



TO: Chairwoman Caryn Tyson and members of the Senate Committee on Assessment and Taxation
FROM: Jeff Glendening, Director, Americans for Prosperity Kansas
SUBJECT: SB 111; Testimony in opposition
DATE: 2/7/2017

On behalf of thousands of AFP activists across Kansas, thank you for the opportunity to voice our opposition to SB 111.

Kansas is not alone in its pursuit of increasing tax revenues from online sales. However, the U.S. Supreme Court clearly ruled in *Quill Corp. v. North Dakota (1992)* that state sales tax laws have finite jurisdictions under the Constitution. The *Quill* doctrine holds that, absent Congressional action, states do not have the power to force remote sellers to collect and remit sales taxes.

The Federal 10th Circuit Court's decision in *Digital Market Association v. Grohl (2016)* seems to have opened the floodgates for states to circumvent the spirit of the *Quill* doctrine, by allowing state regulators to require reporting of sales from out of state retailers. While the Supreme Court has refused to hear challenges to this ruling, they have consistently held that preventing states from enacting discriminatory and anti-competitive regulations is crucial to protecting interstate commerce. Further, requiring sellers disclose the purchasing information of customers to state authorities – as does SB 111 – was ruled a violation of the First Amendment by U.S. district courts in *Amazon.com LLC v. Lay (2010)* and *Direct Marketing Association v. Huber (2012)*.

Additionally, Colorado's online sales tax disclosure law – the subject of the 10th Circuit *Grohl* case and the model for SB 111 – has yet to be fully implemented, but the revenue increases are estimated by the government's own accountants to total a paltry \$200,000 per year. When considering the budgetary costs of practically enforcing the law on the countless small businesses that make online sales to the state's residents, it is doubtful any net revenue will be generated. It is easy to see that even a small department of four or five tax lawyers and investigators focused on enforcing this law would cost taxpayers more, just in salaries, than the state would receive in revenues.

In addition to wasting taxpayer dollars, SB 111 would limit the choices of Kansans by leading out-of-state small businesses to stop offering us their products and services due to the cost of navigating the more than 420 tax jurisdictions in our state. If every state were to adopt its own tax compliance dragnet, almost anyone attempting to start a business online could become subject to costly government audits from the nearly 10,000 tax jurisdictions around the country. This would hurt the economy and kill countless jobs which is why Gallup public opinion polls show nearly 60 percent of consumers oppose this approach to online sales tax.

SB 111 is the wrong response to growth in Internet-facilitated commerce. If enacted, this legislation would waste taxpayer money and create a bad precedent for overly complex tax policy in Kansas. We strongly urge the members of the committee to oppose SB 111.

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