



January 27, 2010

The Honorable Joel Judd  
Chairman, House Finance Committee  
Colorado House of Representatives  
Denver, CO 80203

Dear Chairman Judd,

**I write in strong opposition to establishing an affiliate nexus tax in Colorado under House Bill 1193.** The bill would require out-of-state retailers to collect and remit the state's sales tax on products purchased online by Coloradans. HB 1193 not only attempts to circumvent federal interstate commerce law; it would also put the state at a competitive disadvantage and small Colorado companies out of business, invite a costly legal challenge, encourage online-black markets, and – worst of all – raise taxes on Colorado residents.

Current jurisprudence, under the Supreme Court's ruling in *Quill v. North Dakota*, requires that a business have a physical "nexus" in a state in order for the state to compel that business to collect and remit sales taxes. However, HB 1193 attempts to circumvent this law by presuming that a company has a physical nexus if business is solicited through a third-party advertiser in the state – thereby requiring the retailer to collect sales tax. Not only does this legislation fly in the face of the Supreme Court's ruling, it will bring an unnecessary and costly lawsuit to Colorado at a time when the affiliate nexus tax is already undergoing significant legal challenge in New York.

**HB 1193 will inadvertently punish small Colorado advertisers and other businesses.** This tax expands the definition of doing business to include a retailer that, while based out of state, advertises on a Colorado-based website using a banner ad or other link. If advertising on Colorado-based websites were to create a nexus for out-of-state retailers, these retailers will simply choose to terminate advertising agreements with small business advertisers.

**While this measure is a tax increase on Coloradans, it will raise little to no tax revenue.** When passed in Rhode Island, the affiliate nexus tax was estimated to raise no additional revenue, and this has now been confirmed by the Department of Revenue. This is a result of out-of-state retailers ending in-state advertising agreements to sever their nexus. In reality, by putting small online advertisers out of business or cutting into their profits, HB 1193 will likely lower the amount these businesses pay in taxes by more than any negligible new revenue collected by the tax.

Finally, **taxing consumers that download products such as music and movies from out-of-state retailers will encourage illegal downloading** at a time when providers of these digital goods are working hard to establish a legitimate online market. The bill would essentially incentivize online piracy, reversing a hard fought trend toward legal downloads.

For these reasons, I urge you to oppose HB 1193 and any effort to enact an affiliate nexus tax in Colorado. If you have any questions, please contact Kelly William Cobb or Patrick Gleason, state affairs managers, at (202) 785-0266.

Onward,

Grover Norquist

CC: House Finance Committee

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