

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

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January 31, 2017

Sen. Howard A. Stephenson, Chair
Senate Revenue and Taxation Committee
Utah State Capitol
Salt Lake City, Utah 84114

RE: Opposition to SB 110 – Sales and Use Tax Revisions

Dear Chair Stephenson and members of the committee:

We ask that you do not pass SB 110. Utahns will likely see it as a new tax, since any tax collected will come from the pockets of Utahns, not from out-of-state businesses.

Utahns see SB 110 as a statewide tax increase

In Jan-2016 we polled over 600 Utah citizens across a broad spectrum of demographic characteristics. Polling results show significant opposition to legislation such as SB 110:

67% percent said that imposing sales tax obligations on businesses that have no physical presence in the state would amount to a statewide tax increase.

67% percent of Utahns said the “issue has largely solved itself and requiring small merchants to collect and send taxes to 46 states is overly burdensome.” Only 16 percent said there “should be federal or state laws that require merchants large and small to collect and pay taxes to tax collection agencies in nearly every state.” Two-thirds said they oppose laws that would allow state tax authorities to audit businesses from other states.

Utahns support the current online sales tax system. An overwhelming 78 percent said that the current system is “fine, I like it as it is.” Only 8 percent said “it needs to change. More purchases should be taxed.”

Utahns are also worried about a boomerang effect on Utah businesses if state lawmakers passed laws forcing online businesses in other states to collect and file taxes when they sell to Utah customers. Seventy-three percent of those surveyed said they think the proposed law would encourage other states to impose similar obligations on Utah businesses that sell to customers in other states.

Polling questions and results are available at <http://NetChoice.org/UtahTaxPoll>

Many of these answers make sense, especially when you realize that 24 of the top 25 e-retailers already collect Utahn’s sales taxes and remit them to the state capital.

Utah's action will encourage other states to impose new obligations on Utah businesses

This legislation will encourage other states to force Utah businesses to comply with *their* tax rules, rates, tax holidays, thresholds, and caps. SB 110 could thereby encourage 45 additional state tax auditors to go after Utah businesses. Imagine telling your local businesses that New York and Illinois tax auditors can now go after them for taxes due on sales to out-of-state customers.

Plunging Utah into a long and expensive legal battle

SB 110 anticipates a constitutional challenge, advocates of the bill have declared their intent to spark litigation, all the way to the US Supreme Court. What advocates are not discussing is the cost of this lawsuit to Utah taxpayers. The US Supreme Court has repeatedly upheld the protection of businesses from other states' tax auditors.

Not only is it unlikely that the Supreme Court would overturn a hundred years of jurisprudence, but such a challenge would cost Utah taxpayers millions of dollars. Utah has so many better ways to spend taxpayer money, other than paying lawyers to fight an issue on which the Supreme Court has already repeatedly ruled.

Regardless of the outcome of SB 110 and its Supreme Court challenge, *no new money will flow into the state*. Any sales taxes collected as the result of SB 110 would not come from out-of-state businesses, but would instead come from the pockets of Utahns. In essence, all SB 110 would do is transfer money from Utah citizens to state tax coffers.

Over-estimated budgetary revenue

Any Uthan resident's taxes flowing to the state coffers would be much less than predicted. The revenue projections fail to take into account many factors, the largest of which is that Amazon already collects and remits Utah's sales taxes to the state. Amazon accounts for over 39% of all e-commerce. Even simple math shows that the budgetary projections in the Fiscal note are overstated by over 500%¹ and would account for a mere 0.46% of the total Utah budget.

Stunting Utah's Affiliate-Advertisers

The advertiser-nexus language in SB 110 would apply to retailers that use an extended network of websites for displaying advertisements. The law redefines what it means to be a "business" in the state and creates a presumption of nexus when an out-of-state company pays Utah's businesses for sold-thru referrals from its websites.

It's essential to remember that out-of-state businesses can avoid the burden of collecting taxes by cutting off their ad commission payments with Utah's websites. Of course, Utah consumers could still buy from out-of-state businesses that stop paying commissions to Utah websites. That means the advertiser-nexus language in SB 110 could have the unintended consequence of reducing ad revenue for Utah advertisers *without* increasing sales tax collections.

¹ From the US Census: Utah share of US population is .00932 (2.957 million / 318.9 million).

From eMarketer, total ecommerce in 2018 is \$514.14 billion. Thus, Utah's share of ecommerce is \$4.79 billion (\$514.4 billion x .00932).

Total taxes due are \$312.9 million (.0653 x \$4.79 billion).

Since 24 of the top 25 e-retailers already collect for Utah – very conservatively say that 60% of ecommerce is collecting sales taxes for Utah (Amazon alone accounts for 39% of e-commerce). Many of the firms not collecting fall under the threshold, including consumer sellers and very small businesses.

So, conservatively, the most tax revenue generated from SB 110 is \$63 million (20% of \$312.9 million) – which is 0.46% of the total UT budget.

It would impact “Mommy Bloggers” like Salt Lake City’s Heather B. Armstrong who uses affiliate advertising as a source of revenue on her site, Docce.com.

The net effect of the advertiser-nexus language in SB 110 could, therefore, be *new pain with no gain*. We ask that you not pass SB 110 and instead protect Utah businesses from out-of-state tax auditors, protect Utah citizens from a new tax, and protect Utah from costly litigation.

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

Sincerely,

A handwritten signature in black ink that reads "Steve DelBianco". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steve DelBianco
Executive Director, NetChoice

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