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THE OFFICIAL  
PUBLICATION OF THE  
ALABAMA RETAIL  
ASSOCIATION

*THE VOICE  
of Retailing in Alabama*



## SPOTLIGHT ON... JUSTICE JEAN BROWN

Jean Williams Brown was born and reared in Birmingham, Alabama. She graduated from high school as a member of the National Honor Society.

She attended Samford University and also attended the University of Nice in Nice, France, for a junior semester. She graduated with honors from Samford University in 1974 and received her Doctor of Jurisprudence degree from the University of Alabama School of Law in 1977. While in law school, she was a member of the Bench and Bar Legal Honor Society and served as a law clerk for the firm of Tucker, Gray & Thigpen.

Justice Brown was admitted to the Alabama State Bar in 1977 and is admitted to practice in all state and federal courts, the U. S. Court of Appeals for the Eleventh Circuit, and the U. S. Supreme Court. She served as Assistant Attorney General in the

*(Continued on page 2)*



*Justice Jean Brown*

## SENATE VOTES TO EXTEND BAN ON INTERNET ACCESS TAXES

The Senate recently voted to extend the federal ban on state and local Internet access taxes for four years, a step that could make it easier to win passage of legislation that would address the separate issue of sales tax collection.

Senators voted 93-3 on April 29 to approve an amended version of S. 150, the Internet Tax Non-discrimination Act of 2003. The original bill was sponsored by Senator George Allen, R-Va., and would have permanently extended the 1998 Internet Tax Freedom Act, which expired in November 2003. The bill passed, however, was a substitute sponsored by Senate

Commerce Committee Chairman John McCain, R-Ariz., that would extend the access tax ban for four years.

The McCain bill was a compromise between the original Allen bill and another version that would have extended the ban for only two years. The vote ended six months of Senate debate on whether to extend the ban and, if so, for how long.

The ban applies only to state and local taxation of Internet access and does not address the collection of sales tax from e-commerce transactions conducted on the Internet.

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# THE VOICE

THE VOICE OF  
RETAILING IN ALABAMA  
VOLUME 4, NUMBER 2  
SECOND QUARTER

**PUBLISHER:**

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**EDITOR:**

ALISON WINGATE

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*THE VOICE* is the official publication of the Alabama Retail Association, 7265 Halcyon Summit Drive, Montgomery, Alabama 36117. Telephone (334) 263-5757; FAX (334) 262-3991.

*THE VOICE* is published four times a year, quarterly. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the editors or officers of the Alabama Retail Association. Opinions expressed in this magazine do not necessarily reflect the policies of the Alabama Retail Association.

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**Postmaster:** Send address changes to *THE VOICE*, P. O. Box 240669, Montgomery, Alabama 36124.

## FROM THE PRESIDENT

### CHARLES MCDONALD



In this edition of *THE VOICE* you will find profiles of the ARA-endorsed candidates for Alabama's highest court.

The Alabama Civil Justice Reform Committee (ACJRC), of which ARA is a member, has recruited and endorsed these candidates for the three seats up for election to the Alabama Supreme Court. We are pleased to join with 22 other business associations through ACJRC in supporting these candidates.

If you have ever been the victim of a frivolous lawsuit, I do not need to tell you the importance of having a court system with a conservative judicial philosophy. It is essential to maintaining a positive business climate in Alabama.

Alabama voters have made tremendous improvements to our court system over the past four elections, but we have more work to do. We have worked diligently over the years to elect conservative courts and have succeeded in changing Alabama from a plaintiff's paradise to a more stable judicial system.

In the *June 1st* Primary elections, our candidates face contested races for all their positions. ACJRC suspects that trial lawyers are behind some of the opposition

candidates in the Republican Primary, but will not be able to prove it until candidates file their financial reports five days before the election. By then, it will be too late to respond. So, we must turn out the true conservative vote on *Tuesday, June 1st*, in the Republican Primary. The election is the day after Memorial Day and voter turnout is expected to be low, so every vote counts!

You will also be receiving slate cards containing information about these candidates to distribute to your employees, customers, family and friends. More are available, so just contact the Association if you would like to receive more.

I cannot stress the importance of this vote enough. PLEASE help us to get out the vote. Together, we can make sure true conservatives win in the *June 1st* Republican Primary!

Thank you for your help.

