THE NEW REPUBLIC

TRANSCRIPT OF:

TNR/ON
"Sales Tax on the Internet? Consumer Rights vs. Government Revenue"

Sponsored by the NetChoice Coalition

Wednesday, September 17, 2003
10:00 - 12:00
608 Dirksen Senate Building
Washington, DC

Richard Parker, associate publisher, *The New Republic*
Steve DelBianco, executive director, NetChoice Coalition

Senator Ron Wyden (D-OR)

Jonathan Chait, senior editor, *The New Republic*

Robert Atkinson, vice president, Progressive Policy Institute
David Baker, vice president of law and public policy, Earthlink
Tod Cohen, associate general counsel of global public policy, eBay
Maureen Riehl, state and industry relations counsel, National Retail Federation
Scott Peterson, co-chair, Streamlined Sales Tax Project

Transcript by:
Federal News Service
Washington, D.C.

RICHARD PARKER: Good morning. Thank you all very much for coming. My name is Richard Parker. I'm the associate publisher of *The New Republic* magazine. This is the second in an important series that we are hosting on Internet policy and taxation. We thank our sponsor, the NetChoice Foundation.

While people are still trickling in, we're going to hear a few words from Senator Wyden. We're very grateful for his participation today and we thank him for his time.

SEN. RON WYDEN: Thank you, appreciate it.

Well, it would be cruel and unusual punishment to give you a filibuster. You've got a great program here. And let me, if I might, give you a little bit of a sense of where we are and, Richard, congratulations on your timing because this is a week when there is a lot going on on the question of Internet tax policy.

This is essentially the fourth round that I have been involved with on Internet tax freedom law to ensure that our country would not face multiple and discriminatory Internet taxes. There are thousands and thousands of taxing jurisdictions, of course, in the United States and our concern always was that you would be creating a kind of crazy quilt of taxing jurisdictions across the country and if even a significant portion of them took a bite out of the net it would be a fairly painful exercise.

At the time when Congressman Cox and I introduced the legislation first and to some extent the second time, rate estimates of peril and Armageddon and disaster and calamity for the states and others, it was argued, would befall the country and just about everything but Western civilization was going to end.

It was really quite something to go back and look at some of the transcripts of the first hearings that were held on the Cox-Wyden legislation and then the Commerce Committee because you will really see the local jurisdictions saying that the skies are going to fall and the cows aren't going to get milked and schools won't have any money and there won't be any funds for repairing the roads and the like and, of course, none of this came to pass. This didn't happen and you did not see malls, for example, all across America empty out and suddenly no one was shopping anymore at bricks and mortar facilities.

So those two efforts, plus the resolution with respect to international e-commerce take us really up to the present time and there are going to be big developments essentially over the next week on this issue. The House will pass the most recent version of the Cox-Wyden legislation probably today. My sense is, depending on the House calendar, that will happen today. And over the last few days a number of senators on the Commerce Committee who have been part of this debate, particularly Chairman McCain, Senator Hollings, Senator Sununu, Senator Dorgan, Senator Allen and myself, have reached what I think is very close to an agreement to be able to go forward in the United States Senate. If you were to be sort of a football type you would probably say we're on the three-yard line and I'll describe what I think has us just sort of within the sight of the goal line.

And this, of course, would be for the first time a permanent ban on multiple and discriminatory taxes on electronic commerce. The main element of the Senate agreement, and as I say I think we're very, very close here, is to clarify the definition of Internet access. I strongly feel that Internet access is, in fact, Internet access. It is something that gives you access to the Internet and is not a telecommunications service, which, of course, has long been taxed under the various versions of the Cox-Wyden law.

The House bill is going to change nothing in terms of telecommunications taxes. The Senate bill would proceed as well.

Now, any states would tax telecommunications services the way they have for the last five years under the Internet Tax Freedom Act. Some states still felt that the language today in the House bill is really broad and would sweep up some telecommunications services into the tax protection afforded Internet access. That has never been our intent so what we have done is made a small change in the Senate agreement to reassure the states on the point.

The change in the definition of Internet access in this Senate kind of effort will make sure that DSL Internet access and wireless Internet access are not taxed at all and, of course, that is the wave of the future, DSL Internet access and wireless Internet access. And because, as I said, Internet access should be Internet access we wanted to make sure that it was laid out clearly in what we're talking about in the Senate that DSL Internet access and wireless Internet access would not be taxed.

The problem can be very well highlighted in two states, Alabama and Kentucky. In those two states they say a plain old dial-up Internet access costs $10 a month and DSL costs $40 a month and the $30 difference between the two must be related to telecommunications service and not Internet access, so you've got $30 as the added cost to the electronics and software that give the consumer a higher speed onramp to the net. The only purpose, of course, is to give the consumer quicker Internet access. The DSL and the dial-up Internet access run over exactly the same kind of phone line, a phone line, of course, that would be subject to telecommunications taxes, so to us it doesn't make any sense for a consumer to pay $40 to telecommunications services that otherwise would cost $10.

