



Retail Council of New York State

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James R. Sherin
President & Chief Executive Officer

November 10, 2011

Hon. Andrew M. Cuomo
Governor of New York State
State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

As retailers and consumers gear up for the 2011 holiday season, analysts are nearly unanimous in predicting yet another sizable increase in on-line shopping over prior year levels. That's good news for out-of-state-based Internet sellers and FedEx, disconcerting news for New York's Main Street merchants, and terrible news for New York State's budget. Hundreds of millions of sales and use tax dollars owed to the State will remain uncollected, and New York's storefront merchants and Main Street businesses will continue to struggle against a government-sanctioned unfair pricing advantage granted to Internet sellers.

Currently, New York State requires out-of-state vendors to collect and remit state and local sales tax under limited circumstances (known generally as the 'click-through nexus' implemented in the FY 07-08 budget). But at this writing, the United States Congress is considering a federal response that would allow New York and other states to collect billions in sales and use taxes currently uncollected but no less due on sales rendered through Internet and other remote selling channels (known as "e-fairness"). We urge you to encourage New York's Congressional delegation to allow this states' rights solution to sales tax collections.

The Retail Council, on behalf of our member stores small and large, endorsed and advocated for the 2007 New York law. It is critical to underscore that this is not a new tax on Internet sales. It is a matter of collection and a matter of simple fairness that says New York's merchants should not be forced to compete against out-of-state online giants given a competitive advantage rooted in an outdated government policy rather than on price, selection and service.

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The root of the issue is the Supreme Court's decades-old *Quill* decision which prohibits any state from requiring remote sellers with no presence in the state to collect sales taxes owed on purchases from out-of-state vendors. *Quill*, however, pointed to Congress to exercise its authority and let the states enforce their sales tax laws to level the playing field between brick-and-mortar businesses and online-only sellers. Several bills now pending in Congress would give states the authority to enforce existing sales and use tax collection laws-something we know would be essential to any effort to bring e-fairness to the merchants of New York State and needed revenue to state and local government.

At the urging of hundreds of companies (individually and through the representation of state and national trade associations), the Joint Select Committee on Deficit Reduction is considering sales tax-fairness as it seeks solutions to the federal budget problems. We write today on behalf of our thousands of member stores to ask your support for e-fairness and that you urge New York's Congressional delegation to bring more equitable sales tax collection rules to the Main Street Merchants throughout the state.

The retail marketplace never has been as fiercely competitive as it is in 2011, and competition only will escalate in the years ahead. New York's brick-and-mortar merchants know that they must battle it out against each other over price, customer service, selection, location, and every other traditional area of competition. But they should not fall prey to government-imposed sales tax policy that predates the Internet.

Nor, frankly, should New York annually leave staggering amounts of sales and use tax revenue on the table. The click-through-nexus law notwithstanding, recent studies suggests that New York State could forfeit as much as \$865 million in sales tax revenue in the coming fiscal year alone (and an aggregate loss of more than \$3 billion since 2007).

Congress has the chance and the specific proposals necessary to achieve a comprehensive solution that brings fairness to the marketplace and recurring revenue to New York's state and local governments without imposing a new tax. Your statement in support of e-fairness would send an undeniably strong signal to all of Congress that it clearly is time for sales tax collection to be spread evenly among all sellers, and better align itself with technologies and methods that did not exist when the Supreme Court ruled on this issue.

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We welcome the opportunity to meet with you and/or your staff to discuss e-fairness generally or specifically, and look forward to your support of an effort important to New York States long term fiscal stability and to its Main Street merchants.

Sincerely,

A handwritten signature in black ink, reading "Jim Sherin". The signature is written in a cursive, flowing style with a large initial "J" and "S".

James R. Sherin
President & Chief Executive Officer