

E-Commerce Taxation

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Pinole, CA



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Agenda

- ❑ The big picture: E-commerce data
- ❑ Why tax issues/difficulties exist
- ❑ Sample tax issues
- ❑ Recent developments
 - Nexus rulings and legislative changes
 - SSUTA
 - California proposals
 - Congressional actions
 - ❑ Proposals
 - ❑ Credit/debit card & Paypal 1099 reporting
 - Internet tax moratorium
- ❑ Additional issues
- ❑ Considerations in solving e-commerce tax issues

The big picture – E-commerce data





E-Commerce Trends - 1

- Percentage of U.S. adults online has changed from 14% in 1995 to 73% in 2008.
 - <http://pewresearch.org/databank/keytrends/>
- From 2006 – 2007:
 - Retail sales increased about 4%
 - E-commerce sales increased about 19%
 - But, still only about 3.3% of total sales as of 1st quarter 2008
 - <http://www.census.gov/eos/www/ebusiness614.htm>

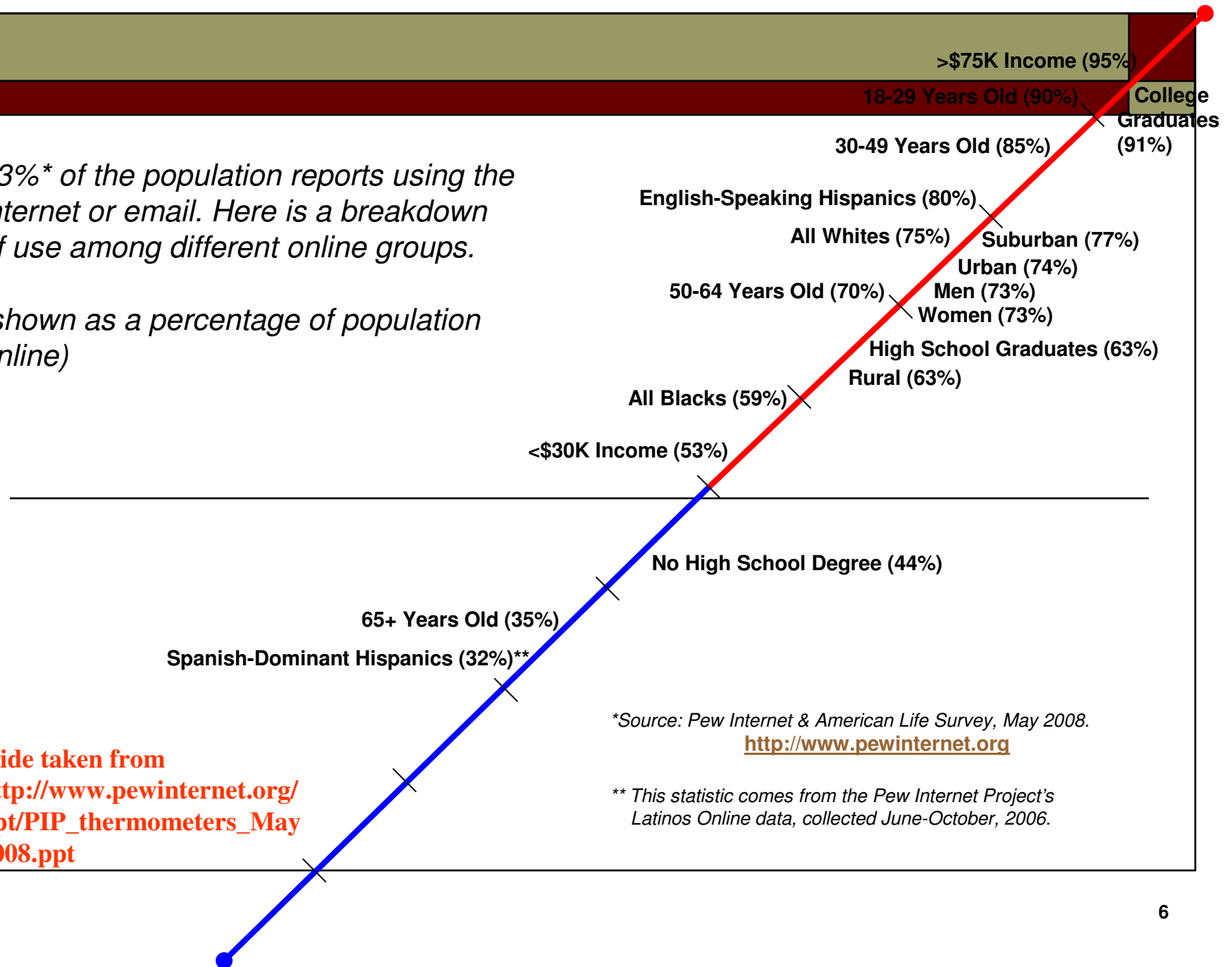


E-Commerce Trends - 2

- From 2001 – 2006:
 - Spending for cell phone services per consumer unit increased 149%
 - Spending for residential phone services per consumer unit decreased 21%
 - <http://www.bls.gov/cex/cellphones.htm>
- April 2008, 55% of adult Americans have broadband access (up from 47% in March 2007).
 - http://www.pewinternet.org/pdfs/PIP_Broadband_2008.pdf

73%* of the population reports using the internet or email. Here is a breakdown of use among different online groups.

(shown as a percentage of population online)



Slide taken from
http://www.pewinternet.org/ppt/PIP_thermometers_May_2008.ppt

*Source: Pew Internet & American Life Survey, May 2008.
<http://www.pewinternet.org>

** This statistic comes from the Pew Internet Project's
 Latinos Online data, collected June-October, 2006.

More data

- Per Pew Internet Project
 - 62% of Americans have some type of experience using mobile access to digital data and tools (including cell phones and Internet)
