

Internet Sales Tax Update

House Ways and Means

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Peter Griffin, Legislative Counsel

Vermont's Sales and Use Tax

- 6% on retail sales price of tangible personal property and certain select services.
- “Trust tax” = collected by vendors on behalf the State.
- If vendor doesn't collect and remit the sales tax, the purchaser owes the use tax – NH example.
- Use tax compliance is very low.

Internet sales and Quill

- What happens if the vendor is in another state and sells something online to a Vermont resident?
- Quill v. South Dakota (1992) held that a state cannot required an out-of-state vendor to collect and remit the sales tax unless the vendor has a physical presence in the State.
- Quill, plus low use tax compliance, means that a significant portion of internet sales are not taxed.
- Physical presence test has led to both revenue and equity concerns.

State strategies after Quill

- Support federal legislation
- Increase use tax compliance
- Streamlined Sales and Use Tax Agreement
- Click through legislation
- Notification legislation
- Set up a state challenge to Quill

Increase use tax compliance

- In 2003, Vermont required use tax liabilities to be reported on the income tax return.
- Taxpayer can either:
 - report actual use tax liability, or
 - report actual use tax on purchases over \$1000, plus a percentage of AGI as a proxy for the use tax owed on purchases under \$1000.
- Starting for tax year 2016, the percentage of AGI used is 0.2%, and it is indexed for future years

Streamlined Sales and Use Tax Agreement

- Share common definitions and administrative provisions.
- 24 states participate – Vermont joined in 2007.
- Some national vendors voluntarily comply in Streamlined states.
- Vermont realizes about \$1 million each year from participating in SSUTA.

Click through legislation

- Many online vendors offer commissions for independent websites to refer business to them.
- In 2008, New York passed legislation expanded its definition of “vendor” to include any independent referring websites located within the State of New York.
- The New York law was upheld in court. Other States, including Vermont (2011) passed similar laws.
- Several different results:
 - Some online retailers negotiated collection agreements in certain states, particularly where they had, or wanted to establish, a physical presence.
 - In some states, like Vermont, the online retailers cancelled the referral contracts.

Notification legislation

- In 2010, Colorado passed a law requiring out-of-state vendors to notify purchasers of their purchases and use tax liability, and to notify the state department of revenue of such sales.
- Designed to increase use tax compliance.
- Colorado notification legislation was litigated in U.S. Tenth Circuit, and upheld.
- Kennedy concurrence on a procedural defense invited states to challenge Quill.

Set up a state challenge to Quill

- Even if no physical presence, out-of-state vendor must collect and remit if:
 - Alabama (by regulation):
 - \$250,000 in sales into state and some other minimum contact (advertising, solicitation, etc.)
 - Currently being appealed administratively.
 - South Dakota (S.B. 106):
 - \$200,000 in sales into state or 200 individual transactions into state
 - Currently being litigated in state and federal courts in South Dakota.

Vermont 2016 notification legislation

- Requires vendors who do not collect the sales tax to:
 - notify purchasers of their use tax obligation for each sale
 - provide an annual notice to Vermont consumers who purchase \$500 or more in the previous calendar year, showing the amount of the purchases made.
- Made effective on the *earlier* of July 1, 2017, or the first day of the first quarter after the Colorado reporting requirements are implemented.
- The Colorado litigation came to an end on 12/12/16, and the Colorado reporting requirements could be implemented as soon as the first quarter of 2017.

Vermont 2016 Quill legislation

- Requires out-of-state vendors to collect and remit if:
 - \$100,000 of sales into the State, or
 - 200 individual sales transactions
- Made effective on the *later* of July 1, 2017, or the first day of the first quarter after the physical presence requirement in Quill is overturned.