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Dec. 15, 2016

The Hon. Mike Bell  
Chairman, Government Operations Committee  
Tennessee Senate  
309 War Memorial Building  
Nashville, TN 37243

The Hon. Jeremy Faison  
Chairman, Government Operations Committee  
Tennessee House of Representatives  
202 War Memorial Building  
Nashville, TN 37243

**RE: Taxation of internet sales and Department of Revenue Rule 1320-05-01-.129**

Dear Chairmen Bell and Faison,

On behalf of the R Street Institute, a free-market think tank with expertise in internet sales tax law, I write in strong opposition to Department of Revenue Rule 1320-05-01-.129 regarding out-of-state dealers, a matter before your committee today. This rule is both unconstitutional and unwise, and your committee would be wise to reject it.

This rule and similar approaches to interstate sales taxes hold an ignominious distinction: they are the only such efforts in recent memory to be *intentionally* drafted so as to be unconstitutional and draw a lawsuit. By empowering Tennessee to collect taxes from businesses with no physical presence in the state, the rule would immediately 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 tax powers stop at the border's edge.

Setting aside the rule's obvious unconstitutionality, it is decidedly unwise for Tennessee. By contributing to the erosion of borders as effective limits on state tax power, it will encourage states like California, New York, and Illinois to unleash their aggressive tax collectors on Volunteer State 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 similar brick-and-mortar businesses in Tennessee would only have to collect 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 who 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, Rule 1320-05-01-.129 seeks to wipe those limits away. That would be dangerous and we urge that you and your fellow committee members act to stop it.

Sincerely,

Andrew Moylan  
Executive Director  
R Street Institute