So we were concerned, as you might guess, that there would be some state authorities that were essentially trying to get their hands into what they saw as kind of a treasure trove of additional kind of tax revenue where they could go after consumers by charging more expensive DSL service and as I say this agreement is going to in the Senate protect DSL from Internet access.

The other area where there was a considerable amount of discussion involves bundling and this is again a fairly arcane kind of thing. As you get into Internet access -- how many of have been involved in this issue in the past? Well, you'll know then that this is sort of like prolonged root canal work and it is arcane kind of stuff.

But bundling involves essentially the practice where two items, one taxable and the other not taxable, essentially get combined and the recognized tax principle in this area is that when a company keeps separate charges on its books for the taxable items and non-taxable items, then, of course, the non-taxable items get protected from the tax. If the company doesn't keep separate track, then the taxable items taints the non-taxable item, making it subject to the tax.

The states wanted to make sure that this principle was clarified in the bill and because the law deals only with Internet taxes I believe the Senate agreement is going to include a provision making it clear that in this area of Internet taxes we're not trying to send the signal to the FCC with respect to state regulatory authority over regulatory issues, so we have essentially tried to help the states on that issue and on the bundling kind of question in an effort to try to reach common ground.

There is one issue, which is why I said we're sort of on the three-yard line, that could bring matters to a screeching halt at this point, and I don't think it's going to happen but I think it is worth, as you get into your day, of discussion of this arcane kind of matter, which, of course, is so complicated it would be useful for you to have.

What has really made it possible this time, that put us on the cusp of finally getting this issue resolved, is a general consensus that the question of what happens in terms of Internet taxes and the Cox-Wyden iterations now through all of these versions, should be kept separate from what the states have sought to do with respect to streamlining sales taxes. The states have said what they're concerned about is being able to collect taxes owed and to try to streamline the various sales tax approaches used by the states. I and others wish them well in this effort but think it is a very, very big hill to climb.

Again, you talk about the thousands of taxing jurisdictions in America, well you've got situations where some states tax a candy bar one way and a cookie another way. So as you try to get into this you will find that it is a really complicated effort.

So we thought, and I, when I talked with Senator Dorgan and others who have been involved with over the years, we said, you know, this time we'll let you go off and pursue streamlined sales taxes in any way that you wish and if, in fact, you can come back with something that allows people to collect taxes owed without creating bureaucratic water torture for small businesses in the United States we'll be interested in doing it. We think it's a big if but we will be interested in trying to be constructive and helpful to you.

So we have kept those things separate and that's why the Commerce Committee was able to go forward on a unanimous basis and why the senators that I've described to you have been talking among themselves and have got us now on the cusp I think of an agreement.

What we have to deal with, however, is some discussion, rumor, speculation about whether the Finance Committee is going to look at this and decide that in their pursuit of it they want to try to link those two issues, that they want to somehow tie streamlining the sales tax into the question of a permanent bag on multiple and discriminatory taxes.

If that was the case and, in effect, the Finance Committee as part of a sequential referral, and this is what could go forward, link the two, you could have a scenario whereby some in the Finance Committee would say let's use the sequential referral to basically overturn the Quill decision, the Supreme Court decision which in effect has gone to the heart of this whole debate. If that was done, that would sort of bring matters to a screeching halt because I and others would fight any effort to overturn the Quill decision on the floor of the Senate. We won that fight in the past. I think we would win it again. I think it would be very unfortunate if that happened. I don't think it's going to happen. I think there are going to be a number of us who are going to object if there is an effort to try to make it happen, but suffice it to say it remains a possibility.

Senator Dorgan and others who have led the effort for the states, to their great credit, have said they want to keep separate the question of Internet access and streamlined sales taxes. We have not heard from any Finance Committee senators that they're interested in something like this that really could bring the discussion to a halt. I hope it won't happen, but as you get into the day's work and the discussion it's worth knowing that some may still -- in the chests of some hope may still be for somehow blowing up this constructive work, and I wanted to pass that on.

So my hope is that within the next couple of months, the next 60 days a bill is going to get to the desk of the President of the United States to permanently ban multiple and discriminatory taxes, extend the moratorium on Internet access. My view is for small and medium sized merchants the law that Chris Cox and I put together in 1998 has been a lifeline. It has been a low-cost alternative for thousands and thousands of small businesses across this country to sell their goods and services for older people, disabled people, folks making modest incomes selling on the Internet, often through their home. At a time when the national economy has got a pretty serious case of the jitters, it would seem to me that making a permanent bag on multiple and discriminatory taxes and protecting Internet access is something that would give our economy a boost and that is why efforts have been so aggressive in recent months.

