

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

Steve DelBianco, executive director
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7482
www.netchoice.org



April 15, 2009

Committee on Taxes
Minnesota Senate
St. Paul, Minnesota

RE: **Opposition to SF 282** (scheduled for hearing on 16-April-2009)

Dear Chairman Bakk and members of the Committee:

We write to oppose SF 282, which would harm Minnesota businesses who depend upon Internet advertising to pay for valuable information and services provided free-of-charge to Minnesota residents.

SF 282 is designed to increase collection of sales taxes when Minnesotans purchase from out-of-state retailers. It would apply to any retailer that uses an extended network of websites for displaying advertisements. The law re-defines what it means to solicit business in the state, and creates a presumption of nexus when an out-of-state company advertises through Minnesota websites.

Now is a critical point in the evolution of e-commerce and Internet content distribution. Online companies are experimenting with new ways to deliver products, services, and content, and business of all kinds are going online to reach consumers and advertise to receptive audiences. State laws that use Internet advertising as a proxy for an in-state sales representative will stunt the growth new business models and distort the evolution of Internet marketing.

Minnesota should avoid the procedural missteps and fundamental unfairness of making online advertising a nexus determinant to burden out-of-state companies with sales tax collection burdens.

But a far more important consideration for Minnesota legislators is the likely unintended consequences for in-state businesses that rely on this very same advertising to fund their operations.

For example, consider this bill's impact on Minnesota Public Radio/American Public Media, with 500 employees and based right here in St. Paul. MPR/APM is one of the nation's premier public media companies, and is the largest station-based producer of programming heard every day by over 16 million listeners of national public radio.

To support its Minnesota employees and operations, MPR depends heavily on advertising revenue from both broadcast and online media.

The screen image below shows the home page of Minnesota Public Radio/American Public Media. To pay the costs of creating, maintaining and hosting their radio and online content, MPR relies on advertising by retailers who want to reach MPR's website audience.

The screenshot shows the Minnesota Public Radio website interface. At the top left is the MPR logo and a weather widget for Twin Cities (64°F) on Tuesday, April 14, 2009. Navigation tabs include 'NEWS & FEATURES', 'EVENTS', 'MEMBERSHIP', and 'ABOUT US'. A 'RADIO' section features a dropdown menu for 'Programs' and a 'Go' button. A prominent green banner reads 'Shop & Support Your online shopping helps support Minnesota Public Radio.' Below this, a section titled 'Your regular online purchases can result in A CONTRIBUTION UP TO 10% TO MPR' explains the program. Two participating advertisers are featured: Amazon.com (books, CDs, DVDs, electronics, computers, sporting goods, appliances, apparel, tools and much more) and ArkivMusic.com (Premier classical music recordings with over 82,000 titles—including ones heard on MPR). On the right side, there is a 'SEARCH' box, a 'SERVICES' list (including hourly audio newscast, HD Radio, iPhone app / Mobile, E-mail newsletters, RSS feeds, Podcasts, Submit your photos, Videos, Weather, Most e-mailed stories), a 'SPONSOR' section with a 'Support the programming' box and a 'Become a sponsor' link, and an 'IN THE SPOTLIGHT' section featuring 'The Bleacher Bums'.

As seen above, MPR has a **Shop & Support** program designed to attract advertisers who agree to give MPR up to 10% of their online sale proceeds when viewers click on these ads.

One of the participating advertisers shown above is Amazon.com. Another is ArkivMusic.com, a Pennsylvania-based distributor of classical music. MPR is the largest producer of classical music programs in the nation, so ArkivMusic is a natural fit with MPR's Shop & Support program.

Neither of these advertisers has a physical presence in Minnesota, so neither is presently required to collect, file, and remit the state's sales tax on purchases made by Minnesotans. A critical question before your committee is whether out-of-state retailers would continue to

advertise with MPR if Minnesota enacted SF 282 as a way to force advertisers to collect state sales taxes.

Would some advertisers begin collecting Minnesota taxes, possibly under protest?

Would they sue the state over questions of constitutionality?

Or would they follow the example of nearly 200 retailers who simply stopped their online advertising in New York after that state enacted a similar law?

Keep in mind that online and catalog retailers can avoid the unreasonable burden of collecting and remitting remote state sales taxes by cutting-off their ad spending with Minnesota websites. Minnesota consumers could still buy from Amazon, ArkivMusic, and other out-of-state retailers who stop advertising on Minnesota websites. That means SF 282 could have the unintended consequence of reducing ad revenue for Minnesota companies like MPR, *without* increasing sales tax collections.

The net effect of SF 282 could therefore be new pain with no gain. In no event would new money flow into Minnesota; any incremental sales tax collected just moves from the Minnesota purchaser to the state treasury, at a time when households are being squeezed by a struggling economy. To the contrary, fewer advertising dollars would flow to Minnesota publishers and websites who employ and serve Minnesotans today.

We therefore urge that you oppose SF 282, and to refrain from imposing tax collection burdens on retailers that spend their advertising dollars with publishers and businesses based in Minnesota.

Thank you for considering our views, and please let me know if I can provide further information for your deliberations on these important issues.

Sincerely,



Steve DelBianco
Executive Director, NetChoice

NetChoice is a coalition of trade associations and e-Commerce businesses who share the goal of promoting convenience, choice and commerce on the Net. NetChoice members include AOL, eBay, the Electronic Retailing Association, IAC, News Corporation, Overstock.com, VeriSign, Yahoo! and others. More information about NetChoice can be found at www.netchoice.org