

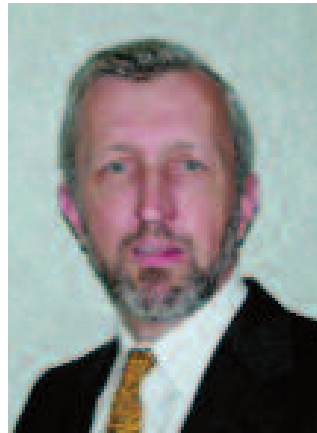
Sales Tax And Simple Fairness

Brick-and-mortar retailers received a bit of good news in early July when a group of tax officials from 18 states met in Chicago to standardize and streamline sales tax collection procedures. The gathering has widely been seen as a first step in nudging direct-response retailers to collect sales tax on items purchased through catalogs or websites. We hope the efforts are successful, not because we relish the idea of sending more money to state capitals (We're based in New Jersey where it's estimated that 25% of the 80,000 state employees hold patronage jobs and deliver no perceptible service.) but because it's a matter of basic fairness.

From the drafting of the Constitution in 1789 to the present, a widely accepted test of fairness is that similar activities receive similar treatment under the law. In fact, the vast majority of jurisprudence, from civil rights to contract law, revolves around this basic concept of fairness. Thus, it's hard to understand why two businesses engaged in identical activities—inventorying, presenting, and selling merchandise to the public—receive appreciably different tax treatment. If customers gain access to your inventory by walking through the door of a building, they pay sales tax on their purchases. If they access it through a website or telephone, they don't. We have nothing against direct-response selling, but we have trouble understanding why it deserves favored tax treatment. It makes about as much sense as saying stores on the north side of the street are liable for sales tax while stores on the south side of the street get a pass.

The unfairness of the situation is exacerbated by the fact taxpayer-funded schools account for at least 15% of music industry revenues. Where is the justice in a direct-response merchant selling products for use in a school and at the same time encouraging consumers to skirt local taxes?

In the past, efforts to collect sales tax on direct-response sales have gotten hung up on two issues: the U.S. Constitution and the complexity of tax law. Article I, Section 8, Clause 3 of the Constitution, better known as the "Commerce Clause," gives the Fed exclusive right to regulate trade among the various states. In the past, the Supreme Court invoked this clause when it rebuffed efforts on the part of states to collect sales tax on goods that are shipped across state lines. In Florida, sales tax is levied on scuba gear but not fishing tackle. Clothing is



exempt from sales tax in New Jersey but not in nearby New York. Multiply these variations by the 5,000-plus sales tax jurisdictions in the country and it's easy to understand why complexity has made compliance difficult.

Standardized tax rules and mutual collection agreements among the states address both the issues of the Constitution and the complexity problem, giving hope that tax fairness will ultimately prevail. Ultimately, we think this effort would level the playing field and restore fairness to retail.

Direct-response merchants are understandably fighting the issue. Among other things, they claim that avoiding sales tax has no impact on consumer buying patterns. If that's the case, as illustrated elsewhere in this issue, why is it that so many Vermonters make their purchases in nearby New Hampshire where there is no sales tax? Also, if sales tax has no impact, then collecting it shouldn't pose any problem to their business.

The states currently participating in the "Streamlined Sales Tax Project" include Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, New Jersey, North Carolina, Nebraska, Oklahoma, South Dakota, and West Virginia. States close to joining up include Arkansas, North Dakota, Ohio, Tennessee, Utah, and Wyoming. If you're a resident of any of the states above, write your Governor and legislators commending them for their work to create sales tax equity. If you're not, write your elected officials and urge them to get on board. It's a matter of simple fairness.

Brian T. Majeski
Editor

Email: brian@musictrades.com