MOM & POP V. DOT-COM: A DISPARITY IN TAXATION BASED ON HOW YOU SHOP?

With the extension of the Internet Tax Freedom Act,[1] concern has resurfaced over whether and when shoppers will be forced to pay state sales taxes on purchases made over the Internet. In fact, consumers should be paying sales tax on all Internet purchases, though few actually do. This iBrief explores the current law on taxation of e-commerce purchases and argues that small modifications by state tax administrators will align the tax treatment of mom & pop stores and e-retailers.

Introduction

The debate over Internet sales taxes arises because brick-and-mortar retailers worry that consumers will make purchases on the Internet specifically to dodge sales taxes, putting them at a competitive disadvantage. However, under current law, the tax implications of making a purchase from an e-retailer or a mom & pop are the same—tax on both purchases is due to the state taxing authority. The only difference is who is obligated to remit the tax. In some circumstances, the e-retailer, like the mom & pop, is obligated to collect and remit the sales tax to the state tax administrator. In other situations, the responsibility falls to the consumer to calculate and pay the state sales tax bill. As this iBrief will discuss, to the extent there is a disparity in taxation, it is due to non-compliance rather than preferences within the tax system for dot-coms over mom & pops.

The *Quill* Case

Traditionally, sales tax has been collected at the point of sale by the retailer and remitted to the state tax agency on a periodic basis. However, retailers making sales to out-of-state consumers are under no obligation to collect sales taxes on the out-of-state purchases, under the rule set forth by the Supreme Court in *Quill v. North Dakota.*[2] In 1992, North Dakota brought a case against a mail-order catalog retailer, attempting to force it to collect and remit sales taxes to the state. The company was incorporated in Delaware, and had no offices, warehouses, or employees in the state of North Dakota. However, the company made sales to North Dakota

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[1] Internet Tax Nondiscrimination Act, Pub. L. No. 107-75, 115 Stat. 703 (2001). President Bush signed the Internet Tax Nondiscrimination Act on November 28, 2001. The Act is an extension of the Internet Tax Freedom Act, passed in 1998, which imposed a three-year moratorium on Internet-specific taxes.

[2] 504 U.S. 298 (1992).

residents by sending catalogs to generate interest in the company's products. If a North Dakota resident made a purchase, the goods were mailed directly to the consumer's residence. The company refused to collect and remit sales taxes from their sales to North Dakota residents.[3]

In determining whether the mail-order retailer could be forced to collect and remit sales taxes to North Dakota, the Supreme Court bifurcated the analysis. The court looked at whether the North Dakota law allowing it to impose tax jurisdiction over every person who engaged in regular or systematic solicitation of customers in the state was valid under the Due Process Clause[4] and the Commerce Clause.[5] "[A]lthough the two notions cannot always be separated, clarity of consideration and of decision would be promoted if the two issues are approached . . . at least tentatively as if they were separate and distinct, not intermingled."[6] The due process analysis was less critical of North Dakota's statute,[7] and the subsequent Commerce Clause analysis stated that "a State may, consistent with the Due Process clause, have the authority to tax a particular taxpayer, [but] imposition of the tax may nonetheless violate the Commerce Clause."[8]

Due Process Analysis

For the due process analysis, the *Quill* court analyzed whether the company had "minimum contacts" to allow North Dakota to assert tax jurisdiction. The court looked for "some definite link, some minimum connection, between [the] state and the person, property, or transaction it seeks to tax."[9] In *Quill*, the court found that the company had purposefully availed itself of the benefits of the North Dakota economic market, based on the substantiality of the company's sales within the state.[10] Because Quill had 3,000 customers and sales of $1 million in North Dakota, the court determined that North Dakota's assertion of tax jurisdiction over the mail-order retailer was consistent with due process considerations.

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[3] *Quill*, 504 U.S. at 302-03.
[4] "[No State shall] deprive any person of life, liberty, or property, without due process of law." U.S. CONST. Amend. XIV, § 1.
[5] Congress may "regulate Commerce with foreign Nations, and among the several states." U.S. CONST. art. I, § 8, cl. 3.
[6] *Quill*, 504 U.S. at 306 (quoting Int'l Harvester Co. v. Dep't of Treasury, 322 U.S. 340, 353 (1944) (Rutledge, J., concurring in part and dissenting in part)).
[7] *Id.* at 313 (reasoning that the "substantial nexus" standard under the Commerce Clause is more strict than the "minimum contacts" test under the Due Process Clause).
[8] *Id.* at 305.
[9] *Id.* at 306 (quoting Miller Bros. Co. v. Maryland, 347 U.S. 340, 344-45 (1954)).
[10] *Id.* at 307.

