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Days of Tax-Free Internet Sales May Soon Be Over With Introduction of Remote Transactions Parity Act

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The imposition of sales tax on internet transactions is a continuing topic of conversation on Capitol Hill that has recently gained even more momentum. In June, Rep. Jason Chaffetz and Rep. Steve Womack introduced the Remote Transaction Parity Act (RTPA), a bill which would require online retailers to collect sales taxes from buyers in remote states even if the retailer does not have a physical location in such state. The passing of the RTPA would be a marked shift from current law, which requires internet retailers to pay sales tax only in those states where they have a physical location.

The RTPA is the most recent iteration of bills proposing to broaden the taxing authority of states by allowing them to capture additional sales tax revenue from internet retailers and closing what some have called a tax loophole that for years has allowed internet retailers a great pricing advantage over brick-and-mortar retailers who are forced to charge higher prices for identical merchandise to cover the sales taxes imposed on them. The Marketplace Fairness Act (MFA), which was passed by the Senate but not the House of Representatives in 2013 was also reintroduced earlier this year, showing the importance of this issue to some lawmakers.

While some claim the RTPA is intended to "level the playing field" among internet retailers and brick-and-mortar businesses, the lines of support are not so clear. In today's marketplace many brick-and-mortar retailers also have some (if not a significant) internet sales presence, which means this Act will not just impact the Amazon's of the world. Under the RTPA, retailers of all sizes that sell products online face potential new taxes and, at the very least, will be required to implement stringent sales tracking systems. Considering the expected costs of imposing these systems, the RTPA may actually create a competitive advantage for the larger online retailers as they would have the resources to implement these systems while continuing to provide products at a lower cost, while smaller retailers may have to increase prices to cover the additional costs of this system. As such, it is extremely important that retailers understand how the proposed destination-based taxation system will impact their bottom line and to become involved in the discussion prior to the final legislation.

The RTPA includes several notable differences from the MFA that may make this slightly more palatable than its predecessor. These differences include a larger initial small seller exception that phases back over three years and is eliminated in year four rather than the set smaller exception amount included in the MFA, increased protections for sellers using certified software providers, and additional audit protections. However, the basic premise remains the same. Under both Acts, states would be gaining greater authority to look inside a retailer's business and impose tax based on the location of its customers, not just the location of the retailer itself. This shift in tax law would have a significant impact on the way retailers do business and is something that should be watched carefully in the coming months.
