

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

Carl Szabo, Senior Policy Counsel  
1401 K St NW, Suite 502  
Washington, DC 20005  
202-420-7485  
[www.netchoice.org](http://www.netchoice.org)



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Speaker Bob DeLeo  
Chairman Brian Dempsey, House Ways and Means  
Massachusetts State House  
24 Beacon St  
Boston, MA 02133

### **Opposition to Amendment #25 to H.4461 — Sales tax collection from out-of-state sellers**

Dear Speaker DeLeo and Chairman Dempsey:

We ask that you oppose Amendment #25 to H.4461 (Amendment 25). We understand the need for states to raise revenue. However, we worry that Amendment 25 has serious flaws that should preclude its adoption:

- The Supreme Court long ago ruled unconstitutional the forcing of tax collection from out-of-state sellers. However, Amendment 25 ignores this reality.
- The artificial expansion of physical presence puts your state's businesses at risk of reactionary legislation in other states.
- Nothing about Amendment 25 would bring new revenue into the state, as it would only move money from the pockets of Massachusetts residents to state coffers.
- 19 of the top 20 e-retailers already collect and remit sales taxes in Massachusetts making the need for this legislation highly dubious as it would most hurt small businesses.

Under existing law, the Massachusetts state tax department is entitled to receive sales tax on every purchase a resident makes – and if from a business with no physical presence, that resident is required to remit the sales taxes directly to the tax department.

### **This Amendment is Going to Be Seen as a New Tax**

Massachusetts residents will likely see Amendment 25 as a new tax, since any tax collected will come from the pockets of Massachusetts citizens, not from out-of-state businesses.

Moreover, Amendment 25 is likely to be broadly opposed by Massachusetts residents. We recently polled Utah residents on similar approaches in that state, and 71% opposed requiring businesses to collect and file sales taxes for up to 46 states. Two-thirds said requiring them to pay tax on online purchases from out-of-state businesses would be a statewide tax increase. We would likely see similar results in a poll of Massachusetts residents. (see Utah polling at [NetChoice.org/UtahTaxPoll](http://NetChoice.org/UtahTaxPoll) )

## Forcing Sellers with No Physical Presence in Massachusetts is Clearly Unconditional

Amendment 25 is not likely to survive a constitutional challenge. But enactment and litigation could prompt other states to force Massachusetts businesses to comply with *their* tax rules, rates, tax holidays, thresholds, and caps. Amendment 25 could thereby encourage 45 additional state tax auditors to go after Massachusetts business. Imagine telling your local businesses that New York and Illinois tax auditors can now go after them for taxes due on past sales to out-of-state customers.

Even if Amendment 25 survived a Supreme Court challenge, *no new money will flow into the state*. Any sales taxes collected as the result of the bill would not come from out-of-state businesses, but would instead come from the pockets of Massachusetts residents. In essence, all Amendment 25 would do is transfer money from Massachusetts citizens to Boston's tax coffers.

## Amendment 25 Erodes State Sovereignty

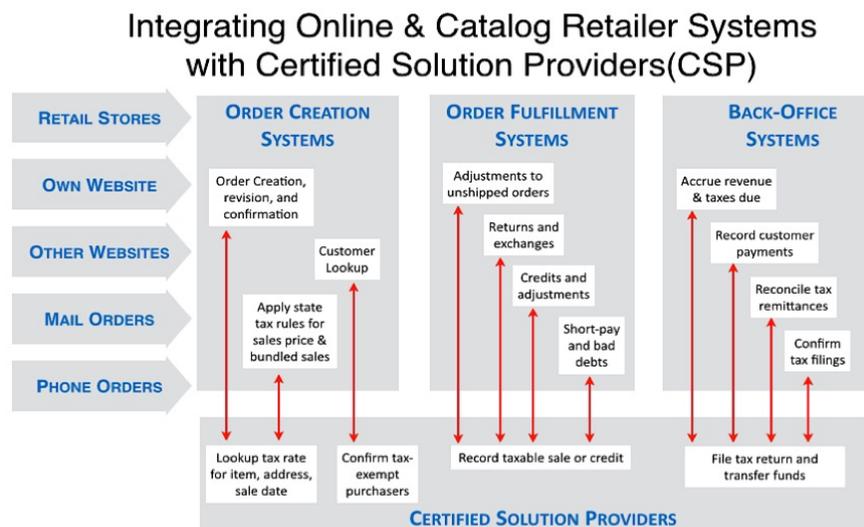
Amendment 25 would unleash tax collectors from across the country on Massachusetts businesses. While calling for a "single tax audit authority" this authority could be tax collectors in California, New York, or Florida. This would force Massachusetts businesses to travel across the country to defend themselves in foreign courts.

Is this the best way to protect Massachusetts's growing economy? Does the Massachusetts legislature really want to surrender its power to control at what rate a Massachusetts business charges when selling online or through a catalog?

## Amendment 25 Imposes Costly New Tax Collection Burdens on Massachusetts Businesses

Under Amendment 25, Massachusetts businesses are forced to spend \$80,000 to \$290,000 in setup and integration costs.

And every year these retailers would also have to spend between \$57,500 and \$260,000 on maintenance, updates, audits, and service fees charged by software providers.<sup>1</sup>



<sup>1</sup> See Larry Kavanagh and Al Bessin, *The Real-World Challenges in Collecting Multi-State Sales Tax*, September 2013.

## Amendment 25 Creates a New Tax That Is Anything but Equal, Consistent, or Fair

Amendment 25 is the opposite of equal, consistent, and fair treatment among traditional brick and mortar retailers, brick and click retailers, catalogue retailers, and Internet only based retailers. Foisting disproportionate collection burdens on catalog and online retailers is anything but equal, consistent, or fair.

When a customer enters a gift-store at Logan International Airport, the gift-store does not ask for that customer's home address then look-up the correct sales tax rates and then remit those taxes to the customer's home state. But Amendment 25 suggests that look-up and remittance if the sale is made through a catalog or online. Is that equal or consistent? Some say that the look-up is easy and simple, and there is an app for that. If so easy and simple, then to achieve true equality, every sale, regardless of venue, online, catalog, or in-store, should calculate the purchaser's home sales tax rate and collect that value.

## Amendment 25 Would Likely Result in a Citizens Payout to Private Tax Software Companies

Lastly, Amendment 25 would likely force Massachusetts to transfer its tax dollars into the pockets of the private companies running the federally mandated sales tax software. These Certified Software Providers (CSPs) are the real winners if Amendment 25 is passed – to the detriment of Massachusetts's businesses. One CSP, FedTax, celebrated their expected windfall of \$1.3 billion/year of revenue coming from their skimming of collected sales taxes.<sup>2</sup>



**FedTax Promotional Video**

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<sup>2</sup> See [NetChoice.org/FedTax](http://NetChoice.org/FedTax)

We ask that you oppose Amendment 25 and protect Massachusetts businesses from out-of-state tax auditors, protect Massachusetts citizens from a new tax, and protect Massachusetts 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 cursive script, appearing to read "Carl Szabo".

Carl Szabo  
Senior Policy Counsel, NetChoice

*NetChoice is a trade association of e-Commerce businesses. More information at [www.netchoice.org](http://www.netchoice.org)*