Commerce Clause Analysis

In *Complete Auto Transit, Inc. v. Brady*,[11] the Supreme Court adopted a four-prong test for determining whether imposition of tax jurisdiction by a state is valid under the Commerce Clause. A tax would be valid only where the tax is "[1] applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the State."[12] In *Quill*, the court clarified the first prong of the *Complete Auto* test, what constitutes a substantial nexus with the taxing state, as to an out-of-state retailer. The court refused to apply the same test as for due process and conclude that economic presence in the state was sufficient under the Commerce Clause.[13] Rather, the court equated substantial nexus with physical presence in the state.[14] Thus, a substantial nexus would exist if the company had employees, retail facilities, a warehouse, or an office in the state.[15] Additionally, a substantial nexus would exist if the company made use of state instrumentalities other than mail or common carrier.[16] If the company opted to use its own delivery trucks, presence of those trucks in the state would be enough for the state to impose tax jurisdiction and cause the company to collect and remit sales taxes for the state.[17]

The Quill Holding

Ultimately, on Commerce Clause grounds, the Supreme Court said that North Dakota could not force the mail-order retailer to collect sales taxes from consumers who live in the state, because the company had no physical presence there. Thus, after *Quill*, there are three situations in which a company may find itself, two that generate a duty to collect and remit sales taxes, and one that does not.

1. The company makes a sale to an in-state resident. For instance, a retailer whose sole operations are in Colorado sells goods to a Colorado resident. In this case, the company will be obligated to collect and remit sales tax to the Colorado tax authority.

2. The company makes a sale to an out-of-state resident, where the retailer has no physical presence in the state of residence. For instance, a retailer whose

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[11] 430 U.S. 274 (1977).
[12] *Id.* at 279, *quoted in Quill*, 504 U.S. at 311.
[13] *Quill*, 504 U.S. at 312.
[14] *Id.* at 317.
[15] *Id.* at 315.
[16] *Id.* at 311.
[17] *See* Town Crier, Inc. v. Dep't of Revenue, 733 N.E.2d 780, 786 (Ill. App. Ct. 2000).

sole operations are in Colorado sells goods to a Texas resident. In this instance, the company cannot be forced to collect and remit Texas state sales tax on the purchase.

3. The company makes a sale to an out-of-state resident, where the retailer has physical presence in the state of residence. For instance, a retailer headquartered in Colorado has stores in both Colorado and Texas. The company will be forced to collect and remit sales tax to Colorado on sales to Colorado residents, and Texas on sales to Texas residents.

The *Quill* court's reasoning for excepting the out-of-state mail-order retailer from an obligation to collect and remit sales taxes focused at least in part on the tax compliance burden. The court concluded that it would be an undue burden to ask companies to collect and remit sales taxes from all jurisdictions if they did not have some connection to each jurisdiction.[18] Since the *Quill* decision, the tax system has grown even more complex; both states and localities have the authority to impose sales taxes, so there are over 7,500 tax jurisdictions in the United States, with varied rates and varied tax bases.[19]

Implications of Quill for E-retailers

By implementing a bright-line test, that physical presence is required for Commerce Clause nexus, the Supreme Court recognized the value companies place on certainty in tax planning. According to the court, the result comported with the "settled expectations" of the mail-order catalog business because a requirement of physical presence has "engendered substantial reliance and has become part of the basic framework of a sizeable industry."[20] Mail order, however, is not the only industry that has come to rely on the *Quill* rule. Though there is no direct implication from mail-order to e-retailers, most Internet companies assume that the *Quill* decision applies to them because the two industries share the defining characteristic of an ability to sell in many places without maintaining a physical presence. Thus, under *Quill*, the question for e-retailers is the same as for mail-order retailers: what physical presence is enough such that a state can impose a duty to collect and remit state sales taxes? Certainly, as the court stated in *Quill,* the presence of employees, retail facilities, a warehouse, or an office in the state

