



Internet Association

NetChoice



TechNet
The Voice of the Innovation Economy

August 5, 2016

Lauren Fields, Associate General Counsel and Assistant Director
Department of Revenue
500 Deaderick Street, 11th Floor
Nashville, TN 37242

Opposition to Rulemaking 1320-05-01-.129 Out-of-State Dealers

Dear Assistant Director Fields,

We ask that you not move forward with the addition of 1320-05-01-.129 Out-of-State Dealers (New Tax Rule) to Rule 1320-05-01-.129. We understand the need for states to raise revenue. However, this New Tax Rule has serious flaws that should preclude its adoption:

- The Supreme Court long ago ruled unconstitutional the forcing of tax collection from out-of-state sellers. However, the New Tax Rule ignores this reality.
- The artificial expansion of physical presence puts your state's businesses at risk of reactionary legislation in other states.
- Nothing about the New Tax Rule would bring new revenue into the state, as it would only move money from the pockets of Tennessee residents to state coffers.
- 19 of the top 20 e-retailers already collect and remit sales taxes in Tennessee making the need for this new rule highly dubious as it would most hurt small and mid-size businesses.

Under existing law, the Tennessee state tax department is entitled to receive sales tax on every purchase a resident makes – and if from a business with no physical presence, that resident is required to remit the sales taxes directly to the tax department.

[Forcing Sellers with No Physical Presence in Tennessee is Clearly Unconditional](#)

The New Tax Rule is not likely to survive a constitutional challenge. But enactment and litigation could prompt other states to force Tennessee businesses to comply with *their* tax rules, rates, tax holidays, thresholds, and caps. The New Tax Rule could thereby encourage 45 additional state tax auditors to go after Tennessee business. In essence, the New Tax Rule opens the door for New York and California tax auditors to go after Tennessee businesses for taxes due on past sales to out-of-state customers.

Even if the New Tax Rule survived a Supreme Court challenge, *no new money will flow into the state*. Any sales taxes collected as the result of the New Tax Rule would not come from out-of-state businesses, but would instead come from the pockets of Tennessee residents. In essence, all the New Tax Rule would do is transfer money from Tennessee citizens to Nashville's tax coffers.

The New Tax Rule Erodes State Sovereignty

The New Tax Rule would unleash tax collectors from across the country on Tennessee businesses. This could include tax collectors in California, New York, or Florida. The New Tax Rule would force Tennessee businesses to travel across the country to defend themselves in foreign courts.

Is this the best way to protect Tennessee's growing economy? Does the Tennessee government really want to surrender its power to control at what rate a Tennessee business charges when selling online or through a catalog?

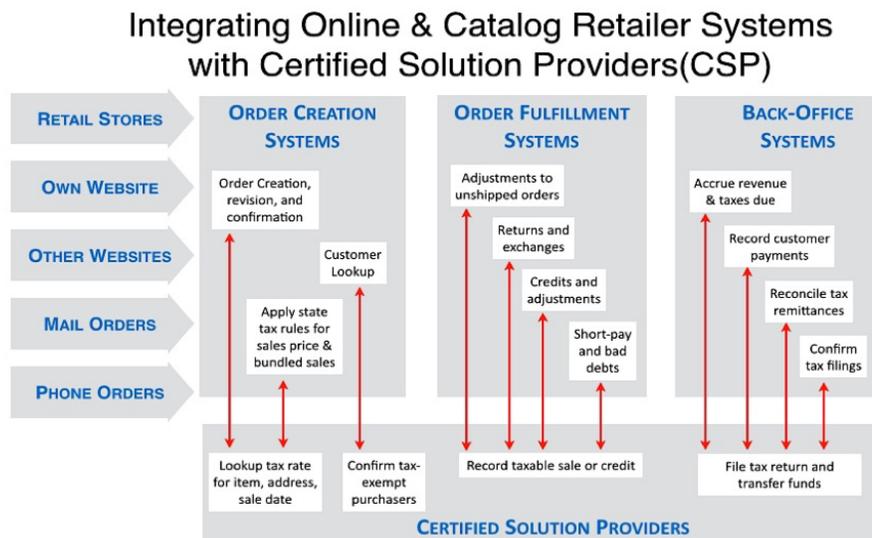
The New Tax Rule Imposes Costly New Tax Collection Burdens on Tennessee Businesses

Under the New Tax Rule, mid-size Tennessee businesses are forced to spend \$80,000 to \$290,000 in setup and integration costs.

And every year these retailers would also have to spend between \$57,500 and \$260,000 on maintenance, updates, audits, and service fees charged by software providers.¹

The New Tax Rule Creates a New Tax That Is Anything but Equal, Consistent, or Fair

The New Tax Rule is the opposite of equal, consistent, and fair treatment among traditional brick and



mortar retailers, brick and click retailers, catalogue retailers, and Internet only based retailers. Foisting disproportionate collection burdens on catalog and online retailers is anything but equal, consistent, or fair.

When a customer enters a gift-store at Nashville International Airport, the gift-store does not ask for that customer's home address then look-up the correct sales tax rates and then remit those taxes to the customer's home state.

¹ See Larry Kavanagh and Al Bessin, *The Real-World Challenges in Collecting Multi-State Sales Tax*, September 2013.

But the New Tax Rule suggests that look-up and remittance if the sale is made through a catalog or online. Is that equal or consistent?

Some say that the look-up is easy and simple, and there is an app for that. If so easy and simple, then to achieve true equality, every sale, regardless of venue, online, catalog, or in-store, should calculate the purchaser's home sales tax rate and collect that value.

The New Tax Rule Would Likely Result in a Citizens Payout to Private Tax Software Companies

Lastly, the New Tax Rule would likely force Tennessee to transfer its tax dollars into the pockets of the private companies running the federally mandated sales tax software. These Certified Software Providers (CSPs) are the real winners if the New Tax Rule is passed – to the detriment of Tennessee's businesses.

One CSP, FedTax, celebrated their expected windfall of \$1.3 billion/year of revenue coming from their skimming of collected sales taxes.²



FedTax Promotional Video

² See NetChoice.org/FedTax

This New Tax Rule is Going to Be Seen as a New Tax

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

Moreover, the New Tax Rule is likely to be broadly opposed by Tennessee residents. We recently polled Utah residents on similar approaches in that state and:

- 71% opposed requiring businesses to collect and file sales taxes for up to 46 states.
- Two-thirds 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 Tennessee residents. (see Utah polling at NetChoice.org/UtahTaxPoll)

We ask that you not move forward with the New Tax Rule and protect Tennessee businesses from out-of-state tax auditors, protect Tennessee citizens from a new tax, and protect Tennessee from costly litigation.

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

Sincerely,

Dustin Brighton
Internet Association
Vice President

Carl Szabo
NetChoice
Senior Policy Counsel

Matt Mincieli
TechNet
Executive Director, Northeast
Region