

Time for an Online Sales Tax?

Supporters of legislation to give states the ability to collect sales taxes for online purchases say they're making headway in Congress. **By Juliana Gruenwald**



Congress may be closer than ever to giving states the authority to require online retailers to collect sales taxes from all of their customers. Supporters of the legislation are looking for an opening to pass it during the lame-duck session that will follow the Nov. 6 election.

The issue has been sitting before Congress since 1992, when the Supreme Court ruled that states can't force catalog retailers to collect sales taxes from customers who live in states where those businesses have no store or other physical presence. That ruling has since been interpreted to apply to online retailers. The high court said that Capitol Hill could address the issue, yet legislation to close the loophole has made little headway until recently.

States say they are losing \$23 billion a year in uncollected sales and use taxes—a number that they predict will continue to rise as more people shop online. At the same time, businesses that operate both online and off-line complain that online-only retailers have an unfair advantage. Because they don't have to collect sales taxes from out-of-state customers, they can offer their products at a lower cost. Small brick-and-mortar retailers "are asked to match that and they can't," Rachelle Bernstein, vice president and tax policy counsel for the National Retail Federation, said in an interview. "They can't absorb the sales tax."

Backed by a major lobbying push led by big-box retailers and others, bipartisan bills were introduced last year in both chambers that took a different approach than past legislation by touting it as a states' rights issue and leaving more of the details to the discretion of state governments. That flexibility seems to have helped attract GOP support. About half

of the 53 cosponsors of the House bill are Republicans. Both measures would allow states to require online retailers to collect sales taxes from out-of-state customers—if they take steps to simplify their sales-tax regimes and otherwise ease the burden on retailers.

Both the House and Senate held hearings on the issue in this Congress, and the Senate sponsors, Michael Enzi, R-Wyo., Dick Durbin, D-Ill., and Lamar Alexander, R-Tenn., in particular, have been seeking opportunities to pass the bill. "Senator Enzi is keeping all options on the table for moving this legislation forward. He hopes to see it finished up this year," his spokesman said. "He continues to work with his colleagues to build support for this legislation."

Supporters want to attach the measure to another bill that is likely to pass during the lame-duck session. While that tactic remains a long shot, the legislation faces better odds heading into the next Congress than it did when the push began two years ago. "I feel more optimistic today than I have in a while," said Jennifer Platt, vice president for federal operations for the International Council for Shopping Centers. The council has joined with other major retailing groups to build support on Capitol Hill and among governors of both parties.

Even opponents acknowledge that they will still be at a disadvantage even if Congress doesn't act on the issue in the lame duck. "We are starting well behind a very well-organized effort led by the bigger companies," said Phil Bond, head of WE R HERE, a new coalition made up of small retailers and online giant eBay that opposes the legislation. "We've got a lot of work to do to communicate the other side." But he added that Congress "wants to

come down as pro-innovation and pro-small business," which he said favors critics of the tax proposals.

Bond's group and others argue that the measures would harm online retailers by requiring them to comply with more than 9,000 taxing jurisdictions, while brick-and-mortar stores have to deal with sales-tax rules only where they are located. Opponents complain that the bills introduced so far don't go nearly far enough in requiring states to simplify their tax regimes and don't include a big enough exemption for small businesses.

The legislation likely will still be a tough sell in Congress. "There's a good indication that the Republican-controlled House will see it as tax increase. It's a new tax burden," said Steve DelBianco, executive director of NetChoice, which represents Overstock.com, eBay, and other Internet firms. And House Majority Leader Eric Cantor, R-Va., does not appear to favor rushing the bill through the lame-duck session. "Leader Cantor believes that legislation like this needs to be fully vetted through the regular order process in the House," his spokeswoman said.

Still, Senate sponsors have been working with the House legislation's authors, Reps. Steve Womack, R-Ark., and Jackie Speier, D-Calif., to develop one bill to offer during the lame duck if the opportunity arises. Congressional supporters also have been reaching out to critics to find ways to make the legislation more palatable.

"Most don't give the unedited version [of the legislation] a snowball's chance of passing" in the lame duck, Mark Griffin, general counsel for Web-only retailer Overstock, told *National Journal*. But he added, "Most of the proponents are listening to us, are paying attention to our issues." While Overstock opposes both the House and Senate bills in current form, Griffin said his company could support federal legislation if several provisions are included, such as measures forcing states to do more to simplify their tax regimes, adding protections for collection mistakes, and compensating sellers for the costs of compliance.

Even if legislation doesn't move this year, opponents concede that the issue isn't going away. Supporters appear well prepared to resume their fight in 2013 wherever they leave off at the end of the year. Platt argues that just having a consensus bill ready to go for the next Congress could mean that supporters will be "starting on second base." ■