Why don't we just break it off at this point and maybe that's a long program. If anybody has any questions for me, softball questions are especially welcome in this area, if *The New Republic* is open, I can take a couple of questions and then I've got to get out the door and you can solve the world's problems here.

Yeah?

QUESTION: I think this is solvable. But what about differences between House and Senate with respect to the states that still have a little bit of Internet access tax left. Would it be grandfathered, do you think?

SEN. RON WYDEN: I think again what we hope to do, you know, we've got the House bill and the Senate bill, we'll hope to convince the House that the Senate approach is the way to go and I think that will strike the best balance.

QUESTION: -- It seems to me that the states actually are in very dire straits right now with revenue. Oregon has problems. There're cuts in schools all over the country.

SEN. RON WYDEN: It really hadn't, and let me be very specific on this case. This is a question of the states and their financial problems and the like.

The states, of course, have serious economic problems, and nobody is disputing that. But there is not a shred of evidence, not any, that the Internet Tax Freedom Bill has caused any of that problem.

And let me be very specific. Not one single local jurisdiction in America, not a state or a locality has produced any evidence that they have been harmed by their inability to discriminate against Internet commerce. That is all that Chris Cox and I have done really now for seven years. Our bill said you cannot have multiple and discriminatory taxes on the electronic commerce. All you've got to do is treat the online world like you treat the offline world. And when we proposed it I gave example after example of how the online world was being treated differently than the offline world. The example that was probably easiest for people to understand is when I proposed it in the Senate I pointed out that in several jurisdictions if you bought the *Wall Street Journal*'s interactive edition you paid a big old tax, but if you bought the *Wall Street Journal*'s snail mail then you paid no tax. You can't do that under the Cox-Wyden law. That is a discriminatory tax. You are singling out technology. And so all our bill said is you can't discriminate against online activity.

And over the years I would say to states who asked me the question, give me an example of how you have been hurt by your inability to discriminate against electronic commerce, and not one jurisdiction in America, not a state or a locality brought us one example of it.

Yes, the states are hurting and that's why I was one of the ringleaders in the effort with Senator Murray to double the amount of money that would be made available to the states for health and education services as part of the tax bill. We were unsuccessful; it came in 20 billion rather than 40 billion.

So there's no disputing the fact that states are hurting but there is also zero evidence that any of that predicament is linked to the Internet Tax Freedom Bill.

And the irony, of course, is that Internet sales are still a tiny fraction of all sales. It's still like 2 percent. I mean, go to the Mall of America during the holiday season and it as not as if you can find a parking place because suddenly the malls are empty because everybody is shopping online.

And, in fact -- a lot longer answer than probably you wanted -- is if you wanted my judgment about the single most significant trend since the original Cox-Wyden legislation, it has been the merging of bricks and clicks as we call it, and this whole notion that you've got a whole bunch of people like all the Retail Federation members, where all these guys run big old stores downtown and they don't have anything to do with the online world because they're busy shoveling the stuff out of their big old store in a building, I don't think that exists anymore. I think what we have seen is the commingling today of the economic facing America where the vast majority of significant people in Internet, you know, commerce, I guess Polo was about the last person to come on the program, but you've got all these operations with online components and bricks and mortar stores. That's been, unlike the question you raised about the states losing revenue, the single biggest change since our original law, has been the acceleration and the breakdown of this distinction between bricks and mortars and online stores.

Since I gave him a lot longer answer than he undoubtedly wanted, you guys are wise to move on with your erudite and thoughtful speakers, but we welcome your input. I'm glad you're doing this. It comes at exactly the right time. Congratulations to *The New Republic* for once again kind of leading the effort in talking about serious policy and at a time when the House is about to vote and the Senate is on the cusp of an agreement it comes at exactly the right time.

(Applause.)

STEVE DELBIANCO: Thank you again, Senator Wyden, appreciate that.

And with that transition, again, I'm Steve DelBianco with The NetChoice Coalition, sponsors of today's event, which is one of three in a series with *The New Republic*.

NetChoice is a coalition of some policy groups -- Rob Atkinson of PPI was one of our Board of Directors members -- e-commerce companies like eBay, Orbitz, E-Realty, 1-800-contacts, and several thousand e-commerce based consumers who have joined the association as well.

And we're dedicated to the proposition of promoting e-commerce, the convenience and choice of e-commerce, and trying to help to expose and erode barriers to e-commerce, which typically show up as legacy rules and regulations that impede the competition that e-commerce presents.

So Internet sales tax, the author Poul Anderson once said, and I think he must have been talking about SSTP, because he said, "I have yet to see any problem, however complicated, which when you looked at it in the right way it would become still more complicated." And we certainly think that's the case here.

