

**The NetChoice Coalition**

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

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March 16, 2012

Senator Edward J. Kasemeyer  
Maryland Senate  
Annapolis, Maryland

**RE: Opposition to SB 152, Tax on Digital Products and Advertiser-Nexus Taxes**

Dear Chairman Kasemeyer and Members of the Senate:

After listening to the hearing and vote on SB 152 on Wednesday, I wanted to clarify and answer a couple of points raised.

First, the fiscal note will not generate any revenue close to the projected \$20 million and may actually result in a net tax loss to the state since the fiscal note was based on New York where Amazon.com collects and remits taxes, not a similar state like Illinois or North Carolina.

Second, California does not have an active advertiser-nexus rule and Amazon.com does not collect and remit taxes to California.

**Fiscal Note Might Actually Be a Net Loss if Based on a State Similar to Maryland**

The fiscal note on which the Senate relied, improperly identified \$20 million of tax revenue to the state of Maryland. The fiscal note is based on New York's collection of tax revenue from online sales.<sup>1</sup> However, New York is in a unique situation that does not provide proper basis for a fiscal note.

Amazon.com collects and remits sales taxes in New York so that it can maintain standing for its lawsuit against the state's law. As such, the revenue generated by New York's passage of the advertiser-nexus bill is not a good basis on which the fiscal note should stand.

Instead, the fiscal note should look to states that are more similar to Maryland that have passed the advertiser-nexus law, states like Illinois, Rhode Island, and North Carolina.

The fiscal note identifies that in those states after they passed the advertiser-nexus, *"as a result, [Amazon.com](#) and [Overstock.com](#), generally the largest companies affected, have ended their*

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<sup>1</sup> "Based on New York's reported sales tax collections from sellers with affiliate programs, it is estimated that State general fund revenues may increase by approximately \$20.0 million annually beginning in fiscal 2013." MD Fiscal Note p32.

*relationships with affiliates in those states in order to avoid a determination that nexus exists.”<sup>2</sup>*  
So Amazon.com does not collect and remit sales taxes in these states, unlike in New York.

If the fiscal note had based its findings on similar states, as opposed to basing its findings on New York, the fiscal note would be significantly lower than \$20 million, and might even be a net loss to Maryland due to the lost tax revenue from affiliates whose relationships with Amazon.com were terminated.

### **California Does Not Have an Active Advertiser-Nexus Rule**

During the hearing, it was incorrectly stated that California has an active advertiser-nexus law and that Amazon.com collects and remits taxes to the state of California.

California did pass an advertiser-nexus law as part of its budget, but quickly repealed it. After California passed its advertiser-nexus law as part of its budget, California watched as Amazon cancelled every one of their 5,000 affiliate business relationships in the state.

California quickly passed AB 155 that effectively deactivated the advertiser-nexus rule.

When California deactivated the advertiser-nexus rule, Amazon reinstated their affiliate program in California.

Nonetheless, Amazon.com still does not collect and remit taxes in the state of California.

We hope these answers help clarify your understanding of the national landscape of the advertiser-nexus laws. We again ask that you move to remove the advertiser-nexus amendment from the Governor’s BURFA.

Thank you for considering our views. Please let us know if we can provide further information.

Sincerely,



Steve DelBianco  
Executive Director, NetChoice

cc: Members of the Senate

*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](http://www.netchoice.org)*

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<sup>2</sup> *Id.* p. 32 (emphasis added).