

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



June 23, 2011

Governor Jerry Brown
c/o State Capitol, Suite 1173
Sacramento, CA 95814

RE: Opposition to ABX1-28, an act to amend Section 6203 of the Revenue and Taxation Code, relating to taxation.

Dear Governor Brown:

We fully understand the need for states to seek out additional tax revenue. However, we worry that ABX1-28 presents a *new pain with no gain* burden that would cause job loss across California and harm California's technology sector and the California economy.

Loss of State Revenue

ABX1-28 is designed to increase collection of sales taxes when California residents purchase from out-of-state businesses. It would apply to retailers that use an extended network of websites for displaying advertisements. The law re-defines what it means to be a "business" in the state and creates a presumption of nexus when an out-of-state company pays California companies for sold-thru referrals from its websites.

Today, both online and traditional companies are experimenting with ways to deliver products, services, and content, while businesses of all kinds are using online advertising to find distant customers. State laws that declare Internet advertising a proxy for in-state sales agents will stunt the growth of new business models and distort the evolution of Internet marketing.

California should avoid the procedural pitfalls and fundamental unfairness of making online advertising a nexus determinant. A far more important consideration for California legislators is the likely unintended impact on in-state businesses and charities that rely on this very same advertising to fund their operations.

Harm to California Schools

Consider the bill's impact on a growing source of fundraising dollars for California's charities—*Box Tops for Education*.

For years, kids around the country have been collecting box tops from cereal boxes to raise money for field trips and new equipment. *Box Tops for Education* has raised over a hundred million dollars -- by collecting just a few cents on every box top. Today, this fundraising has gone online via *Box Tops Marketplace*, generating commissions when parents shop at affiliated e-commerce websites.

Here's the Box Tops Marketplace webpage:

The Box Tops Marketplace has grown to over a hundred participating websites, offering parenting essentials such as pet supplies, shoes, books, clothing, and household goods. Each of the online stores in the *Box Tops Marketplace* gives a percentage of sales to support good causes in California:

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|--|---|--|---|
| | 1-800 PetMeds 6% donation Description Shop Now | | Land of Nod 4% donation Description Shop Now |
| | 1-800-flowers.com 8% donation Description Shop Now | | Lands' End 3.5% donation Description Shop Now |
| | Aeropostale 3% donation Description Shop Now | | Lands' End Overstocks 3.5% donation Description Shop Now |
| | Apple Store 1% donation Description Shop Now | | LeapFrog 3% donation Description Shop Now |

Also in California, schools like the El Oro Way Elementary School encourage parents to do their online shopping at *Box Tops Marketplace* to generate commissions for their school fundraising efforts:

Support El Oro Way

There are many ways to support our wonderful school. Below is a list of all the different fundraising methods El Oro Way Elementary participates in.

Box Tops for Education

The Box Tops program has three main components through which we can earn cash for our school:

Box Tops Coupons – Clip Box Tops coupons from hundreds of participating products found in your local grocery store and send them to school. We earn 10¢ for each Box Top redeemed.

The Box Tops MarketplaceSM – Shop online at your favorite stores like JCPenney and Lands' End through the [Box Tops for Education Marketplace](#). We earn a percentage of each qualifying purchase at no additional cost to you.

The Box Tops Reading Room – Buy books through the [Box Tops Reading Room](#) and we earn up to 6% of your purchase.

Thing is, few of the online stores participating in *Box Tops Marketplace* have any physical presence in California. Would the out-of-state retailers in *Box Tops Marketplace* continue to work with California's schools and PTAs if the state enacts ABX1-28? More likely, these advertisers will simply cancel their online affiliate programs as they did in New York, Rhode Island, North Carolina, and Illinois after those states enacted a similar law.

The Loss Of A Growing Source Of Revenue For California Online Publishers

Website publishers across California rely on revenue generated from referral advertising. Often these referrals are to out-of-state retailers with no physical presence in California and no obligation to collect and remit sales tax for California purchasers.

A critical question before your committee is whether out-of-state retailers would continue to advertise with California publishers if California enacted ABX1-28 as a way to force out-of-state retailers to collect and remit state sales taxes.

Would they sue the state over questions of constitutionality?

Would they follow the example of hundreds of retailers who simply stopped their commission-based advertising in New York, Rhode Island, Illinois, and North Carolina after those states enacted a similar law?

Goes Against the Will of the California Residents and Businesses

59 percent of Californians oppose higher taxes to help the state balance its budget according to a June Thompson/Reuters poll. In addition, Proposition 25 shows that Californians do not want a tax hike. But ABX1-28 might be considered an increase on taxes.

In addition, over 19,000 different small-businesses recently submitted delivered letters to your office in opposition to ABX1-28.

New Pain with No Gain Effects of ABX1-28

It's essential to remember that out-of-state businesses can avoid the burden of collecting taxes by cutting-off their ad commission payments with California websites. Of course, California consumers could still buy from out-of-state businesses that stop paying commissions to California websites. That means ABX1-28 could have the unintended consequence of reducing ad revenue for California publishers *without* increasing sales tax collections.

The net effect of ABX1-28 could therefore be *new pain with no gain*. In no event would new money flow into California; any incremental sales tax collected just moves from the California 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 California websites who employ and serve California residents.

We therefore urge you to veto ABX1-28 and to refrain from imposing additional burdens on retailers who spend advertising dollars with California publishers, businesses, and charities.

Thank you for considering our views. Please let me know if I can provide further information.

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. More information about NetChoice can be found at www.netchoice.org