Today NetChoice published a report called "Sales Tax Simplification: Not So Fast; it's not that Simple." And we try to raise a series of questions that I know the panelists here today will address. It's about the policy and politics, like how much money are we talking about, is it a dime or a dollar. There are estimates that are ten times apart.

The question of should the federal government give the mandate that states seek, and I think that even Scott will agree that it will take a mandate to make SSTP work, not just a voluntary compliance.

And then what about states rights? Will states that don't have sales taxes or states that wish to use economic development as a competition measure, will they still be able to use tax competition at the state level?

Another quick question is who would be subject to the mandate. Does it make sense for a small retailer who does a small portion of their sales over catalogue or even Internet to be having to take on a collection regime when they're well below the radar screen of state tax collectors. And I think some of that depends on the burdens imposed, right.

Now, before moving into the tech policy arena I did spend 15 years running an IT company and as a programmer I know that it will not be difficult for the states and for vendors to put together a database with zip codes, geo codes, SKU numbers for Stock-Keeping Units, and tax rates. That's actually trivial. What I do know is that the way I made my living as a programmer was by back-end systems in every retailer shop. Back-end systems are the ones for returns and exchanges, partial orders, back orders and credits. If any of that is completely done inside the shop, it's not linked in a way that gets you at the end of the month to the right sales tax number, to the right jurisdiction, without having to subject yourself to individual filing and audit.

So I think there's a lot of complexity yet to come.

Finally, what's the political price? I think Senator Wyden called it linkage. What's the linkage of a bill that gives the states the mandate they seek? What is it linked to?

Rob Atkinson I think will present a very fascinating, creative quid pro quo about removing barriers to e-commerce and Maureen I think will express some real concerns with business activity taxes the states can impose as well.

So with that, I know that our panelists are going to be superb in answering these and many other questions. With that, I'll introduce our moderator today. It's Jonathan Chait. Jonathan has been with *The New Republic* for over eight years where he's a senior editor today writing on taxes, healthcare reform and the federal budget. After graduating from the University of Michigan in 1994, Jonathan was an assistant editor at the *American Prospect*. His writing has also appeared in the *New York Times*, the *Wall Street Journal*, *Slate* and *Reason*. Please welcome Jonathan Chait.

(Applause.)

JONATHAN CHAIT: Hi, everyone. Thanks for coming this morning.

As Senator Wyden mentioned, we've got the perfect time to be discussing this issue, which has really percolated to the surface in a way it hasn't since the late 1990s.

Let me just quickly introduce our panelists. I'll have everyone give an overview of their thoughts of what they think is the most important angle here. Everyone can talk for maybe three or four minutes and then afterwards I'll throw out some questions and we'll try to get some discussion going between the panelists.

Starting from near to far, first we have Rob Atkinson from the Progressive Policy Institute; Dave Baker, who's the vice president of law and public policy at Earthlink; Maureen Riehl, vice president, state and industry relations counsel of the National Retail Federation; Scott Peterson, director of business tax division, South Dakota Department of Revenue and the co-chair of the Streamlined Sales Tax Project; Tod Cohen, associate general counsel for global public policy of eBay.

So, Rob, why don't you start and you can go ahead for a few minutes?

ROB ATKINSON: Well, thank you.

Obviously this is a complicated issue and it will be even more complicated after you hear what I have to say. In '99 PPI came out with a report called "The Software Solution to Internet Taxation" which proposed that this sort of problem or challenge of how do you deal with the fact there are thousands of taxing jurisdictions on thousands of different products and isn't that all complicated, and it certainly is complicated but we proposed that one way to make it less complicated was software and that if states were to develop software and provide it to companies at no cost it would allow them to calculate and collect and remit sales taxes and actually use taxes in this case, that this would be a way to do that and get over actually the Quill decision, which is essentially a decision that says you can't impose a burden on an out-of-state company unless they have nexus and that was essentially what the National Governors Association, all the other states did and ended up becoming the Streamlined Sales Tax Project.

Since we did that work, we also have done some other work and got more and more involved in this issue, which it started out really looking at wine sales but really as we got into it we realized that there's this huge problem out there that is really under the radar screen right now, and that's that states historically have regulated not only tax but they've regulated all sorts of other products and services.

And lo and behold, I know you'll be shocked to find this out, that companies in states actually use regulation in this case to protect themselves against e-commerce competition. So there's a reason why you are unable to buy a car over the Internet, because it's illegal in all 50 states because car dealers have passed laws to that. By the way, if you're in Brazil, you can buy a Volkswagen over the Internet and 85,000 people did last year, direct from the factory, so it's not something that people won't do.

You can't really get contact lenses over the Internet in 15, 20 states.

