

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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May 25, 2011

Rep. Jim Tucker
Louisiana House of Representatives
Box 94062
900 North Third Street
Baton Rouge, LA 70804

RE: **Opposition to HB 641, Definition of "dealer" for state and local sales and use tax.**

Dear Speaker Tucker:

We fully understand the need for states to seek out additional tax revenue. However, we worry that HB 641 presents a *new pain with no gain* burden that would cause job loss across Louisiana and harm the Louisiana economy.

Loss of State Revenue

HB 641 is designed to increase collection of sales taxes when Louisiana residents purchase from out-of-state businesses. It would apply to retailers that use an extended network of websites for displaying advertisements. The law re-defines what it means to be a "business" in the state and creates a presumption of nexus when an out-of-state company pays Louisiana companies for referrals from its websites.

Today, both online and traditional companies are experimenting with ways to deliver products, services, and content, while businesses of all kinds are using online advertising to find distant customers. State laws that declare Internet advertising a proxy for in-state sales agents will stunt the growth of new business models and distort the evolution of Internet marketing.

Louisiana should avoid the procedural pitfalls and fundamental unfairness of making online advertising a nexus determinant. A far more important consideration for Louisiana legislators is the likely unintended impact on in-state businesses and charities that rely on this very same advertising to fund their operations.

Harm to Louisiana Schools

Consider the bill's impact on a growing source of fundraising dollars for Louisiana's charities—*Box Tops for Education*.

For years, kids around the country have been collecting box tops from cereal boxes to raise money for field trips and new equipment. *Box Tops for Education* has raised over a hundred million dollars -- by collecting just a few cents on every box top. Today, this fundraising has gone online via *Box Tops Marketplace*, generating commissions when parents shop at affiliated e-commerce websites.

Here's the Box Tops Marketplace webpage:



The Box Tops Marketplace has grown to over a hundred participating websites, offering parenting essentials such as pet supplies, shoes, books, clothing, and household goods. Each of the online stores in the *Box Tops Marketplace* gives a percentage of sales to support good causes in Louisiana:

	1-800 PetMeds 6% donation Description Shop Now		Land of Nod 4% donation Description Shop Now
	1-800-flowers.com 8% donation Description Shop Now		Lands' End 3.5% donation Description Shop Now
	Aeropostale 3% donation Description Shop Now		Lands' End Overstocks 3.5% donation Description Shop Now
	Apple Store 1% donation Description Shop Now		LeapFrog 3% donation Description Shop Now

Also in Louisiana, schools like the Livaudais Middle School in Gretna, LA, encourage parents to do their online shopping at *Box Tops Marketplace* to generate commissions for their school fundraising efforts:



School Announcements



Box Tops 4 Education

The Beta Club is now collecting Box Tops 4 Education. Livaudais Middle is asking for the support of families and community members. Our school earns 10 cents for each box top it collects. All you have to do is clip the box top label from all participating products and send them to our school. For the remainder of this school year, students can drop off the box tops to either Mrs. Miller or Mrs. Jeansonne. Next school year we will collect them in homerooms and have competitions to see who can collect the most.

You can also shop at your favorite online stores through the Box Tops Marketplace® (boxtops4education.com/marketplace). Up to 15% of your qualifying purchase total is automatically donated to our school, at no additional cost to you. Plus, you'll get exclusive Box Tops deals and discounts!

Thing is, few of the online stores participating in *Box Tops Marketplace* have any physical presence in Louisiana. More likely, the out-of-state retailers involved in the *Box Tops Marketplace* would cancel their affiliate programs in Louisiana.

The Loss Of A Growing Source Of Revenue For Louisiana Online Publishers

Website publishers across Louisiana rely on revenue generated from referral advertising. Often these referrals are to out-of-state retailers with no physical presence in Louisiana and no obligation to collect and remit sales tax for Louisiana purchasers.

A critical question before you is whether out-of-state retailers would continue to advertise with Louisiana publishers if Louisiana enacted HB 641 as a way to force out-of-state retailers to collect and remit state sales taxes.

Would they sue the state over questions of constitutionality?

Would they follow the example of hundreds of retailers who simply stopped their commission-based advertising in Rhode Island, Illinois, and North Carolina after those states enacted a similar law?

New Pain with No Gain Effects of HB 641

It's essential to remember that out-of-state businesses can avoid the burden of collecting taxes by cutting-off their advertising payments to Louisiana websites. Of course, Louisiana consumers could still buy from out-of-state businesses who stop paying Louisiana based websites. That means HB 641 could have the unintended consequence of reducing ad revenue for Louisiana publishers *without* increasing sales tax collections.

The net effect of HB 641 could therefore be *new pain with no gain*. In no event would new money flow into Louisiana; any incremental sales tax collected just moves from the Louisiana purchaser to the state treasury at a time when households are being squeezed by a struggling economy. To the contrary, fewer advertising dollars would flow to Louisiana websites who employ and serve Louisiana residents.

We therefore urge you to oppose HB 641 and to refrain from imposing additional burdens on retailers who spend advertising dollars with Louisiana publishers, businesses, and charities.

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

Sincerely,



Steve DelBianco
Executive Director, NetChoice

cc: Members of the House of Representatives

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