## JUSTICE JEAN BROWN

(Continued from page 1)

Criminal Appeals Division of the Alabama Attorney General's Office for 19 years, specializing in the field of criminal law. Justice Brown also served in the Opinions Division of the Attorney General's Office. She served as chief extradition officer for that office and was appointed to the faculty of the Alabama Judicial College in 1982.

Justice Brown is active in her community. She is a sustaining member of the Montgomery Junior League, past docent for the Montgomery Museum of Fine Arts, past president of the Friends of the Montgomery Ballet and has served as advisor to the Boy Scouts Explorer Club.

Justice Brown finds it especially gratify-

ing to speak to school age children. She believes that by doing so, she might influence some of them to consider a career on the bench.

Justice Brown was elected to the Alabama Court of Criminal Appeals in 1996 in her first statewide election. In 1998, she was elected to the Supreme Court of Alabama. Justice Brown was the first woman elected to serve on two Alabama appellate courts.

Jean and her husband Terry have two daughters, Meredith and Caroline. They attend First Baptist Church of Montgomery where she has taught Sunday School for more than sixteen years.



*Judge Mike Bolin*

## SPOTLIGHT ON... JUDGE MIKE BOLIN

After fifteen years on the bench and deciding over 17,000 cases, Judge Mike Bolin has the experience we need on the Alabama Supreme Court. A native and lifetime resident of Jefferson County, Judge Bolin was elected Probate Judge in 1988, 1994, and 2000. Before being elected to the bench Judge Bolin spent 16 years as an attorney in private practice.

As the Chief Election Officer for the state's largest county, Judge Mike Bolin stood on principle and protected the votes of Jefferson County when Democrats tried to count illegal, unwitnessed absentee ballots in their 1995 attempt to overturn the election of Chief Justice Perry Hooper. Judge Bolin then went on to lead nine other

Jefferson County judges to join the Alabama Republican Party after the ballot dispute was resolved.

Judge Mike Bolin is a leader in making adoption easier for Alabama families. As Probate Judge he has presided over 6,000 adoptions and wrote Alabama's Putative Father Registry Law, which protects the rights of parties in adoption proceedings. And adoptive father himself, Judge Bolin was recognized nationally by the "Angels of Adoption" in 2000 for his service to adoptive families.

Judge Mike Bolin is a principled conservative who believes judges should adhere to the law as it is written—from the Constitution to the laws of legislature—and not make law from the bench.

## SPOTLIGHT ON... JUDGE PATTI SMITH

When she was appointed to the bench at age 27, Judge Patti Smith became one of the youngest judges in the history of Alabama. Since then she has been elected and re-elected four times as District Judge in Shelby County, making her one of Alabama's most senior jurists.

While serving as Shelby County's only Juvenile Court Judge for a population over 150,000, Patti Smith continues to work on local and state juvenile justice issues. She helped establish CASA (Court Appointed Special Advocates) of Shelby County, the nationally recognized D.A.Y. Program (Developing Alabama Youth), Family Connection and the Early Warning Program— all organizations geared toward assisting children in need and unifying their families. In 2001 she was named National CASA Judge of the Year. Judge Smith organized Shelby County's Children's Policy Council and works with many other local charities and nonprofit organizations.

In addition to her work at the local level,

Judge Smith has served on the Governor's Commission on Crime, the Commission on the Future of the Juvenile Justice System and the Alabama Judicial System Study Commission on Sentencing. She served as Chairman of the Task Force on Dependency and also of the Interagency Conference on Youth. She is a member of Alabama Associations of District Court Judges and Juvenile and Family Court Judges, the Shelby County Bar Association and the Alabama State Bar.

Prior to her service as District Judge, Patti Smith was an Assistant District Attorney and worked as an attorney in private practice. Judge Smith is a graduate of Catholic High School in Montgomery, Troy State University and Jones School of Law. Judge Smith and her husband Jerry live in Shelby County and have two children, Shelly and Jarrett.

Judge Smith is a candidate for the Alabama Supreme Court Associate Justice seat currently held by Justice Gorman Houston, who has announced plans for retirement at the end of his term.



