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Property tax, sales tax, and New York's retailers

Testimony of:
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Good afternoon.

My name is Ted Potrikus; I am Executive Vice President and Director of Government Relations for the Retail Council of New York State. We represent some 5,000 member stores of all size and sort throughout the state.

We applaud Governor Spitzer and the Division of the Budget for bringing to the table the stakeholders in the important public policy discussion regarding property taxes. Thank you for including the retail industry in these talks. Obviously, property taxes affect retailers small and large and, ultimately, have an impact on the prices our customers pay for the goods and services we sell.

The margins in today's hyper-competitive retail economy don't give much room for absorbing increases in bottom-line expenses. So when property taxes increase, it's hard to hide the hit from the shopper. It's not the most favorable situation, but more often than not, it can't be avoided.

But retailers recognize, too, that - outside of the metropolitan New York area - the property tax is one of only two fundamental revenue streams for the funding of the essential services provided by local governments. The other, of course, is the local sales and use tax - which New York's property-tax-paying storefront merchants are required by law to collect from consumers and remit to the state. It's a formidable and costly burden for the retailer, particularly when state government tolerates neither error nor delay in sales tax filings.

Retailers are caught right in the middle of the rapids formed by the confluence of these two turbulent revenue streams. Winning an argument against an increase in the property tax means that a retailer might just have lost the argument against increasing the sales tax that he or she must collect from the valued customer.

Someone is bound to be unhappy.

Either way, the concurrent burdens fall ultimately on the storefront merchant. These are the same stores upon which state and local governments rely not just to generate, collect, and remit sales tax dollars - retailers are the lynchpin in every community. They provide good jobs to hundreds of thousands of New Yorkers, contribute to and support community organizations and schools, attract other businesses, and set a standard for downtowns, neighborhoods, and suburbs throughout the state. In general, retail creates the atmosphere and quality of life that every community desires. The first thing one hears when a neighborhood, region, street, or downtown is in need of redevelopment is the desire for high-quality, attractive retail options.

Moreso every day, too, storefront merchants are called upon to do more - to pick up more of the work that once was provided through the services paid for by those ever-increasing property taxes. Whether it's simple sidewalk maintenance or new proposals under consideration that would force storefront retailers to act as plastic bag, bottle, and lightbulb reclamation centers, storefront merchants are losing the time and resources they need to do the thing they do best: sell merchandise.

That's why it is distressing to the industry as a whole to be summarily left out of the picture when the conversation turns to property tax credits. This was illustrated all too clearly earlier this year when the City of New York sought to renew its Industrial and Commercial Incentive Program (ICIP), but wanted to "save money" by removing most retailers from eligibility for this important property tax credit.

Let me interrupt my own testimony for a moment to thank Governor Spitzer and the state legislature for recognizing that the hasty effort by New York City merited greater study. You rejected the initial renewal appeal and, instead, approved a one-year extension of ICIP comprising its decades-old, retail-inclusive rules. That extension terminates June 30, 2008, so this matter certainly will be among our industry's legislative priorities for the upcoming session.

When discussing the ICIP with city and state officials, retailers are able to underscore the industry's adherence to the myriad goals of the ICIP since its 1984 inception. We can point to a record of growth and development in city neighborhoods seeking quality retail development, good-paying jobs, and anchor projects that add value to neighborhoods. When ICIP includes retail, it creates jobs - because every new store in New York City creates new jobs at every level. And the City's investment is returned through increased collections of sales tax, through the constant improvement of retail property, and through the response to the demand by city residents for good retail in every borough.

Despite the one-year extension, we are smart enough to know that our industry's collective neck is squarely on the ICIP chopping block. The problem - and this seems to extend to any time the conversation turns to property tax credits - is the pervading and shortsighted notion that retailers large and small have to be where the people are; that retailers will build regardless of property tax incentives or abatements.

A retailer today can be wherever there is a computer with Internet access. No property necessary. No jobs for New Yorkers, no bricks or mortar, no presence in the community.

