

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

Carl Szabo, Senior Policy Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org



Honorable Taylor Barras, Speaker
Louisiana House of Representatives
P.O. Box 94062
Baton Rouge, LA 70804

May 22, 2016

RE: Oppose HB 1121, Internet Sales Tax and Consumer and State Reporting

Dear Speaker Barras:

We ask that you oppose HB 1121. We understand the need for states to raise revenue. However, we worry that HB 1121 has serious flaws that should preclude its approval by your committee:

- HB 1121 would expose the private purchasing information of Louisiana consumers to potential abuse or leaks by the state’s tax department.
- HB 1121 is based on a Colorado law that a federal court already ruled unconstitutional.
- The artificial expansion of physical presence puts your state’s businesses at risk of reactionary legislation in other states.
- Nothing about HB 1121 would bring new revenue into the state, as it would only move money from the pockets of Louisiana residents to state coffers.

Under HB 1121, the Louisiana state tax department receives a list of every purchase over \$200 that Louisiana residents make from out-of-state companies. As you can imagine, this information is private and might be very sensitive. Consider a Louisiana consumer purchasing homeopathic treatments for a mental disorder, or making a purchase of jewelry about which their significant other does not know. In essence, HB 1121 gives Louisiana tax collectors the ability to look into the personal lives of state residents.

HB 1121 mirrors a 2010 Colorado law¹ that federal courts determined was in violation of the US Constitution – based on both the dormant commerce clause and first amendment. Shortly after enactment, a federal court in Colorado enjoined the Colorado reporting mandate. Nearly six years later the law still remains enjoined and the state has spent thousands of dollars trying to overturn the decision. It currently awaits a hearing on the facts in the Federal District Court of Colorado which previously found the Colorado law unconstitutional.

Like the Colorado law, HB 1121 would impose undue burdens on every out-of-state seller, pointing to similar constitutional infirmities and an expensive court battle with a predictable outcome.

¹ Rev. Stat. § 39-21-112

The mandated disclosure of Louisiana residents' buying habits is not only invasive, but federal courts have determined that it violates the first amendment. A federal district court struck down a North Carolina reporting mandate similar to HB 1121, saying:

“The First Amendment protects a buyer from having the expressive content of her purchase of books, music and audiovisual materials disclosed to the government. The fear of government tracking and censoring one’s reading, listening and viewing choices chills the exercise of First Amendment rights.”²

HB 1121 erodes the physical presence standard that protects Louisiana businesses from tax collectors in other states. Enactment could prompt other states to force Louisiana businesses to comply with their tax rules, rates, tax holidays, thresholds, and caps. HB 1121 could thereby encourage 46 state tax auditors to go after Louisiana businesses. Imagine telling your local businesses that New York and Alabama tax auditors can now go after them for taxes due on out-of-state sales.

Please note that in no event would HB 1121 bring new tax revenue into Louisiana, since any new sales & use tax collected just moves from the Louisiana purchaser to the state treasury.

We fully understand the need for states to seek out additional tax revenue. However, HB 1121 presents new burdens on Louisiana citizens that would expose their privacy and cost the state to defend the law’s constitutionality.

Thank you for considering our views. Please let me know if I can provide further information.

Sincerely,



Carl Szabo
Senior Policy Counsel, NetChoice

NetChoice is a trade association of e-Commerce businesses. More information at www.netchoice.org

² *Amazon Inc. v. Lay*, Case No. C10-664 MJP (WA Fed Ct, Oct. 10).