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Ted Potrikus
President and CEO

March 12, 2018

Hon. John Flanagan
Majority Leader and President Pro Tem
New York State Senate
Room 330, State Capitol
Albany, New York 12247

Hon. Carl Heastie
Speaker
New York State Assembly
Room 349, State Capitol
Albany, New York 12248

Hon. Jeff Klein
Leader, Independent Democratic Conference
New York State Senate
Room 913 LOB
Albany, New York 12247

Hon. Brian Kolb
Minority Leader
New York State Assembly
Room 933 LOB
Albany, New York 12248

Hon. Andrea Stewart-Cousins
Minority Leader
New York State Senate
Room 907 LOB
Albany, New York 12247

**Re: Marketplace Sales Tax
S.7509-A / A.9509-A, Part AA**

Dear Legislative Leaders:

The Retail Council of New York State writes today on behalf of its thousands of member stores large and small -- brick-and-mortar and actively engaged in e-commerce -- in support of the 2018-19 Executive Budget proposal that would require online marketplaces with more than \$100 million in annual sales to collect and remit New York's state and local sales and use taxes on merchandise shipped in to the state from out-of-state sellers.

This is neither a new tax nor a tax on the Internet. It reaffirms current state law, which requires New Yorkers to pay the sales and use tax on tangible personal property from an out-of-state merchant. The 'marketplace' proposal simply fills a loophole that today disadvantages brick-and-mortar Main Street merchants in every Senate and Assembly district in the state - the same merchants who give good jobs to hundreds of thousands of New Yorkers, support community activities, and give our communities their local color, flavor, vibrancy, and life.

Letter to New York State Legislature Leaders
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The Supreme Court's 1992 decision in *Quill v. North Dakota* doesn't even mention the words 'internet' or 'e-commerce.' Neither existed at the time, but *Quill*, which protected the mail-order retail sector's then-\$180 billion annual sales, created the tax shelter under which e-commerce soon exploded.

E-commerce today commands sales of some \$6 trillion.

That's a mere 25 years after *Quill*, and a decade after New York's bipartisan, landmark 'click-through nexus' law that opponents promised would irreversibly chill e-commerce and fail constitutional muster. New York's law survived legal challenges all the way to the Supreme Court and was replicated in nearly two dozen states.

E-commerce also has survived pretty well since that 2008 promise of certain death and, today, is huge and robust, agile and smart, and well past any claim of fragile infancy that needs a tax shelter to survive to sell another day.

The captioned proposal nonetheless provides for would-be start-up 'marketplace' platforms by capturing only those sellers pushing at least \$100 million in annual sales. Any start-up Main Street brick-and-mortar merchant would jump at the chance to have even the briefest of periods of grace from collecting sales and use taxes from its customers – but no store can open for business until it has in hand its certification as a sales tax vendor.

New Yorkers, as shoppers, owe sales and use taxes regardless of whether they are collected at the point of sale. Certainly giant businesses with more than \$100 million in sales are able easily to collect and remit sales and use tax on behalf of the third-party sellers from which they derive significant revenue. The states of Washington and Pennsylvania already have enacted without controversy 'marketplace' collection proposals similar in nature to that which we support in New York State; marketplace platforms such as Amazon already are able to comply with those statutes.

Our brick-and-mortar members today use the Amazon Marketplace and similar platforms to get their products in front of potential customers around the world. The Marketplace is a valuable and valued tool that, for New York State's Main Street, would be made even more so through the simple principle of fairness applied through this proposal.

The Main Street retailers in your districts support this proposal. We look forward to your respective conference votes supporting your Main Street retailers.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ted Potrikus". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ted Potrikus
President and CEO
Retail Council of New York State