In the specific case of the ICIP, retailers can show the importance of the abatement in corporate decisions to locate, build, redevelop, and invest in various parts of New York City. The impact and importance of the ICIP is dramatic. As the City continues its growth and transformation, more and more people will demand more and more retail close by. The ICIP is a vital ingredient to make this happen.

While the ICIP is New York City-specific matter, we can extrapolate the concept to every locality across the state seeking to attract new and popular retailers. When a company can assess its bottom-line costs against the need for the long-term success of a new location, a lower property tax can be the determinant factor in expansion plans.

And this expansion redounds directly to the benefit of the state and the localities in which the retailers choose and are able to build.

So as you and your colleagues look at property tax initiatives over the year ahead and in the years to come, we urge you to remember the important role all retailers, regardless of size, play in the composition of the communities of New York State. A favorable property tax climate for retailers means jobs for New Yorkers, a greater contribution to the tax base and the community, and a better fulfillment of all the other roles I've mentioned so far today.

This, of course, stands in stark contrast to the Internet-based merchants who provide no jobs for New Yorkers and frankly, in many cases, abrogate their lawful responsibility to collect and remit state and local sales and use taxes due and owing.

I mentioned a moment ago the two fundamental revenue streams for local governments - the property tax and the sales and use tax. The second of these, while not the topic of today's discussion, merits special mention thanks in part to a proposal floated a few weeks ago by the state's Department of Taxation and Finance. I'm referring, of course, to the short-lived plan to interpret certain business relationships to establish nexus in New York State for certain merchants today located only on the Internet or otherwise outside of New York State.

While the timing may have been a little bit out of skew, the underlying concept of the plan is worthy of further investigation. And while this may sound rather contrary coming from a representative of the retail industry during the busiest time of our year, we believe that it is inevitable that New York State will, one day, successfully require that these merchants collect from shoppers the sales and use tax on items shipped into New York.

That inevitability may require strict regulations and a dedicated effort to enforce same, but we think it is absolutely essential.

I could be here all afternoon explaining the whats, whens, hows, and whys of the collection of sales and use tax on purchases made over the Internet.

That it is not a new tax, but simple and proper application of an existing levy.

That failure to collect the tax on such purchases puts New York's brick-and-mortar, property-tax-paying retailers at an enormous competitive disadvantage - all over a levy that those brick-and-mortar stores would rather not be required to collect in the first place.

That New York's personal income tax return now seeks to collect from New Yorkers a quasi-voluntary estimate of sales and use taxes due and payable as a result of purchases made either on the Internet or from other merchants located outside of New York State.

That New York State law already requires these merchants outside of New York State to collect and remit sales and use taxes and that the 2003-2004 state budget included a requirement that New York State head to the table to meet with other states in the discussion of simplifying the thousands of differing sales tax collection requirements across the country.

That technology available to every Internet user blasts easily through those thousands of requirements and defeats the barriers to commerce cited by the Supreme Court in its 1992 *Quill vs. North Dakota* decision. If a Luddite such as I can use a search engine to determine the sales tax rate for a product sold in Albany, New York; Grand Rapids, Michigan; Yuma, Arizona; or North Podunk, Anystate, then surely the high-tech wizards developing and guiding the business operations of sophisticated Internet merchants can do the same.

But I digress.

We're not here today to talk about sales tax - but I do hope that in the busy weeks ahead, as you grapple with budget numbers and solutions, that we can return to a full and robust discussion about sales and use taxes and the importance of leveling the proverbial playing field not only for retailers, but for the localities facing similar pressures as sales tax collections dwindle and the retail marketplace continues its unstoppable metamorphosis.

Again, on behalf of the member stores of the Retail Council of New York State, our thanks to you for your outreach on this topic that affects our industry on a daily basis. We appreciate your attention to our concerns and look forward to the opportunity to continue the dialog and respond to the questions you may have for us.