



Internet Association



July 6, 2017

The Honorable Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

RE: HB 2163, Remote Sellers, Referrers, and Marketplace Facilitators

The undersigned associations represent hundreds of the country's leading technology companies in high-tech manufacturing, computer networking, and information technology, clean energy, life sciences, Internet media, ecommerce, education, and sharing economy sectors. Our member companies are committed to advancing public policies and private sector initiatives that make the U.S. the most innovative country in the world.

We have a number of concerns with the marketplace sales tax provisions of HB 2163, located in Part II, sections 201 to 214. This section requires marketplace providers without any presence in the state to collect and remit sales and use taxes for other sellers' sales that are "facilitated" by the marketplace provider. We are extremely concerned about the implications this policy would have on business – small and large – in the state and the negative precedent it would set for online commerce nationally.

Requiring internet-enabled businesses to comply with a piecemeal approach on a state-by-state level leads to a number of workability issues. Part II, sections 201 to 214, confuses the mechanism for what party has the responsibility to collect and remit the tax to the state, creating new liabilities for both parties. The bill sets a precedent that could negatively impact businesses around the country with enormous tax and administrative burdens.

The U.S. Supreme Court has drawn a bright line with the decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992): states do not have the power to require sales tax collection by out-of-state sellers having no physical presence in the state. The language in HB 2163 is constitutionally suspect and will likely be the subject of protracted legal challenges while purportedly generating revenues that are speculative at best.

In states from Indiana to Wyoming, all internet sales tax economic nexus and marketplace legislation that were scheduled to take effect are currently involved in

active lawsuits. It is simply unwise to rely on obtaining any immediate revenue from this speculative tax, and to designate it as a funding source for urgent state priorities, like education.

As businesses plan where to place new data centers, or invest in other ways, there is a need for certainty on tax expectations. Part II, sections 201 to 214, create unpredictability that might have a chilling effect on new investments in the state from technology companies.

Today, Washington businesses are only required to collect and remit taxes in states where they have a physical presence. So they are not required to follow and comply with 12,000 tax jurisdictions or face audits from 45 states and the District of Columbia. This protects Washington businesses that do not collect sales taxes for out-of-state sales. HB 2163 would encourage other states to force Washington businesses to comply with their tax rules, rates, audits, tax holidays, thresholds, and caps.

Washington should continue to support small businesses, and the flexibility of schedules and income to support families that marketplaces can provide for online sellers. HB 2163 sets the tone of overly-broad taxation that threatens to take this away from small businesses outside the state and ultimately, those in Washington as other states' tax authorities follow suit.

For all these reasons, we ask that you to veto Part II, sections 201 to 214, of HB 2163. Thank you for considering our views.

Respectfully submitted,

TechNet
Internet Association
NetChoice
CompTIA