



February 9, 2010

The Honorable Charles J. Colgan  
Chairman, Senate Committee on Finance  
General Assembly Building, Room 626  
Richmond, Virginia 23219

Dear Chairman Colgan,

**I write in strong opposition to establishing an affiliate nexus tax in Virginia under Senate Bill 660.** The bill would require out-of-state retailers to collect and remit the state's sales tax on products purchased online by Virginians. SB 660 not only attempts to circumvent federal interstate commerce law; it would also put the state at a competitive disadvantage and small Virginia companies out of business, invite a costly legal challenge, encourage online-black markets, and – worst of all – raise taxes on Virginia 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, SB 660 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 Virginia at a time when the affiliate nexus tax is already undergoing significant legal challenge in New York.

**SB 660 will inadvertently punish small Virginia 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 Virginia-based website using a banner ad or other link. If advertising on Virginia-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 bill is a tax increase, it will also raise little to no tax revenue.** The fiscal impact statement attached to the bill confirms a resulting lawsuit will likely cost more than will be raised under the legislation. Similarly, when passed in Rhode Island, the Department of Revenue estimated and confirmed the measure will not raise revenue. In fact, small businesses will also pay less in taxes due to lower profits once advertising agreements are ended to sever nexus.

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 SB 660 and any effort to enact an affiliate nexus or other digital goods tax in Virginia. If you have any questions, please contact Kelly William Cobb or Nathan Pick, state affairs managers, at (202) 785-0266.

Onward,

Grover Norquist

CC: Senate Finance Committee  
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