*Judge Patti Smith*

# ARE ALABAMA BUSINESSES PAYING THEIR “FAIR SHARE” OF TAXES?

Bruce P. Ely, Christopher R. Grissom  
Bradley Arant Rose & White LLP, Birmingham

With recent budget shortfalls in Alabama, the business community has become the target of several attack ads in the local news media, alleging that many businesses don't pay their “fair share” of the total tax burden required to effectively operate the State of Alabama and provide necessary services to the citizenry. Two new studies, one conducted by the 570-member Council On State Taxation (COST) headquartered in Washington, D.C. and the other by the Public Affairs Research Council of Alabama (PARCA), headquartered at Samford University in Birmingham, should be required reading for every Alabama tax practitioner, policymaker and editorial writer.

The COST study, entitled “50-State Study of the Taxes Paid by Business in FY 2003,” was released in January. A component of that study focused on Alabama business taxes and yielded some results that may surprise some while confirming the thinking of many others. The study found that:

- (1) Alabama's state and local business taxes totaled \$4.4 billion last fiscal year (not including at least one tax, as discussed below).
- (2) Alabama's corporate income tax burden grew by 57% from 2000 to 2003, despite the dramatic increase in the use of pass-through business entities which do not pay state corporate income tax.
- (3) Alabama's corporate income tax burden was second highest in the Southeast, with only Mississippi imposing a heavier burden.
- (4) Alabama's business excise and gross receipts tax burden was nearly double the national average, and 60% higher than the Southeastern average.

The latest Alabama Department of Revenue “Revenue Abstract” further confirms points (2) and (3). Corporate income tax revenues for the six month period October 2003 through March 2004 were up almost 40% from the same period last fiscal year. Total collections for October 2003 through March 2004 were \$137,328,238 as opposed to \$98,527,423 for the same period last fiscal year. Collections from banks and other financial institutions, which are taxed under the separate financial institution excise tax, were up almost 78% over the same period last year.

The overarching conclusion reached by the COST study, and a point implicit in the PARCA analysis, is that a state's business tax burden cannot be calculated by reference to only one tax, such as the corporate income tax. Instead, a comprehensive review is required, and no one industry or segment of the economy should be singled out for punitive taxation in an effort to find the needed revenue.

That is also the position of two leading statewide business organizations: the 31-member Business Associations' Tax Coalition (BATC) (of which the Alabama Retail Association is an active member) and the 5,000 member Business Council of Alabama, based on their 2004 legislative agendas. See [www.bcatoday.org](http://www.bcatoday.org). Both groups have stated recently that they remain open to discussion involving comprehensive tax reform including tax increases, but their members insist,

as a condition to re-opening that discussion, that several budget and accountability reform bills advocated by Governor Bob Riley (R) first be enacted.

The COST study also cautioned state legislators and other policymakers to consider the impact on a state's economy and its industrial recruiting efforts when targeting businesses for new taxes. That would be particularly true for Alabama since the state, unfortunately, was one of the first to be hit hard by the economic downturn, and only now seems to be recovering. According to the Alabama Department of Industrial Relations, the state's manufacturing sector has lost almost 58,000 jobs since 2000, including 9,900 net manufacturing jobs lost during the 12-month period ending February 2004 alone.

The COST study has the practical effect of understating the business tax burden in Alabama by intentionally not including the share of individual income taxes paid on the earnings of limited liability entities, or “LLEs,” the number of which has grown exponentially since late 1993. The state-by-state data was not available to their researchers. But according to the Alabama Secretary of State's office, there were approximately 16,000 LLCs, LLPs and limited partnerships in Alabama at the end of 1993, while more than 68,000 existed as of February 2004. Nor does that include the approximately 42,000 S corporations doing business in Alabama. Even if one disregards the economic downturn that hit Alabama in late 2000 or early 2001, no wonder the state's individual income tax revenues have increased dramatically over the past several years while corporate income tax revenues dropped, at least until recently: many existing corporations converted to the LLE form and there is strong evidence that a majority of new businesses, both large and small, are being formed as LLEs rather than “C” corporations. Of course, the owners, rather than the entity, are liable for the business' income tax.

