Model Legislation

Electronic Commerce and New Economy Data Collection Act

Summary

State officials estimate possible considerable sales tax revenue losses due to the continued growth of out-of-state sales over the Internet. Concern over the perceived sales tax drain on state coffers has spurred states to establish a multi-state compact designed to capture revenue from retail e-commerce. The coordinated effort to force electronic vendors to collect taxes on out-of-state sales could have a dampening effect on the Internet economy. Moreover, state revenue departments are, in some cases, using the threat posed by electronic commerce to encroach upon the powers vested in state legislatures to determine tax policy. However, the basis for projected sales tax revenue losses is unreliable and subject to dispute. Current forecasting is largely derived from anecdotal observations and from generalized assumptions extrapolated from private research data. In light of the important policy implications raised by the advent of Internet, it is paramount that state legislators possess accurate, empirical data with respect to e-commerce. It is also crucial that legislators reassert their rightful authority over state tax policy and force state revenue officials to validate their claims.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title} This Act may be cited as the Electronic Commerce and New Economy Data Collection Act.

Section 2. {Statement of Purpose} It is the intent of the LEGISLATIVE BODY to require the STATE TAXING AUTHORITY to begin collecting state-specific, valid data concerning the size of electronic commerce within said state. Furthermore, the LEGISLATIVE BODY will require the STATE TAXING AUTHORITY to expand the number of factors used when projecting estimated net gains/losses in connection with electronic commerce.

Section 3. {Definitions}

(A) “state taxing authority” means the government entity responsible for collecting state taxes.

(B) “electronic commerce” means business-to-consumer sales conducted via the Internet that is subject to taxation levied under CITE SPECIFIC STATUTE. Electronic commerce includes, but is not limited to, the sale of tangible goods (i.e. clothing, books) and intangible goods (i.e. software).

(C) “electronic commerce vendor” means an individual, firm, fiduciary, partnership, limited liability partnership, limited liability company, corporation, or any other legal entity engaged in business-to-consumer sales of goods or services through an Internet web site.
(D) “person” means any natural person and any other entity subject to retail sales and use taxation under CITE SPECIFIC STATUTE

Section 4. {Annual Report} The STATE TAXING AUTHORITY shall collect primary and supplementary data in order to provide the STATE LEGISLATIVE BODY with an accurate rendering of the level of electronic commerce activity within the state. The primary data set shall include, but is not limited to, the number of electronic commerce vendors domiciled within the state (where obtainable); gross retail sales of electronic commerce vendors domiciled within the state; an estimate of the number of in-state electronic commerce transactions conducted by persons within the state boundaries based on accepted standards of scientific sampling; an estimate of the number of out-of-state electronic commerce transactions conducted by persons within the state boundaries during a calendar year; a reliable estimate of the use tax revenue that is uncollected due to out-of-state electronic commerce; and a reliable estimate of income, property, excise and other revenues paid to the state by electronic commerce vendors. Collection of primary data shall be considered part of the STATE TAXING AUTHORITY’s normal duties and shall not require an additional budgetary appropriation. The STATE TAXING AUTHORITY shall supplement primary data with information supplied by the United States Commerce Department, the United States Census Bureau, the United States Small Business Administration, any other federal agency collecting electronic commerce data, and (where obtainable) affiliated state data centers. The STATE TAXING AUTHORITY is permitted to use information gathered from private, academic, and/or non-governmental entities provided that the source and methodology is clearly stated within the text of the report. The STATE TAXING AUTHORITY is prohibited from citing, as authoritative sources, studies conducted by private, academic, and/or non-governmental entities that are speculative in nature and/or based on unscientific methods. In addition, the STATE TAXING AUTHORITY shall include an analysis of the financial impact increased sales/use tax collection requirements would have on in-state companies engaged in electronic commerce. The data shall be compiled in the form of an annual report to be delivered to the LEGISLATIVE BODY no later than DATE of each year.

Section 5. {Severability Clause}

Section 6. {Repealer Clause}

Section 7. {Effective Date}


Center for Media and Democracy’s quick summary

This act would require the state revenue department (taxing authority) to collect data and prepare an annual report to the legislature regarding the level of economic commerce activity within the state, including an analysis of the potential financial impact of increased sales/use tax collection requirements for in-state companies engaged in e-commerce.

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