence" to establish constitutional "nexus." The facts in that landmark case were certainly far different from the situation involving the mere presence of an electronic link between two websites.

The Proposed Legislation Is Bad Tax Policy

There are over 7,000 sales and use tax jurisdictions in the United States, with varying tax rates, taxable products, exempt transactions, filing requirements, audit arrangements and appeal procedures. The Supreme Court's Commerce Clause jurisprudence is intended to give substantive meaning to the jurisdictional boundaries that allow the American federal system of government to accommodate the exercise of state sovereignty, including in the area of taxation. Clearly, each state is sovereign in regard to the tax obligations of persons and businesses within its territory, but that authority does not extend beyond a state's boundaries.

Federalism does not work efficiently, or fairly, when a legislature attempts to export its tax laws across state borders. A system in which 50 state governments, and thousands of localities, impose their myriad sales/use tax regimes on businesses in each of the other 49 states would be chaotic, both as a matter of tax administration and business compliance. If the Connecticut Department of Revenue Services were empowered to impose new burdens on businesses in distant states, it is inevitable that similar legislation would be enacted by other state legislatures (whose businesses would be adversely affected by the Connecticut law), and their state revenue departments will attempt to exert similar authority over Connecticut companies. Indeed, similar proposals are now pending in other states. The end result will be nothing less than a crazy quilt of non-uniform tax laws and compliance obligations that will further stagnate the consumer sector of the national economy and aggravate an already grossly inefficient system of multi-state tax administration. In addition, the new tax obligations on consumer transactions will be confusing to, and burdensome on, Connecticut residents.

Hanging Out The "Unwelcome" Sign To Electronic Commerce

It is beyond question that state tax policies greatly influence business decisions. Connecticut has benefited from being recognized as a leader in technology and business innovation. The proposed nexus-expanding tax legislation, however, would carry a very different message. It would issue a

warning to companies throughout the United States to beware of any connection with businesses and organizations located in Connecticut, because those relationships might be used as a pretext to impose new tax obligations on remote sellers, despite the absence of any physical facilities or personnel within the state. The inevitable effect of such a law will be that direct marketing companies will choose, if possible, not to associate with businesses located in Connecticut, but, instead, re-direct their relationships to companies located in other states. Such a development is a lose-lose proposition. It produces no new tax revenue for Connecticut, while, at the same time, directly harming Connecticut's economy in the midst of the current recession.

DMA appreciates the opportunity to comment on HB 5481 and, on behalf of its members, urges you to reject this untimely tax proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Barnes', written in a cursive style.

Ron Barnes
Vice President, State Affairs

cc: Members of the Joint Finance, Revenue and Bonding Committee