



August 5, 2010

California Assembly and Senate

RE: Opposition to Affiliate Nexus Tax in Budget Proposal

Dear Legislator,

**I write urging your opposition to the proposed tax increase on online purchases that was recently included in the Democrat's budget plan.** The affiliate nexus tax, which has been repeatedly rejected in California, would require out-of-state retailers to collect and remit the state's sales tax on products purchased online by Californians. This not only attempts to circumvent interstate commerce law; but would put small California advertisers out of business, invite a costly legal challenge, and establish a new tax on California residents.

Governor Arnold Schwarzenegger has rightly stated that he will not sign a budget that contains a tax increase. This measure projects a tax increase of \$100 million, let alone the other \$2 billion in tax hikes included in the budget proposal. **For Taxpayer Protection Pledge signers, Americans for Tax Reform scores this proposal as a tax increase and a vote in favor of this bill as a violation of the Pledge.**

As the Governor noted in vetoing the affiliate nexus tax last year, this measure will inadvertently punish California advertisers and web-based businesses. Since under this measure advertising on California-based websites creates a nexus for out-of-state retailers, these retailers will simply choose to terminate advertising agreements with small business advertisers.

Additionally, while the measure is scored as a tax increase, it will raise little to no tax revenue. Since passage in Rhode Island and North Carolina, the affiliate nexus tax has raised no additional revenue, as retailers rightly ended their advertising agreements to avoid an unconstitutional tax collection scheme.

Finally, current jurisprudence under the U.S. Supreme Court's ruling in *Quill v. North Dakota* requires that a business have a physical nexus in a state in order for the state to compel that business to collect and remit sales taxes. However, this measure attempts to circumvent the Commerce Clause by presuming that a company has a nexus if business is solicited through a third-party advertiser in the state. This measure flies in the face of the Supreme Court's ruling and comes at a time when the affiliate nexus tax is already undergoing significant legal challenge in New York.

For these reasons, I urge you to oppose this budget proposal and the affiliate nexus tax on online sales in California. If you have any questions, please contact Kelly William Cobb or Patrick Gleason at (202) 785-0266.

Onward,

Grover Norquist

CC: Governor Arnold Schwarzenegger

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)