 - Variations based on age, income and education.
 - EX – text messaging with PDA or cell phone
 - Age 18 – 29 = 85%
 - Age 65 or older = 11%
 - EX – play music with PDA or cell phone
 - Age 18 – 29 = 38%
 - Age 50 – 64 = 5%

http://www.pewinternet.org/pdfs/PIP_Mobile.Data.Access.pdf



And more ...

- ❑ Micropayment growth: TowerGroup expects \$11.5 billion in revenues in 2009, a 23% increase from about \$2 billion in 2003
 - <http://www.internetnews.com/ec-news/article.php/3431461>
- ❑ 66% of US individuals have made an online purchase
 - Majority find it convenient and save time
 - But also have security and privacy concerns
 - 81% have used Internet for product research
- ❑ 64% have made travel arrangements online
- ❑ 11% have done stock trades online
- ❑ http://www.pewinternet.org/PPF/r/237/report_display.asp



Additional data

- How we spend our time:
 - Prediction that by 2013, we'll spend average of 8 hours/day with video-based entertainment
 - Millennials v Boomers:
 - Use cellphone as entertainment device
 - Millennial = 62% Boomer = 17%
 - Computer is greater entertainment device than TV
 - Millennial = 80% Boomer = 64%
 - www.emarketer.com (6/25/08)

And ...

- ❑ In 2006, sales of clothing online topped sales of computers.
- ❑ For 2007, about 10% of clothing sales were expected to be made online.
 - National Retail Federation, 5/14/07;
http://www.nrf.com/modules.php?name=news&op=viewlive&sp_id=292.
- ❑ 11% of American consumers shopping more online due to high gas prices
 - www.emarketer.com (7/25/08)



Emerging technologies

- ❑ Fractal transactions – when pay, money goes immediately to all parties in the transaction as originally agreed upon (Ex – manufacturer, distributor, shipping firm, website operator)
 - <http://www.davinciinstitute.com/page.php?ID=141>
- ❑ Greater Internet speed
- ❑ More storage on smaller devices
 - Nanotechnology



