

October 25, 2013

- IL Court Ruling Underscores Need for Federal Action on Sales Tax Fairness
- Governors Supporting Retail Real Estate Development
- NY: Governor Cuomo Appoints Head of New State Tax Incentive Program
- "Invisible" Retail in the 21st Century
- ICSC Alliance Program Sponsors "Dinner with Developers"

## IL Court Ruling Underscores Need for Federal Action on Sales Tax Fairness

On October 18, the Illinois Supreme Court issued a ruling in the case [Performance Marketing Association, Inc. v. Brian Hamer, Director of Revenue](#) that struck down the state's affiliate nexus law. The 2011 law required online retailers that maintained relationships with in-state affiliates and that had \$10,000 or more in sales to collect sales taxes from Illinois residents. The law was also known as an "Amazon law" and "click-through nexus law" and similar laws have been enacted in 12 other states.

The Illinois Supreme Court upheld the Circuit Court ruling that found in favor of the plaintiff. In the 6-1 decision, the court found that the state law was superseded by the federal Internet Tax Freedom Act (ITFA), which places a temporary moratorium on any "discriminatory taxes on electronic commerce." The Court found that the law was discriminatory because it obligates sales tax collection on transactions based on Internet performance marketing but not on similar performance marketing in print or on television. The Court also ruled that since the state law was preempted by federal law, the argument surrounding constitutionality under the Commerce Clause was irrelevant. Supporters of sales tax fairness were disappointed that the Court chose not to examine the constitutionality of the law. The ITFA is set to expire on November 1, 2014; however, Congress is expected to extend the moratorium. Residents in Illinois should not expect refunds of the taxes on their purchases because the Court upheld that the taxes are still owed under the state's existing use tax law.

Earlier this year, New York State's high court upheld its affiliate nexus law, finding that affiliates located in the state constitute physical nexus and therefore trigger the obligation for out-of-state retailers that have relationships with them to collect sales taxes. Amazon is asking the U.S. Supreme Court to review that case. Many legal experts believe that since the Illinois Supreme Court ruled differently than the New York court on a law that was modeled after the New York law, the U.S. Supreme Court will be more inclined to take the case. If the Supreme Court accepts the case, oral arguments could begin as early as April 2014.

ICSC continues to push for Congress to take action on sales tax fairness legislation. The differing court opinions in the states underscore the need for Congress to address the issue quickly. The Marketplace Fairness Act was passed the U.S. Senate in May and is now before the House Judiciary Committee. ICSC was encouraged by principles on sales tax fairness legislation that the Committee released last month and continues to work with it to advance a bill.

### Governors Supporting Retail Real Estate Development

At an intimate Democratic Governors Association (DGA) dinner this week at the home of Massachusetts Governor Deval Patrick (D), several governors were on hand who spoke positively about the shopping center industry. Attendees included Vermont Governor Peter Shumlin, New Hampshire Governor Maggie Hassan (D) and Massachusetts State Senator Brian Joyce (D). While the function was primarily focused on supporting Governors Shumlin and Hassan's re-elections, there was uniform acknowledgement of ICSC members' roles in employment and economic development across New England. ICSC member Walmart was represented at the event by Chris Buchanan, who covers much of New England for the retailer. Events such as these are useful for strengthening the industry's relationships with elected officials and their understanding of policy challenges facing our members.



**Massachusetts Governor Deval Patrick (left) and Chris Buchanan (Walmart).**

### **"Invisible" Retail in the 21st Century**

The most recent issue of [Property & Policy Research](#) finds that, within the retail trade industry, over 44% of the jobs are in non-sales-related occupations. This means that more than 6.6 million "retail" employees are engaged in day-to-day activities and compensated at levels that bear little resemblance to what one typically associates with the industry. These occupations include financial specialists, software developers and programmers, art and design workers, and health diagnosing and treating practitioners, just to name a few. Further, the study finds that the projected growth rates over the coming decade for the sales-related occupations are significantly lower than those that are more technologically or organizationally focused.

### **NY: Governor Cuomo Appoints Head of New State Tax Incentive Program**

On October 21, Governor Andrew Cuomo (D) announced that Leslie Whatley, former Global Head of Corporate Real Estate at Morgan Stanley, has been appointed as Executive Vice President for the START-UP NY program. Earlier this year, Cuomo announced the START-UP NY initiative to attract private businesses and corporate investments to college campuses across the State by offering the opportunity to operate tax-free while also partnering with the higher education institutions in New York. The State University of New York campus system, along with other college communities, serves as the framework of the program to attract high-tech and other start-ups, venture capital, new business and investments. Under the program, businesses have the opportunity to operate completely tax-free for 10 years on eligible campuses and spaces.

### **ICSC Alliance Program Sponsors "Dinner with Developers"**

On Tuesday, October 29, the ICSC Alliance Program and the Florida Redevelopment Association (FRA) will co-host "Dinner with Developers" in Tampa. The event is designed to bring together elected officials, redevelopment professionals and developers to network, ask questions, exchange information and discuss development opportunities. For more information, contact Carol Westmoreland at [cwestmoreland@flicities.com](mailto:cwestmoreland@flicities.com) or 850-701-3608.



### **SAVE THE DATE - March 25-26, 2014**

#### **SLS 2014: The ICSC Federal Fly-In**

The ICSC Strategic Leadership Summit provides an opportunity to have face-to-face meetings with Members of Congress or their staff where you can articulate your views on issues of importance to your company and the shopping center industry.

#### **ICSC Global Public Policy**

555 12th Street, N.W., Suite 660  
Washington, DC 20004  
202-626-1400