Internet Tax Bill Draws Strange Alliances

As the Senate moves toward likely passage of legislation to allow states to tax Internet sales, some unusual coalitions continue to push for and against the bill. Amazon, the world's largest online retailer, is for it. So, too, is supply-side economics guru Art Laffer, famous for popularizing the belief that lowering taxes promotes both economic growth and higher revenue. Anti-tax crusader Grover Norquist of Americans for Tax Reform is fiercely opposed to the bill, while many of the congressional Republicans who signed ATR's pledge to vote against any new tax are solidly behind what supporters have dubbed the Marketplace Fairness Act.

"I oppose government policies that favor some businesses over another and that's what we're doing right now," said Senator Mike Enzi (R-Wy.). Internet sales are currently free of the sales taxes that 45 states, including Wyoming, impose on transactions that occur at retail establishments located within their borders. The bill's supporters say that puts the "brick-and-mortar" stores at a competitive disadvantage and deprives states of much-needed revenue. "Sales tax is the main source of revenue for cities, towns and counties and even the state," said Enzi. "It provides the money for roads, police, fire protection. If we don't collect that revenue, they'll have to find a new source."

Senators voted 63 to 30 to advance the bill on a procedural motion Thursday evening and a final vote is scheduled for May 6. The bill has broad support in the House as well, with some usually "anti-tax" conservatives on board. Rep. Steve Womack (R-Ark.), author of the House version of the bill, framed the issue as one of independence in comments to the *New York Times*.

"I have a lot of constituents saying to me, 'Grover Norquist did not elect you,'" said Womack. "Members that come to Washington and kowtow to special interests end up contributing to this very polarized government. These are tough decisions we have to make up here."

Some contend the measure would not authorize "new" or increased taxes, but would simply extend existing state taxes to Internet sales at the same rates that apply to over-the-counter sales. Still, the legislation could result in an estimated $24 billion in new revenue for the states. If enacted, each state could require out-of-state sellers to collect and pay the state tax on sales, as they do now on transactions within the state. That would require a business selling in several states to know the laws and collect the taxes for 45 states as well as municipal and county governments that have sales taxes. Even Montana and Alaska, two states that charge no sales tax, have municipalities that do.

"So a business owner in New Hampshire — which has no sales tax — sending a fishing pole to a customer in Juneau, Alaska, would have to collect a 5 percent sales tax, but would charge no sales tax to the buyer in Denali Borough," wrote Sarah Parnass at abcnews.com. Small, online retailers may be required to calculate, collect, and remit the taxes on their sales to literally thousands of taxing jurisdictions and be subject to an untold number of what Heritage Action, the political arm of the conservative Heritage Foundation, has called "tax audits from hell."

Kelly Ayotte (R-N.H.) and Ron Wyden (D-Ore.), two senators from states with no sales tax, have been leading the fight in the Senate against a tax on Internet sales, having introduced a "Sense of the Senate" resolution last November against giving states that authority. In a press release, Wyden took issue with the "fairness" argument made by those who favor a tax on Internet sales:

> Small online storefronts are taxed differently than big-box brick and mortar operations because they are different. A state can force an in-state store to collect and remit sales tax because that store benefits from state services. But Virginia isn't going to send the fire department to help out an online retailer operating out of a living room in Oregon.

Amazon, in joining forces with the National Retail Federation and the Retail Industry Leaders Association in support of the bill, is defending its own newly acquired turf. Opponents say the Internet giant can afford the staff of accountants needed to deal with all the tax requirements of all the states, while its smaller competitors cannot. But Amazon in recent years has also opened a number of warehouses across the country to better compete with local retailers on the swift delivery of products. The U.S. Supreme Court ruling in *Quill Corporation v. North Dakota* (1992) held that a state may not impose a tax on transactions made outside its jurisdiction unless the seller has a physical presence within that state. Having established such a presence in a number of states, Amazon is already paying taxes that many of its online competitors have so far avoided.

Laffer, the economist who created the "Laffer curve" to illustrate the benefits of lower marginal income tax rates, has advanced the notion that a tax on Internet sales would promote economic growth. The revenue raised would enable the states to lower the top rates on state income taxes, he argues, while leaving the total revenue collected by the state constant. But governors lobbying for the Internet tax are not looking for that added revenue so they can reduce income taxes. They're saying they need it to meet current expenses. Enacting a new tax rarely results in relief from existing taxes, since government spending nearly always exceeds the flow of new revenues.

The legislation exempts anyone with under $1 million in online sales, which would likely spare Sen. Wyden's retailer operating out of a living room in Oregon. It also requires "simplification of state laws" and requires states to provide software or services to online retailers free of charge, Dan Crippen, executive director of the National Governors Association, wrote in a *Wall Street Journal* opinion piece in support of the bill. That adds, however, to the constitutional issues raised by opponents of the measure. Authorizing governments to tax sales that occur beyond their borders, writes Daniel Mitchell of the libertarian Cato Institute, is "an assault of sovereignty, particularly since out-of-state merchants will be coerced into being tax collectors for a distant government."

Sen. Wyden has also raised the issue of competition with Internet sellers from outside the United States, since they would not be subject to the same taxes. "Maybe the sponsors of the bill should want to rename it the 'shop Canada' or 'shop Mexico' [bill]," he said, "because that's what it will be."