Relevance - 1

- Internet = changes in how we live and do business
- Internet = new ways to reach out to individuals
- Many are new transactions
 - Global small businesses
 - Web search engines
 - Advertising strategies
- Most are old transactions in modified form
 - Digital items such as software or games
 - Online news and ads
 - Social networking



Relevance - 2

- E-commerce and broadband + micropayments continued growth:
 - tax bases continue to shrink, particularly in states, such as CA, that do not subject items transferred online to sales and use tax
 - tax collections continue to decline as more sales are from remote vendors and consumers are not 100% compliant with their use tax obligations
 - more people download larger files such as movies and music – hard to collect use tax + shrinking tax base (such as in CA)
- Tax agency concerns:
 - Keeping up with new technologies
 - Using new technologies to improve tax administration
 - Lost audit trails and documents (maybe)



Relevance - 3

- Different demographics use some of the technology differently
 - Consider in any design of how to use tech to get gov't info to citizens
 - Varying tax issues and revenue losses
 - How to redesign tax administration that better uses technology



Relevance - 4

- Are incentives needed for broadband?
 - What exactly are the barriers to wider use?
 - What form? Who should receive?
 - Impact on local gov't and revenues?
 - What level of gov't?



Relevance - 5

- ❑ New business opportunities from constant change in technology. This includes hardware and software development, a variety of web services for personal and business use, new uses for new types of assets (such as with domain names), and growing usage of new technologies that opens up even more business opportunities.
- ❑ Changes continue, and continue to challenge existing rules.

Why tax issues/difficulties exist





E-Commerce Traits

- ❑ Location not very important
- ❑ Changed nature of products – more digitized
- ❑ Changed nature of transactions
 - Easy to match buyers and sellers – bigger market reach
 - Technology can do lots of new things
 - Global
- ❑ New types of assets
- ❑ Scattered and remote workforce
- ❑ Transaction details may be digital only

http://www.cob.sjsu.edu/nellen_a/ETraits.pdf

Sample tax issues



State & Local Concern #1

Uncollected Revenues

1. Increase in number and total dollar amount of transactions where sales and use tax is not collected
 - Amazon's annual 5-year revenue growth rate is 25.18%
 - But, also a growth in “multi-channel” retailers
 - Professors Bruce and Fox, Univ Tennessee
 - CA use tax loss in 2008 from:
 - E-commerce \$2.4 billion
 - All remote commerce \$4.6 billion
 - <http://judiciary.house.gov/hearings/pdf/Rauschenberger071206.pdf>
 - Others, such as DMA, say these estimates are too high



BOE Lost Revenue Estimate

- ❑ 2002 - BOE estimated use tax loss from households purchasing from remote vendors as \$309 million from mail order sales and \$146 million from Internet sales for a total of \$456 million in uncollected use tax
- ❑ estimated use tax loss from businesses to be \$783 million
- ❑ total of over \$1 billion uncollected use tax each year
- ❑ <http://www.boe.ca.gov/legdiv/sutleg/pdf/sb1009-3bm.pdf>
- ❑ Have also heard up to \$2 billion loss /year



State & Local Concern #2

Eroding Tax Base

- Knowledge-economy transactions not taxable in California (and a few other states)
 - Best “product” to sell online is information
 - Shift of some products from tangible to digital
 - 4/08 – iTunes largest music retailer
 - Software download versus purchase on tangible media
- Is not uncollected sales tax – is an eroding tax base

Equity issue of eroding tax base

- 2004 Nielsen//NetRatings press release, “Affluent Americans Power Internet Growth” noted that at income level of \$150,000 or more, 69% of Internet users used broadband while 31% used narrowband. In contrast, in households with income under \$25,000, broadband use was 25% which narrowband use was 75%.
 - http://www.nielsen-netratings.com/pr/pr_040419.pdf
- U.S. Census Bureau estimated that for 2003, 41% of households with income under \$25,000 had a computer, compared to 94.7% for households with \$100,000 or more of income. Also estimated that in 2003, 30.7% of households with income under \$25,000 had Internet access compared to 92.2% for households with \$100,000 or more of income.
 - <http://www.census.gov/prod/2005pubs/p23-208.pdf>



Untaxed Gains

- ❑ Not all “junk” sold on Ebay is at a loss.
- ❑ No 1099 requirements.
- ❑ Many sellers likely don’t know that gain is reportable.
- ❑ Likely a bigger issue today since likely to have higher bids and greater possibility of gain with online auction.



