

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

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RE: **Opposition to new tax on peer to peer car sharing amendment to HB 1234 – creating new restrictions on car ownership**

The proposed amendment to HB 1234 adding a new tax on peer to peer car sharing will discourage new income opportunities for Granite state residents and impose burdensome regulations that are antithetical to property rights that are core to New Hampshire values.

This new tax amendment would impose barriers on car owners' ability to lend their car for a couple of days via Turo or NextDoor.

Moreover, the new tax amendment will undermine New Hampshire's effort to protect state businesses from out-of-state tax collectors and runs afoul of federal law by holding online platforms like Turo or NextDoor liable for taxes on any such car listed on their websites.

To that end, we suggest not advancing legislation like this new tax amendment and instead having a robust conversation about the benefits of the peer-to-peer economy.

Benefits of car-sharing to constituents

Car-sharing services provide extra income to New Hampshire residents. Over 4,800 New Hampshire residents have signed up to use Turo, a leading car-sharing platform. And about half of New Hampshire car-shares on Turo occur *between New Hampshire neighbors*.

Consider, for example, New Hampshire families that need a pick-up truck to move furniture. Car-sharing services help connect families that need a truck with neighbors who have a truck available for use. This helps car-owners earn extra income by sharing their cars with their neighbors.

This type of sharing has been around since the days of the cart and horse. If a neighbor puts gas in a truck after borrowing it via NextDoor, is NextDoor responsible for the tax on the gas?

The new tax amendment limits the property rights of New Hampshire citizens

Making it harder to use their car the way they want, the new tax amendment's limitations on New Hampshire residents seem counter to the state motto of: "Live Free or Die."

Big rental car chains benefit most from limits on car-sharing

Big rental car companies are backing legislation like the new tax amendment because they view the emergence of car-sharing as a threat to their business model. These big companies want to create artificial barriers to competition and are using legislation like *this new tax amendment as a form of competition prevention*.

Car-Sharing platforms are not rental car companies

While the big car rental companies want legislators to treat car-sharing as car-rental, the two activities are markedly different. Unlike Enterprise or Hertz, online platforms don't own the cars that are shared.

Big rental car companies enjoy \$3 billion in annual sales tax exemptions – something not available to car-sharing platforms.¹

Moreover, big car rental companies take advantage of tax loopholes and corporate and business tax incentives. Such deductions are rarely available to a New Hampshire car owner who shares their car.

The new tax amendment will undermine New Hampshire's effort to protect state businesses from out-of-state tax collectors

Governor Sununu said: "As Governor, I am going to do everything in my power to fight this outrageous attempt to force New Hampshire's businesses to collect out of state taxes."² The Governor was referring to the US Supreme Court case *South Dakota v. Wayfair*,³ which tested the longstanding *Quill* ruling that states can only impose sales tax on businesses with a physical presence in the state.

New Hampshire's amicus brief argued that states should not be able to force out of state businesses to collect and remit taxes. While the state lost when the Supreme Court reversed the *Quill* standard, the underlying US Constitutional Commerce Clause protections against under burdens remain.

Today, more than ever, New Hampshire should stand-up to stop tax collectors from California, New York, or Massachusetts from harassing New Hampshire businesses that have no physical presence in those states.

*"As Governor, I am going to do everything in my power to fight this outrageous attempt to force New Hampshire's businesses to collect out of state taxes."
- Governor Sununu referring to Wayfair v South Dakota*

While the new tax amendment supporters say that state lines are no barrier to tax collection by empowering New Hampshire tax collectors to impose taxes on online car-sharing platforms that have no presence in New Hampshire. This encourages foreign states to show that even New Hampshire's legislators think that states *should* be able reach across borders for tax collection purposes and that the US Supreme Court was right to overturn *Quill*.

New Hampshire should protect its businesses from tax collectors across the country that are trying to force New Hampshire businesses to travel to those states to defend themselves in foreign state courts.

The requirements from new tax amendment on Online Platforms would run afoul of federal laws

The internet is an open platform that enables people from all parts of New Hampshire to share content and engage in lawful conduct and commerce. While some nations discourage such user-generated content, the United States created fertile ground for business models that have transformed the world.

User-driven innovation is protected by Section 230 of the federal Communications Decency Act. Section 230 operates as the backbone for our favorite e-Commerce sites. Without Section 230 we might not have platforms

¹ See NetChoice Policy Note at NetChoice.org/CarSharingPolicyNote

² Press Statement, Gov. Chris Sununu, *New Hampshire to Fight Internet Sales Tax* (Jan. 31, 2018)

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

like eBay, Kickstarter, Yelp, HomeAway, or YouTube. Put simply, Section 230 says platforms can't be held strictly liable for content posted by others.

However, the new tax amendment ignores Section 230 and instead imposes requirements on websites that merely operate much like a bulletin-board. This not only threatens a core tenet of the internet but is at odds with federal law – resulting in the likely injunction of new tax amendment.

To that end, we ask that you not consider legislation like this new tax amendment. Nonetheless, we welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org