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**June 29, 2017**

**Gov. John Kasich**  
**Riffe Center, 30th Floor**  
**77 South High Street**  
**Columbus, OH 43215-6117**  
**Phone: (614) 466-3555**

**RE: H.B. 49 and physical presence standard for sales tax**

Dear Gov. Kasich:

The R Street Institute strongly opposes the provision in H.B. 49 that would require online vendors located outside Ohio to remit sales tax to the state. This legislation is both unconstitutional and impractical and therefore should be rejected.

This provision and similar approaches to interstate sales taxes hold an ignominious distinction: they are the only such efforts in recent memory intentionally drafted to be unconstitutional and draw a lawsuit. By empowering Ohio to collect taxes from businesses with no physical presence within its borders, the rule immediately would draw the state into a potentially expensive and bitter cycle of litigation that is duplicative of similar cases in other states. It's a cycle unlikely to yield a positive result, since decades-old Supreme Court precedent makes clear that state taxing powers stop at the border's edge.

Setting aside the bill's obvious unconstitutionality, it is most probably not an effective measure to raise the revenue projected, even if it were to be upheld. By contributing to the erosion of borders as effective limits on state tax power, it will encourage poorly governed, tax-heavy states like California, New York and Illinois to unleash their aggressive tax collectors on Ohio businesses. Your own constituents could be subject to audit and enforcement actions in states all across the country in which they have no physical presence.

Furthermore, a system of sales-tax enforcement unbounded by any tangible connection like a physical presence would impose significant compliance costs on web-enabled businesses. This burden would fall particularly hard on specialty businesses and small sellers that are dependent on the internet to reach their customers. They would be forced to keep track of all 10,000 taxing jurisdictions across the country,

each with its own rates, rules and regulations, while sales in similar brick-and-mortar businesses only require collecting tax for the single jurisdiction in which they're located.

The U.S. Constitution was written to replace the Articles of Confederation in no small part due to the latter's failure to prevent a spiraling interior "war" of states that could assert tax and regulatory authority outside their borders. While the Constitution's Commerce Clause and subsequent jurisprudence make clear that taxing power must be limited by state borders, this bill seeks to wipe those limits away. That would be dangerous and we urge that you veto this provision, as you did in 2013. Since the commercial activity tax has been upheld, there seems to be less justification than ever for this approach.

Respectfully,

Alan Smith  
R Street Institute

