

**NetChoice** *Promoting Convenience, Choice, and Commerce on The Net*

Steve DelBianco, President  
NetChoice  
1401 K St NW, Suite 502  
Washington, DC 20005  
703-615-6206  
[www.netchoice.org](http://www.netchoice.org)



April 20, 2018

Senate President Charles Schneider  
House Speaker Linda L. Upmeyer  
Iowa Legislature  
Des Moines, Iowa

RE: **Opposition to HF 2489 – New Taxes on Iowans**

We ask that you not include provisions in HF2489 that would impose new taxes on Iowa residents, harm Iowa's technology sector and Iowa's travel agents, and would likely be blocked by constitutional challenges.

### **No new money would come into Iowa**

Any online sales taxes collected as the result of HF 2489 would come from the pockets of Iowa residents -- not from out-of-state businesses.

### **The new tax on online marketplaces is likely seen as a new tax by your constituents**

HF 2489 makes online marketplaces liable for taxes on sales to Iowans, and this is likely to be seen as a new tax by your constituents.

We polled Minnesota residents on a similar tax there, and by a 2-to-1 margin, Minnesotans consider this legislation a statewide tax increase. We would likely see similar results in a poll of Iowa citizens. (see Minnesota poll at [NetChoice.org/MNPoll](http://NetChoice.org/MNPoll)).

On the Minnesota tax burden on marketplaces, Grover Norquist, ATR President said, "This bill puts shackles on any online marketplace looking to make Minnesota its home."

This tax burden on online marketplaces is like requiring the Coral Ridge Mall to be liable for the sales tax on purchases made at stores in the mall. And since HF 2489 isn't likely to be applied to offline marketplaces like the Coral Ridge Mall, HF 2489 is unconstitutional as violating the Federal Internet Tax Freedom Act (ITFA), discussed below.

### **HF 2489's tax on online marketplaces will invite other states to burden Iowa businesses**

HF 2489 creates a dangerous precedent for other states to follow. While HF 2489 would apply only to remote sellers, it encourages other states to create similar laws that would impact Iowa sellers.

## **Passage of HF 2489 would erode Iowa's power to protect its citizens and businesses**

Advocates for HF 2489 claim that the purpose of this bill is to overturn the current physical presence standard.<sup>1</sup> Today, the physical presence standard stops tax collectors in California, New York, or Illinois from harassing Iowa businesses that have no physical presence in those states.

But the online seller tax in HF 2489 would reduce the ability of Iowa to protect its businesses from tax collectors from other states, who can force Iowa businesses to travel across the country to defend themselves in foreign state courts.

State tax collectors would be the true “winners” if HF 2489 succeeds in eroding the physical presence standard. Iowa citizens and Iowa businesses would be the losers.

## **Minimal tax revenue would be generated from HF 2489's requirements for online sales tax**

Today, most of the top e-retailers already collect for Iowa. That includes Amazon, who accounted for 44% of online sales in 2017.<sup>2</sup>

Last year, the US Government Accountability Office (GAO)<sup>3</sup> estimated that new tax collections are less than half of the often cited and outdated University of Tennessee study<sup>4</sup> estimates.

The question is whether the minimal tax revenue extracted from Iowa citizens is enough to justify the resulting legal costs and erosion of state sovereignty?

## **Harm to Iowa from Digital Goods and Services Taxation**

If Iowa begins taxing digital goods and services it will harm Iowa's technology sector, encourage businesses to select states like Michigan as principal place of activity, and undermine Iowa's ongoing green initiatives.

## **Harm to Iowa's Technology Sector**

Now is a critical point in the evolution of e-commerce and internet content distribution. Online companies are experimenting with new ways to deliver information, services, and content; and businesses of all kinds are going online to reach consumers and advertise to receptive audiences.

While state governments are looking online for additional revenue, including taxing digital products, many states that considered such tax revenue realized the potential harm and avoided such taxes.

