

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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February 15, 2011

Honorable Jim Weiers
Chairman, House Commerce Committee
Arizona State Legislature
1700 W. Washington, Room 219
Phoenix, AZ 85007

RE: Opposition to HB 2551, taxation; presumption regarding internet sales

Dear Chairman Weiers:

We fully understand Arizona's need for additional tax revenue. However, we worry that HB 2551 presents an *all pain and no-gain* approach for Arizona. Rather than increasing state revenue, HB 2551 would simply encourage businesses that depend upon Internet affiliates in Arizona to discontinue their relationships with these Arizona companies.

Essentially, HB 2551 would generate no new tax revenue, reduce jobs in Arizona, and reduce fundraising by Arizona schools and charities.

As you know, HB 2551 is designed to increase collection of sales taxes when Arizona residents buy from out-of-state retailers. It would apply to any retailer that uses an extended network of websites for displaying its advertisements. The law re-defines what it means to be a "retailer" in the state, and creates a presumption of nexus when an out-of-state company advertises through Arizona 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.

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

For example, consider the bill's impact on a growing source of fundraising dollars for Arizona 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 playground 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:

BOX TOPS EDUCATION | All About Box Tops | **Marketplace** | Reading Room | Bonus Offers | Recipes | Family Matters | Parent Community | Sign up now | Already signed up? Log in



Marketplace

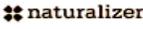
Shop online at your favorite stores through the Box Tops Marketplace™ and your school earns cash on every qualifying purchase, up to \$20,000 each year, at no additional cost to you.

How the Marketplace Works

- 1 Start your online shopping at the **Box Tops Marketplace**. Click "shop now" next to the store you'd like to shop at.
- 2 Select items you'd like to purchase, as you normally would, and follow their standard checkout process.
- 3 A percentage of qualifying purchases will be automatically credited to your school. [Learn more »](#)

[Store Categories](#)
 Apparel & Accessories
 Books, Music & Movies
 Electronics & Office

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 here in Arizona:

 1-800-PetMeds 6% donation Description Shop Now	 Land of Nod 4% donation Description Shop Now	 blue nile 2.5% donation FREE FedEx Shipping on every order!
 1-800-flowers.com 8% donation Description Shop Now	 Lands' End 3.5% donation Description Shop Now	 Kodak EasyShare Gallery 3.5% donation Free Shipping on orders of \$15+ for Mother's Day with code: ILOVEMOM
 Aéropostale 3% donation Description Shop Now	 Lands' End Overstocks 3.5% donation Description Shop Now	 HSN shop now 2% donation Save \$15 off your first single item purchase of \$45 or more. Use coupon C73687
 Apple Store 1% donation Description Shop Now	 LeapFrog 3% donation Description Shop Now	 SHOES.COM 7.5% donation Save 15% off at shoes.com with code: SPRING15
 Avon 4% donation Description Shop Now	 Leaps & Bounds 3% donation Description Shop Now	
 babygap.com 2% donation Description Shop Now	 Lillian Vernon 3% donation Description Shop Now	
 Banana Republic 2% donation Description Shop Now	 Magazines.com 20% donation Description Shop Now	
 Barnes & Noble.com 6% donation Description Shop Now	 Martha Stewart for 1-800-Flowers 5% donation Description Shop Now	
 Best Buy 0.5% donation Description Shop Now	 Naturalizer 5% donation Description Shop Now	

Right here in Arizona, schools like Ishikawa Elementary encourage parents to do their online shopping through *Box Tops Marketplace*, to generate commissions for their school:



Ishikawa participates in three easy [Box Top 4 Education](#) programs. They are simple, quick ways our community, and beyond, can work together to improve our school. Tell your family, friends and neighbors to check out this site and make a difference.

Thing is, few of the online stores participating in *Box Tops Marketplace* have any physical presence in Arizona, and are therefore not required to collect, file, and remit the state's sales tax on purchases made by Arizona residents. Would the out-of-state retailers in Box Tops Marketplace continue to work with Arizona schools and PTAs if the state enacts HB 2551? More likely, these advertisers will simply cancel their online affiliate programs, as they did in New York, Rhode Island, and North Carolina after those states enacted a similar law.

Another unintended consequence of HB 2551 is the loss of a growing source of revenue for Arizona's online publishers.

One such publisher is Gannett Company, Inc. a world-class media company that employs hundreds of Arizona citizens. To pay the costs of creating and hosting online content, Gannett relies on advertising by retailers seeking to reach its website visitors. As seen in the screen below, one of Gannett's popular sites, USA Today.com, shows what a consumer would see if they turned to USATODAY.com to for the latest sports news:



Vibram, the retailer who purchased ads on this page, sells the popular “FiveFingers” running shoe on its website. Vibram has no presence in Arizona and presently has no obligation to collect and remit sales tax for Arizona purchasers. A critical question before your committee is whether out-of-state retailers would continue to advertise with Gannett’s many web properties if Arizona enacted HB 2551 as a way to force advertisers to collect state sales taxes.

Would some advertisers begin collecting Arizona taxes, possibly under protest?

Would they sue the state over questions of constitutionality?

Or would they follow the example of hundreds of retailers who simply stopped their online advertising in New York, Rhode Island, and North Carolina after those states enacted a similar law?

It's essential to remember that out-of-state online and catalog retailers can avoid the burden of collecting and remitting remote state sales taxes by cutting-off their ad spending with Arizona websites. Of course, Arizona consumers could still buy from out-of-state retailers who stop advertising on Arizona websites. That means HB 2551 could have the unintended consequence of reducing ad revenue for Arizona publishers *without* increasing sales tax collections.

The net effect of HB 2551 could therefore be all pain with no gain. In no event would new money flow into Arizona; any incremental sales tax collected just moves from the Arizona 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 Arizona websites who employ and serve Arizona’s residents.

We therefore urge you to withdraw HB 2551, and to refrain from imposing tax collection burdens on retailers who spend advertising dollars with Arizona’s 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 House Commerce Committee

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