

March 9, 2011

Arkansas State Senate

Dear Members of the Arkansas Senate,

I write in strong opposition to establishing an affiliate nexus Internet tax in Arkansas under Senate Bill 738. The bill's intent is to require out-of-state retailers to collect and remit sales tax on products purchased online by residents. However, the realistic outcome of this legislation will do more to negatively impact in-state businesses than it will to level the playing field.

Current jurisprudence, under the Supreme Court's ruling in *Quill v. North Dakota*, requires a business to have a physical presence in a state in order for the state to compel that business to collect sales taxes. SB 738 attempts to circumvent this law and require out-of-state retailers to collect tax by presuming a company has a presence if 1) business is solicited through a third-party affiliate in the state, or 2) it is part of a "controlled group of corporations" with another one based the state. This bill flies in the face of the Supreme Court's ruling and could bring a lawsuit to Arkansas at a time when the same tax is already undergoing legal challenge in New York.

Senate Bill 738 could inadvertently punish Arkansas advertisers and other businesses. This tax expands the definition of doing business to include an out-of-state retailer that has an affiliate in Arkansas. If having an affiliate in Arkansas creates a nexus for out-of-state retailers, these retailers will likely terminate advertising or other agreements with Arkansas businesses. This is precisely what has happened when similar legislation passed in other states, such as Rhode Island and North Carolina.

If online retailers sever nexus to avoid the tax change, the state will not raise revenue. In fact, should this bill pass and online retailers sever contracts, 1,800 advertising affiliates in Arkansas will lose business and the state will lose the \$9 million in state income tax that these affiliates pay.

There are two potential outcomes. If SB 738 is scored assuming no online retailer severs their in-state ties, the bill will be a tax increase that raises revenue and Americans for Tax Reform considers it a violation of the Taxpayer Protection Pledge. If SB 738 is scored to not raise revenue, it assumes out-of-state retailers will sever their ties with Arkansas businesses, causing them and the state to lose revenue without leveling the playing field between brick-and-mortar and online retailers. This is no contradiction – it simply depends on how economic actors react to the tax change. Regardless, both of these outcomes make for bad tax policy, and the more likely outcome makes the intent of this legislation – leveling the playing field – irrelevant.

For these reasons, the affiliate nexus Internet tax has been rightly rejected in at least 14 other states. We urge you to reject Senate Bill 738. If you have any questions, please contact Kelly William Cobb at (202) 785-0266.

Onward,



Grover Norquist

722 12th Street N.W.

Fourth Floor

Washington, D.C.

20005

T: (202) 785-0266

F: (202) 785-0261

www.atr.org



February 21, 2011

Arkansas Senate
Arkansas House of Delegates

Dear Legislator,

With the Arkansas legislative session in full swing, calls for tax increases are rising. **I urge you to reject any and all tax increases that are presented to you.** Raising taxes at this time would only prolong the current downturn and serve as an impediment to economic recovery.

Specifically, I write to you with two particular concerns: one being a bill to raise taxes legislatively and another to refer a sales tax hike to the ballot, both of which would be a violation of the Taxpayer Protection Pledge, a commitment that many legislators have made to “oppose and vote against any and all efforts to increase taxes.” According to the 2010 Cost of Government Day Report, it takes the average Arkansan 222 days to pay for his/her share of government spending and regulation; increasing the tax burden and spending more would only make the situation worse. ATR calls on Arkansas lawmakers to reject the following proposals to raise taxes or aid in raising taxes:

- House Joint Resolution 1001, sponsored by Representative Jonathan Barnett: This bill is currently a shell bill; but according to an Associated Press report, will most likely be an attempt to put a half cent sales tax increase on the ballot. If passed, this would cost the taxpayers approximately \$200 million annually.
- Speaker Robert Moore plans to introduce a bill this week to raise taxes for transportation purposes. The complete contents of this proposal have not been made public yet, but unless offsetting cuts are included; this bill will be scored as a tax increase and a violation of the Taxpayer Protection Pledge. If transportation is the priority in Arkansas, then monies should be appropriated from other projects that are not as important.

Please join the families of Arkansas who are working to find ways to make due with less. As they are finding ways to cut their budgets, I urge you to find ways to cut Arkansas’ budget and bring expenditures in line with revenues. It’s time for the state to live within its means, just as families across the state do every day. If you have any questions, please contact Nathan Pick, state affairs manager, at 202.785.0266.

Onward,

Grover Norquist

722 12th Street N.W.

Fourth Floor

Washington, D.C.

20005

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F:(202)785-0261

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