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Representative Dan Pabon, Chair
Representative Mike Foote, Vice Chair
House Finance Committee
Colorado General Assembly

May 1, 2017

RE: Support for SB 17-238, Notifications Regarding Online Purchases

Dear Chairman Pabon, Vice Chair Foote, and members of the committee:

We strongly recommend you take the opportunity to approve SB 17-238 when it comes before you on May 1, for these reasons:

- SB 17-238 would repeal serious privacy problems inherent in a law passed in 2010 and set to take effect later this year.
- You can fix the law's privacy problems now –*before Coloradans realize the state is collecting personal data that polling shows they overwhelmingly see as an invasion of privacy.*
- You can fix the present law's privacy problems now – *before other states adopt similar laws to assault Colorado businesses that sell online.*
- SB 17-283 preserves the customer notification, and adds a "Know What You Owe" educational campaign, which will increase consumer Use Tax payments via income tax returns.

SB 17-238 would fix serious privacy problems inherent in a 2010 bill set to take effect later this year.

A Colorado law passed on 2010 has been blocked by court orders – until now. Over a century of federal doctrine holds that states cannot force out-of-state retailers to pay sales tax. But this new Colorado law requires out-of-state catalog and online retailers to either pay sales tax, or to disclose to state tax authorities personal information on Colorado shoppers' purchases, including:

- The name of the catalog or online store where the Colorado resident made purchases
- The name and address of the Colorado resident paying for the products or services
- The address of the Colorado resident receiving the products or services
- How much the Colorado resident spent during the prior year

In many cases, linking a particular retailer to a specific customer will reveal information on that Coloradan's health issues, political leanings, sexual orientation, personal tastes, and financial circumstances. [see examples at right]

And by collecting shipping addresses, DoR will learn when a Colorado citizen has a gift purchase delivered to a different address, revealing what could be personal and very private relationships.

The state will soon know what any Coloradan spends at websites or catalogs with names that include:

Depression ... Alzheimer's

Adult media ...LGBT ...Transgender

Guns ... Ammunition

Socialism ... Tea Party ... Right Wing

Bankruptcy ... Divorce

Moreover, the law has *no provision for protecting the confidentiality of the information* collected by the Department of Revenue, meaning it might be shared with other government agencies and used for purposes other than collection of Use Taxes.

More worrisome is the fact that this personal purchasing data *will* be shared with local government officials across Colorado. As DoR's Philip Horwitz noted on the April 27 Working Group call, "the state already has information sharing agreements with virtually all home rule jurisdictions."

Speaking of the personal purchase reporting data, Mr. Horwitz added, "I don't think we can exclude it, which is why the question was raised."

Imagine the potential for leakage or outright abuse if personal information about Colorado citizens' online purchases are shared thousands of local officials.

You can fix the law's privacy problems now – before Coloradans realize the state is collecting personal data that polling shows they overwhelmingly see as an invasion of privacy.

An overwhelming majority of Coloradans say that forcing online and catalog businesses to report personal purchase information to state tax authorities is an invasion of privacy, per a 2017.¹

78 percent of Coloradans said the state should not force businesses to turn over information on their internet purchases, including the retailer's name, the customer's name, the billing address, the shipping address, and the amount of purchases.

67 percent said the Colorado law violates their expectation of privacy from government intrusion into their online and catalog purchases. 84 percent said that when making online purchases, their privacy is "very important" and another 14 percent said it is "somewhat important." Only 2 percent of Coloradans indicated privacy was not an important factor.

Two of three Coloradans said the state should not attempt to regulate online businesses located in other states and force them to report on their Colorado customers.

If the state reporting is allowed to take effect this July, please understand that online retailers will be compelled to notify their Colorado customers whenever they make a transaction. Several retailers have said they would explain in their notices why they are reporting customer purchasing data to the state:

CUSTOMER ALERT: Colorado law requires us to send you a year-end summary of all your purchases from our company. Moreover, the law also requires us to report your name, billing and shipping addresses, and total amount of your purchases to the Colorado Department of Revenue.

If you have privacy concerns or questions about Colorado's purchase reporting law, please contact your state representatives. See <http://leg.colorado.gov/find-my-legislator>

You can avoid this expected "privacy surprise" to your constituents by repealing the state reporting requirement of a law that was enacted by your predecessors back in 2010.

You can fix the law's privacy problems now – before other states adopt similar laws to assault Colorado businesses that sell online.

Today, Colorado businesses are only required to collect and remit taxes only for places where they have a physical presence. So they are not required to comply with 12,000 tax jurisdictions or face audits from

¹ (This January 2017 interactive survey of 500 Colorado residents was conducted by Morar Consulting, and has a margin of error of +/- 4%. Poll results are available at NetChoice.org/COpoll)

46 states. Nor are these Colorado businesses forced to disclose customer purchase data to states where they have no physical presence.

But the enforcement of Colorado's purchase reporting law would encourage *other* states to force Colorado businesses to comply with *their* reporting mandates.

Please consider the harms to your local Colorado businesses if New York and Illinois tax auditors come after them for purchase reporting on sales to out-of-state customers. This is an additional reason to support SB 17-238 and fix the privacy problems inherent in Colorado's purchase reporting law.

SB 17-238 requires DoR to educate Coloradans about their Use Tax obligations, which should increase Use Tax revenue to the state.

This legislation not only fixes the privacy problems with the 2010 law, but also creates a new educational campaign to help Coloradans comply with Use Tax obligations.

This "Know What You Owe" campaign can remind taxpayers that the law requires retailers to send them an annual customer purchasing summary before filing their state income taxes, which will make it easy calculate any Use Tax due on their online purchases.

The educational campaign coupled with the required purchase summaries should increase Use Tax revenue to Colorado – without violation citizens' expectations of privacy.

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

Sincerely,



Steve DelBianco
Executive Director

NetChoice is trade association of leading e-commerce and online businesses, at www.NetChoice.org