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Senator John Fonfara, Co-Chairman
Rep. Jeffrey Berger, Co-Chairman
Finance, Revenue and Bonding Committee
Legislative Office Building, Room 3700
Hartford, CT 06106

March 18, 2016

RE: Opposition to SB 448 - Notice and Reporting Requirements for Internet Sales and Erasing the Physical Presence Protection for Businesses

Dear Chairmen Fonfara and Berger:

We ask that you oppose SB 448. We understand the need for states to raise revenue. However, we worry that SB 448 has serious flaws that should preclude its approval by your committee:

- SB 448 would expose the private purchasing information of Connecticut consumers to potential abuse or leaks by the state’s tax department.
- SB 448 is based on a Colorado law that a federal court already ruled unconstitutional.
- The artificial expansion of physical presence puts your state’s businesses at risk of reactionary legislation in other states.
- Nothing about SB 448 would bring new revenue into the state, as it would only move money from the pockets of Connecticut residents to state coffers.

Under SB 448, the Connecticut state tax department receives a list of every purchase that Connecticut residents make from out-of-state companies. As you can imagine, this information is private and might be very sensitive. Consider a Connecticut consumer purchasing homeopathic treatments for a mental disorder, or making a purchase of jewelry about which their significant other does not know. In essence, SB 448 gives Connecticut tax collectors the ability to look into the personal lives of state residents.

SB 448 mirrors a 2010 Colorado law¹ that federal courts determined was in violation of the US Constitution – based on both the dormant commerce clause and first amendment. Shortly after enactment, a federal court in Colorado enjoined the Colorado reporting mandate. Nearly six years later the law still remains enjoined and the state has spent thousands of dollars trying to overturn the decision. It currently awaits a hearing on the facts in the Federal District Court of Colorado which previously found the Colorado law unconstitutional.

¹ Rev. Stat. § 39-21-112

Like the Colorado law, SB 448 would impose undue burdens on every out-of-state seller, pointing to similar constitutional infirmities and an expensive court battle with a predictable outcome. The mandated disclosure of Connecticut residents' buying habits is not only invasive, but federal courts have determined that it violates the first amendment. A federal district court struck down a North Carolina reporting mandate similar to SB 448, saying:

“The First Amendment protects a buyer from having the expressive content of her purchase of books, music and audiovisual materials disclosed to the government. The fear of government tracking and censoring one’s reading, listening and viewing choices chills the exercise of First Amendment rights.”²

SB 448 erodes the physical presence standard that protects Connecticut businesses from tax collectors in other states. Enactment could prompt other states to force Connecticut businesses to comply with their tax rules, rates, tax holidays, thresholds, and caps. SB 448 could thereby encourage 46 state tax auditors to go after Connecticut businesses. Imagine telling your local businesses that New York and Massachusetts tax auditors can now go after them for taxes due on out-of-state sales.

Please note that in no event would SB 448 bring new tax revenue into Connecticut, since any new sales & use tax collected just moves from the Connecticut purchaser to the state treasury.

We fully understand the need for states to seek out additional tax revenue. However, SB 448 presents new burdens on Connecticut citizens that would expose their privacy and cost the state to defend the law’s constitutionality.

Thank you for considering our views. Please let me know if I can provide further information.

Sincerely,



Carl Szabo
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NetChoice is a trade association of e-Commerce businesses. More information at www.netchoice.org

² *Amazon Inc. v. Lay*, Case No. C10-664 MJP (WA Fed Ct, Oct. 10).