

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*
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Senator Deidre M. Henderson
Utah Senate
462 River Cross Rd
Spanish Fork, UT 84660

February 9, 2015

RE: Opposition to SB 125 - Sales And Use Tax Amendments

Dear Madame Chair Henderson and members of the Revenue and Taxation Committee:

We understand the need for states to seek additional tax revenue. However, SB 125 is unlikely to capture new revenue and will likely impose costs for Utah to fight an unwinnable lawsuit over its constitutionality. If, on the other hand, SB 125 somehow survived court challenges, it would upend the standard of physical presence on which Utah businesses rely when they serve customers from outside the state.

The US Supreme Court has long held that states cannot impose tax obligations on a business that lacks the necessary connections to that state. That necessary connection now means a physical presence, per *Quill v. North Dakota*, 504 US 298 (1992).

The duty of out-of-state businesses with no physical presence in Utah to register and obtain licensing with the Utah tax commission is likewise unconstitutional.

Utah cannot grant new tax and regulatory powers to enable its tax collectors to reach a business that is not “engaging” in Utah. It is long settled that state tax collectors cannot reach across their borders just for sales made over the phone or the Internet, when delivered by a common carrier. Courts have long held the mere delivery or sale into a state does not create the necessary presence for businesses to become subject to state regulation.

The ultimate result of SB 125’s passage is a clearly unconstitutional law that would result in the state of Utah having to pay for an expensive court battle.

Moreover, SB 125 would declare that Utah wants to eliminate the Constitutional safeguards its businesses rely upon when conducting interstate commerce. The commerce clause of the US Constitution was deigned to prevent states from harassing businesses in foreign states where no physical presence exists. Utah businesses rely on this constitutional protection from other state tax collectors who could otherwise demand registration, licensing, and taxes.

Finally, it is important to remembers that in no event would SB 125 bring new tax money into Utah, since any new sales tax collected just moves from a Utah consumer to the state treasury.

We therefore urge you to oppose SB 125. Thank you for considering our views. Please let me know if I can provide further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve DelBianco", with a long horizontal flourish extending to the right.

Steve DelBianco
Executive Director, NetChoice

NetChoice is a trade association of online content and e-Commerce businesses promoting and protecting convenience, choice and commerce on the Net. Learn more about NetChoice at www.netchoice.org