The PARCA report, issued April 7, analyzes the COST study for Alabama and draws on the independent think tank's own data base as well. The full text can be found at <http://parca.samford.edu/Information on State & Local Government/State Taxes, Finances & Debt>. It notes that Alabama's business tax structure differs in several respects from its regional neighbors, as the following table illustrates:

Type of Tax on Business	National Average	Average of 9 S.E. States	Alabama
Property taxes on business property	38.6%	36.3%	24.7%
General sales taxes on business inputs	24.8%	29.2%	26.3%
Excise and gross receipts taxes	11.0%	13.5%	22.9%
License and other taxes	9.5%	9.0%	11.1%
Corporate income tax	8.6%	7.0%	8.8%
Payroll taxes	7.5%	5.0%	6.2%
Total:	100%	100%	100%

(Continued on page 5)

## ARE ALABAMA BUSINESSES PAYING THEIR "FAIR SHARE" OF TAXES?

(Continued from page 4)

While most states rely more heavily on business property taxes than Alabama, our state is "dramatically above the national average in its use of business excise and gross receipts taxes (22.9% vs. 11.0% of total business tax revenues)," according to PARCA. At the same time, the report suggests that the reason Alabama corporate income taxes are higher than almost all of its regional neighbors is the package of revenue raisers enacted in late 1999, and modified in 2001. Those bills increased both the corporate income tax and financial institution excise tax rate to 6.5%; imposed a business privilege tax on LLEs for the first time and up to a \$3 million alternative minimum tax on financial institution groups; required withholding of income taxes on LLEs with non-resident owners who refused to consent to tax jurisdiction or to file separate tax returns; and disallowed the deduction of certain royalties and interest payments to related companies unless one of several narrow exceptions is met.

The full impact of these changes is only now being witnessed. The latest ADOR Revenue Abstract seems to support that conclusion.

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*[The principal author is Vice Chairman of the BCA's Tax & Fiscal Policy Committee, and both recently served as Technical Advisers to the Governor's Commission on Existing Industries.]*

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## CITIES CAPITALIZE ON STATE'S NEW BUSINESS TAX FILING SYSTEM

Four Alabama cities recently announced their plans to partner with the Alabama Department of Revenue in providing electronic tax filing services to their business taxpayers.

Huntsville, Gulf Shores, Daphne, and Robertsdale city officials all recently signed agreements with the ADOR which allow their business taxpayers to file respective city sales, use, rental, and lodgings tax returns free of charge using the state's new business tax electronic filing system.

"We are very pleased that we were able to come together and share our resources to provide the electronic filing service to these cities. Our partnership shows how state and local governments can work together to improve our operational efficiencies, save valuable taxpayer dollars in operating costs, and provide taxpayers with the convenience of electronic filing at no cost to them," said ADOR Department Secretary Lewis A. Easterly.

Beginning April 1, 2004, business taxpayers filing a Huntsville or Gulf Shores sales, use, rental, or lodgings tax return will have the added convenience of electronically filing their local return along with their state returns. Robertsdale and Daphne business taxpayers will have access to the new filing system beginning May 1, 2004.

The Internet-based tax-filing system is free to filers and is part of the Alabama Department of Revenue's (ADOR) new business tax paperless filing and payment program.

The agreements signed by the four cities stipulate that the ADOR will provide only the access to the filing service. The new filing service will cost the cities 50 cents per filing transaction. The cities retain full control over all local tax administration,

collection, auditing, and enforcement matters.

"The ADOR is simply serving as an electronic filing conduit," explained Easterly.

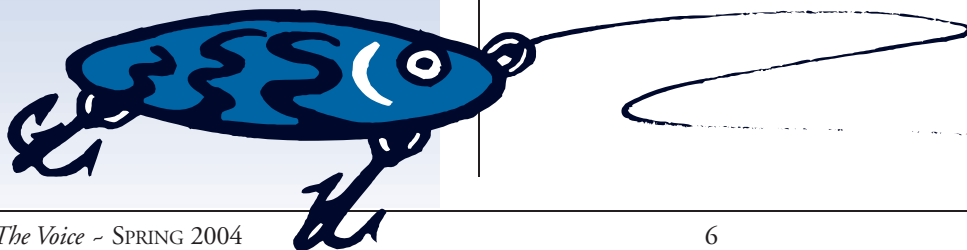
The ADOR mandated electronic filing for state sales, use, lodgings, and rental taxes last October. In March almost 99 percent of all business tax filers electronically filed their state sales, use, lodgings and rental tax returns and over 74 percent of the monthly state sales, use, lodgings, and rental tax collections were paid through electronic fund transfers, according to the ADOR.

For more information concerning the new paperless business tax filing and payment program, visit ADOR's Web site at [www.ador.state.al.us](http://www.ador.state.al.us) or contact ADOR's local tax representatives Angela Till or John Paradise at (334) 242-1175.