You can't buy wine in a third of the states. If you're an eBay reseller you might get sued in three states or possibly two states, possibly three, because the auctioneers have weighed in.

If you're a mortgage broker you can't sell a mortgage over the Internet unless you actually have a physical presence and you have to have an office and in South Carolina they tell you exactly how many square feet that office is. I wonder where that law came from. Mortgage brokers in South Carolina.

So the bottom line is simple: We don't have a problem with giving states the right to force companies to collect sales taxes as long as they do it in a no-burden way, but our view is if states are going to have that privilege, that right, the same responsibility of getting rid of and abolishing all of these protectionist laws.

So what we've proposed is that Congress pass a law, create a commission and essentially certify a state as compliant if they've done this streamline thing and they've done the software thing and they've eliminated these rules. And so it's in some ways the quid pro quo: If states what that right they also have to have that responsibility to open up their economies to competition.

So thank you.

JONATHAN CHAIT: Go ahead, Dave.

DAVID BAKER: Thank you.

As everyone knows, there are sort of two parts to the Internet sales tax debate. There's how do we tax e-commerce and how do we treat Internet access itself. And I may be unique among the panelists in focusing my comments on the Internet access portion, which was really largely considered to be a no-brainer. I mean, it was just a mom and apple pie issue. As a matter of fact, Cheryl had contacted me a couple of weeks ago and said, you know, basically I mean, "This thing may already be done by the time we have our panel, so you wouldn't be offended if we dropped you from the list" and I'm like, "Yeah, no problem at all," "so we can talk about the sales tax problem." "Well, I don't know that as well but I suppose I could muddle through something."

But, in fact, we find, and it's very timely, that the treatment of Internet access and extending the tax moratorium on that is, in fact, not as clear as it should be. We've got HR 49 over in the House which is going to come up on the suspension calendar today, which means for that to pass it's going to need a two-thirds vote but no amendments can be made to it. Even with those conditions, it still stands a pretty good chance of coming over across to the Senate.

And let me be clear, we want to see this moratorium made permanent and just yesterday EarthLink and eBay and the other members of the U.S. Internet Services Providers Association all signed a letter, sent it over the House and made it clear, "We support HR 49."

But there is some language in the House bill that is being debated in various Senate versions that is problematic, and here's the thing is that the definition of Internet access for the past five years has been very, very clear. And I'm going to quote Senate language here, but I'm quoting from the existing bill. The term Internet access means a service that enables users to access content, information, electronic mail or other services, et cetera, et cetera, et cetera. Such term does not include telecommunications services.

Well, for those of us who spend a lot of time at the FCC that's definitional. There is nothing unique to that. Internet access is an information service and if you're going to have a definition of Internet access, again you almost didn't need to restate it but it's clear that such term does not include telecommunications services.

Here is the twist. The various House and Senate versions now add a comma to the end of that little clarification and to say, "Except to the extent such services -- " -- again, referring to telecommunications services -- " -- are used to provide Internet access.

Well, I mean, clearly the problem number one is circular. You're saying that Internet access is not taxed, telecom service is not Internet access, except to the extent that it's used to provide Internet access, so you kind of come -- you've got your term in your definition. That doesn't work.

Here's the problem: What this does is it extends the moratorium on Internet access to certain telecommunications services as well. Now, that will obviously reap a windfall for various telecommunications service providers, and if that is Congress' intent that's Congress' right to do. And while I can't say I'd be thrilled about something like that it's sort of no skin off of our nose if the Bells and AT&T reap the benefit there.

Here's the problem: The whole point, as Senator Wyden said so clearly, is that this moratorium is here to do away with multiple and discriminatory taxes and the risk is that with this language in this amendment, in fact, you can create a discriminatory regime. Put simply, what the amendment is trying to get at, what the members of the House and Senate are trying to get at is they're trying to say, well, you know, cable modem service is not taxed at all, DSL, broadband service over a telephone line, while the Internet portion isn't taxed, right now the telecommunications service portion is taxed. There is some disparate treatment there; how do we reconcile that.

The problem is threefold. Number one, it is already addressed clearly, again to refer back to Senator Wyden's comments, any part of that service that's Internet access is tax free but you can't use that provisioning of Internet access to sort of pull that moratorium to cover all the telecommunications services as well, and that's a very real concern to an independent Internet Service Provider, lest a Verizon or an SBC treat all their DSL services as tax free when it's provided to their own in-house Internet provider, but as a taxable commodity when it's sold to an Earthlink, thereby putting Earthlink at a disadvantage by whatever the tax rate is, so that's a concern there.

