FC: Michael Geist: "It's time to tax purchases made online"

From: Declan McCullagh (*declan@well.com*)
Date: Tue Mar 25 2003 - 07:47:07 PST

Next message: Declan McCullagh: "FC: Google update: Scrutinizes antiwar ads, rejects sole-writer sites"

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Date: Mon, 24 Mar 2003 12:01:49 -0500
To: declan@well.com
From: Michael Geist <mgeist@uottawa.ca>
Subject: It's Back to the Future for Internet Taxation

Declan,

Of possible interest to Politech - my latest Law Bytes column in the
Toronto Star on the momentum toward Internet taxation and how we've seen
this all before.

MG

<http://shorl.com/bikurifrimusto> [Toronto Star]

Fairness says it's time to tax goods sold online

MICHAEL GEIST
LAW BYTES
To those following the Internet taxation debate, the story smacks of déjà vu.

In the months following a war, U.S. governments begin to express concern
about millions in lost tax revenues stemming from consumer purchases from
out-of-state retailers who do not collect local sales taxes.

The governments argue that the tax avoidance is particularly problematic
since it creates an unfair playing field that places local businesses at a
competitive disadvantage when compared with their counterparts in
non-taxing jurisdictions.

In response, the governments pass legislation requiring all sellers to
report their monthly out-of-state sales to tax authorities. The new rules
are designed to ensure that all sales are subject to local sales taxes.

While many expect precisely this scenario to unfold in 2003, this is
actually a story from 1949. That year, the U.S. Congress, alarmed at the
losses in tax revenue due to the growing popularity of tobacco sales via
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mail order, enacted the Jenkins Act.

The much-neglected statute, which remains in effect today, requires tobacco retailers to disclose their out-of-state sales to the relevant taxation authority.

Technology may have changed dramatically since 1949, but the policy choices surrounding sales tax and its collection remain largely the same.

Today, tax authorities throughout the United States and Europe are rapidly abandoning previous policies that rendered the Internet a "duty free zone" in favour of online tax approaches that mirror those found offline.

During the dot-com boom of the late 1990s, Internet taxation was viewed with considerable skepticism. Internet self-regulation was the preferred approach and with it came a hands-off approach to taxation.

Moreover, with e-commerce promotion enshrined as a key policy position, governments were loath to stifle e-commerce growth with the burden of tax collection.

The U.S. government led the way in this regard, enacting the Internet Tax Freedom Act in 1998. The statute prohibited the establishment of new Internet taxes for three years and was subsequently renewed in 2001.

Just as the dot-com boom has turned into a dot-com bust, however, so too has Internet tax policy undergone a significant reversal.

Although many in the U.S. Congress remain supportive of the ITFA, dozens of U.S. states have shifted toward a pro-Internet tax position.

This shift comes as little surprise since unlike the states, the U.S. federal government does not levy a sales tax and thus its revenues are largely unaffected by Internet sales.

In recent weeks, states such as California and Massachusetts, previously strong supporters of a no-tax position due to the importance of the tech sector within their states, have taken a sober second look at their budget deficits and then taken the first steps toward implementing state-based Internet sales taxes.

Moreover, more than 30 states recently reached agreement with several large online retailers, reportedly including Wal-mart and Toys R Us, whereby it was agreed to absolve the retailers from any liability for tax not previously collected on Internet sales, in return for levying sales tax on all future sales.

Tax courts in the U.S. have also shown a willingness to pursue tax claims against online sellers. For example, a California board recently ruled that online retailer Borders.com was required to collect sales tax for its sales to state residents.

The board reasoned that Borders.com was sufficiently tied to the state that it should collect sales tax since it offered customers the right to return their online purchases to its offline stores.

The European Union has been similarly aggressive in pursuing a new Internet tax policy. Commencing on July 1st of this year, the EU will require non-EU companies selling digital products via the Internet into the EU to collect Value Added Tax (VAT) on behalf of EU member countries.

While U.S. interests have argued strongly against the measure, the EU points to simple tax fairness, noting that the current tax-free position enjoyed by non-EU companies places them at a competitive advantage over their European counterparts.

For example, Freeserve, a large U.K. Internet service provider has long argued that it has been placed at a disadvantage relative to AOL, a major competitor, since it is required to collect VAT from its subscribers, while AOL does not.

Lost in the rush toward Internet sales taxation is a Canadian policy that seems stuck in the 1990s. Last year the Canadian tax authorities released guidance on GST collection for e-commerce sales and largely refrained from adopting the more aggressive positions found in Europe and at the U.S. state level.

While no one likes paying additional tax, the move toward equalizing online and offline tax policy is to be welcomed.

First, it affirms longstanding notions of tax fairness that dictate the tax policy should be consistent.

Second, it represents another step toward the continuing maturation of e-commerce.

For e-commerce to be taken seriously as a critical part of the economy, it must offer more than just a better deal on tax.

Michael Geist is a law professor at the University of Ottawa and technology counsel with the law firm Osler Hoskin & Harcourt LLP. He is online at http://www.lawbytes.ca and http://www.osler.com (mgeist@uottawa.ca).
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Professor Michael A. Geist
Canada Research Chair in Internet and E-commerce Law
University of Ottawa Law School, Common Law Section
Technology Counsel, Osler, Hoskin & Harcourt LLP
57 Louis Pasteur St., P.O. Box 450, Stn. A, Ottawa, Ontario, K1N 6N5
Tel: 613-562-5800, x3319   Fax: 613-562-5124
mgeist@pobox.com   http://www.lawbytes.ca

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