

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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Senator Gerald Allen
Alabama State Senate
Commerce, Transportation and Utilities Committee
Montgomery, AL 36130

RE: **Opposition to HB 365, Sales and use tax**

Dear Chairman Allen:

We fully understand the need for states to collect additional taxes. However, we believe that HB 365 is a bad idea for Alabama, for several reasons:

1. Consumers buy online because it's convenient – not to avoid sales tax

A common misconception is that consumers shop online to avoid paying sales tax. In reality, Alabama consumers buy online for convenience, selection, and lower prices.

In fact, 18 of the top 20 online retailers already collect taxes in Alabama. A growing share of online purchases by Alabama taxpayers is from larger retailers who operate both retail stores and websites, where online sales result in tax collection, not tax avoidance. So the obligations imposed by HB 365 will fall hardest on small businesses that go online to find customers around the country in their effort to compete with big-box retailers.

2. HB 365 will generate adverse reactions from Alabama taxpayers and Internet users

HB 365 is designed to increase collection of sales tax when Alabama taxpayers purchase from out-of-state businesses. However, the bill could generate complaints from Alabama taxpayers as they realize who's being taxed and as they confront the impact of HB 365.

HB 365 could force Alabama Internet users to remove pop-up blockers they have installed to eliminate the most annoying online pop-up ads. Otherwise, users might not see the notice and confirmation pop-ups mandated by the bill.

The bill would not bring any *new* revenue into the state. Although the bill imposes obligations on out-of-state businesses, any collected revenue comes entirely from Alabama taxpayers. HB 365 would only move money from the pockets of taxpayers to the state capital.

3. HB 365 will face constitutional challenges

HB 365 requires out-of-state businesses to report purchases made by Alabama taxpayers. This could raise Constitutional infirmities worse than those Colorado confronted earlier this year. A Colorado judge enjoined a law similar to HB 365, stating:

“looking to the practical effect of the Act and the Regulations, I conclude that the burdens imposed by the Act and the Regulations are inextricably related in kind and purpose to the burdens condemned [by the US Supreme Court] in Quill.”¹

Alabama, like Colorado, would likely be in court arguing the constitutionality of HB 365. And when a state loses these court battles, the court can require the state to pay the opposing party’s attorney’s fees. It would be prudent for Alabama to defer acting on HB 365 until this novel approach survives Constitutional challenges.

4. HB 365 is discriminatory and may violate Federal Law

HB 365 unfairly discriminates against online sales. The bill’s requirement for prior-purchase notice confirmation and taxpayer letters do not extend to non-Internet businesses such as:

- Phone orders
- Mail-order catalogs
- Purchases from neighboring states that are shipped into Alabama

This discrimination may result in HB 365’s violation of 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.”² In addition, part of the legislative purpose of the ITFA was to prevent the type of e-commerce discrimination that HB 365 seeks to create.

HB 365 also unfairly discriminates against small online retailers. While large retailers can more easily implement the new requirements of HB 365, the re-programming of websites and provision of written notices will be a big challenge to small businesses that compete against large retailers.

5. HB 365 will bring no new revenue from out-of-state businesses

It’s essential to remember that out-of-state businesses are not the ones paying Alabama’s sales and use taxes. In no event would new money flow into Alabama; any incremental sales tax collected just moves from the Alabama taxpayer to the state treasury at a time when households are being squeezed by a struggling economy. That means the fiscal burden of HB 365 falls heavily on the shoulders of Alabama taxpayers.

For all these reasons, we urge you to oppose HB 365.

Thank you for considering our views and please let me know if we can provide further information.

Sincerely,



Steve DelBianco
Executive Director, NetChoice
cc: Members of the Committee

NetChoice is a coalition of trade associations and e-Commerce businesses who share the goal of promoting convenience, choice and commerce on the Net. More information about NetChoice can be found at www.netchoice.org

¹ *The Direct Marketing Ass’n v. Roxy Huber*, No. IO-CV-01546-REB-CBS (June 30, 2010).

² 47 U.S.C. § 151.