“Hidden” Businesses

- ❑ Individual may not really know they have crossed line from occasional sale to business
- ❑ Some people do know and evade
- ❑ Issues:
 - Business license tax
 - Not registered to collect sales tax
 - Not reporting federal or state income tax correctly
 - Not “in the system”



Audit Trails and Compliance

- ❑ More paperless transactions
- ❑ More crossing of borders (very easy to do)
- ❑ 2/06 – District Ct No. CA granted IRS permission to serve “John Doe” summons on PayPal to determine proper tax liability of US t/p with signature authority over bank accounts or credit cards issued by offshore financial institutions
- ❑ More Schedule C businesses; more errors and confusion
 - *Tax Loopholes for eBay Sellers* (book)
 - *J.K. Lasser's From Ebay to Mary Kay: Taxes Made Easy for Your Home Business* (book)
 - Online discussion boards for tax advice



Growing Unreported Income

- ❑ IRS studies – SB/SE primarily, since 2000
- ❑ Tax gap found:
 - Review of 426 commercial sites in 2000
 - 10% of owners – 1997 non-filers
 - 12% of owners could not be identified
 - \$1 billion estimated gap for small Internet businesses

<http://www.treasury.gov/tigta/auditreports/2005reports/200530010fr.html>



IRS Retail Industry Audit Technique Guide

- “Investigative Tools”
 - Ask t/p if have website; use search engine; find out who owner of site is
 - See if URL noted in yellow pages or business cards
 - Look for deductions for website development, application service provider, ISP payments
- “Inspection of t/p’s website is every bit as important as the inspection of the place of business.”
- Long list of questions and possible issues provided in ATG
- <http://www.irs.gov/businesses/small/article/0,,id=141373,00.html>



Easy to Only be a Remote Vendor

- ❑ Some vendors on Amazon note that they ship *from* State X, but do not ship *to* State X
- ❑ Easy for buyer to search online for seller who doesn't charge sales tax



Occasional Sales Rule

- CA Reg. §1595: “Generally, a person who makes three or more sales for substantial amounts in a period of 12 months is required to hold a seller’s permit regardless of whether the sales are at retail or are for resale. Each sale of the person during the 12 months period is included in determining whether that person is required to hold a permit, or would be required to hold a permit if the activities were conducted entirely inside this state. Thus, a sale occurring outside California, whether at retail or for resale, is included, even though it would not be subject to California sales tax. A person who makes a substantial number of sales for relatively small amounts is also required to hold a seller’s permit.”
- No rule in Colorado, Oklahoma and Wyoming.



Occasional Sale Issue

- How many online sellers (particularly through auction sites) should have seller's permits and collect sales tax, but are not doing so?
- Solutions:
 - Educate sellers (SBE should post ads on eBay)
 - Expand occasional sales to reduce non-compliance
 - Clarify rules to address today's transactions
 - EX – California SB 607 (2005) – Would define "a series of sales sufficient in number, scope, and character" for purposes of the obligation to obtain a sellers permit [and be obligated to pay the sales and use tax (SUT)] to mean three or more sales in any 12-month period where the gross receipts from those sales exceeds \$1,200. SBE may adjust dollar amount annually for inflation.