# M-LAW ANNOUNCES WINNERS OF SEVENTH ANNUAL WACKY WARNING LABEL CONTEST

*Fishing lure  
which warns,  
“Harmful  
if swallowed,”  
catches one  
of the  
top awards*



A five-inch fishing lure which sports three steel hooks and cautions users that it is, “Harmful if swallowed,” has been identified as one of the nation’s wackiest warning labels in an annual contest sponsored by a consumer watchdog group.

The Wacky Warning Label Contest, now in its seventh year, is conducted by Michigan Lawsuit Abuse Watch, M-LAW, to reveal how lawsuits, and fear of lawsuits, have prompted many manufacturers to issue warnings against even obvious misuses of consumer products.

The winning labels were selected from a list of M-LAW’s finalists by listeners of the Dick Purtan show on Detroit radio station, WOMC-FM 104.3. The fishing lure warning actually placed fourth.



## GRAND PRIZE

The \$500 grand prize for the wackiest label was awarded to Robert Brocone of Euclid, Ohio for a warning he found on a bottle of drain cleaner which says: “If you do not understand, or cannot read, all directions, cautions and warnings, do not use this product.” Brocone also wins a copy of the book,

“The Death of Common Sense,” by Philip K. Howard, chairman of the legal reform group, Common Good.

And, for the first time, the winner of the top prize receives a special edition wacky warning label coffee mug produced by the Common Good coalition. A recent Newsweek magazine cover story reported on Common Good’s campaign to focus national attention on the impact legal fear is having in our society.



## OTHER WINNERS

The \$250 SECOND PLACE award went to Alexander Tabarrok of Fairfax, Virginia for a label on a snow sled which says:

“Beware: sled may develop high speed under certain

snow conditions.”

THIRD PLACE and \$100 goes to Bob Skowronek of Northville, Michigan who purchased a 12-inch-high storage rack for compact disks which warns: “Do not use as a ladder.”



FOURTH PLACE, as mentioned above, went to the fishing lure, sent in by Melissa Cerrito, Atlantic Mine, Michigan, and

FIFTH PLACE goes to a smoke detector which warns: “Do not use the Silence Feature

in emergency situations. It will not extinguish a fire,” sent in by Bill Masterson, Ft. Myers, Florida

“Wacky warning labels are a sign of our lawsuit-plagued times,” said Robert B. Dorigo Jones, M-LAW

president. “It used to be that if someone spilled coffee in their lap, they simply called themselves clumsy. Today, too many people are calling themselves an attorney. This “sue first, ask questions later” mentality has not only produced wacky warning labels, it has increased the cost of products and services families use daily. That’s the real problem.”

M-LAW is a non-profit organization working to increase public awareness of how the explosion in litigation is hurting America. M-LAW is dedicated to restoring common sense and personal responsibility to the courts.