[18] *Quill*, 504 U.S. at 313.
[19] The variations between jurisdictions are exaggerated by the fact that some jurisdictions exclude food or certain types of clothing from taxation. Additionally, some jurisdictions unilaterally celebrate temporary sales tax holidays.
[20] *Quill*, 504 U.S. at 316-17.

will generate jurisdiction for tax purposes.[21] The most pressing issue for e-retailers is whether having a network server in the state will be enough of a physical presence to generate jurisdictional nexus. As yet, that issue is unresolved. Some commentators believe that having a server in a state is too insubstantial to qualify for nexus under the Commerce Clause.[22] The only state where an e-retailer can locate a server and enjoy absolute certainty is California, which has a statute indicating it will not impute jurisdictional nexus based only on the presence of a web server.[23]

The only advantage the *Quill* decision gives e-retailers, that they can avoid an obligation to collect and remit sales taxes if they do not have a physical presence in a state, is insubstantial. Any perceived advantage of e-retailers over brick-and-mortar stores is in most cases fully offset by the shipping costs that accrue to Internet purchases.[24]

The Internet Tax Nondiscrimination Act of 2001

In *Quill*, the court stated that "the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve . . . Accordingly, Congress is now free to decide whether, when, and to what extent the states may burden interstate mail-order concerns with a duty to collect . . . taxes."[25] The closest Congress has come to accepting that invitation came in the Internet Tax Freedom Act of 1998[26] and the Internet Tax Nondiscrimination Act of 2001.[27]

The debate over whether e-retailers, like their brick-and-mortar counterparts, should be forced to collect and remit sales taxes reached new heights during congressional consideration of the Internet Tax Nondiscrimination Act of 2001. The Act extended for two years the moratorium on Internet-specific taxes that was laid out in the Internet Tax Freedom Act of 1998 (which

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[21] *Id.* at 315.
[22] *But see* Sidney S. Silhan, *Symposium on the Second Amendment: Fresh Looks: If It Ain't Broke Don't Fix It: An Argument for the Codification of the Quill Standard for Taxing Internet Commerce,* 76 CHI.-KENT L. REV. 671, 696 (2000) (arguing that imposition of tax jurisdiction is appropriate where a server in the state is the company's only physical presence).
[23] DAVID E. HARDESTY, ELECTRONIC COMMERCE: TAXATION AND PLANNING ¶ 14.03[3][a] (2002) (citing Cal. Reg. § 1684(a)), *available at* 1999 WL 1336736, at *31. California, as a technology center, has an interest in attracting dot-coms from other states, and such a statute provides certainty for prospective business entrants.
[24] David Cowling & Gregg Perry, *The E-Tax Man Cometh: The Battle Over Internet Taxation Makes Its Way Back To Washington*, 19 No. 17 ANDREWS COMPUTER & ONLINE INDUSTRY LITIGATION REPORTER 14 (March 26, 2002).
[25] *Quill*, 504 U.S. at 318.
[26] Internet Tax Freedom Act, Pub. L. No. 105-277, 112 Stat. 2681 (1998).
[27] Internet Tax Nondiscrimination Act, *supra* note 1.

expired on October 21, 2001).[28] However, Congress deferred a decision on the thorniest issue, choosing not to disrupt the *Quill* precedent or give guidance on the tax jurisdiction of states over e-retailers. In part, Congress may have been attempting to facilitate the growth of the Internet.[29] The Act, which expires on November 1, 2003, reaffirmed *Quill*'s physical presence requirement for Commerce Clause nexus, saying that states may not collect a tax if "the sole ability to access a site on a remote seller's out-of-state computer server is considered a factor in determining a remote seller's tax collection obligation."[30]

Due to the contentiousness of the debates thus far, it is doubtful that Congress will accept the expiration of the Internet Tax Nondiscrimination Act as an invitation to disrupt the *Quill* precedent.[31] Some commentators have insinuated that Congress may never take action on the issue of Internet sales taxes because they have no vested interest in what is mainly a state and local issue.[32] Therefore, to the extent states are concerned about the tax impacts of a shift toward Internet shopping, they should make adjustments within the existing laws to capture tax revenues from e-retailers.

A Disparity in Taxation Based on How You Shop?