And another concern we have, just very quickly, is this whole telecom services versus information services is the focus of an FCC rulemaking that's pending right now. It's called the Wireline Broadband NPRM. And just as the FCC was about to plunge headlong into the abyss, it seems that they are at least considering what they are doing -- I'm not saying any minds have been changed yet -- and seem to at least be pausing before plunging headlong and doing away with what have been and continue to be very clear definitions in the Telecommunications Act and other statues.

And we're very concerned that if Congress does this, albeit it without the intent of doing so, that the FCC can't help but see this as a sign and view it as congressional approval for this proposed rulemaking they're having and really head them down on in the wrong direction.

So those are our concerns. Hopefully we can reconcile this all in the Senate and work it out to achieve the goals that the senator described without any of the bad effects that I may have mentioned.

MAUREEN RIEHL: Retailers are not here to talk today, unlike Dave, about the Internet Tax Freedom Act. What I am here today to talk about is sales tax simplification and agree with Senator Wyden on two things that he said today, and that is that retailers also support separating authorization to states for mandatory collection of remote sales tax in a separate bill from the Internet Tax Freedom Act, and I'm also here to talk about and agree with Senator Wyden on what he said just before he left in that we want retailers to be treated in the online world the same way they're treated in the offline world. So we have harmony with Senator Wyden in those respects.

Retail has been involved in the sales tax simplification issue since late 1999. At that point, we found ourselves facing a few realities and these are basically it in a nutshell: that the sales tax is here to stay, it's not going away. It's the least controversial tax that's administered at the state level. And every single one of the brick and mortar sellers that exist in your states today are required to collect it.

There's no certainty in states that have different ways of defining their goods in the rates that they apply in that most of the sales tax collection responsibility for multi-state sellers is centralized in one headquarters location. We have no certainty about what those definitions were, what's taxed and what's not taxed.

Three, that it's extremely complex. We totally agree with everybody's assessment that there's several thousand jurisdictions that affect these taxes and that it's too difficult to know, even with applying a technology solution, under the current system what those rates are and what's taxable.

And that finally, even three years ago we knew that the Internet Tax Freedom Act did not apply to sales taxes on goods sold over the Internet. It applies only to access.

All those things we agree with.

The goals in our participation in the Streamlined Sales Tax these past three and a half years were threefold: We wanted fairness in both the online and the offline world, we wanted certainty about what's taxable and what's not taxable and at what rate, and that we wanted the burden to be shifted off of the retailer to government as the appropriate party to determine, in fact, when there's been an error made in what's taxed and what's not taxed.

I'm here to tell you that in three and a half years of working with the Streamlined Sales Tax Project all three of those goals are virtually 100 percent met from the retail perspective.

Next week Congressman Istook and Senators Enzi and Dorgan will likely be introducing legislation that we've worked in concert with other business interests as well as state government interests in order to move a bill forward that would authorize mandatory collection in states if they adopted the simplifications that were found in the sales tax agreement passed in November of 2002.

I'll be happy to talk at length about some questions regarding that, but at this point it's the position of retail that these are distinctly separate issues. Nonetheless, if, like Senator Wyden said, they eventually become merged, we will still fight to deal with the access issue of being distinctly separate from sales tax that applies to online sales. And again this is a fairness issue. Treat the online world the same way that you treat the offline world and retail will be happy.

SCOTT PETERSON: Good morning. I agree with much of what's been said already, including what Senator Wyden has said, even though the Internet Tax Freedom Act as it's currently sitting in the House does damage the state of South Dakota.

The Streamlined Sales Tax Project was created because the National Governors Association and the National Conference of State Legislators in 1999 came to the conclusion that the way we had independently structured our tax system hurt us not only as a group but also as individuals in that the system that we created, without giving any thought to that which our neighbors had created, sometimes reveling in the fact that it was different than what our neighbors created, created an unreasonable burden on those people that employed our neighbors, those people where we went to shop on Saturdays and Sundays and Fridays and that if we didn't do something as a state, if the states didn't take the responsibility of solving their own problem, that somebody else would solve this problem for us and that we would not like the solution.

The Streamlined Sales Tax Project had as its primary goal and, in my opinion, still has as its primary goal the creation of solutions to complexities that exist for people that are collecting taxes.

The point -- and I argued this strenuously in that very first year that we were going to get nowhere in the Streamlined Sales Tax Project if our only goal was to try to figure out a way to collect sales tax on people who were making remote sales. Our goal was to figure out a way of making the current system simpler because people were already collecting our tax. Why do something for which there was very little political support when we could do something for which there was a lot of political support, and that is help those people who are helping us today in that they are in our communities, they're employing our neighbors and they're collecting our taxes.

Have we accomplished everything we had hoped for? Not yet, but I'm actually quite thrilled to have Maureen sit beside me and tell me that they are happy that we have made progress. I have spent a considerable amount of the last three years of my life doing nothing but this and I'm glad that there's somebody that thinks that we have made some accomplishments.