Nexus rulings and legislative changes



Sales Tax Nexus Review

- ❑ Sufficient *nexus* must exist in order for a state to subject a vendor to sales and use tax collection obligations.
- ❑ Nexus - a connection between the vendor and state such that subjecting vendor to state's sales tax rules is neither unfair to vendor nor harmful to interstate commerce. These two requirements stem from the U.S. Constitution:
 - Due Process Clause
 - Commerce Clause
- ❑ 1992 US Supreme Court decision – *Quill* – for substantial nexus, seller must have a physical presence in the state
- ❑ Rules vary among states as to type and extent of physical presence needed



Nexus stretches

MTC 2004 - affiliate nexus proposal:

- Remote vendor has substantial nexus in a State for collection of use tax if
 - (1) the vendor is related to an in-state business that maintains one or more locations within the state, and
 - (2) the vendor and the in-state business “use an identical or substantially similar name, tradename, trademark or goodwill to develop, promote, or maintain sales, or the in-state business and the out-of-state vendor share a common business plan or substantially coordinate their business plans, or the in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting, or maintaining the in-state market.”
- Similar changes in Arkansas, Alabama, Kansas, Louisiana, Idaho and Minnesota
- CA – AB 2412 passed legislature in 2000, vetoed by Governor



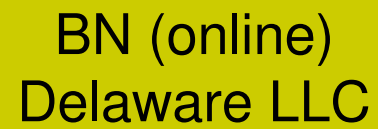
Nexus stretches

- CA - 2003 *Borders Online, Inc.* ruling
 1. Border's activities were "for the purpose of selling" Online's goods
 - Handling returns ~ selling under R&T §6203
 2. Online had sufficient presence, through Borders, to justify that it was required to collect sales/use tax
- Too broad?



bn.com in CA (2007)

- Reversed earlier decision
- BN doesn't have nexus in CA
- Legally separate from Booksellers a subsidiary of B&N which operates retail stores in US
- No common employees, inventory, mgmt, facilities
- Bricks-mortar store doesn't take BN returns and gives no unique services to BN's customers



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graph TD; BN[BN (online) Delaware LLC] --- B40[B&N 40%]; BN --- Bert40[Bertelsmann 40%]; BN --- BNcom[Barnesandnoble.com 20% Publicly-traded]; B40 --- Booksellers[Booksellers – wholly-owned];
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BN (online)
Delaware LLC

B&N 40%

Bertelsmann 40%

Barnesandnoble.com
20%
Publicly-traded

Booksellers – wholly-owned

Facts

- One month in 1999, B's shopping bags had coupon for \$5 discount at BN
 - B's logo on one side and BN's on other
 - BN paid to have the coupons printed and for bag printing
- 9/01 – BOE ruling on Borders – broad interpretation of “selling” under RT 6203 – all activities integral to making sales.
 - BOE – use of coupons integral to making sales so BN has substantial nexus in CA thru its rep or agent (B)



Appeals Decision

- Agent – requires more than distributing coupons
 - Must be doing something that binds principal
 - Similar name doesn't create agency
- Although BOE modified §6203 via Borders ruling, not a problem for BN because B wasn't an agent of BN

New York Nexus Expansion

- ❑ Legislation enacted in April 2008
- ❑ Presumed to have nexus if seller uses NY residents to solicit sales via an Internet link if cumulative GR exceed \$10K
- Can rebut presumption with proof that resident did not engage in any solicitation in the state on behalf of seller that meets nexus requirement of US Constitution





NY Expanded Def. of Vendor

- NY Law Change in 4/08
- “a person making sales of tangible personal property or services taxable under this article (“seller”) shall be presumed to be soliciting business through an independent contractor or other representative if the seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller, if the cumulative gross receipts from sales by the seller to customers in the state who are referred to the seller by all residents with this type of an agreement with the seller is in excess of ten thousand dollars during the preceding four quarterly periods ending on the last day of February, May, August, and November. This presumption may be rebutted by proof that the resident with whom the seller has an agreement did not engage in any solicitation in the state on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the quarterly periods in question. ...”