For example, Arkansas, Illinois, Kansas, Michigan, Missouri, North Dakota, and Oklahoma do not tax digital goods. Likewise, Illinois, Indiana, Kansas, Michigan, North Dakota, Oklahoma and Wyoming do not tax streaming services.

We believe that Iowa should conclude that this tax proposal would negatively impact the state. It will penalize the environmental benefits of digitally delivered goods as well as discourage economic development and job creation among businesses who use the Internet to deliver services.

---

<sup>1</sup> *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) further confirmed the physical presence standard for sales tax collection. It protected Quill, a Delaware corporation with offices and warehouses in Illinois, California, and Georgia, from North Dakota tax collectors and North Dakota tax rules – a state where Quill had no physical presence.

<sup>2</sup> Lauren Thomas, *Amazon grabbed 4 percent of all US retail sales in 2017, new study says*, CNBC (Jan. 3, 2018).

<sup>3</sup> U.S. Government Accountability Office, *States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs* (Nov. 2017)

<sup>4</sup> William Fox, *An Analysis of Internet Sales Taxation and the Small Seller Exemption*, University of Tennessee (April 13, 2009)

## **Competitive Disadvantage to Iowa's Economy versus Iowa's neighbors**

States that begin taxing digital goods put themselves at a competitive disadvantage when encouraging new businesses to move into the state and supporting existing businesses trying to stay and grow.

Consider a new online service weighing the costs of basing operations in Iowa or Michigan. Michigan already offers many pro-businesses tax incentives. If Iowa levies the types of taxes proposed in HF 2489, it loses points on that score versus Michigan.

Also, since out-of-state businesses do not have physical presence in Iowa, only Iowa businesses would be required to collect these digital goods taxes. This imposes tax collection requirements only on Iowa businesses, further disadvantaging them versus their competitors in states like Michigan and Kansas. Moreover, since no out-of-state businesses are collecting digital goods taxes, the actual revenue collected will be much lower than estimated.

Iowa should instead follow its many neighbors and not tax digital goods or services.

## **Harm to Iowa's Environment – Digital Goods are Green**

Iowa prides itself on its green initiatives. However, since we typically tax things we don't like, this new tax would signal Iowa's disapproval of eco-commerce. The result of such a tax is Iowa's residents logging more miles in their cars to buy physical products whose raw inputs and carbon outputs contribute to global warming.

A digital download is the greenest way to buy music, movies, books, games, and software. Downloading requires no driving to the store, no delivery vans, and no plastics or packaging.

Iowa's leaders should identify ways to *encourage* the environmental benefits realized when consumers use digital delivery instead of driving to a store for a tangible item that has to be produced and packaged. This would further signal Iowa's commitment to environmental sustainability, and it would send a strong positive message about the benefits of eco-commerce.

## **Creates a new tax on Iowa residents who use online travel services**

Today, Iowa does not impose lodging tax on service fees charged by travel agents when they research and compare available travel options and make the booking. But HF 2489 would impose a new tax on services and service fees provided by travel agents and online travel companies – all of which is passed on to your constituents.

The new tax imposed on booking service fees by HF 2489 would impact only Iowa's citizens and businesses. That's because of the rules for determining the source jurisdiction for taxable services – when a tourist uses a travel service, the reservation service fee is sourced to the traveler's home location – not to the traveler's destination.

For example, say two tourists are booking a hotel room in Iowa. One lives in Indianapolis, the other in Des Moines. The Indiana tourist would *not* pay the tax created by HF 2489 when they booked through a travel agent since they received their online booking services outside of Iowa.<sup>5</sup> But, the tourist living in Des Moines who books through a travel agent *would* pay the tax created by HF 2489.

This new tax would therefore only apply to services provided to Iowa-based travelers. The tax would *not* apply to service fees paid by out-of-state travelers booking Iowa hotels.

---

<sup>5</sup> Note that the out-of-state tourist still pays the Iowa occupancy tax when they book the room.

