

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

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Sen. Toi W. Hutchinson, Chair  
Senate Revenue Committee  
Illinois State Senate

February 20, 2018

**RE: Opposition to SB 2577 – Expanding the Use Tax Act and the Service Use Tax Act**

Dear Chair Hutchinson and members of the committee:

We respectfully ask that you do not move SB 2577 and avoid making the same mistakes as South Dakota.

SB 2577 will be seen by Illinois consumers as a new tax and could erode your ability to protect Illinois businesses from out-of-state tax collectors.

*First, consider problems created by SB 2577's anticipated legal challenges:*

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

*Second, if the SB 2577 survives court challenges, it would:*

- Reduce the ability of Illinois to protect its businesses from burdens imposed by other states
- Rely on new revenue extracted from Illinois 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

**Likely seen as a new tax by your constituents**

Illinois residents will likely see this as a new tax since any tax collected will come from the pockets of Illinois citizens, not from out-of-state businesses.

We polled Tennessee residents on a similar tax in that state, and 56% said requiring them to pay tax on online purchases from out-of-state businesses would be a statewide tax increase. We would likely see similar results in a poll of Illinois citizens. (see Tennessee poll at [NetChoice.org/TNTaxPoll](http://NetChoice.org/TNTaxPoll))

**SB 2577 is likely to bring burdens on Illinois businesses from other states**

Just by proposing SB 2577, Illinois creates a dangerous precedent for other state revenue departments to follow. While SB 2577 would apply only to remote sellers, it encourages other states to create similar laws that would impact Illinois sellers.

**No revenue would be generated from SB 2577 for several years, if ever. And SB 2577 fritters away tax dollars on an unnecessary lawsuit.**

SB 2577 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 2577 is likely, since even the state of South Dakota<sup>1</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.”

If a similar injunction is obtained in Illinois, the state could not enforce SB 2577.

**Passage of SB 2577 would erode state sovereignty**

Advocates for SB 2577 claim that the purpose of this bill is to overturn the current *Quill* standard<sup>2</sup> of physical presence. Today, the *Quill* standard stops tax collectors in California, New York, or Massachusetts from harassing Illinois businesses that have no physical presence in those states.

But passage of SB 2577 would remove the protections of *Quill* and reduce the ability of Illinois to protect its businesses from tax collectors across the country, forcing Illinois businesses to travel across the country to defend themselves in foreign state courts.

State tax collectors would be the true “winners” if SB 2577 succeeds in overturning the *Quill* standard. Illinois citizens and Illinois businesses would be the losers.

**No new money would come into Illinois**

Even if SB 2577 survived a Supreme Court challenge, *no new money would flow into Illinois*. Any sales taxes collected as the result of SB 2577 would come from the pockets of Illinois residents -- not from out-of- state businesses.

**Minimal tax revenue would be generated from SB 2577**

Today, most of the top e-retailers already collect for Illinois. That includes Amazon, who accounted for 44% of online sales in 2017.<sup>3</sup>

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<sup>1</sup> See *South Dakota v. Wayfair Inc. et al*, Case No. 3:2016cv03019 (S.D. Dist. Ct. May 15, 2016).

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

Some SB 2577 advocates cite a 2009 University of Tennessee<sup>4</sup> study to suggest a large windfall of uncollected sales taxes. However, the UT study is far out-of-date and fails to account for existing tax collection by Amazon and several other large e-retailers.

Even the US General Accounting Office<sup>5</sup> predict collections are, at best, less than half of what the outdated University of Tennessee study promises.

The question, assuming SB 2577 survives in court, is whether the minimal tax revenue extracted from Illinois citizens is enough to justify the legal costs, executive branch overreach, and erosion of state sovereignty?

### **SB 2577 creates a new tax that is not equal, consistent, or fair**

Tax advocates justify SB 2577 by saying it “creates a level playing field for all sellers.” However, SB 2577 foists disproportionate collection burdens on catalog and online retailers. When a customer enters a gift shop in Chicago, the store does not ask for that customer’s home address, so she can look-up the tax rate and later remit the tax to the customer’s home state.

But SB 2577 would impose the burden of look-up, tax filing, and audit -- if the sale occurs through a phone call, mail order, or the internet. We fail to see how that would be equal, consistent, or fair.

### **Discourages investment in Illinois**

This tax mandate would create a barrier to attracting new jobs and investment to Illinois since SB 2577 paints Illinois as anti-business and anti-tech. The provisions to create new tax obligations on online businesses discourages the growing array of companies from creating any presence in the state.

We respectfully ask that you not move SB 2577 and protect Illinois businesses from out-of-state tax auditors, protect Illinois citizens from a new tax, and avoid costly litigation the state is likely to lose.

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

Sincerely,



Carl Szabo  
Vice President and General Counsel  
NetChoice

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<sup>4</sup> Bruce, Fox, and Luna, *State and Local Government Sales Tax Revenue Losses from Electronic Commerce*, University of Tennessee (2009).

<sup>5</sup> U.S. Government Accountability Office, *States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs* (Nov. 2017)

