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States must seek same page on e-sales tax issue

There's nothing new about transacting business online. That's an everyday (every hour, every minute) occurrence relied upon by businesses and consumers alike. In the software world, it's only natural that the web would become a critical point of sale. Why, then, are tax

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authorities still disjointed when it comes to dealing with downloadable software?

If you've transacted business electronically, then you've likely encountered the quandary of state and local sales tax relating to e-commerce. Each local jurisdiction has authority over how electronic sales are taxed

in their state, and little coordination exists among them. This is not a small universe — there are thousands of local tax jurisdictions, and they continue to increase.

The real problem is that each state prescribes its own laws, definitions and formulas in determining taxation. Generally, states may impose sales tax collection obligations on vendors if companies have "nexus" with a state. The Commerce and Due Process Clauses of The United States Constitution provide states with a foundation for defining what creates nexus. However, states still have great flexibility in determining what gets taxed.

Taking a look at a few states, we see a wide range of approaches:

California: In California, sales tax does not apply to the sale or lease of prewritten programs if the product is transferred for download by remote telecommunications from the seller's place of business to the purchaser's computer and the purchaser does not obtain tangible personal property (i.e., a CD on which the software program is written).

Connecticut: Canned, or prewritten, software is considered tangible personal property, and its sale, leasing or licensing (including upgrades) is taxable at 6 percent. Here's where it gets tricky, though: If software is downloaded, but no tangible property is transferred, the charge is assessed for "computer and data-processing services." That means a Connecticut retailer of downloaded software is actually a retailer of computer and data-processing services and must register, collect and remit sales tax of 1 percent.

Massachusetts: Whether delivered through tangible or electronic means, a sale in Massachusetts of prewritten (canned) software is a taxable sale, subject to sales tax.

You can see the problem: three different states, three different tax codes.

Thankfully, efforts are under way to pave the way for a unified system. The Multistate Tax Commission is an intergovernmental state-tax agency that works on behalf of

states and taxpayers to administer tax laws that apply to multistate and multinational enterprises. The MTC has 20 member states and 21 associate member states, with additional states supporting its purpose.

Another initiative, the Streamlined Sales Tax Project (SSTP), will develop measures to design, test and implement a system that radically simplifies sales and use taxes. The SSTP has 17 full-member states and five associate-member states, with several other participating states. The coordination of this project resulted in the Streamlined Sales and Use Tax Agreement (SSUTA), which puts forth uniform definitions for taxable goods and services, simplification of tax rates and of tax reporting, and administration procedures for businesses.

With Internet connection speeds getting faster every year, software downloaded electronically will only become more widespread. Whether businesses are selling or buying, states should come together on cross-border sales tax policies and make life a little easier for companies that are embracing the future by reducing the administrative burdens faced by these companies for transacting business across state lines.

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