

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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February 22, 2011

Honorable Richard Martinez, Chair
Senate Judiciary Committee
State Capitol
Santa Fe, NM 87501

RE: **Opposition to SB 95, Internet Sales Gross Receipts**

Dear Chairman Martinez:

We fully understand the need for states to seek out additional tax revenue. However, we worry that SB 95 presents a *new pain with no-gain* tax option that would cause job loss across New Mexico. Even more telling, the Legislative Finance Committee's report finds SB 95:

"will likely have negative effects on New Mexico business's retail sales, and therefore, will have a negative impact on general fund revenues." "Additionally, because of the size of the business community and the population of New Mexico, it is likely that major sellers will discontinue all affiliate relationships in New Mexico in response to the imposition of tax on internet sales transactions."

Essentially, SB 95 would generate no new tax revenue, cut jobs in New Mexico, and reduce fundraising by New Mexico schools and charities.

SB 95 is designed to increase collection of sales taxes when New Mexico residents 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 be a "retailer" in the state, and creates a presumption of nexus when an out-of-state company advertises through New Mexico's 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.

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

For example, consider the bill's impact on a growing source of fundraising dollars for New Mexico'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 screenshot shows the Box Tops Marketplace website. At the top left is the 'BOX TOPS EDUCATION' logo. A navigation bar contains links for 'All About Box Tops', 'Marketplace' (highlighted in pink), 'Reading Room', 'Bonus Offers', 'Recipes', 'Family Matters', and 'Parent Community'. On the right, there are links for 'Sign up now' and 'Already signed up? Log in'. Below the navigation bar is a large banner with a photo of a smiling girl on the left and the 'Marketplace' logo in the center. To the right of the logo, text reads: 'Shop online at your favorite stores through the Box Tops Marketplace™ and your school earns cash on every qualifying purchase, up to \$20,000 each year, at no additional cost to you.' Below the banner is a section titled 'How the Marketplace Works' with a 'Hide' button. It contains three numbered steps: 1. 'Start your online shopping at the Box Tops Marketplace. Click "shop now" next to the store you'd like to shop at.' 2. 'Select items you'd like to purchase, as you normally would, and follow their standard checkout process.' 3. 'A percentage of qualifying purchases will be automatically credited to your school. Learn more »' Below the banner on the left is a 'Store Categories' menu with options: 'Apparel & Accessories', 'Books, Music & Movies', and 'Electronics & Office'.

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 here in New Mexico:

 1-800-PetMeds 6% donation Description Shop Now	 The Land of Nod 4% donation Description Shop Now	 blue nile 2.5% donation FREE FedEx Shipping on every order!
 1-800-flowers.com 8% donation Description Shop Now	 LANDS' END Guaranteed Period.* Lands' End 3.5% donation Description Shop Now	
 AÉROPOSTALE 3% donation Description Shop Now	 LANDS' END OVERSTOCKS Lands' End Overstocks 3.5% donation Description Shop Now	 Kodak EasyShare Gallery 3.5% donation Free Shipping on orders of \$15+ for Mother's Day with code: ILOVEMOM
 Apple Store 1% donation Description Shop Now	 LeapFrog 3% donation Description Shop Now	
 AVON 4% donation Description Shop Now	 Leaps and Bounds 3% donation Description Shop Now	 HSN shop now 2% donation Save \$15 off your first single item purchase of \$45 or more. Use coupon C73687
 babygap.com 2% donation Description Shop Now	 Lillian Vernon 3% donation Description Shop Now	
 BANANA REPUBLIC 2% donation Description Shop Now	 magazines.com 20% donation Description Shop Now	 SHOES.COM 7.5% donation Save 15% off at shoes.com with code: SPRING15
 BARNES & NOBLE www.bn.com 6% donation Description Shop Now	 Martha Stewart for 1-800-Flowers 5% donation Description Shop Now	
 BEST BUY 0.5% donation Description Shop Now	 naturalizer 5% donation Description Shop Now	

Also here in New Mexico, schools like the Bellehaven Elementary School encourage parents to do their online shopping at *Box Tops Marketplace*, to generate commissions for their school:



Bellehaven Elementary

Home of the Bobcats

Today is Tu

- Home
- Our Teachers and Staff
- School Information
- Calendar
- Clubs and Programs
- PTA Information
- Contact

SAVE BOXTOPS FOR YOUR EDUCATION

[ABC Sheet](#)

[BoxTops for Education Marketplace](#)

[Dear Bellehaven Parents](#)

[How-to Clip BoxTops for Education](#)

[BoxTops products list](#)



MAKE OUR SCHOOL A CUT ABOVE!

Thing is, few of the online stores participating in *Box Tops Marketplace* have any physical presence in New Mexico, and are therefore not required to collect, file, and remit the state's sales tax on purchases made by New Mexican residents. Would the out-of-state retailers in Box Tops Marketplace continue to work with New Mexico's schools and PTAs if the state enacts SB 95? More likely, these advertisers will simply cancel their online affiliate programs, as they did in New York, Rhode Island, and North Carolina after those states enacted a similar law.

Another unintended consequence of SB 95 is the loss of a growing source of revenue for New Mexico's online publishers.

One such publisher is Lin Media, a world-class media company that employs hundreds of New Mexico's citizens and runs the New Mexico television stations, KRQE-CBS and KASA-Fox. To pay the costs of creating and hosting online content, Lin Media relies on advertising by retailers seeking to reach its website visitors. As seen in the screen below, one of Lin Media's popular sites, krqe.com, shows what a consumer would see if they turned to krqe.com for the latest news:



Stiefel Labs, the retailer who purchased ads on this page, sells the popular “Max Clarity” acne cream. Stiefel has no presence in New Mexico and presently has no obligation to collect and remit sales tax for New Mexico purchasers. A critical question before your committee is whether out-of-state retailers would continue to advertise with Lin Media if New Mexico enacted SB 95 as a way to force advertisers to collect state sales taxes.

Would some advertisers begin collecting New Mexico taxes, possibly under protest?

Would they sue the state over questions of constitutionality?

Or would they follow the example of hundreds of retailers who simply stopped their online advertising in New York, Rhode Island, and North Carolina after those states enacted a similar law?

It's essential to remember that out-of-state online and catalog retailers can avoid the burden of collecting and remitting remote state sales taxes by cutting-off their ad spending with New Mexico's websites. Of course, New Mexico consumers could still buy from out-of-state retailers who stop advertising on New Mexico's websites. That means SB 95 could have the unintended

consequence of reducing ad revenue for New Mexico's publishers *without* increasing sales tax collections.

As stated in the Legislative Finance Committee's report:

"With expectations of small positive impact on gross receipts revenues from those sellers who continue their affiliate relationships and the potential negative effects resulting from the dissolution of relationships between New Mexico business and major internet retailers, Senate Bill 95 is expected to have *no effect on general fund revenues.*" In addition, "[t]he discontinuance of affiliate relationships will likely have *negative* effects on New Mexico business's retail sales."ⁱⁱ

The net effect of SB 95 could therefore be new pain with no gain. In no event would new money flow into New Mexico; any incremental sales tax collected just moves from the New Mexico's 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 New Mexico's websites who employ and serve New Mexico's residents.

We therefore urge you to oppose SB 95, and to refrain from imposing tax collection burdens on retailers who spend advertising dollars with New Mexico's 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

cc: Members of the committee

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

ⁱ Emphasis added.

ⁱⁱ *Id.*