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The Most Important Sales Tax Change in Almost 50 Years

Proposed Federal Legislation Requiring Collection of State Sales Taxes

Whether they know it or not, businesses that make sales by mail order, Internet or any other "remote" method have been relying on a 45 year old interpretation of the United States Constitution to avoid collecting sales and use taxes. That interpretation appears set to be overturned, perhaps in the next year. When change comes, these sales models will become more expensive for customers and vendors alike. *This includes vendors in distant states and foreign countries.*

Both houses of the United States Congress have pending legislation requiring remote sellers to collect sales tax on their sales into any other states (currently, 45 states impose sales taxes). The legislation has bi-partisan support (the Senate's proposal is sponsored by a Democrat; the House of Representatives' by a Republican), the support of almost all if not all of the states, the support of America's largest in-store retailers, the support of important business lobbying interests and, now, the support of Internet mega-retailer Amazon.com. With the 2012 election past, and "no new taxes" legislators reeling, the stage seems set for this legislation to pass.

What it Means to Sellers Headquartered in the United States

If either piece of legislation becomes law, a business located in New York City making sales by Internet to customers in, for example, Pennsylvania, Florida, Illinois, Colorado, Texas and California will have to (i) collect those states' sales taxes, (ii) remit the collected taxes, and (iii) file periodic returns in each of those states as well as in its home state (New York, in this example). Of course, Internet businesses seek to sell to customers located throughout the United States, which means that the retailer will have to collect and remit tax, and file periodic tax returns, in every other state from Alabama to Wyoming even if the retailer has no store or inventory in those states. *These are significant new responsibilities and expenses.*

More importantly, it means that the cost of goods to customers of remote sellers will increase by some 4% to 7% (the legislation might also require the collection of local taxes)**.** (In truth, most customers should be paying this tax already, but few do.) This will permit local retail stores to better compete on price. This is one of the purposes of this legislation: to benefit local retailers. Moreover, the legislation does so while raising tax revenue for the state.

What it Means to Sellers Headquartered Outside of the United States

Retailers headquartered outside of the United States but shipping from within the United States are in the same position as retailers headquartered in the United States. Retailers located outside of the United States and shipping from outside of the United States should contact me.

Exception

It appears that businesses with small amounts of sales will be exempt from the sales tax collection/remittance/reporting requirement. When the threshold is set, look for it to be in the neighborhood of $500,000 in U.S. sales annually.

What Remote Businesses Can Do Now

For most businesses, tax planning will have to wait until a law is enacted. Until then, businesses relying on remote sales should review their competitive advantages and challenges when compared to local retail stores. Can price, convenience, delivery time, selection, etc. be improved? Can the return policy match that of the local stores?

Please contact me at dfruchtman@hmblaw.com to discuss this further.