As the e-commerce industry has grown, so have the concerns of mom & pop competitors (Will my business survive?) and state tax authorities (Will Internet purchases go untaxed?). Currently, purchases made over the Internet comprise 1.2% of total retail sales.[33] In 2001, Internet purchases topped $35 billion,[34] and some predict that they could soon reach $300 billion.[35] The growth in online spending is four times the rate of growth in overall retail sales.[36]

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[28] *Id.*

[29] *See* H.R. REP. NO. 107-240 (2001) (statement of Rep. Goodlatte) ("[I]f you are going to impose these taxes on the Internet, you are going to harm the growth of an economy, an industry, that is already struggling.").

[30] Internet Tax Freedom Act, Pub. L. No. 105-277, 112 Stat. 2681 (1998).

[31] Under a proposed amendment to the Internet Tax Nondiscrimination Act of 2001, passage of a uniform simplified sales tax by twenty state legislatures would force Congress to consider legislation to nullify the *Quill* precedent. This amendment was rejected by both the House and Senate, who voted in favor of an unconditional two-year extension of the Act. *See* Russell Gold, *Regional Report: Cross Country*, WALL ST. J., Nov. 21, 2001, at B6; H.R. REP. NO. 107-240 (2001) (statement of Rep. Bachus).

[32] *See* Brian S. Masterson, *Collecting Sales and Use Tax on Electronic Commerce: E-Confusion or E-Collection*, 79 N.C. L. REV. 203, 225-26 (2000).

[33] U.S. Dep't of Commerce Press Release (Aug. 22, 2002), *available at* http://www.census.gov/mrts/www/current.html (last visited Nov. 16, 2002).

[34] *Id.*

[35] Clayton W. Shan, *Taxation of Global E-commerce on the Internet: The Underlying Issues and Proposed Plans*, 9 MINN. J. GLOBAL TRADE 233, 235 (2000).

Sixty-two million people are expected to make purchases online in the fourth quarter of 2002, with three million of those being first-time online purchasers.[37]

In response to the rise in Internet shopping, states worry that their lack of tax jurisdiction over e-retailers causes significant tax leakage.[38] A recent study showed that the loss in state tax revenue from Internet purchases will grow to $55 billion over the next ten years.[39] These lost revenues are of particular importance during a recession, when state funding is already tight for such necessities as public schools, law enforcement, and road projects.[40] Additionally, the ability to draw on sales tax as a source of revenue is critical in circumstances where other taxes are limited, as in California, where voters have imposed a property tax ceiling.[41]

To avoid sales tax leakage from e-retailers and mail-order retailers, most states have imposed use taxes on consumers.[42] The use tax is a tax on the use, storage, or consumption of an item within the taxing state where sales tax has not been collected. Use tax rates generally match sales tax rates. For transactions on which the consumer pays no sales tax, he is obligated to self-remit the use tax. For example, if a consumer purchases an item over the Internet from an out-of-state company who has no obligation to collect and remit sales tax, under the use tax statute the consumer should calculate his tax liability and include this in his annual state income tax return. However, due to consumers being unaware of their responsibility, consumer compliance with use tax obligations is virtually non-existent, and the use tax has been called the "most ignored tax on the books."[43] Because collection of use taxes has been a relatively ineffective means of capturing tax revenue from Internet purchases, states are applying pressure on Congress to put the onus on e-retailers to collect and remit sales taxes. However, as stated previously, it may be a long time before Congress accepts the invitation in *Quill* to force out-of-state retailers to collect and remit

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[36] *eMarketer Reports Online Sales Will Grow to $13 Billion This Holiday Season*, Nov. 3, 2002, *at* http://www.fashionwindows.com/visualprofiles/2002/emarketer.asp (last visited Nov. 16, 2002).
[37] *Id.*
[38] There was also tax leakage pre-Internet, due to purchases by state residents at stores in states that do not impose a sales tax, or through out-of-state mail-order catalogs. It can be assumed, however, that the magnitude of these sales pales in comparison to the sales occurring via the Internet.
[39] Study by the Center for Business and Economic Research at the University of Tennessee, commissioned by the Institute for State Studies, *referenced in* Matthew Vadum, *State and Local Finance: NGA: Looming Sales Tax Losses Make Simplification a Must*, THE BOND BUYER, Oct. 3, 2001, at 4.
[40] *See* H.R. REP. NO. 107-240 (2001) (statement of Rep. Bachus).
[41] Joseph R. Feehan, *Comment: Surfing Around the Sales Tax Byte: The Internet Tax Freedom Act, Sales Tax Jurisdiction and the Role of Congress*, 12 ALB. L.J. SCI. & TECH. 619, 632 (2002).
[42] Use taxes predate the advent of the Internet.
[43] *See* H.R. REP. NO. 107-240 (2001) (statement of Rep. Sensenbrenner).

