Taxing e-Commerce

Anthony J. Cataldo II
West Chester University of Pennsylvania, acataldo@wcupa.edu

Arline Savage
Oakland University

Anthony P. Curatola
Drexel University

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Taxing e-Commerce

THE ADVISORY COMMISSION ON ELECTRONIC COMMERCE (ACEC) has been wrestling with issues relating to the Internet and sales and use taxation. ACEC was created following the 1998 Internet Tax Freedom Act (ITFA).

The ITFA bars state and local governments from imposing (new) taxes on e-commerce, but this three-year moratorium on Internet taxation is scheduled to expire on September 30, 2000. The ACEC was charged with the responsibility of making its recommendations on April 21, 2000.

Though failing to reach the desired supermajority of 13, the 19 members of the ACEC have reached consensus on three issues. First, there should be no taxes on Internet access or usage. Second, the 3% excise tax on telecommunications (dating back to the Spanish-American War) should be eliminated. Third, the existing system of sales taxation is far too complex.

Consider the evolution and the complexity of this issue as it relates to Internet growth and taxation:

- Connecticut, Iowa, New Mexico, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin had already taken steps toward taxation of the Internet. The ITFA did not prevent these states from proceeding if they were able to demonstrate that their taxes had already been "generally imposed and actually enforced" prior to October 1, 1998. Despite this grandfather clause, some of these states agreed to abide by the national moratorium.

- The Supreme Court decision in Quill v. North Dakota, 504 U.S. 298 (1992) prohibited any jurisdiction from forcing vendors without a substantial nexus in that jurisdiction to collect that jurisdiction's use tax. This decision protected mail-order and other "remote sellers" from taxation by states and localities. Any new sales and use taxes imposed on Internet sales are likely to include mail-order sales. By some estimates, state and local taxing authorities are losing $3-$4 billion in sales tax revenues from mail-order sales.

- Forty-five states and the District of Columbia impose a sales tax. Alaska, Delaware, Montana, New Hampshire, and Oregon don’t impose general sales taxes on goods and services. Therefore, any federal legislation requiring that the vendor have a "substantial nexus," or physical presence at the point of sale (POS) or origin, as a prerequisite for the collection of sales and use taxes would provide economic incentives for the establishment of Internet sales facilities originating from these states.

- Estimates suggest that state and local sales taxes within the U.S. could involve 7,500 to 30,000 separate jurisdictions. Approximately 650 of these change or add new sales tax rates annually. Although sales tax compliance software is already available (such as those products provided by the Big 5 accounting firms) that maps sales and use tax rates and forms to ZIP code, the administra-
tive and clerical costs of compliance will be excessive.

Consider the monthly remittance of sales taxes. The costs of administrative and clerical salaries, postage or electronic transfers, and the simple act of signing sales and use tax reports would prove onerous. Generally, computer databases could be updated monthly via the Internet, but this would provide for the recurring additional expense of periodic software updates. These costs would represent “barriers to entry” into e-commerce, particularly for the small business.

- The American Institute of Certified Public Accountants (AICPA) has proposed many changes leading to sales and use tax uniformity. These include the consolidation of multiple sales and use tax rates and returns within a state, definitions of the same product or service, reporting requirements, and audit procedures and administrative requirements. Also in the proposal is a standardization of nexus rules. The AICPA proposal, however, may further contribute to the evolution of a national sales tax.

For insights into the desirability of such a trend, you need only look toward our northern neighbor, Canada, where regressive, consumption-based provincial sales tax (PST); national/general sales tax (GST); and harmonized (combined provincial and national) sales taxes (HSTs) have evolved to represent significant sources of state and local revenues.

Senator John McCain (R.-Ariz.), in his campaign for the Republican nomination for President, proposed making permanent the ITFA’s three-year moratorium on Internet taxation. State and local taxing authorities are fearful that a permanent extension of the ITFA will erode their tax base and their ability to raise revenues for necessary services. They fear that nontaxable Internet-based sales may replace a substantial portion of traditional taxable brick-and-mortar sales.

A.J. Cataldo is an assistant professor of accounting in the Haworth College of Business at Western Michigan University, Kalamazoo, Mich. He can be reached at aj.cataldo@wmich.edu.

Arline Savage is an assistant professor of accounting in the School of Business Administration at Oakland University, Rochester, Mich. She can be reached at savage@oakland.edu.

Anthony P. Curatola is Joseph P. Ford Professor of Accounting at Drexel University, Philadelphia, Pa. He can be reached at curatola@worldnet.att.net.