## **Allows tax collectors to levy their occupancy tax on more than just hotel rooms**

Iowa travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. But HF 2489 allows Des Moines tax collectors to impose their occupancy taxes on all kinds of goods and services when included in travel packages:

- taxi from the airport to the hotel
- food served at a hotel restaurant
- tickets to a Cavaliers Game

## **The new tax on ride-sharing services will be paid by Iowa residents**

Today, transportation network companies (“TNCs”) create economic opportunities for thousands of Iowa residents and provide affordable and convenient transportation opportunities for citizens across the state.

TNC services help Kansas residents across the state get to and from work, events, and safely home. But HF 2489 seeks to create new taxes on the services TNCs offer. In doing so, these taxes are passed onto your constituents.

In the end, HF 2489 is creating a new tax on TNC services and a new tax on Iowa residents.

## **HF 2489 creates a new tax and makes it harder for neighbors to lend their car**

Today, online car sharing platforms are helping Iowa residents generate income by sharing their cars. Subsection 6 on page 75 of HF 2489 creates a disincentive for these services to operate in Iowa, since doing so exposes the platform to new tax collection obligations.

And most car-sharing occurs between neighbors, so this new tax will mostly fall on Iowa residents.

## **HF 2489 is a violation of Supreme Court precedent established in *Quill v North Dakota***

HF 2489 will generate no revenue for the state unless and until the US Supreme Court overturns a century of established federal doctrine.

Following enactment of the law, groups like NetChoice and ACMA will likely seek an injunction and challenge the law. Immediate injunction of HF 2489 is likely, since even the state of South Dakota<sup>6</sup> stipulated that its similar “Kill Quill” law was unconstitutional.

On March 6, 2017, the State Circuit Court in South Dakota granted a motion for Summary Judgment against the state’s 2016 law, finding:

“Because each of the Defendants lacks a physical presence in South Dakota... the State acknowledges that under *Quill Corp. v. North Dakota*, the State of South Dakota is prohibited from imposing sales tax collection and remittance obligations on the Defendants.”

“The State further admits that this Court is required to grant summary judgment in Defendants’ favor, because of the *Quill* ruling.”

“This Court is duty bound to follow applicable precedent of the United States Supreme Court.”

“This is true even when changing times and events clearly suggest a different outcome; it is simply not the role of a state circuit court to disregard a ruling from the United States Supreme Court.”

---

<sup>6</sup> See *South Dakota v. Wayfair Inc. et al*, Case No. 3:2016cv03019 (S.D. Dist. Ct. May 15, 2016).

If a similar injunction is obtained in Iowa, the state could not enforce HF 2489.

It is highly likely that the US Supreme Court will decide on the *Quill* question before July, in the case of South Dakota's law.<sup>7</sup> HF 2489 acts as a pile-on with no material benefit to Iowa -- while incurring litigation costs for the state.

### **HF 2489 is Unconstitutional as a violation of the federal Internet Tax Freedom Act**

In 2016, a Republican-controlled congress and a Democratic president made permanent the Federal Internet Tax Freedom Act (ITFA). The ITFA prohibits states from imposing "any tax . . . on electronic commerce that is not generally imposed and legally collectible by such State."<sup>8</sup> The legislative intent of the ITFA was to prevent the kind of e-commerce discrimination that HF 2489 seeks to create, and would be the basis of a constitutional challenge to the Iowa law.

Because of the creation of new taxes only on Iowa residents, harm to Iowa travel agents, harm to Iowa citizens embracing the sharing economy, and unconstitutional nature of the bill, we ask that you not advance HF 2489.

We appreciate your consideration of our views, and please let us know if we can provide further information.

Sincerely,

Steve DelBianco  
President, NetChoice

*NetChoice is a trade association of e-Commerce and online businesses.* [www.netchoice.org](http://www.netchoice.org)

cc: Senate and House leadership

---

<sup>7</sup> See Sandra Guy, *South Dakota sues four big online retailers over sales taxes*, Internet Retailer (April 29, 2016).

<sup>8</sup> 47 U.S.C. § 151.