sales taxes regardless of the company's physical presence in the state. Likewise, due to the principle of *stare decisis*, it is unlikely the Supreme Court will overturn *Quill.* All is not lost, however. States have two options as to how to stop the sales tax leakage: (1) stronger enforcement of use taxes, or (2) give e-retailers an incentive to voluntarily collect and remit sales taxes.

State Option #1: Stronger Enforcement of Use Taxes

There are a number of creative means that states could utilize to enforce use taxes against individual consumers. Most obviously, state tax authorities could increase audits of individuals to identify instances of use tax evasion. However, for political reasons, state tax authorities are loath to audit individual taxpayers for the sole purpose of monitoring use tax compliance. An alternative that would require less intrusion into the individual consumer's life is for more states to follow Florida's example. Reportedly, police in Florida stop furniture delivery trucks for inspection when they cross the state line. The officers "note the customers, the value of the furniture, and whether or not [sales] tax has been paid. If customers do not voluntarily remit use tax within a certain period, the state sends a bill for the use tax, plus interest and penalties."[44] Another alternative that is beginning to catch on with states is information sharing. For instance, Louisiana shares information with other states through a regional association of tax administrators.[45] Through cooperation, the state tax authorities may become aware of out-of-state purchases on which they can then assess tax bills.[46] Finally, states could engage in an information campaign to educate taxpayers of their obligation to calculate and remit use taxes.[47] Very simple information campaigns have had significant impacts on tax collection. In Louisiana, moving the use tax instructions to the front of the individual tax forms allowed the state to increase its use tax collections in 2001 to $545,538, over three times what it had collected in total

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[44] DAVID E. HARDESTY, ELECTRONIC COMMERCE: TAXATION AND PLANNING ¶ 19.02[2][c][ii] (2002), *available at* 2000 WL 359749, at *23.
[45] Roy Pitchford, *Net shoppers not paying sales tax*, ALEXANDRIA DAILY TOWN TALK, June 23, 2002, at D.
[46] There is precedent outside the Internet industry for compulsory reporting of sales made to out-of-state consumers. For instance, the Jenkins Act requires anyone who sells cigarettes into any state to report those sales to each state monthly. 15 U.S.C. §375-378. Compliance with the Act allows tax officials to collect cigarette excise taxes.
[47] Pitchford, *supra* note 45 (quoting J.A. Cline, revenue tax research analyst for the Louisiana Department of Revenue) ("Lots of people didn't know the law, or else they thought it didn't apply to them").

over the previous seven years.[48] Another form of information campaign would target consumers most likely to be affected, through placement of advertisements on e-retailer websites.[49]

State Option #2: Give E-Retailers an Incentive to Voluntarily Collect and Remit

Because e-retailers, like all companies, desire certainty as to their tax bill, commentators believe that states can give companies an incentive to voluntarily collect and remit sales taxes.[50] Efforts toward inducing companies to voluntarily collect and remit sales taxes have the added benefit that if they do not have the desired effect, they may still obviate the court's concern in *Quill* about tax complexity.[51] Thus, efforts by the states could induce the Supreme Court to change its stance on the jurisdictional nexus required under the Commerce Clause. Because inducing voluntarily cooperation by e-retailers has such significant promise, states should consider two alternatives: (1) collaborate to simplify sales taxes, or (2) facilitate the development of technologies that calculate sales taxes for a large number of jurisdictions.

