

SNG-Nowlan-sales tax evasion to end-12-17-12

Grinch: On-line sales tax “break” to end

By Jim Nowlan

I predict this to be the last holiday season shoppers will be able to avoid sales taxes on products purchased from on-line retailers such as Amazon, which lack stores in Illinois.

Brick-and-mortar retail stores have been fighting for years for legislation at the federal level to require on-line retailers to collect and return to the states sales tax on purchases, as all in-state physical stores have always done. They say it will level the playing field.

Illinois is connected to the issue from beginning to end. In 1967, in *Bellas Hess v. Illinois*, the U.S. Supreme Court held that state revenue departments could not compel out-of-state mail order sellers that lacked any physical presence in a state (the legal types call it “nexus”) to collect and return sales tax on purchases.

On-line and catalog companies that have a physical presence in a state, such as a real store or a distribution center, are required to collect the sales tax. So some of your purchases on-line and by catalog may have sales taxes included.

Technically, it is not a sales tax but a “use tax,” that is, a tax on an item purchased out of state for use in Illinois. This tax has always been owed by individuals in Illinois who purchase from catalogs (L.L. Bean) and on-line virtual stores.

Yet the Illinois Department of Revenue has been unable to enforce compliance from millions of shoppers, and so most of us either consciously evade the tax owed or are unaware that we owe it.

As catalog and on-line sales have grown dramatically in recent years, states—and physical stores—are losing big dollars. The Illinois Department of Revenue estimates that the state will lose \$183 million in tax revenue in 2012 because of the unwillingness of out-of-state stores to collect our use tax.

Brick-and-mortar stores here in the state lament they are put at a 5-10 percent price disadvantage versus on-line stores that lack nexus. The Illinois sales tax ranges from 6.25 to 10 cents per dollar, depending upon the city in which a purchase is made (Chicago is highest at 9.75 cents, I believe).

In addition, buyers will browse the real stores to observe and price items, and then use their smart phones—right there in the store sometimes—to buy cheaper from the virtual stores.

The National Conference of State Legislatures (NCSL) has been working with the states for a number of years to develop a streamlined state sales tax that would provide uniformity in sales taxation. This would make it easier to collect these taxes. Twenty-four states have signed on to the streamlining effort.

Illinois has been working with the 24 states but is not yet a member of the group, as changes in state law here are needed first.

I think, however, state efforts at coordination may have been eclipsed by savvy software developers. The techies have come up with programs that make it relatively easy for virtual stores to collect differing sales (or use) taxes from 9,700 local tax jurisdictions in the U.S.

Illinois State Sen. Pam Althoff (R-Crystal Lake) is co-chair of an NCSL committee that has been working on this issue. She says that Illinois U.S. Sen. Dick Durbin (D) has a bill to require virtual stores to collect taxes on sales and return the revenues to the state revenue units. Durbin has GOP co-sponsors on the bill.

Durbin recently told Althoff that he hoped to pass a bill early next year. This issue has languished in Washington for years, as lawmakers saw the matter as one of taxing the internet, which they didn't want to touch.

This is a good illustration of policymaking that needs a significant, intense, even emotional (the small bricks-and-mortar store owners) push from advocates to overcome inertia in the nation's capital. A big push has also recently come from both Democratic and GOP governors whose states have been losing ever more revenue.

In the meantime, Illinois has tried to collect the use tax owed from good, upright citizens among us. In 2011, the state revenue unit put a new line on our 1040 annual tax forms at Line 23: "Use tax on internet, mail order or other out-of-state purchases. . . .Do not [in bold face] leave this line blank."

More than 270,000 taxpayers voluntarily paid \$11.4 million in 2011, or a little more than 5 percent of the total owed by all of us taxpayers.

Expect that by the end of next year, the virtual stores will be collecting this tax that we have been blithely evading for many years.