



Indiana lawmakers push for Internet taxes

Mary Dieter September 23, 2010

A bipartisan duo of state lawmakers wants Congress to allow the states to collect sales taxes on Internet purchases, a move they say could bring hundreds of millions of dollars to cash-strapped Indiana and level the playing field for Hoosier retailers.

State Rep. Ed DeLaney, D-Indianapolis, was spurred into action after David Simon, CEO of mall developer Simon Property Group Inc., lamented that Internet retailers rarely charge their customers for sales tax, putting mom-and-pop stores and big-box retailers at a competitive disadvantage because they must add Indiana's 7-percent sales tax to the customer's bill.

"[The] Internet has a distinct advantage, which in my opinion is unfair," Simon told the Economic Club on Sept. 16, "and hopefully we're looking for fairness in our tax system. If you sell it in the physical world versus the virtual world, it ought to be the same. ... We need to level the playing field tax-wise."

DeLaney has asked Sen. Luke Kenley, R-Noblesville, to bring the issue before the state Budget Committee, the five-member body that oversees state finances while the legislature is not in session. Kenley said he is not sure that's the right forum, but DeLaney "is trying to do the right thing. I appreciate an ally on this."

Kenley is on the national forefront of the issue; he is first vice president of the Streamlined Sales Tax Governing Board Inc., a body created in 1999 by the National Governors Association and the National Conference of State Legislatures to simplify the collection of sales taxes and thus remove the central reason online retailers say they cannot collect sales tax.

Kenley said he has plenty of allies—up to a point. For the past three or four years, he has visited Indiana's congressional delegation in Washington D.C., urging lawmakers to pass the so-called Main Street Fairness Act. The U.S. Supreme Court ruled in 1992 that retailers need not collect sales tax in states where they do not have a physical presence. But Congress, as the arbiter of interstate commerce, could require such retailers to do so.

Members of Congress “all agree it's the right thing to do, but they don't get it done,” Kenley said. “They don't want to be perceived as in any way asking anybody to pay any more taxes—even though they're taxes that are already due.”

Indeed, when an Indiana resident buys, say, a juicer online, the retailer typically doesn't charge sales tax if it doesn't have a storefront or warehouse in Indiana. The purchaser owes a “use tax”—also 7 percent—because he'll use the juicer in Indiana.

The local appliance store owner has lost that sale, possibly because he has to add sales tax. But “your bricks-and-mortar people hire employees, who pay taxes,” said Kenley, who ran Kenley Supermarkets in Noblesville from 1974 to 1998. “They give your people productive employment. They pay property taxes, so they support local government. Usually they're sponsors of all the Little League baseball teams. ... They've really sacrificed and are committed to Indiana a lot, so I think we owe them a level playing field.”

Even large retailers are harmed when would-be customers take the time of sales associates to learn about the latest big-screen TV, only to go home and order it online, he said.

What's more, hardly anyone pays the use tax. Stephanie McFarland, public relations director for the Department of Revenue, said only about \$1.4 million in use taxes were self-reported on 2009 returns filed in 2010.

“My guess is 98 percent of us don't file a use-tax return if we're buying over the Internet,” Kenley said. DeLaney said it's likely that few Hoosiers are aware that they owe the tax and those who are may be turned off by the effort it takes to retain receipts, decipher the purchases for which no sales tax was charged and declare the amount on their state income tax forms.

Whatever the reason, Hoosiers who don't pay sales or use taxes deprive the state of as much as \$400 million a year—not an insignificant amount, especially when the state faces a \$1.3 billion budget deficit by fiscal 2012, Kenley said.

DeLaney said he knows that it's an uphill political battle to persuade Congress to change the law. He wants the 2011 Indiana General Assembly to pass a resolution urging Congress to do so and a bill that spells out how the revenue would be used if that happened.

He will propose that the state devote a certain percentage to help small businesses, the very entities he believes are most harmed by the current situation. “Maybe that will get Washington's attention,” DeLaney said. “In a curious way, this is a zero-cost stimulus program from Washington.”

Kenley said he is concerned that Indiana lawmakers may be just as skittish as their federal counterparts to pass anything that could be construed as a tax increase. But if the money were to become available, he said, his first priority would be public education, the funding of which was reduced \$300 million last year. He also knows that “there's going to be a million ideas about how to spend that money.”

Opponents of stronger Internet taxation say doing so would be a major hindrance to electronic

commerce just as it's becoming an established industry. They say collecting taxes puts an additional burden on Internet retailers, many of which are small businesses. And, opponents say, tax-collection mandates could drive popular e-commerce sites to set up operations outside the United States.

Amazon.com, the nation's biggest online retailer, has a distribution center at Whitestown, but does not collect sales tax when Hoosiers buy its own merchandise. Kenley said Amazon representatives regularly attend meetings of the Streamlined Sales Tax group and their official position is that it's fair to remit sales tax, but only if all online retailers do so.

Amazon contends that it need not collect sales tax in states, including Indiana, where it has distribution centers because its online business is a discrete legal entity. When New York enacted a state law requiring Amazon to remit sales tax, Amazon sued and announced it would pull its facilities out of all states that enacted similar laws, except California, Texas and Florida.

North Carolina, unable to force Amazon to collect sales tax, tried to collect the revenue for itself by retrieving from Amazon its buyers' names, amounts of their purchases and broad categories of spending, since some purchases are tax-exempt. Amazon filed suit, saying North Carolina's actions threatened customers' privacy. The matter is pending.