Thirty-four states and the District of Columbia are participants in the Streamlined Sales Tax Project (SSTP).[52] On November 12, 2002, the participants voted to approve a multi-state agreement to simplify sales tax laws.[53] The agreement "reduces the number of sales tax rates, brings uniformity to definitions of items in the sales tax base, significantly reduces the paperwork burden on retailers, and incorporates new technology to modernize many administrative procedures."[54] Though the agreement is non-binding until it is approved by at least ten state legislatures, legislation will be introduced in the individual states in early-2003.[55]

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[48] *Id.*
[49] Silhan, *supra* note 22, at 700.
[50] Press Release, Streamlined Sales Tax Project, States Approve Sales Tax Simplification Agreement; Legislature Poised for Consideration (Nov. 12, 2002) (quoting Larry Walters, Professor of Public Policy at George Mason University) ("It is conceivable that numerous e-commerce companies may want to volunteer to use the system as a means of avoiding any potential tax conflicts with the states."), *at* http://www.geocities.com/streamlined2000/11-12pressreleaseagreementsigning.html (last visited Nov. 16, 2002).
[51] *Quill*, 504 U.S. at 313.
[52] Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia are all participants in the SSTP. List of Participating States, *at* www.geocities.com/streamlined2000/participatingstates.html (last visited Nov. 16, 2002).
[53] Press Release, *supra* note 50.
[54] *Id.*
[55] *Id.*

There is technology that has been tested to help e-retailers calculate the sales taxes for different tax jurisdictions.[56] Users of the software have complained that it "adds too much time to each transaction."[57] States could consider contributing some amount of funding to further test and develop the technology so that it can be widely implemented.[58] If the technology is successful, e-retailers may have fewer objections to collecting and remitting sales taxes to a large number of states.

Conclusion

If the trend in e-commerce continues, sales tax leakage will disappear. Retail giants are increasingly capitalizing on brick-and-mortar retail outlets in combination with Internet websites. For instance, Barnes & Noble, Wal-Mart, and the Gap are already obligated to collect and remit sales taxes for purchases on their websites by virtue of the fact that they have a physical presence in virtually all states. Traditional mail-order retailer L.L. Bean, a company who for years had only one retail store in Maine, is establishing brick-and-mortar retail outlets elsewhere, subjecting it to tax jurisdiction in those states.[59] To the extent the ubiquitous brick-and-mortar store is becoming the e-retailer, *Quill* will impose a duty to collect and remit sales taxes on Internet sales to most states. In the meantime, states are in a position to self-help and capture tax revenues on Internet sales by more strongly enforcing use taxes or creating incentives for e-retailers to voluntarily collect and remit sales taxes.

Ultimately, what both e-retailers and mom & pop stores want is certainty—certainty as to their obligations to collect and remit sales taxes, and certainty that there is no disparity in taxation depending on what medium consumers use to shop. As to both, the current system offers absolute certainty. E-retailers have no obligation to collect sales taxes unless they have a physical presence in the state. If the retailer collects no tax, the consumer, under state use tax laws, has the

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[56] *See* Arthur J. Cockfield, *Transforming the Internet Into a Taxable Forum: A Case Study in E-Commerce Taxation,* 85 MINN. L. REV. 1171, 1259 (2001) (company called Taxware International operates an online service that will determine the sales tax rate in any U.S. tax jurisdiction and calculate the sales tax owed); Russell Gold, *O.C. Tanner tests online tax collection*, DESERET NEWS, Mar. 27, 2002 (company who sold 2002 Olympic Winter Games souvenirs over the Internet voluntary tested the Taxware product).

[57] Gold, *supra* note 56.

[58] Walter Hellerstein, *Symposium: Debating the Prospect of E-Commerce Taxation: Article & Policy Commentary: Deconstructing the Debate Over State Taxation of Electronic Commerce*, 13 HARV. J.L. & TECH. 549, 550 (Summer 2000).

[59] In Spring 2002, L.L. Bean began notifying customers in New Jersey that they would soon be charged New Jersey state sales tax on purchases at llbean.com, by virtue of the fact that the company was opening a store in the state. Lauren Coleman-Lochner, *Tax Perk Suddenly in Danger*, THE RECORD, BERGEN COUNTY, NJ, May 19, 2002, *available at* 2002 WL 4657720.

responsibility for calculating the tax and sending it in with his income tax bill. Purchases made over the Internet, like those made at a brick-and-mortar store, are *all* subject to sales tax. There is no disparity in taxation based on how you shop.

By: Jaime Klima