Do we have everything done? No. Are there things that we are going to get done? Yes. Are some things involved in administering the sales taxes painfully complicated? Absolutely. And some of these back door things that were mentioned earlier are very difficult things to accomplish through software, extremely difficult, and there has to be a political solution to them and not a software solution.

I too think that the Internet Tax Freedom Act and the collection of sales tax are two completely separate things. I respectfully disagree with Senator Wyden on some of the things that he's said and the gentleman from EarthLink, I come from a state where we've always taxed everything and our sales tax applies to everything. It never occurred to us, not for one second did we think about whether or not Internet access was going to be subject to our sales tax, because we tax all services, everything. And it's a service; is the Internet a service? Yeah. Was it ever taxed before? No, because it never existed before. Our tax law doesn't change. Our legislature does not have to come back into town and impose a tax on something because it's brand new. Our law does that automatically.

And we are a little concerned about the negative effect on the budget for the state of South Dakota and the people that rely on that tax revenue as a result of the current version of the Internet Tax Freedom Act. We don't understand why it's important to eliminate the grandfather clause, but that's a decision we'll fight at a different day.

TOD COHEN: Good morning.

I think I wanted to start my remarks by talking about the fairness issue and about how it applies to eBay and our sellers and discuss a little bit about why we think a headlong rush into federal mandates for the SSTP would be devastating to our sellers but most importantly wouldn't eliminate the, quote, "claimed unfairness" that retail is currently experiencing.

We don't think it's unfair for the simple reason that the rules apply to everybody both online and offline right now. Everyone of our sellers that has nexus in a state has an obligation to collect local state sales taxes and they do. Our sellers are not tax cheats. They don't get some unfair advantage because they are selling on the Internet.

Last year alone 306,000 automobiles were sold across eBay in the United States. Every single one of those was subject to a use tax or the equivalent of a use tax before anybody drove that car in America when they registered that.

What this is really about is about state political leaders not having the political courage to enforce use taxes. That's all this is about, because all the states attribute the sales and use tax agreement but it's not fun to make their own people pay the tax. So what they would prefer to do is impose it on the distant seller, when every distant seller understands that they're not in that state to protect themselves.

So right now there are 75 million users of eBay around the world. Of that, our estimates are that currently in the United States alone 150,000 neighbors make their living on eBay, 150,000 people. They are the small business entrepreneurs of the future and nothing will end their ability to sell and to have an opportunity to compete in the global marketplace and to have large companies that have the tax institutions and bureaucracies in place to crush their businesses.

Now, we don't think that it's technologically impossible; we've never made that argument, nor do we believe that it is one in which there isn't some revenue that is being lost, but we believe the burdens that would be placed on our sellers are so significant and the additional tax revenue is so insignificant that all this really is, is about protecting big businesses.

So what would we like to do in the future? Fundamentally we would like the current system to be enforced. If there is a use tax obligation there is a use tax obligation. If there is a seller on eBay who is not currently collecting local state sales taxes and has an obligation to do so, come to us and we will work with them to make sure they do. That is all we're asking, that the current system, which is not unfair in any sense, it's only unfair because certain states want to collect taxes from people that aren't there.

And let me get to one other issue, which is the SSTP. We think that the current revolt that's occurring in Kansas is very indicative of what will happen throughout the SSTP as it is implemented. Kansas right now has already -- the governor has announced that she will not be enforcing the sourcing rules in the state of Kansas to make sure that the sourcing rules apply equally online and offline. We've already seen Texas adopt an SSTP enforcement provision that excludes Round Rock from the sourcing rules to protect Round Rock's tax base from Dell.

So we don't believe that the SSTP and the ability for states to change the sourcing rules is going to lead to any more fair system than what currently exists, and we've also seen the same thing in Washington State.

So we're more than willing to talk about creating a system that is more fair, but we believe the current system is just that.

JONATHAN CHAIT: All right, let me throw out some questions to the panel. The first one that occurs to me is Rob mentioned the possibility of a compromise where states would have to stop discriminating against certain sorts of services and goods that can be purchased over the Internet in order for them to tax everything, but the political cynic in me thinks that perhaps you'd get the opposite compromise, that essentially you would not have taxation of these goods but you would have certain merchants conspiring to basically protect themselves from Internet competition. You could have a compromise but it would be the opposite of what you envision. I'm not saying that's right but what do you all foresee as actually happening politically?

ROB ATKINSON: Well, I'd just add that's what we have now is we have merchants that don't pay and we have merchants that at the same time are passing laws to protect themselves from competition. So -- excuse me, merchants that pay sales tax but also that don't collect from other states.

So I think that's the status quo. So the issue is how do you really begin to get traction on this. And we think that this protectionism issue is really important. It's why frankly a number of

Internet companies have gone out of business; they can't compete when there's so much protection in the marketplace.

