



AMERICANS  
for TAX REFORM

June 23, 2009

Rhode Island House of Representatives  
Rhode Island State Senate

Dear Members of the Rhode Island Legislature,

**I write in opposition to the affiliate nexus tax provision included in the House budget, HB 5983 Substitute A, and urge your opposition to the measure.**

**This provision would require out-of-state retailers to collect and remit the state's sales tax on products purchased online by Rhode Islanders.** The measure not only attempts to circumvent federal interstate commerce law; 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 5983 Sub A 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, 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.**

**In fact, recognizing the likely unconstitutional nature of this proposal, the House Finance Committee determined that it would be unenforceable and thus would provide no increase in revenue for Rhode Island.** Instead, it would leave a law inviting costly legal challenge on the state's books.

**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 the effort to enact an affiliate nexus tax in Rhode Island through House Bill 5983 Sub A. If you have any questions, please contact Kelly Cobb, state affairs manager, at (202) 785-0266.

Onward,

Grover Norquist

CC: Governor Donald Carcieri

722 12<sup>th</sup> Street N.W.

Fourth Floor

Washington, D.C.

20005

T:(202)785-0266

F:(202)785-0261

[www.atr.org](http://www.atr.org)