# WELCOME NEW MEMBERS

365 Inc. . . . . Birmingham  
 4 Seasons Cleaners, Inc. . . . . Auburn  
 Acquisition Associates, Inc. . . . . Huntsville  
 Alapasta, Inc. . . . . Auburn  
 All About Sewing, Inc. . . . . Mobile  
 Alpha Church Supply & Gifts, LLC . . . . . Birmingham  
 American Rental Car Sales, LLC . . . . . Dothan  
 Amy's Holiday Beach Boutique, Inc. . . . . Tuscaloosa  
 Armstrong Engineering Consulting, P.C. . . . . Birmingham  
 Beads Du Monde, L.L.C. . . . . Dothan  
 Bell & Company, Inc. . . . . Mobile  
 Benefits Plus, Inc. . . . . Birmingham  
 Blackburn Of Walker County, Inc. . . . . Dora  
 Butler Properties, LLC . . . . . Tuscaloosa  
 Cake Designs, Inc. . . . . Montgomery  
 Captain's Quarters, LLC. . . . . Vestavia  
 Catalog Collection, Inc. . . . . Rainbow City  
 CGM Enterprises, LLC. . . . . Cullman  
 CHB Mechanical, LLC . . . . . Homewood  
 Chris' Old Fashioned B-B-Q. . . . . Prattville  
 Clark Astin, Inc. . . . . Boaz  
 Dancewear, Etc., Inc. . . . . Montgomery  
 Davis Theatre/Dothan . . . . . Dothan  
 Dewayne, Inc. . . . . Northport  
 Dixie Sporting Goods . . . . . Frisco City  
 Donnie Bryant Transmission, Inc. . . . . Tuscaloosa  
 Downtowner's On Dauphin Street, LLC . . . . . Mobile  
 Earlyne's Flowers, Inc. . . . . Sylacauga  
 Eclipse Coffee & Books, Inc. . . . . Montevallo  
 Econo-Med, Inc. . . . . Cullman  
 Employers Drug Program Management., Inc. . . . . Birmingham  
 First Presbyterian Church Of Tuscumbia . . . . . Tuscumbia  
 Florence-Lauderdale Public Library . . . . . Florence  
 Food, Family & Fun, Inc. . . . . Chelsea  
 Gadsden Commerical Development Authority . . . . . Gadsden  
 Granny's Nook, Inc. . . . . Boaz  
 Gulf Coast Chapter National Electrical Contractors Assoc. . . . . Mobile  
 Haleyville Medical Arts Drugs, Inc. . . . . Haleyville  
 Hattemer, Hornsby, & Bailey, PC. . . . . Prattville  
 Hoffman Distributing Co, Inc. . . . . Birmingham  
 Homewood Paint & Hardware Co. . . . . Homewood  
 Hydro-Engineering Solutions, LLC . . . . . Auburn  
 Imperial Hair & Beauty Supply . . . . . Birmingham  
 Ingram's, Inc. . . . . Florence  
 Innovative Consumer Services, Inc. . . . . Homewood  
 Intellectual Properties, Inc. . . . . Madison  
 International Trade Club, Port of Mobile, Inc. . . . . Mobile  
 It Support Center, Inc. . . . . Dothan  
 Jageta Inc. . . . . Pensacola  
 JC Imperial Hair & Beauty Supply . . . . . Birmingham  
 Jeff Postle Tire Co., Inc. . . . . Tuscaloosa  
 Jennings-Shehan Agency . . . . . Birmingham  
 Lawhon's Family Restuarant . . . . . Luverne  
 Little Drug, LLC . . . . . Linden

Los Arcos, LLC . . . . . Boaz  
 Love's Seafood. . . . . Mobile  
 Lulu's Landing, Inc. . . . . Gulf Shores  
 Mark's Quality Cleaners, Inc. . . . . Birmingham  
 McKinney's Auto Repair . . . . . Andalusia  
 Menasha Ridge Press, Inc. . . . . Birmingham  
 Montgomery Hotels II, LLC . . . . . Auburn  
 Muller Communications, Inc. . . . . Dothan  
 Newbanks, Inc./Birmingham . . . . . Birmingham  
 Nilipour Oriental Rugs, Inc. . . . . Birmingham  
 Nobles, LLC. . . . . Montgomery  
 Nona Maria, Inc. . . . . Montgomery  
 Norm The Tireman, Inc. . . . . Loxley  
 North River Marine, Inc. . . . . Northport  
 O.K. Enterprises, LLC. . . . . Jackson  
 Olde Blue Computer Services, Inc. . . . . Mobile  
 Ol' Stove Diner, LLC . . . . . Tuscaloosa  
 OSCMIG, Inc. . . . . Decatur  
 Paulk's Transmission Services, Inc. . . . . Montgomery  
 Peak Performance, Inc. . . . . Arab  
 Pings Garden, Inc. . . . . Clanton  
 Pharmacy Xpress, Inc. . . . . Hueytown  
 Phoenix, LLC . . . . . Montgomery  
 Prowler Supply, Inc. . . . . Birmingham  
 Radha-Krishna, Inc. . . . . Tuscaloosa  
 Rafiki Hotels, LLC . . . . . Birmingham  
 Redmont Recreation Club, Inc. . . . . Red Bay  
 Remtech, Inc. . . . . Huntsville  
 Richland Golf Centers, Inc. . . . . Huntsville  
 RJO, Inc. . . . . Birmingham  
 Rodney L. Sartain, Inc. . . . . Birmingham  
 Rome Roebuck, LLC . . . . . Homewood  
 Rowe, Inc. . . . . Huntsville  
 Russell Tractor Parts, Inc. . . . . Scottsborro  
 Salon Allure, Inc. . . . . Huntsville  
 Skinner's Cash & Carry, Inc. . . . . Anniston  
 Structural Technics, Inc. . . . . Irondale  
 Surprises Inside, LLC . . . . . Dothan  
 TBC Investments, Inc. . . . . Mobile  
 The Auburn Grille, Inc. . . . . Auburn  
 The Gulf Seafood, Inc. . . . . Springville  
 Thornton Lakes, Inc. . . . . Gadsden  
 Titletech Services, Inc. . . . . Birmingham  
 Tony's Transmission Service . . . . . Montgomery  
 Top That Grille #2 . . . . . Birmingham  
 Troy Hotels, LLC . . . . . Auburn  
 Thurman & Thurman, LLC . . . . . Huntsville  
 Tuscaloosa Powersports, LLC . . . . . Cottondale  
 Tuscaloosa Furniture Co., Inc. . . . . Tuscaloosa  
 Uda Technologies, Inc. . . . . Auburn  
 University Cleaners, Inc. . . . . Huntsville  
 Village BBQ & Grill, LLC. . . . . Mountain Brook  
 Vittorio's Restaurant . . . . . Montgomery  
 Weathers Hardware And Appliance Co., Inc. . . . . Boaz