New York - more

- 4/25/08 - Amazon.com filed compliant in NY challenging new law as unconstitutional. Per Amazon.com
 - no physical presence in NY as required for sales tax collection.
 - affiliates perform advertising rather than solicitation of sales
 - Per *Tyler Pipe*, 483 US 232 (1987), such activity is not sufficient to find nexus
 - affiliates are not its agents
 - Associates Program does not depend on residence of any affiliate and it does not know how many are legal residents of New York.
- Overstock.com also filed a suit against the state.
- Company response:
 - Amazon.com – now collecting sales tax in NY
 - Overstock.com – cancelled its affiliate arrangements with its over 3,400 New Yorkers
- https://www.cpa2biz.com/Content/media/PRODUCER_CONTENT/Newsletters/Articles_2008/CorpTax/Remote_Vendors.jsp



California Response

- ❑ June 2008 BOE staff memo
- ❑ Link on an affiliate's Web site does not by itself make the affiliate an authorized salesperson for the remote vendor.
- ❑ <http://www.boe.ca.gov/meetings/pdf/070808nexus.pdf>

Multistate operations and mobile customers

- ❑ A recent Massachusetts ruling involved a tire dealer with locations in 4 states including MA and NH which has no sales tax.
- ❑ Appellate Tax Board held that seller's NH stores should have collected use tax when they installed tires on MA cars since they could readily tell from the license where tires would be used.
- ❑ *Town Fair Tire Centers*, Dkt C280607 (6/08)
 - <http://www.mass.gov/atb/2008/08p707.doc>
- ❑ Consider whether other states adopt or enforce similar approaches or require sellers to ask if taxable items will be used in any state where the seller has nexus.

SSUTA

Streamlined Sales & Use Tax Agreement

<http://www.streamlinedsalestax.org>



SSUTA Goals

- ❑ Started in 2000
- ❑ “It is the purpose of this Agreement to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance.”
- ❑ Goals:
 - Draft uniform SUT law for states to adopt
 - Get states to adopt it
 - Create governing board once at least 10 states representing 20% of population of states imposing a sales tax have enacted appropriate legislation – October 2005
 - Get Congress to reverse *Quill* for adopting states

SSUTA - more

- Includes technological compliance and third party collection options
- Remote vendors can get limited amnesty if register with an adopting state (which also means they register for all adopting states)
- Issues:
 - Destination sourcing made some local retailers unhappy
 - EX – florist who used to be able to charge sales tax for store location, had to change to customer location
 - Solution – SSUTA modified to allow state to elect origin sourcing for in-state sales of tangible or digital goods (not services)
 - Problem – uniformity missing; constitutionality
 - EX – San Jose resident purchases book online from Ventura seller – 7.25% sales tax. SJ resident purchase book online from registered Michigan seller – 8.25% sales tax



Sourcing issue

- Destination sourcing made some local retailers and cities unhappy
 - EX – florist who used to be able to charge sales tax for store location, had to change to customer location
 - EX – city has worked to get corporate sales offices in its borders, would lose that revenue under destination sourcing (unless customers are in same city)
 - Solution – SSUTA modified to allow state to elect origin sourcing for in-state sales of tangible or digital goods (not services)
 - Problem – uniformity missing; constitutionality questionable
 - EX – San Jose resident purchases book online from Ventura seller – 7.25% sales tax. SJ resident purchase book online from registered Michigan seller – 8.25% sales tax



SSUTA - issues

- Simple?
- Will Congress overturn Quill for adopting states?
 - Proposals at least back to 108th Congress.
- Many changes
 - 12 amendments to 11/02 version, such as
 - Option for origin sourcing rather than destination
 - Definition of digital goods
 - Separate definition for “fur clothing” (so is no longer part of clothing definition)
- California – would get one vote on governing board



110th Legislation to Reverse Quill

- S. 34. and H.R. 3396
 - to the extent SSUTA meets specified simplification standards, adopting states may collect sales tax from remote sellers
 - exemption for small sellers with less than \$5 million of remote taxable sales in the prior year.
- Observations:
 - Small seller exemption challenges the touted simplification
 - Unless states exempt purchases from small businesses from use tax, buyers still need to self-assess use tax.
 - Another solution to explore is better use of technology, such as at the time of sale having buyer's credit card charged sales tax by state tax agency. This approach results in no filing obligations for vendors or buyers.
- Congressional Record statement 12-20-05



