

Taxing Dilemma

It's Time for Congress to Kill *Quill*

By Bill Waltz

Nearly 20 years ago the U.S. Supreme Court issued its decision in the seminal case of *Quill Corp. v. North Dakota* 504 U.S. 298 (1992). *Quill* confirmed the standard that a retail business must have “physical presence” in a state before that state can require the retailer to collect and remit the state’s sales tax from customers within that state.

Quill involved mail order purchases; the decision gives no mention or consideration to the just-developing online sales market of the time. The Court concluded that requiring an entity with no substantial nexus, or meaningful physical presence, in the state to collect and remit the state’s tax constitutes an unjustified burden on and interference with interstate commerce in violation of our Constitution’s Commerce Clause.

First, it is not a new tax. Sales taxes, in the form of use taxes, are currently owed on every retail purchase made over the Internet – they’re just not being paid.

Quill remains the law and its restrictive rationale is considered fully applicable to online sales. But, neither *Quill* nor the Constitution prevents Congress from taking action to require online retailers to collect a state’s sales tax. In fact, *Quill* was in large part based on the premise that it is up to Congress to make the determination as to “what extent the States may burden mail order (now read Internet) concerns to collect use taxes.”

In 1992, online sales were a minuscule segment of the market. They now represent over 20% of all sales and that percentage is growing at an amazing rate of about 15% year over year. This phenomenon doesn’t (and probably shouldn’t) change the Court’s test, but it should (and eventually probably will) change Congress’s view. So, why should we burden the Amazons, eBays and Overstocks with the task of collecting sales tax? Isn’t this still a burden on interstate commerce? Wouldn’t this just amount to another tax, a tax on the Internet?

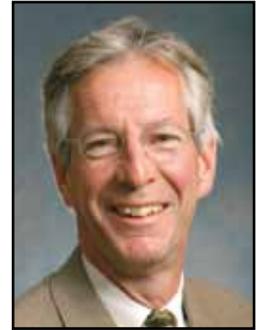
First, it is not a new tax. Sales taxes, in the form of use taxes, are currently owed on every retail purchase made over the Internet – they’re just not being paid. How is that the Internet sellers’ problem? It’s not really, but then whether a purchaser pays the sales tax at the store wouldn’t be the store’s problem either but for the state law requiring them to collect it. The point is one retailer doing business in the state must collect it while the other doesn’t. And it makes the Internet seller’s product 7% cheaper. So the brick and mortar retail store (which pays property tax and employs state residents) has the additional burden of collecting and remitting the tax, and is put at a competitive disadvantage, while the Internet seller is

free to market the same product to the same customer without the collection obligation and at a discounted price – all in the name of interstate commerce.

Second, this is not a tax on Internet use; it is a tax on purchases – the same tax you pay when you go into the store, and a tax that you are legally obligated to pay now under existing law. Opposition should not be based on the premise that this is a new tax or a tax on the Internet. Support should be based on free market equity, respect for the law and a desire to see everyone pay the taxes they owe.

To force those who sell exclusively over the Internet (let’s call them “E-tailers”) to collect sales tax for every state and locality where their customers reside will in fact be a burden. Administrative compliance issues will be abundant and there are very real complications, burdens and costs associated with trying to apply and comply with somewhere around 8,000 different taxing jurisdictions. But Internet sellers can cope and are not likely to suffer much.

For amounts far less than the windfall they currently reap from this situation (as a result of their competitive advantage), they could incorporate software to automatically apply local sales tax rates. These “burdens” are more appropriately considered part of the cost of doing business in those locales/jurisdictions – many as they may be. After all, their in-state, brick-and-mortar competitors must do the same; they may not operate in as many jurisdictions, but that is a matter of choice, and they have to manage the hassles of collecting and remitting the taxes wherever they choose to be. Principles of fairness, together with recognition of the modern realities, should control.



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INFORMATION LINK

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More information on the Main Street Fairness Act:
www.opencongress.org/bill/111-h5660/show

About the Streamlined Sales and Use Tax Agreement:
www.streamlinedsalestax.org

Background perspective from the Tax Foundation:
www.taxfoundation.org/publications/show/27416.html