F I S C A L I M P A C T R E P O R T

SPONSOR:	Sandel	DATE TYPED:	02/05/00	HB	282
SHORT TITLE:	Develop Multistate Sales Tax System			SB	
			ANALYST:	Williams	

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY00	**FY01**			
		No Fiscal Impact		

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates/Conflicts with/Companion to/Relates to

SOURCES OF INFORMATION

Legislative Finance Committee (LFC files)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

This bill directs TRD to participate in discussions among the states regarding development of a voluntary, multi-state system for sales and use tax collection and administration. Potential areas of focus of these discussions are outlined in the bill. The bill would prevent TRD from participating in a pilot project of such a system, but authorizes the Secretary to participate in a joint request for information, based on consultation with the interim revenue stabilization and tax policy (RSTP) committee. The Secretary is directed to regularly report to RSTP on these discussions and to submit an annual written report to the Governor and Legislature by December 15, 2001 and December 15, 2002 on the status of the discussions and whether the state should participate in the voluntary, multi-state system. The authorization and direction is repealed effective January 1, 2002.

Significant Issues

In its analysis, TRD estimates the state currently loses at least $20 million in gross receipts tax collections to untaxed mail order sales and electronic commerce, but indicates the extent of recovery of this lost revenue through the proposed third party system is uncertain. TRD notes there is potential for the state to lose revenue, at least for awhile, if the state adopts alternative filing procedures, repeals the gross receipts tax on transportation for electronic commerce purposes or restricts its level of taxation of services.

The National Conference of State Legislatures and National Governors Association have endorsed a proposal for third parties to collect, on a real time basis, and remit sales taxes to the states, based on simplification of the state sales tax system. Note that New Mexico has a gross receipts tax, with burden on the seller, rather than a sales tax, which imposes burden on the buyer. A summary of current federal and state proposals on internet taxation developed by LFC is attached.

FISCAL IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

TRD estimates full participation in discussions and negotiations will require about $15.0 in additional travel and per diem funds.

OTHER SUBSTANTIVE ISSUES

TRD notes an alternative approach to a multistate, voluntary system is to repeal the compensating tax estoppel in 7-9-7.1 NMSA 1978, and fund an aggressive effort to impose and collect compensating tax on all mail order or Internet sales.

AW/prr

Attachment

Summary of Electronic Commerce

Sales And Use Tax Issues

Legislative Finance Committee

February 5, 2000

Equity and Policy Issues

- •Disparity between "Main Street" retailers and Internet sellers.

- •Administrative costs imposed on multistate sellers with nexus.
- •If all shoppers had to pay, it may be possible to lower rates.
- •Generally lower income citizens without computers and Internet access would benefit.
- •Revenue erosion.

Proposed Solutions

- •No concrete answer yet.

Federal Government

- •The existing freeze on new taxes, due to expire in 2001, may be extended.
- •Presidential candidate Senator John McCain and House Budget Committee Chairman John Kasich of Ohio introduced bills to create tax-free Internet commerce.
- •Presidential candidate Governor George Bush proposed extending the moratorium on e-taxes.

Internet Tax Freedom Act of 1998

- •Prohibits the implementation of new taxes in cyberspace pending the recommendation of the Advisory Commission on Electronic Commerce. The Act expires in October 2001.
- •Grandfathered existing state and local taxes on electronic commerce.
- •Maintains existing liability for taxes already accrued and enforced and continues ongoing litigation with respect to these taxes.
- •Internet Tax Freedom Act created Advisory Commission on Electronic Commerce which currently appears divided on resolution.
- •Must recommend a national Internet tax policy to Congress by April 2000.
- •Final meeting: Dallas, Texas on March 20-21, 2000.
- •Currently split; no majority support for a single proposal.
- •Most members agree state and local sales taxes need to be simplified; one estimate of cost of collecting sales tax in multiple states costs by remote sellers is 8-14% of the amount of tax collected; small retailers pay nearly as much in administrative costs as they do in taxes.

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Outlook

- •Status quo would continue revenue erosion for states, heavy administrative burdens for those firms with nexus and Main Street equity issues.
- •Internet could be made tax free and state and local taxes could be preempted;
- •Could lead to erosion of state control over sales tax, and ultimately, a national consumption tax.
- •States could address the issue.

Andal Proposal (Dean Andal, California State Board of Equalization)

- •Codify the system followed by most mail order businesses; i.e., companies only collect taxes from customers in states where they have a substantial physical presence.

Billing Address of the Transaction Proposal

- •State with legal authority to tax based on billing address.
- •If that state is unable to tax the transaction, right to tax would be returned to state of seller's principal place of business.
- •Would require congressional approval because it violates current nexus standard.
- •Credit provision for sales and use tax paid to another state.
- •Requires merchants to add the tax to the purchaser's bill and remit the tax to the appropriate state.

Bit Tax

- •An excise tax that taxes Internet users an infinitesimal tax on each bit or byte of information transferred over the Internet.

Origin/Destination-Based Tax Coupled With Revenue Sharing Compacts Between States

- •Use an origin-based tax
- •If none imposed, insert destination taxes through compact approach

State and Local Government

- •States can bypass the Internet Tax Freedom Act, which only blocks new tax taxes but does not prevent collection of existing taxes from online buyers.

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- •With most states enjoying strong fiscal positions, it is difficult to marshal consensus.
- •To collect taxes from remote sales, state must minimize or eliminate the "undue burden" of collection by simplifying.
- •Would require giving up some authority over sales taxes.
- •Option: Single sales tax per state for remote sales.
- •Con: Local government would probably want one rate only on remote sales.
- •Con: Equity issues for locals remains.
- •Con: Remote sales could be taxed at lower rate in one location and higher rate in others; problem with constitutional prohibition against interstate commerce.
- •Question: Would companies with both stores and Internet sales be subject to "one rate" or local option rate?

- •Option: Single sales tax rate for entire state.
- •End of local option taxes, including stadium taxes, local transportation and cultural facilities taxes.
- •No local autonomy over local sales taxes.
- •State government would have to provide revenue sharing to local governments.

- •Option: Common set of definitions of products and services subject to sales and use taxes for all states and localities
- •Would lead to development of database

- •Option: Standardized filing; treatment of exempt organizations and simplified audit and record keeping procedures

<u>"Zero Burden System"</u>

- •Removes collection burden from retailers
- •Builds upon current technology allowing retailers to verify credit and debit card purchases in "real time"
- •Create a third-party financial clearinghouse to maintain a national database of tax rates by jurisdiction and by which products are taxable in each state. When transaction is processed, the company would supply retailers with the amount of tax to collect. Instead of the retailer collecting the tax and remitting it to the states, the tax would go directly to the third-party clearinghouse and then be remitted to the

states
- •Each state would pay for the service through a small percentage of the transaction

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- •States would still need to simplify sales and use tax and achieve uniformity in areas such as exemptions for nonprofits, charitable organizations, farmers, business purchases and others.
- •Major policy decisions on what goods and services to tax and what rate would remain with state government

NCSL/NGA Proposal

- •States would collet taxes for online and mail order sales.
- •The plan would be at first voluntary, then be universal.
- •See zero burden system discussion.
- •Collection based on the delivery address the buyer.
- •Intermediaries would handle any tax returns.
- •Intermediaries would be subject to audit.
- •Intermediaries paid by states and localities on a "per transaction" basis, either a flat per transaction rate, percentage rate, or combination.
- •Similar system being developed to collect value-added taxes for businesses in Europe being developed by IBM.
- •NGA expects approximately 6 states to enact the plan in 2000.