

Remote sellers: The tax man cometh?

State-led initiative to tax remote sales slowly gaining momentum

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In the not-so-distant past, consumers had no choice but to travel to the grocery store when they wanted food, trek to the mall when they needed clothes and, if necessary, journey across three suburbs to find that perfect holiday gift. Thanks to myriad Internet sellers hawking more goods than a shopper could possibly find under any single roof, these things now can be bought from the safety and comfort of a swivel chair.

But what's good for shoppers is a complicated tax mess and revenue loss for states. Remote sellers—like Internet sites and catalogs—do not have to pay taxes to states where they are not physically located. In two cases, *Bellas Hess v. Illinois* in 1967 and *Quill Corp. v. North Dakota* in 1992, the Supreme Court ruled that the complications of the tax system created too great a burden for sellers to pay taxes to states where they do not have a physical presence, be they catalog companies or Amazon.com. The rulings have translated into sizable revenue losses for states. A study by the University of Tennessee estimates that Minnesota, North Dakota, South Dakota and Wisconsin will collectively lose \$258 million in revenue from untaxed e-commerce sales in 2009 alone.

To address the loss of revenue from e-commerce and other remote sellers, states have created the Streamlined Sales and Use Tax Agreement. The idea behind the agreement is to simplify the sales tax system enough so that out-of-state sellers pay the appropriate state sales tax.

The SSTA effectively harmonizes states' sales tax systems in order to "simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance," according to the initiative's governing board. That doesn't mean that e-businesses or other remote sellers are stuffing state coffers with new tax revenue—indeed, new collections have been exceedingly modest, mostly because such tax charges are still considered voluntary. But the initiative has higher hopes of convincing Congress to pass legislation allowing states to mandate sales tax payments from remote sellers and buyers if one of the parties resides inside state borders.

Along with Internet and catalog sales, the SSTA also works to secure collections from other sellers that do not collect taxes despite a physical presence. For example, some traveling salespeople and installation companies doing business across state lines are notorious shirkers of sales taxes, according to Scott Peterson, executive director of the Streamlined Sales Tax Governing Board. Unlike remote sellers, these businesses are already legally required to collect sales tax, but enforcement is difficult. "There's all kinds of people out there who aren't collecting tax," Peterson said.

Member states of the SSTA hope to eventually see federal legislation that mandates tax collection by Internet and other remote sellers. But the SSTA did not originally form with the intention of coercing such businesses into paying taxes. Rather, the agreement germinated from the hypothesis that states could catch more tax revenue with honey than with vinegar.

"It was kind of an, 'If you build it, they will come' mentality. This was a 'field of dreams' concept when we started," Peterson said. "The Supreme Court said that the system was too complicated to let states require other state retailers to collect, and for years businesspeople have said, 'You've got all these different things that make it complicated.' So our thought in the beginning was, 'Let's take them at their word and address their issues and see whether or not there's anybody who starts collecting.'" In time, the SSTA took up the cause of getting the legislation adopted, a cause that other groups had already begun.

So far, 22 states have adopted the agreement. Michigan, Minnesota, North Dakota and South Dakota are full members of the SSTA. These states were part of the original few that have been on board since Oct. 1, 2005. Wisconsin is an associate member until Oct. 1, 2009, when it will become a full member, which means that it is in compliance with all components of the agreement.

When companies sign up through the SSTA's central registration, they are then required to collect taxes for transactions with buyers in member states, according to Myles Vosberg, division director for

sales income and special taxes at the North Dakota Department of Revenue. In order to become full members, states must adopt a number of simplification measures, including administering taxes at the state level only and adopting standardized definitions.

Minnesota was one of the first four states to adopt the full agreement, signing on in 2002, before the agreement was formalized. Larry Wilkie, assistant commissioner for business taxes at the Minnesota Department of Revenue, said that joining early brought both challenges and benefits. Joining early meant that Minnesota had to adjust some of its own statutes to suit the needs of states joining later that wanted changes in the stipulations of the agreement. But becoming a member early also brought its perks. Wilkie believes that it gave Minnesota leverage over the points of the agreement itself. Being an early adopter, "we had more of a say in how the agreement was crafted and some influence in deciding how it should be administered," he said.

Besides the bump in tax revenue, states had a variety of motivations when they signed on. Member states wanted to remove unnecessary complications for retailers. "We just thought it was a good idea to try to be more uniform with the other states, and it was a good service to the retailers to try to reduce the burden as much as we could to make it easier to collect," said Vosberg. "In the long run it's going to be advantageous to the state as well because ... as we make it simpler ... it should increase revenues for us as well." States also wanted to be fair to local businesses. "It's really a fairness issue. ... It puts the local businesses at a competitive disadvantage because they need to collect that tax," Vosberg said.

States get some revenue now from the 1,163 companies that have essentially volunteered to pay taxes to SSTA member states. "That's tiny," Peterson said. "We're just barely scratching the surface." Though the identities of the companies are confidential, Peterson said that the businesses span a wide variety of sizes and industries. "Most of the companies on the list are small to medium-sized companies. ... A couple are quite large and names you would recognize," he said. "There's a pretty wide variety—hardware companies, telecommunications companies, medical supply companies, sporting goods companies—a pretty good cross section of commerce other than ... heavy equipment or cars or things like that."

Peterson added that businesses generally did not agree to pay more taxes out of purely altruistic motives, often joining instead to secure an amnesty from past unpaid taxes. "The majority of people we consider to be volunteers; they don't consider themselves to be volunteers," explained Peterson. "They

came in because of an amnesty, and the deal we made with them was, 'If you want to come in and take advantage of Minnesota's (tax) amnesty, you have to collect for South Dakota.'"

The SSTA taxes paid to states are growing, but very modestly. Minnesota currently receives the most SSTA revenue in the district, collecting \$11 million in 2008—a nice jump from the \$1.5 million in 2006, but a minuscule rounding error amid the state's overall sales and use tax, which was \$4.6 billion in 2008.

But now the ultimate goal for SSTA states is the passage of federal legislation that would mandate this model for all states and remote sellers. That does not necessarily mean that sales tax compliance from e-commerce and other remote sellers will be easy or universal. Peterson acknowledged that the SSTA does nothing to ease the difficult task of sales tax enforcement at the state level. Still, federal legislation would turn these voluntary payments into required tax liabilities, which carries significantly more payment leverage, and states would stand to gain a hefty boost in tax revenue. The University of Tennessee study concluded that Minnesota lost \$160 million in 2008 from uncollected sales taxes on e-commerce alone.

Though a bill in Congress has not yet been introduced this year, Peterson is optimistic that it will be. "I think it's been introduced for seven or eight years in a row," he said, adding that this year looked especially good for the legislation. "The last administration didn't like this concept," said Peterson. "I have no idea what the current president thinks. ... He hasn't come out and said no." One factor in SSTA's favor is that state budgets are "crap, for lack of a more delicate way of saying that," Peterson said. "I think there's a greater likelihood this year, but Congress is an extremely difficult thing to predict."

But struggles could still lie ahead for the bill's passage. "There's lots of people out there who don't want this to pass," including businesses and some members of Congress, said Jane Page, assistant director of the business tax division at the South Dakota Department of Revenue and Regulation. She added that other federal bills are being introduced that could get attached to the streamlined bill, "and then it won't look quite as attractive." Page said that the main point of contention currently is a vendor compensation part of the bill, which would require states to compensate vendors from whom they collect tax.

But the SSTA initiative has surmounted many other challenges. "For the last eight years now, we've worked through lots and lots of things that people didn't think would be able to be resolved," said Page. "But they have been." **F**