

August 1, 2012

Online Sales Tax Looking Better in Congress

By John Golden

With budget deficits and revenue shortfalls plaguing officials at every level of government, levying sales taxes on shoppers' online purchases from out-of-state companies might no longer be seen as political poison by Republicans and Democrats alike. For brick-and-mortar retailers, landlords and brokers in Westchester County, the long-sought change can't come soon enough.

In Congress this month, the House Judiciary Committee held a hearing on the Marketplace Equity Act, a bipartisan bill that has nearly 50 co-sponsors from both sides of the aisle in the bitterly divided House. It would allow a state to require e-commerce merchants anywhere in the U.S. to collect sales taxes on online purchases by that state's residents, even if the seller has no physical location in the state. A similar bill, the Marketplace Fairness Act, has been introduced in the Senate by bipartisan co-sponsors.

New York and other states have been largely stymied in their attempts to collect taxes on those so-called remote sales by a 1992 U.S. Supreme Court decision in which justices ruled that a state may not collect sales tax from retailers with no physical presence within its borders unless Congress used its powers under the Interstate Commerce Act to explicitly permit it. The pending bills in Congress would grant that authority to states, provided they use a simplified, uniform tax collection system.

"It really is unfair," Jonathan Gordon, president and CEO of Admiral Real Estate Services Corp. in Bronxville, said of the current situation for brick-and-mortar retailers in Westchester who must tack on to customers' bills a state and county sales tax of 8.375 percent. Gordon in the past has lobbied at congressional offices for the online sales tax as a member of the International Council of Shopping Centers (ICSC). "I think maybe government was willing to look past the unfairness because it was unpopular" to tax Internet commerce, he said.

"We're having trouble keeping these Westchester retail corridors filled with tenants," Gordon said. "I'm sure one of the factors is people shopping from their living rooms" – and often avoiding sales taxes when they do.

"The Internet did 26 to 27 billion (dollars) in sales last year," Gordon said. "That hardly sounds to me like a budding business that needs more help (in the form of a tax moratorium) to get a foothold."

ICSC lobbyists point to a 2009 study by professors at the University of Tennessee Center for Business and Economic Research who calculated that the 50 states and District of Columbia this year stand to miss out on a total of approximately \$11.4 billion in sales and use taxes from remote e-commerce sales; New York's lost revenue in 2012 was projected to total nearly \$866 million.

Online retail business in the nation is growing roughly four to four and one-half times as fast as brick-and-mortar retail trade, said Adam Ifshin, founding president and CEO of DLC Management Corp. in Tarrytown. His company's portfolio of leased properties includes 118 shopping centers totaling more than 16.6 million square feet of retail space in 31 states. "As this problem (with tax-free online sales) goes on, the tax avoidance issue grows bigger. ... You have a classic free-rider problem."

Ifshin leads lobbying efforts in Congress by the 55,000-member ICSC as chairman of its government relations advisory committee. He did not testify at the House committee's July 24 hearing on the Marketplace Equity Act – a hearing that was inconceivable just two years ago, he said – but for several years he helped lay the groundwork for legislation to "level the playing field" for DLC's retail tenants competing with online companies.



Adam Ifshin

"It took a long time to get traction," said Ifshin, who also has lobbied Democratic and Republican governors' associations, the National Conference of Mayors and National League of Cities to support the online sales tax. "An American politician's fascination with the Internet knows no bounds. It took a long time and literally thousands of meetings."

"There's no new taxation going on here," Ifshin said. "All this is is a technical fix" of legislation that dates to the dawn of Internet commerce. "These bills are not complicated and they're not creating any new tax."

In Briarcliff Manor, online entrepreneur Susan Sears has not closely followed the progress of the federal legislation that could affect the business in French imports, *Quel Objet*, which she started in her home eight years ago. "I know it keeps raising its head now and then," she said.

Sears already collects the New York sales tax from her customers and makes quarterly payments to the state. But only about 5 percent of her customers reside in New York, and she worried about the impact that having to collect taxes from out-of-state customers might have on her one-woman operation.

“It would probably sink it completely,” she said. “If I had to do it for all 50 states, I wouldn’t have time to do anything else. It would be immensely complicated.” And integrating tax software into her shopping-cart system to simplify that task would consume more time and money.

Sears and other small business owners could be exempt from remote sales tax collections under provisions in the bills pending in Congress. The House bill as proposed would exempt businesses with less than \$1 million in annual sales in the U.S. or less than \$100,000 annually in the taxing state.

“Maybe there should be an exemption” for businesses like hers, Sears said. “I would find it hard to argue that Amazon shouldn’t be paying sales tax.”

Among lobbying groups testifying against the House bill, the Competitive Enterprise Institute urged Congress to reform sales tax policy by assessing the tax rate for the seller’s principal place of business rather than the buyer’s location. Payments would be made to the state in which the vendor is located.

“In the last 24 months,” said Ifshin, “people have realized that this is not a tax on the Internet. This is a fairness issue, an equity issue. This is purely a matter of bringing into the 21st century interstate commerce.”

As for the legislation’s prospects in Congress, Ifshin said he thinks nothing will be done before the November election. “There’s a reasonable chance the issue will be addressed as part of a larger tax cleanup.”

“The competition in the free market should rule, but the playing field should be level,” he said. Among brick-and-mortar tenants struggling to compete for customers increasingly drawn to online shopping, “No one I speak to in retail sees this as a panacea.”

“The burden is still on the retailer to compete. That’s not going to go away. They’re not looking for a gift,” Ifshin said.