# SENATE VOTES TO EXTEND BAN ON INTERNET ACCESS TAXES

*(Continued from page 1)*

But the delay in acting on the access tax issue had amounted to a roadblock for sales tax legislation because senators were hesitant to move on to the second issue before resolving the first.

Unfortunately, the debate is not completely settled. The House passed legislation last fall to permanently extend the access tax ban. In addition, the House bill allows telephone calls made over the Internet to remain tax-free, while the Senate bill would allow those calls to be taxed. The conflicting legislation means that the House and Senate must now negotiate a final version of the bill, which will require another round of votes once - and if - a compromise is reached.

If Congress can finish action on the access tax issue, that would clear the way for consideration of the Simplified Sales and Use Tax Act of 2003, legislation supported by the Alabama Retail Association that would address the sales tax issue.

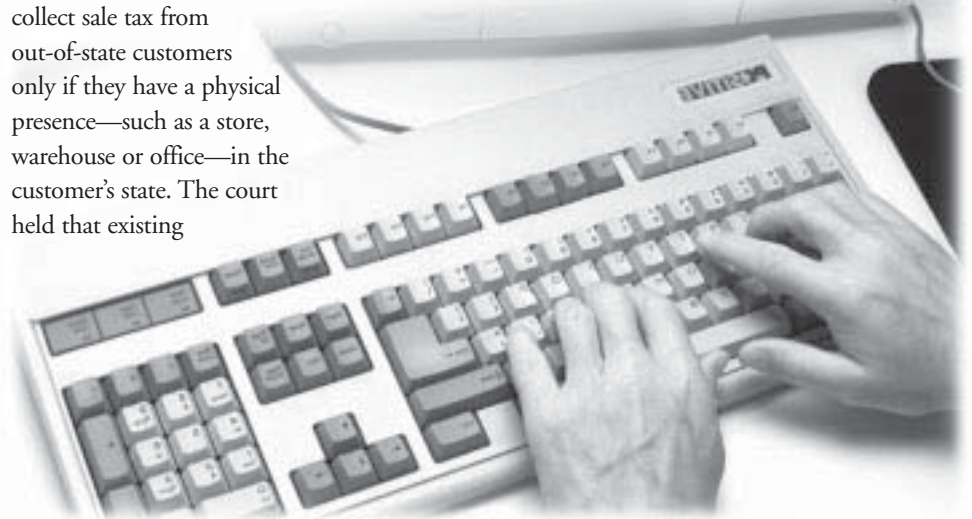
Introduced as H.R. 3184 in the House by Representative Ernest Istook, R-Okla., and in the Senate as S. 1736 by Senator

Mike Enzi, R-Wyo., the legislation would allow states that have implemented the Streamlined Sales and Use Tax Agreement to require that out-of-state retailers collect sales tax when selling to their residents. All remote sellers, including mail-order, telephone and Internet merchants, would be affected, but companies with less than \$5 million in remote annual sales would be exempt.

Under a 1992 U.S. Supreme Court ruling, remote sellers can be required to collect sale tax from out-of-state customers only if they have a physical presence—such as a store, warehouse or office—in the customer's state. The court held that existing

sales tax systems were too complicated for a retailer to know how much tax to charge an out-of-state customer, but the sales tax simplification agreement was developed in order to remove that obstacle.

ARA believes that remote sellers enjoy an unfair price advantage when not required to collect sales tax, and that all merchants should play by the same tax rules regardless of whether their merchandise is sold in a store, over the phone, by mail or via the Internet.



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