



May 29, 2009

The Honorable Steven M. Costantino
Chairman, House Finance Committee
Rhode Island House of Representatives
120 Courtland Street
Providence, RI 02909

Dear Representative Costantino,

I write in opposition to House Bill 6164 and urge you to reconsider your support for the measure. This bill would require out-of-state retailers to collect and remit the state's sales tax on products purchased online by Rhode Islanders. The measure would not only circumvent federal interstate commerce law and the Dormant Commerce Clause of the United States Constitution; it would also put Rhode Island at a competitive disadvantage, encourage online-black markets, and – worst of all – raise taxes on Rhode Islanders.

Current jurisprudence, under the Supreme Court's ruling in *Quill v. North Dakota*, requires that a business have a physical presence or "nexus" in a state in order for the state to compel that business to collect and remit sales taxes. However, House Bill 6164 attempts to circumvent this federal 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, but it will bring an unnecessary lawsuit to Rhode Island at a time when the affiliate nexus tax is already undergoing significant legal challenge in New York.

The affiliate nexus tax is also a net tax increase on Rhode Island residents and consumers. Economists of all political and ideological stripes concur that increasing taxes during a recession is bad for the economy and worse for consumers.

Additionally, this effort puts Rhode Islanders at a competitive disadvantage by inadvertently punishing in-state 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 Rhode Island-based website using a banner ad or other link. If advertising with Rhode Island-based websites were to create a nexus for out-of-state retailers, these retailers will simply choose to terminate advertising agreements with Rhode Island-based websites.

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 any effort to enact an affiliate nexus tax in Rhode Island. If you have any questions, please contact Kelly Cobb, state affairs manager, at (202) 785-0266.

Onward,

Grover Norquist

CC: Rhode Island House Finance Committee

722 12th Street N.W.

Fourth Floor

Washington, D.C.

20005

T:(202)785-0266

F:(202)785-0261

www.atr.org