

NetChoice Promoting Convenience, Choice, and Commerce
on The Net

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April 5, 2016

The Honorable Tim Ashe, Chair
Senate Committee on Finance
Vermont State House
115 State Street
Montpelier, VT 05633

RE: Opposition to H.873 Sections 22-24 –An Act Relating to Miscellaneous Tax Changes

Dear Senator Ashe,

We ask that you oppose H.873 Sections 22-24. We understand the need for states to raise revenue. However, we worry that H.873 Sections 22-24 have serious flaws that should preclude its approval by your committee:

- Sec. 23 would expose the private purchasing information of Vermont consumers to potential abuse or leaks by the state's tax department.
- Sec. 23 reporting requirements are unduly burdensome and violate the First Amendment.
- Sec. 24 violates established Supreme Court precedent that protects out-of-state businesses from other states' tax auditors.
- Sec. 24 puts Vermont businesses at risk of reactionary legislation in other states.
- Nothing about H.873 Sections 22-24 would bring new revenue into the state, as it would only move money from the pockets of Vermont residents to state coffers.

H.873 Sec. 23 Imposes Unduly Burdensome Notice & Reporting Requirements

Under H.873 Sec. 23, the Vermont state tax department receives a list of every purchase that Vermont residents make from out-of-state companies. As you can imagine, this information is private and might be very sensitive. Consider a Vermont consumer purchasing homeopathic treatments for a mental disorder, or making a purchase of jewelry about which their significant other does not know. In essence, Sec. 23 gives Vermont tax collectors the ability to look into the personal lives of state residents.

The mandated disclosure of Vermont 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 Sec. 23, 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."¹

H.873 Sec. 24. Violates the Dormant Commerce

H.873 Sec. 24 is not likely to survive a constitutional challenge. The United States Supreme Court has repeatedly upheld the protection of businesses from other states' tax auditors, and is unlikely to overturn a hundred years of jurisprudence.

H.873 Sec 24 Incites Other States to Retaliate by Taxing Vermont Businesses

Enacting H.873 Sec. 24 could prompt other states to force Vermont businesses to comply with *their* tax rules, rates, tax holidays, thresholds, and caps. Sec. 24 could thereby encourage 46 state tax auditors to go after Vermont business. Imagine telling your local businesses that New York and Illinois tax auditors can now go after them for taxes due on out-of-state sales.

Regardless of the outcome of Sec. 24 and its Supreme Court challenge, no new money will flow into the state. Any sales taxes collected as the result of Sec. 24 would not come from out-of-state businesses, but would instead come from the pockets of Vermont denizens. In essence, all Sec. 24 would do is transfer money from Vermont citizens to Pierre's tax coffers.

We ask that you not pass H.873 Sections 22-24 and instead protect Vermont businesses from out-of-state tax auditors, protect Vermont citizens from a new tax, and protect Vermont from costly litigation.

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

Sincerely,



Steve DelBianco

Executive Director, NetChoice

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

¹ Amazon Inc. v. Lay, 785 F. Supp. 2d 1154 (W.D. Wash. 2010).