

September 7, 2010

We OPPOSE Affiliate Nexus Tax (aka click-thru tax):

TRUE: Merchants with a physical presence (nexus) in a state must collect sales tax (US Constitution commerce clause).

TRUE: No physical presence means no requirement to collect sales tax (Quill vs. North Dakota).

FALSE: Affiliates establish nexus for out-of-state retailers.

Affiliates are websites that earn income from placing ads for retailers. Affiliates don't sell to consumers, they don't collect money from consumers, they don't even know who the consumers are! Affiliates do not establish nexus for out-of-state retailers.

TRUE: Retailers will terminate Georgia affiliates to avoid nexus.

It happened in NY, NC and RI. They'll just advertise with affiliates in other states.

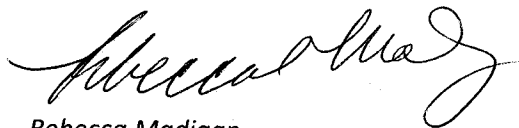
TRUE: There are 5,800 affiliate business in Georgia – who earned \$397MM and paid \$24MM in state income tax in 2009 - whose incomes will be devastated if this passes.

TRUE: Georgia will collect \$0 in new sales tax revenue – because affiliates will be terminated. And Georgia will *lose state income tax revenue* because affiliate incomes will be devastated.

This 'affiliate nexus tax' creates a loophole: if having affiliate partners establishes nexus for out-of-state retailers, those retailers will simply terminate their Georgia affiliate marketing partnerships. **The state will see no new sales tax revenue and small businesses will be devastated.**

On behalf of the 5,800 small businesses in Georgia, we respectfully ask you to oppose the affiliate nexus tax.

Sincerely,



Rebecca Madigan
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The Performance Marketing Association is a not-for-profit trade association founded in 2008 by the leaders of the performance marketing industry, to connect, inform and advocate on behalf of this rapidly growing field.

The Performance Marketing Association (PMA) strives to raise the profile of performance marketing by demonstrating the value of this multi-billion marketing channel, with over 200,000 performance marketing businesses worldwide. Online performance marketing revenue was \$13.4B in 2009, ***the only advertising segment to experience growth from 2008*** [source: IAB Internet Advertising Revenue Report 2009].

Performance marketing is a comprehensive term that refers to online marketing and advertising programs in which retailers and service companies — also known as affiliates or publishers — are paid when a specific action is completed, such as a sale.

With traditional display advertising, advertising fees are paid up front and do not depend on a specific transaction taking place. Department store magnet John Wanamaker once said, ***"Half the money I spend on advertising is wasted; the trouble is I don't know which half."***

In performance marketing, advertisers and marketers only pay for successful transactions. Each transaction is based on a consumer taking a defined action, such as making a purchase from the advertiser or signing up for a subscription. *The trackability of performance marketing isn't based on estimates. It's based on actual results — meaning that a marketing program's effectiveness is accurately determined, down to the mouse click.*

Continued growth of the performance marketing space is expected as advertisers, facing small budgets and big expectations, increasingly look to performance-based marketing initiatives to expand their business.

More information can be found at www.performancemarketingassociation.com

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Affiliate Nexus Tax – Status

Alabama (No Bill Proposed)

Summary: In the fall of 2009 the state's Department of Revenue put out a recommendation encouraging legislators to propose an advertising tax but no bill was proposed.

California (Vetoed)

Summary: In 2009 Governor Schwarzenegger threatened to veto the entire budget if AB178, the affiliate nexus tax, wasn't removed. He put out a press release saying affiliate would still stay in business. In 2010, it was introduced again; the budget is still pending.

Colorado (Dead)

Summary: Colorado removed the affiliate nexus tax after hearing affiliate uproar. Colorado's Big Brother Sales Tax law, HB 1193, passed into law and went into effect March 1, 2010. On June 16, 2010, the Direct Marketing Association notified its members it will be filing suit against the state of Colorado, claiming the Big Brother Sales Tax is 'expensive, intrusive, and oppressive.'

Connecticut (Dead)

Summary: In February, 2010, Senate bill SB 5481 was introduced by the Senate finance committee. The bill was passed by the senate committee and passed by the House. But days before the legislative session was to end, the leaders of the Finance, Revenue and Bonding Committee had a change of heart; they recognized the bill would not protect retailers, would not help the state, but would only harm affiliate businesses. The legislative session ended May 5th without passing the ad tax.

Hawaii (Vetoed)

Summary: Governor Linda Lingle vetoed HB 1405 in April of 2009 because this legislation has immediate and adverse consequences for residents and businesses of Hawaii. Thanks to all the affiliates who wrote letters, sent emails and showed up at the capitol.

Illinois (Dead)

Summary: Senate Bill SB 3353 was introduced by Senator Jeffrey Schoenberg and heard by the Senate Revenue Committee. The bill was heard March 4, 2010, and was 'held over', or essentially tabled. The bill was not killed outright, but there has been no activity or support for this bill so it is not expected to be revived this year. Senator Schoenberg had attempted to propose an ad tax in 2009 but was unsuccessful.

Iowa (Dead)

Summary: HF 2510 was introduced on March 1, 2010 and killed in committee a day later.

Maryland (Dead)

Summary: 2010 The Maryland Senate Budget and Taxation Committee heard Bill SB 824, an ad tax bill sponsored by Senators Madaleno, Conway, Currie and Kelley. The bill was heard by the committee on March 17, 2010, but the legislative session ended without the committee ever casting its vote.

2009: The ad tax concept was included in the Budget Reconciliation and Financing Act (BRFA), and, under the sponsorship of Senator Madaleno, became Senate Bill SB 1071. The bill was killed in committee.

Minnesota (Dead)

Summary: SF 282 was introduced in March 2009 by the senate tax committee and did not pass out of committee in April 2009.

Nevada (No Bill Proposed)

Summary: The Nevada special session began February 23, 2010, and ended at 2:16am March 1. A tax bill was never proposed or adopted, despite being mentioned in the governor's pledge.

Affiliate Nexus Tax – Status

New Mexico (Dead)

Summary: House Bill 50 was proposed in late January 2010 and just days later there was a hearing. The bill did not pass in committee.

Tennessee (Never Voted On)

Summary: In the summer of 2009 Tennessee introduced SB 1741, but the legislative session of the state ended without a vote on the bill.

Vermont (Dead)

Summary: HB661 was introduced in January 2010 by Representatives Jeffrey Wilson, John Rodgers and Megan Smith and was voted down in the Ways and Means committee on February 24, 2010. It will not go any further.

Virginia (Dead)

Summary: Senate Bill SB 660, sponsored by Senator Hanger, was passed by the Senate Finance Committee. It was heard and tabled by the House Finance committee. However, weeks later it was included in the budget proposal. However, the ad tax was not included in the final budget.

Passed:

New York:

In litigation with Amazon and Overstock. In mid-level appeals court; oral arguments were heard October 2009; ruling is imminent.

North Carolina:

Passed in 2009, resulting in hundreds of merchants terminating their NC affiliates. NC publicly stated they have seen no new sales tax revenue. However, their department of revenue is relying on earlier statute, pursuing back sales tax collection from out-of-state retailers to 2003. In litigation with Amazon and ACLU for breach of consumer privacy.

Rhode Island

Passed in 2009, resulting in hundreds of merchants terminating their RI affiliates. Introduced legislation to repeal.