Chapter 7.14
E-Commerce Taxation Issues

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INTRODUCTION

This article is designed to give the reader a balanced perspective on some of the issues surrounding the current discussions related to state and local taxation of Internet access fees and sales transactions. It attempts to express the issues being discussed and presents several viewpoints. The proponents of Internet taxation are searching for technological and administrative system to meet their goal. After much deliberation, the Advisory Commission on Electronic Commerce released its final recommendations to Congress in April 2000. Major emphasis is being placed on simplification, neutrality, avoiding double taxation and accepting the existing tax rules with no new taxes.

The United States economy has benefited tremendously by e-commerce. This escalation has created numerous highly skilled jobs, providing the consumer with goods and services at competitive prices. The Internet Tax Fairness Coalition and many other groups feel that implementing taxes on the Internet transaction can have an adverse affect on the businesses. According to the Supreme Court of United States, a vendor has a sales tax obligation only when the buyer and seller are in the same state or has a physical presence (nexus) in the buyer's state. These coalitions feel that entry barriers for new and old companies, who have yet to exploit the e-commerce, will slow the growth in this sector. With over 30,000 taxing jurisdictions, tax collection and payment can be a complex process. Many street retailers collect at a single rate, and prepare and file a single tax return at one place. Taxation of online transactions would require the vendor to identify and send forms to all taxing jurisdictions. Under the present circumstances, the ever-changing maze of state and local tax policies makes application of a single Internet transaction tax policy virtually impossible.

The complicated, complex and ever changing maze of state and local tax policies and laws make application of a sensible, fair and easily understood Internet transaction tax policy virtually impossible under the present circumstances. James Plummer, a policy analyst at Consumer Alert wrote, "Nefarious new taxes and regulations will kill many new start-up e-businesses before they even start up; denying consumers their chance to find the specialized products and services for their needs" (Plummer, 2000).

The anti-tax community and coalitions have a strong adversary in the National Governor's Association. The State is worried that the brick and mortar stores are jeopardized by the popularization of Internet commerce, which is tax-free. The Governors suggest that government tax policy offers a competitive advantage to Internet stores. Major brick and mortar retailers such as Sears and Wal-Mart are concerned that if unresolved, this issue may gain much public resistance, thus making the taxing of e-commerce politically impossible.

BACKGROUND

The United States Congress enacted The Internet Tax Freedom Act in 1998, imposing a three-year moratorium on new Internet taxation. It also established the Advisory Commission on Electronic Commerce to address the issues related to Internet taxation (Advisory Commission on Electronic Commerce, 2000).

The Advisory Commission has representatives from state and local governments and e-commerce industry. It is to conduct a study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access, and other comparable sales activities. The Commission's recommendations are to be submitted to Congress no later than April of 2000. Based on testimonies, the Commission is reviewing barriers imposed in foreign markets on U.S. property, goods or services engaged in Internet and its impact on U.S. consumers, and ways to simplify federal, state and local taxes imposed on telecommunications services.

The National Governor's Association's Perspective

Today, 46 states have a sales tax of some sort. All of the 46 states that have a sales tax also have what is called a complementary use tax. Consumers pay the sales tax when they buy goods and services in their own state and use tax when they buy from other states. This strategy avoids double taxation. When the consumer buys from an out of state merchant, such as mail order or the Internet, tax is collected and sent to the consumer's state only if the merchant has a nexus in the consumer's state. According to U.S. Supreme Court 1967, National Bellas Hess and 1992 Quill decisions, the merchant is not required to collect the use tax and remit it to the state of residence of the consumer. Consumers then are responsible for paying taxes on goods they purchase through mail-order catalogues and over the Internet. This subsidizes one category of businesses at the expense of their competitors.

The Governors have suggested a streamlined sales tax system for the 21st century. Some of the features of the governor's proposed streamlined system include:

- Maintain the current definitions of nexus and eliminate collection of state and government taxes
- Simplify the current system and without any federal government intervention
- Eliminate the cost of compliance, tax returns and payments and tax audits
- Eliminate tax-rate monitoring and implementation.
- Eliminate risks for sellers exercising reasonable care

The states would implement uniform laws, practices, technology applications, and collections systems to achieve the goals and results. These goals, when implemented, would achieve the first step of the streamlined system. The second step