



NetChoice



May 14, 2018

Governor Dannel Malloy
State of Connecticut
Hartford, CT

RE: Veto Request for SB 417 – Creating a New Tax on Marketplaces

Dear Governor Malloy,

We ask that you veto SB 417 as it creates a new tax on Connecticut residents and is unconstitutional.

SB 417 will be seen by Connecticut consumers as a new tax and could erode your ability to protect Connecticut businesses from out-of-state tax collectors. Moreover, the new tax burdens created by SB 417 would move money from the pockets of your constituents to the coffers of tax compliance companies like the one to which the outgoing Revenue Commissioner is headed.¹

First, consider problems created by SB 417's anticipated legal challenges:

- Will not go into effect for several years, if ever
- Will cost Connecticut taxpayers in attorney's fees and court costs
- May be rendered irrelevant by other state lawsuits or Congressional action

Second, if the SB 417 survives court challenges, it would:

- Reduce the ability of Connecticut to protect its businesses from burdens imposed by other states
- Rely on new revenue extracted from Connecticut residents – not from out-of-state businesses
- Generate only minimal new tax revenue
- Establish a new tax regime that is anything but equal, consistent, or fair

¹ "Commissioner Sullivan has accepted a new position with Verus Analytics. The company assists tax agencies in using data-driven solutions to reduce the gap in uncollected taxes." Press Release, Gov. Malloy Announces Commissioner Sullivan to Step Down from the Department of Revenue Services (May 1, 2018)

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

SB 417 requires marketplaces become liable for collecting taxes for sales on their platform residents – likely to be seen as a new tax by your constituents.

We polled Minnesota residents in 2017 on a similar tax in that state, and by a 2-to-1 margin, Minnesotans considered this legislation a statewide tax increase.² We would likely see similar results in a poll of Connecticut citizens.

This tax burden on online marketplaces is like requiring the Connecticut Post Mall to be responsible and liable for the sales tax on purchases made at stores in the mall. And since SB 417 isn't likely to be applied to offline marketplaces like the Connecticut Post Mall, SB 417 is unconstitutional as violating the Federal Internet Tax Freedom Act (ITFA) discussed below.

SB 417's tax on online marketplaces is likely to bring burdens on Connecticut businesses from other states

SB 417 creates a dangerous precedent for other state revenue departments to follow. While SB 417 would apply only to remote sellers, it encourages other states to create similar laws that would impact Connecticut sellers.

Passage of SB 417 would erode state sovereignty

Advocates for SB 417 claim that the purpose of this bill is to overturn the current physical presence standard.³ Today, the physical presence standard stops tax collectors in California, New York, or Massachusetts from harassing Connecticut businesses that have no physical presence in those states.

But passage of SB 417 would reduce the ability of Connecticut to protect its businesses from tax collectors across the country, forcing Connecticut businesses to travel across the country to defend themselves in foreign state courts.

State tax collectors would be the true “winners” if SB 417 succeeds in eroding the physical presence standard. Connecticut citizens and Connecticut businesses would be the losers.

No new money would come into Connecticut

Any sales taxes collected as the result of SB 417 would come from the pockets of Connecticut residents – not from out-of- state businesses.

Minimal tax revenue would be generated from SB 417

Today, most of the top e-retailers already collect for Connecticut.

² See Minnesota poll at NetChoice.org/MNPoll

³ *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.

Even the US General Accounting Office⁴ predict collections are, at best, less than half of what the often cited and outdated University of Tennessee study⁵ promises.

The question, is whether the minimal tax revenue extracted from Connecticut citizens is enough to justify the legal costs, executive branch overreach, and erosion of state sovereignty?

SB 417 is Unconstitutional as a violation of Supreme Court precedent established in *Quill v North Dakota*.

SB 417 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 seek an injunction and challenge the law. Immediate injunction of SB 417 is likely, since even the state of South Dakota⁶ 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.”

If a similar injunction is obtained in Connecticut, the state could not enforce SB 417.

It is likely that the US Supreme Court will have already decided on the *Quill* question even before the SB 417 makes its way through the courts. As noted above, courts already enjoined and are now reviewing

⁴ U.S. Government Accountability Office, *States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs* (Nov. 2017)

⁵ William Fox, *An Analysis of Internet Sales Taxation and the Small Seller Exemption*, University of Tennessee (April 13, 2009)

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

the legality of a similar law in South Dakota⁷ and Indiana⁸ and regulation in Alabama.⁹ SB 417 acts as a pile-on with no material benefit to Connecticut -- while incurring litigation costs for the state.

SB 417 is Unconstitutional as a violation of the federal Internet Tax Freedom Act and *Quill*

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.”¹⁰ In addition, part of the legislative purpose of the ITFA was to prevent the same type of Internet e-commerce discrimination that SB 417 seeks to create.

SB 417 unfairly discriminates against online sales and would be a clear violation of the ITFA, resulting in a swift injunction of the law.

Because of the creation of new taxes only on Connecticut residents, harm to Connecticut travel agents, and unconstitutional nature of the bill, we ask that you veto SB 417.

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

Sincerely,

John Olsen
Director, Northeast Region
Internet Association

Tammy Cota
Executive Director
Internet Coalition

Carl Szabo
Vice President and General Counsel
NetChoice

Matt Mincieli
Executive Director
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⁷ See Sandra Guy, *South Dakota sues four big online retailers over sales taxes*, Internet Retailer (April 29, 2016).

⁸ Ind. Code § 34-14-1-1

⁹ See Chris Morran, *Newegg Challenges Alabama Over Collection of Online Sales Tax*, Consumerist (June 14, 2016)

¹⁰ 47 U.S.C. § 151.