H.R. 3396 Hearing

12/6/07 –House Judiciary Subcommittee on Commercial and Administrative Law

□ Oppose:

■ Direct Marketing Association

- States should have used NCCUSL approach
- SSUTA did not create uniformity and created some new complexities
- “It has not produced a one stop/one form tax return and remittance system.” Ex – states still allowed sales tax holidays – no uniformity.
- Isn’t one rate per state as was the original premise for the project
- Uncollected use tax overstated

□ In favor:

■ NCSL

- Uniformity of definitions is more important than one rate/state
- Lowers collection costs
- No consumer privacy issues

■ JC Penney

- JC Penney, National Retail Federation and many multi-channel retailers support HR 3396

□ http://judiciary.house.gov/hearings/hear_120607_2.html

California Proposals

Sampling



CA Proposals

- BOE Chair Judy Chu – expand sales tax to include some services
 - http://www.boe.ca.gov/members/jchu/sales_tax_article.html
 - Relevance to local governments
- AB 1956 – requires BOE to submit report to Legislature on transactions involving digital property including proposed regulation providing that sales of digital property are subject to sales and use tax
- AB 1840 - would broaden definition of “substantial nexus” and modify Reg 1684

CA proposals – cont'd

- AB 1957, introduced February 13, 2008, is primarily a reintroduction of AB 969 which was vetoed by Governor. These bills aim to not enable individuals to avoid completing use tax line on Form 540 by allowing them option to file sales tax forms.
- AB 1957 amended 3/25/08 to add option to allow individuals to use a table to be provided in Form 540 instructions where they could look up their use tax liability for non-business purchases.
 - For individual non-business items for which use tax is owed that cost \$1,000 or more, actual use tax must be calculated.
 - In addition to making recordkeeping simpler, sponsor intends that this simplification address a reasons for Governor's veto – that individuals would not have time to get ready to comply.



BOE Tax Gap Plans

- ❑ Obtain info from online auctioners on large transactions
- ❑ Use info from FTB
- ❑ Change penalty of perjury statement on 540 to also mention use tax
- ❑ Legislation to mandate reporting of use tax on 540
- ❑ Comprehensive media plan on the use tax
- ❑ Required use tax courses for preparers

http://www.boe.ca.gov/meetings/pdf/ItemP1_2_042507.pdf

Congressional actions

Proposals relevant to e-commerce taxation
(besides HR 3396 noted earlier)





New possible bans

- ❑ S. 3418 (Wyden) – “No State shall impose a discriminatory tax on any means of providing multichannel video programming distribution services, including Internet protocol technology (or any successor protocol), direct broadcast satellite delivery, and cable television services.”
- ❑ S. 3249 (Wyden) – “No State or local jurisdiction shall impose a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile service property, during the 5-year period beginning on the date of the enactment of this Act.”

Congressional actions

New 1099 Reporting Requirement



IRC 6050W

- ❑ Housing and Economic Recovery Act of 2008 (PL 110-289; 7/30/08)
- ❑ Payment settlement entities must file information returns with IRS and merchant
 - merchant's name, address, taxpayer identification number (TIN), and gross amount of the transactions the entity processed for the merchant
 - covers credit and debit cards and third party payment networks, such as online payment systems such as PayPal

6050W – cont'd

- ❑ De minimis exception provides that third party settlement organizations are only required to file returns regarding third party network transactions if aggregate value of a merchant's transactions exceed \$20,000 and aggregate number of transactions exceeds 200
- ❑ Penalties imposed for failure to file (IRC §6724)
- ❑ Backup withholding required if merchant does not provide TIN (IRC §3406); effective for amounts paid after 12/31/2011
- ❑ §6050W effective for calendar years beginning after 12/31/2010



