Digital Goods – The Need for A Federal Framework:

Frequently Asked Questions

Question

What is the problem?

Answer

Currently, up to three states can seek to collect taxes from a consumer on the purchase of a digital good or service. The easiest way to classify who can tax a digital good are:

- The state where the consumer physically presses the purchase button.
- The location of the server that provides the sale of the good or service.
- The state in which the consumer resides.

The digital economy is booming and the current laws governing the digital economy are antiquated and **must** be updated to avoid multiple taxation of digital transactions.

Question

Why do you need a Federal solution to determine state tax standards?

Answer

Go back in history and think about taxation of liquor. Each state decides what the rate is in their state. But what happens when the movement of the liquor is on a plane? Can Kansas tax a glass of wine that you had over the state, even though you asked for it over Missouri, but the plane is going from New York to Los Angeles? Federal law says Kansas doesn't get to make that decision. We run into the same issues with Wi-Fi networks. You ordered a movie or book for that flight from New York to Los Angeles. The server that provided that movie is in Texas. You live in New York. Which state taxes you and when are you taxed? Only the Federal government can sort through this type of situation and set clear rules of the road to provide the legal certainty needed to states seeking to tax digital commerce.

Question

Why do we need it now?

Answer

Look at any set of data, or even just think about your own actions. The use of the internet, and digital transactions generally, including cloud computing, is growing at an astronomical rate. The Federal Communications Commission and companies across the globe are building out 5G networks that are 100 times faster than what we have today, giving us all greater reach in our buying and selling decisions. The bipartisan, bicameral bills that have been introduced this Congress are trying hard to get ahead of the already growing wave, so that there is a uniform framework for the taxation of digital transactions. We run the risk of a competing patchwork of state rules and regulations that will lead to a cumbersome and confusing consumer experience.

Question

Why do we even need rules for a Federal framework?

Answer

Again, look at history. In the old days, we had party line phones. We also had long distance rates for our hard-wired home and work phones. Taxation then was simple until cell phones came along. The same problem we face today with digital goods transactions existed back then, until Congress acted. Think about traveling on a train from New York to Virginia and using your cell phone the whole way. Which state would be allowed to tax that activity? In passing the laws governing the taxation of cell phone calls, Congress effectively said the state of the residence of the caller determined whether or not to tax the call, not the states where the caller may have been traveling through when making the call. This is the exact type of framework we are proposing for digital goods and services.

Question

Why hasn't the bill been enacted yet?

Answer

Over the last several sessions of Congress, the bill got caught behind other bills, such as the Market Place/Main Street Fairness legislation. While we were able to successfully move the legislation out of Committee in the House, our effort timed out by the end of the 115th Congress and failed to move any further. This is a noncontroversial bill and should be passed by under Suspension of the Rules in the House and by Unanimous Consent in the Senate, but it continues to be held up by issues not related to the bill.

Question

At a high level, what would H.R. 1725 and S. 765 do?

Answer

Both bills would protect consumers from potential multiple state taxes on a single digital purchase; establish a national framework to determine which state has the right to decide whether to tax a digital transaction – it is important to note that it would not require that any state establish a tax; and ensure that any taxes imposed on digital goods and services are the same as taxes imposed on traditional commerce subject to tax in the state.

Question

Are consumers harmed by the legislation?

Answer

No. Consumers are protected by the bill, as only their home state can decide whether or not to tax a digital good or service.

Questions

Do States benefit from the bill?

Answer

Yes. States get certainty that they have the legal authority to modernize their tax base to include digital commerce and allows them the ability to act (or not) in protecting their residents from multiple taxation.

Question

Is the legislation all about allowing big companies to skirt their existing tax obligations?

Answer

The taxable transaction is the consumer's decision to buy. The big companies are the tax collectors for all of these transactions. They get certainty in terms of what they need to collect and remit.

Question

Why hasn't Congress acted yet this session?

Answer

Our Coalition is asking for a set of rules of the internet road, so that everyone that participates knows and understands their responsibilities. The issue doesn't have glossy pictures, or movie stars lining up to raise awareness. This issue benefits everyday Americans – the people that buy digital goods and services – and while we have not yet faced the notions of three states taxing the same transaction, when it happens, it will be too late to fix it. Multiple taxation will be detrimental to both consumers and businesses alike. But for now, Congress needs to understand the need to get in front of this and enact this legislation now.