

**American Booksellers Association**

**Submitted Testimony in Support of Sales Tax Fairness**

**Joint Committee on Revenue**

**April 7, 2011**

On behalf of its Massachusetts member bookstores, the American Booksellers Association, a not-for-profit, national trade association of independent bookstores, fully supports the sales tax fairness bills currently under consideration, which include bills H01731**,** S01554**,** and S01450. We thank the Joint Committee on Revenue for allowing the association to submit testimony in support of sales tax fairness.

Currently, remote retailers with a physical presence in the state through broad networks of online affiliates acting as sales agents are skirting their duty to collect and remit sales tax for purchases made by Massachusetts residents. This puts in-state retailers, both large and small, at a distinct competitive disadvantage.

Over the years, the current sales tax inequity has forced Main Street stores to lay off workers, cut hours, or even worse, shut their doors. And the economic damage will only increase as online shopping grows. The time to act is now. We urge Massachusetts to follow the lead of the states around the country that have already passed sales tax fairness legislation: Arkansas, Colorado, Illinois, New York, North Carolina, Rhode Island, and South Dakota. We believe it is time for the state to level the playing field for its retailing businesses.

Remote retailers that oppose sales tax fairness want to preserve their unfair strategic advantage over Massachusetts retailers. Amazon.com, for one, has shown that it will go to extraordinary lengths to circumvent sales tax laws in an effort to maintain its unfair competitive advantage over Main Street retailers.

In states attempting to pass affiliate nexus laws, Amazon.com has fired, or has threatened to fire, their online affiliates to evade sales tax laws. In Texas, where they have both online affiliates and distribution facilities, they are threatening to close down their warehouses and put a hundred people out of work.

Frankly, based on history, Amazon.com may very well fire their online affiliates in Massachusetts if affiliate nexus legislation is passed in Massachusetts. However, far from inhibiting legislators from passing affiliate nexus laws, we believe Amazon.com’s actions are reasons *why* this legislation needs to be passed in Massachusetts *and* every other state where sales tax is collected. A tipping point will soon be reached, and Amazon.com will no longer be able to afford to fire affiliates or pull out of states. They'll have no place left to hide.

Often we hear opponents erroneously declare affiliate nexus laws as “unconstitutional.” Thus far, there have been two court rulings on affiliate nexus laws, both in New York State, where the law was challenged by Amazon.com. Both the New York lower and appellate courts have declared affiliate nexus laws to be constitutional. Importantly, the appellate court ruled that online affiliates are not “advertisers,” as affiliates call themselves, but are indeed sales agents, thereby triggering the nexus requirement as reaffirmed under the 1992 Supreme Court decision *Quill vs. North Dakota*.

I know opponents of sales tax fairness contend that the loss of Amazon.com's affiliate program will put online affiliates out of business. However, there are hundreds upon hundreds of companies that collect and remit sales tax to states that will gladly work with online affiliates and fill the void left by Amazon.com. Indeed, affiliate bloggers themselves posted long lists of these companies following the passage of the New York State affiliate nexus law.

And while many refer to affiliate nexus laws as the “Amazon Tax,” it is often overlooked that there are other remote retailers that are not collecting and remitting sales tax to the state, but should be. For example, within two months following the affiliate law’s enactment in New York, the New York State Department of Taxation and Finance reported that more than 30 companies registered to collect and remit sales tax in the state. Amazon.com also collects and remits sales tax in New York State as it awaits the outcome of its lawsuit against the state; Overstock fired its affiliates in the state.

Following enactment of its affiliate nexus law, in the first fiscal year, New York State recouped some $70 million in sales tax revenue that would have otherwise been lost.

That said, ABA does not make any claims as to what, if any, revenue these bills will bring in. We can guarantee one thing, however. If the state does nothing, the sales tax dollars lost out of state to remote retailers will only grow, while the jobs provide by in-state retailers will most assuredly decrease. Something must be done now – it’s a matter of sound economic policy and fairness. We urge the committee to stand with Main Street.

Thank you for your consideration.