6050W - relevance

- ❑ Estimated to raise \$9.5 billion for feds over 10 years
- ❑ May help IRS to better understand ratio of credit card sales to cash sales for different business types
- ❑ Information to share with state governments
- ❑ May cause some online vendors to start reporting their business income

Internet Tax Moratorium



Background

- **PL 105-277** (10/21/98)
 - 10/1/98 to 10/21/01 moratorium
 - Advisory Comm'n on E-Commerce
- **PL 107-75** (11/28/01)
 - extended to 11/1/03
 - no other change
- **PL 108-435** (12/3/04)
 - extended to 11/1/07
 - definitional changes
 - GAO to study impact of moratorium on state and local revenues + on deployment and adoption of broadband technologies
 - January 2006 - *Internet Access Tax Moratorium – Revenue Impacts Will Vary by State*, <http://www.gao.gov/new.items/d06273.pdf>
 - May 2006. *Broadband Deployment is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, <http://www.gao.gov/new.items/d06426.pdf>
- **PL 110-108** (10/31/07)
 - extended to 11/1/14
 - various definitional
 - grandfather changes



Internet Tax Moratorium

- PL 110-108 (10/31/07) extended the moratorium until 11/1/2014
- Primarily applies to prevent state and local governments from taxing Internet access services
 - Some grandfathering
 - Definitional issues



Moratorium Issues

- ❑ End, extend or make permanent?
- ❑ Any exceptions?
- ❑ Does it promote Internet access? Needed?
- ❑ Does it prevent discriminatory taxes? Needed?
- ❑ Federalism – why not a federal level incentive?
- ❑ Impreciseness of definitions (Internet access, bundling, telecomm services).



Some State Have Issued Guidance

- EX – Tennessee – Notice 07-21
 - <http://tennessee.gov/revenue/notices/sales/sales07-21.pdf>
 - How 2004 and 2007 changes affect application of sales and other taxes to telecom and Internet access charges

Additional Issues



3% Telecommunications Excise Tax and California Utility User Tax

- Today, many long distance charges are not based on both time and distance
- Courts (2nd, 3rd, 6th, 11th & DC) say – 3% tax n/a
- IRS only just gave up on 5/25/06
- CA Cities – many use federal definition for UUT so may lose revenue or need to change definition



What's next for telephone excise tax?

- Will Congress step in and repeal all of IRC §4251?
 - Is the tax outdated given the number of ways to make a phone call today?
 - Should definitions be changed to bring in all types of telecommunications or should lost revenue be made up with other taxes that are industry neutral?
 - Relevance to local government



Online travel service tourism tax

- ❑ Online company charges tax based on price customer charged
- ❑ Online remits tax based on what on the price that the hotel is actually charging
- ❑ Some cities suing online companies to get the difference



“Virtual Economies”

- ❑ 10/17/06 – Joint Economic Committee examining public policy issues of virtual economies
- ❑ “universe of transactions that occur within an online community, such as Second Life or World of Warcraft.” “no real-world or physical exchange”
 - But “real-world value can often be assigned to such transactions using exchange rates or other methods.”
- ❑ Q – is tax due on cash income from transactions in virtual economies?
- ❑ Q – are these players in business?

Considerations in Solving E-Commerce Tax Issues



Considerations in Addressing Lingering E-commerce Taxation Issues

- ❑ Technologically neutral ways of taxing
- ❑ Avoiding compliance burden for small businesses with worldwide customers
- ❑ Taxpayer education
 - “What’s a use tax?”
- ❑ Caution on incentives
 - Might be misdirected
 - Might not be needed
 - Federal may restrict state and local



And ...

- How can the technology help in tax administration and compliance?
- How to resolve issues globally?
 - Simplify tax bases
- Follow principles of good tax policy.

Questions?

[http://www.cob.sjsu.edu/nellen_a/TaxReform/
21st_century_taxation.htm](http://www.cob.sjsu.edu/nellen_a/TaxReform/21st_century_taxation.htm)