



Taxes

Web Sales Tax Looms

Elizabeth Woyke, 11.13.08, 6:26 PM ET

Attention, online shoppers! This may be the last holiday season you can dodge sales taxes by buying presents on the Web. (Admit it, you do this.) State legislators, retailers and lawyers say 2009 may be the year Internet taxes finally come to pass.

The idea, which would levy sales tax on most goods bought online, has been tossed around for nearly a decade. A perfect storm of factors, including record state budget deficits, a new Congress and continued e-commerce growth, appear likely to rekindle the issue. Experts say that cash-strapped states view this revenue, estimated to be several billions of dollars, as money left on the table.

"States are coming up with huge deficits and looking for places to make money," says Eric Menhart, the principal of CyberLaw, a Rockville, Md.-based law firm that concentrates on technology legal issues. "All of a sudden, Internet taxation appears a lot more viable."

Spotting an opportunity, legislators and other proponents of Internet taxation are renewing their efforts. Scott Peterson, executive director of the Streamlined Sales Tax Governing Board (SSTGB), a group that oversees states' efforts to simplify and modernize sales tax issues, says legislators from Florida, Illinois, Massachusetts, Texas and Virginia, among others, have recently contacted him about the issue. The plan: to reintroduce legislation as early as January when the new Congress takes office.

"We're hoping that the House and Senate will give this their full attention and we can get a bill to our new president in 2009," says Maureen Riehl, vice president and government and industry relations counsel of the National Retail Federation (NRF), the world's largest retail trade association. (The industry association believes that applying sales tax to all retailers is more fair to their membership than the current scenario.)

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The legislative route is necessary because the Supreme Court ruled in the 1990s that states can't require out-of-state retailers to collect sales tax on online sales. Proponents believe that making their case to Congress would be faster and more practical than wending their way through the courts.

That has supporters, including the NRF, the SSTGB and the National Conference of State Legislatures (NCSL), mulling over how to revamp two bills, both called the "Sales Tax Fairness and Simplification Act," which have been pending in the House and the Senate since 2007. The three groups met Thursday in Chicago to discuss how to rework the bills.

At issue is how to exempt "small sellers" from the policy and how states plan to reimburse vendors who have to collect sales tax. (Even defining who qualifies as a "small" seller is tricky.) To bolster the need for the tax, the groups also plan to highlight the steady growth of e-commerce and the ways that new technology, such as tax software, could make it easier to collect taxes. They have also drafted several professors from the University of Tennessee to calculate how much tax revenue states are currently losing.

Once legislation is passed, changes could roll out in as little as six months, says Peterson.

For consumers, such a law would mean an end to sales tax freeloading online. Plenty of loopholes currently exist. Shoppers at Amazon.com, for instance, currently pay tax only if they ship purchases to five specific states (Kansas, Kentucky, New York, North Dakota and Washington) where the company has a physical presence, such as a distribution center. A new law could significantly increase that number. Amazon is currently challenging the New York ruling and declined to comment for this story due to the ongoing litigation.

Ebay, another large online seller, has opposed Internet taxation for years. In a presentation given Thursday to industry associations, retailers and state legislators, William Lasher, an eBay senior director of indirect taxes, argued that a new

law would hurt the company's millions of sellers and generate less net revenue than states might expect.

Though eBay moved \$27 billion in merchandise in the U.S. in 2007, Lasher said that approximately \$11 billion to \$14 billion of those transactions were services or sold to consumers in other countries or tax-exempt entities--thus nontaxable or subject only to low taxes. He also said a new law would make business complicated and costly for small sellers.

Both companies have found public support from the Direct Marketing Association (DMA), which counts eBay and Amazon among its members. Internet taxation laws are an attempt to make marketers "unpaid tax collectors for the state," says Jerry Cerasale, DMA's senior vice president of government affairs.

The trade association has long refuted the numbers touted by taxation supporters. In a 2003 study, the most recent available, the DMA estimated uncollected sales tax revenue at \$3.2 billion in 2006 and \$4.5 billion in 2011. Projections used by the SSTGB are much higher, ranging from \$19 billion to \$27 billion in 2006.

Expect a lobbying war. The DMA plans to take its message--that sales tax reporting and collection is still too complicated for out-of-state firms--to Capitol Hill. It will also warn of the effects new rules may have on e-commerce. "It's a bad time to go after remote sales," says Cerasale. "In this economic slowdown, we need to bolster consumer spending."

How the new Congress will react is hard to predict. Experts say the issue doesn't split neatly along party lines. "It has to do with your idea of state government and the Internet," notes NRF's Riehl. "Democrats may be more sensitive to state budgetary concerns whereas Republicans might see it as a question of business fairness," she adds. Fresh ears make a difference, too. Menhart, the lawyer, thinks new congressional representatives will be more inclined to pay attention to the issue.

President-elect Barack Obama appears to be aware of the issue but hasn't signaled which way he'd lean. His campaign did not include Internet taxation in its broad list of technology initiatives, but he reportedly voted in favor of investigating the issue back in his days as an Illinois state senator. (Republican presidential nominee John McCain's position was clearer, given his close ties with former eBay Chief Executive Meg Whitman.)

A number of states have yet to choose a side. Peterson says 22 states are members of his streamlined sales tax project and 22 others are "in active discussions." That could change as budgets get tighter. States hate raising taxes, notes Peterson. "[Internet taxation] gives them a way to go after tax that's already owed."

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