



March 12, 2009

To Members of the Assembly Revenue & Taxation Committee

AB 178 and ABX3 27 (Skinner and Calderon) – OPPOSE

Threatens California Technology Sector Jobs and Harms California Online Marketplace Companies, E-Commerce Companies, Small Businesses, Nonprofits, Many Others

The below-listed business and employer organizations and companies must respectfully **OPPOSE AB 178 AND ABX3 27 (Skinner and Calderon)** which we believe could harm highly-coveted California technology sector companies, such as online marketplace and other e-commerce companies, by placing them at a severe competitive disadvantage, nationally and globally.

AB 178 AND ABX3 27 would establish that California nexus is created when any retailer enters into any referral agreement with a California resident in exchange for compensation or commission, such as by a link, website, or otherwise, which generates referrals in excess of \$10,000 in sales. “Nexus” refers to the U.S. Constitution’s requirement that an out-of-state retailer have a sufficient physical connection with a state before the state can force the retailer to collect the state’s sales or use tax.

We OPPOSE for the following reasons:

1. **Undermines the Ability of California Companies to Survive or Do Business in this State. AB 178 AND ABX3 27**, while aimed at out-of-state companies, could inflict significant harm on California companies. The language of **AB 178 AND ABX3 27** is extremely vague and broad and could impede numerous ways that California companies currently survive or earn money, including: offering online-marketplace services to customers who are retailers around the globe, placing banners and other advertisements on websites, and earning commissions from “click-through” links on websites.

AB 178 AND ABX3 27 could place California companies who offer online marketplace and other web services at a competitive disadvantage by creating a strong disincentive for existing and potential out-of-state customers/retailers to instead utilize service-providers in other states. By using out-of-state competitor web-service companies, out-of-state retailers can lawfully avoid collecting California sales or use tax, while still reaching California consumers. There will be many other non-California states from which to choose as only one other state, New York, has adopted a similar nexus standard.

(Over)

Moreover, a host of California companies and nonprofits of all types and sizes who currently depend on income from placing advertising and “click-throughs” on their websites, may lose these income opportunities altogether. For example, a major Internet retailer terminated all of its “click-through” arrangements with New York-based websites, almost immediately after New York adopted its new nexus law. There are many California online companies and nonprofit organizations who offer information and services on their websites that greatly benefit consumers, free-of-cost. For websites, banner advertisements and “click-throughs” are a major source of income.

2. **Could Result in Behavioral Changes Which May Ultimately Reduce State Tax Revenue.** The possibility of any new tax revenues resulting from **AB 178 AND ABX3 27** may be more than offset by the damage it could cause to California web-service companies whose customer bases could shrink or disappear, ultimately resulting in lost jobs and fewer tax revenues stemming from lost company revenue and lost jobs. Moreover, California web-service and online companies are uniquely positioned to move their operations to another state due to their highly-mobile nature.
3. **Could Result in Costly Litigation Against the State.** A state’s enactment of a new nexus standard does not mean that it is legal. The form of nexus that **AB 178 AND ABX3 27** attempt to establish has not been decided as Constitutional by the U.S. Supreme Court and thus could be subject to immediate court challenge under the U.S. Commerce Clause. For example, New York, was sued immediately after adoption of its nexus law last year and is still in litigation with no end in sight. Such costly court challenges against California could last for years as they make their way through the trial and appellate courts, at a time when California is suffering from budgetary challenges and a severe economic downturn,

California lawmakers need to decide: Will California be the global leader of the Internet-marketplace or the global leader of the Internet taxation?

AB 178 AND ABX3 27 are bad for Californians and California. For these and other reasons, we strongly **OPPOSE AB 178 AND ABX3 27** and strongly urge your **“NO”** vote.

Sincerely,

California Chamber of Commerce	Entertainment Software Association	Recording Industry Association of America
Advice Company	Fuller Sound/CSS Music/ D.A.W.N.	Risse Mechanical
Amazon.com	Google	Seawright Custom Precast, Inc
AOL	Haldeman, Inc.	Silicon Valley Leadership Group
California Cable and Telecommunications Association	HR Jungle	Software Finance and Tax Executive Council
California Independent Grocers Association	Irvine Chamber of Commerce	St. John’s Retirement Village
California Manufacturers and Technology Association	Manheim Central California	Stephen P. McGee, Law Offices of TechAmerica
California Taxpayers Association	Motion Pictures Association of America, Inc.	TechNet
Coastal Cardiology	Murphy, McKay & Associates, Inc.	VLSI Research, Inc.
Creativity, Inc	Ogletree’s, Inc.	Westgate Hardwoods, Inc.
DMAF Consulting	Palm Desert Chamber of Commerce	Yahoo! Inc.
Direct Marketing Association	Panoptx Inc.	
eBay, Inc.	Plan-it Interactive	

cc: The Honorable Nancy Skinner
The Honorable Charles Calderon
Michael Pro시오, Office of the Governor
Oksana Jaffe, Assembly Revenue & Taxation Committee
Julia King, Assembly Republican Caucus
Brent Jamison, Office of Planning and Research
Eric Csizmar, Business, Transportation & Housing Agency