




COMMONWEALTH of VIRGINIA

Department of Taxation

MEMORANDUM

TO: Tax Assistant Commissioners

FROM: Danny M. Payne 

DATE: July 10, 1998

SUBJECT: Internet Tax Freedom Act (H.R. 4105)

The Office of Tax Policy has reviewed the provisions of the Internet Tax Freedom Act (the "Act") recently passed by the U.S. House of Representatives and analyzed its potential impact on Virginia. Based on this analysis as explained below, there should be no change in Virginia's current policy relating to Internet access charges and sales via the Internet, and no action is necessary to conform to the provisions of the Act or to continue collecting sales tax on tangible personal property sold through the Internet by Virginia registered vendors.

Background

On June 23, 1998, the House passed H.R. 4105, the "Internet Tax Freedom Act." The bill establishes a 3-year moratorium during which states and political subdivisions may not impose, assess, collect, or attempt to collect (1) taxes on Internet access; (2) bit taxes; or (3) multiple or discriminatory taxes on electronic commerce.

Virginia does not currently impose taxes on Internet access charges or on bit taxes. The department has ruled administratively that Internet access is a service, and the charges for the service are not subject to the retail sales and use tax. Similarly, products sold over the Internet and transferred electronically constitute a nontaxable service. These policies were codified by the 1998 General Assembly in House Bill 278 (Chapter 481, 1998 Acts of Assembly). The only question which must be considered regarding current Virginia policy and its interaction with the Act is whether or not Virginia imposes discriminatory or multiple taxes on electronic commerce subject to the moratorium.

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Discriminatory tax

Under the Act, a discriminatory tax is one that is not generally imposed at the same rate (and collectible by the same person) as that on transactions involving similar "property, goods, services or information accomplished through other means." In addition, a tax will be considered discriminatory if it includes the use of a computer server by a remote seller as a factor in determining the remote seller's tax collection obligation. The Act does not prohibit a tax on goods sold via the Internet; it only prohibits a discriminatory tax on Internet sales (electronic commerce).

Virginia's current policy

The department currently requires dealers with a physical presence in Virginia to collect tax on all sales to its Virginia customers, including sales via the Internet. The department applies the same nexus standards to out-of-state vendors doing business over the Internet as are applied to other out-of-state vendors. As long as a vendor has a physical presence in Virginia (as defined in Code of Virginia § 58.1-612), an obligation to collect tax on sales exists and applies to all sales to Virginia customers. Nexus is not conferred upon an out-of-state seller whose only presence in Virginia is the use of a computer server to create or maintain a site on the Internet.

In addition, Virginia's sales and use tax rate is the same for goods purchased via the Internet and goods purchased through other means (at a local retail store or through a mail-order company). Accordingly, Virginia's policy does not run afoul of the discriminatory tax provision in the Act and may continue collecting sales tax on tangible personal property sold by Virginia registered dealers through the Internet.

Multiple tax

The Act defines "multiple tax" as one in which one or more states tax "the same or essentially the same" electronic commerce transaction without a mechanism for avoiding duplicate taxation, or as one in which the same electronic commerce transaction is subject to more than one tax in a single state. Excluded from the definition of "multiple tax" are: (1) a sales and use tax imposed by a state and one or more political subdivisions on the same electronic commerce; and (2) a tax which includes within its measure receipts which may have been subject to a sales and use tax.

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Virginia's current policy

Virginia provides a mechanism for avoiding duplicate taxation of the same transaction. Under Code of Virginia § 58.1-611, a credit is granted against the use tax imposed by Virginia for the amount of tax properly paid in another state. The credit is equal to the tax paid to the other state but cannot exceed the Virginia tax.

Virginia and its political subdivisions do not impose more than one tax on the same electronic commerce transaction. A transaction may be subject to the state and local retail sales and use tax, but these are not considered multiple taxes, based on the exception noted in (1) above. Receipts from an electronic commerce transaction may also be subject to income or BPOL tax, but these taxes would fall under exception (2) above. Because Virginia does not currently impose any other taxes on electronic commerce transactions, there is no multiple tax situation which violates the Act.

Similar bill

The U.S. Senate has taken no action on its version of the Internet Tax Freedom Act (S. 442) since November 1997. The Senate bill provides that sales taxation of electronic commerce is to be compared to "mail order and other remote sales."

I hope you find this information useful. Tax Policy will continue to monitor the progress of these bills. If you have any questions, please contact Mike Melson (7-0033) or Valerie Marks (7-0964) in OTP.