And it's not just about competition, it's about productivity. We just did a paper on real estate. We could save probably upwards of ten, 15, $20 billion a year in real estate if we got rid of these protectionist laws. There are companies out there that are charging 3 and 4 percent on the commission, but they're precluded by law from giving a rebate to the seller or to the buyer. There are state laws. And where do those laws come from? Those laws came from real estate agents that said, "Damn, I don't want to give a rebate; I want to keep that 6 percent." So that's the status quo.

So I think to me this sort of states want one thing and, well, they want this but it seems to me this is a way frankly for us to say this is this other issue that's really important.

Now, what's the politics of that? I don't know. I mean, there are some other people here, maybe Tod can comment on that. I think frankly it's going to be a little bit of tough sledding because not as many people know about this protectionism issue as they do about the Internet tax issue. So I think if you put the two together though it does make a somewhat elegant compromise.

TOD COHEN: Let me echo what Rob said, because we think it's a very important point about if they were to move to a SSTP and a federal mandate for it, that at a minimum the state protectionism laws that are currently in place for contact lenses, for wine sales, for a variety of other issues, which is part of the reason why if you ever go online we have 65 pages and I believe 150 categories of prohibited items that deal with different state protectionist laws and that our sellers can't comply with.

One of the ones we're most involved with and one that we would think would be a very fair compromise in moving forward on this is the insanity of state scalping laws that prohibit the resell of tickets for concerts and sporting events, only to basically protect either the sporting event promoter or the Ticketmaster company.

MAUREEN RIEHL: I have to disagree. I see scalping laws actually have to do with criminal activity and that has to do with things like stolen gift cards that are resold. I mean, how do you protect against those kinds of things? Just be careful about what kind of rules that you're eliminating with the expectation that it's now promoting free enterprise when, in fact, they're in place for very legitimate reasons.

TOD COHEN: Where in the country is it legal to steal a gift card, even without a scalping law?

MAUREEN RIEHL: I'm just saying that I think that they're being sold at times in marketplaces where there's really no responsibility taken by the provider of the forum.

TOD COHEN: All right, so then you're saying that you want the intermediary to be liable for the collection, so that would also include Internet Service Providers, correct?

MAUREEN RIEHL: I would say that that would include the same kind of regs that are done when you go to some sort of unauthorized auction house or things like that. If it's determined that there's fencing of stolen goods or if there's scalping, and that's against the law in the state, then why would you eliminate that?

TOD COHEN: Now, is that the same standard you would apply for a shopping mall that happened to have a ticket reseller that was fencing in the stores?

MAUREEN RIEHL: That happens now. They're easy to find and law enforcement can go and locate that and take the appropriate measures. I think getting away from scalping laws and other sorts of protectionist laws should be dealt with on a specific basis to achieve a specific good, not to avoid criminal activity.

TOD COHEN: Well, no one is suggesting anybody wants to avoid criminal activity or impose a lesser standard, but you just need to show me a state in which it wouldn't be illegal to engage in all those activities if you eliminated the scalping law.

JONATHAN CHAIT: All right, why don't I try to throw out another question here?

As I understand the issue, you have temporary problems, some of them technological, some of them political, that make it very difficult to have Internet taxation, which a lot of people agree down the road you eventually need to have. But looking historically, a lot of times temporary expedience can lead to situations that become permanently ensconced in the law and become a kind of political property right.

So let me ask this especially of Tod and Dave but others can join in as well: What do you think is the danger or is there not a danger that 30, 40, 50 years from now we still won't have any taxation at all, any kind of sales taxation at all on the Internet because of a kind of political property right that's built?

TOD COHEN: There is no political property right for sales tax on the Internet. It applies if you have nexus like it does anywhere offline, online, retail; I mean, it applies. The only difference is there is a moratorium on access and multiple and discriminatory taxes. So there is no political property right that's been created that allows for the Internet to be tax free. There is a problem of distant state sales taxes that happen to go through a different medium.

Remember, the Quill decision in '92, there wasn't much of an Internet sales problem at that point. That was all about LL Bean and catalogue sales. And we still believe, by the way, that's still 95 percent of the distant sales in the country. They're not Internet related.

DAVID BAKER: I would probably echo Tod's comments. I mean, yes, we've agreed that as a matter of policy we want to promote -- five years ago it was Internet access; now a lot of times people will call it broadband deployment, broadband adoption. The point is it's still a national policy to try to see the Internet as widely dispersed as possible and to that extent Internet access itself has been tax free and hopefully will remain tax free.

Now, a similar treatment in past years was afforded to e-commerce as well. And we all knew at the time that those pronouncements were being made, that it was a fledgling -- fledgling industry wasn't even the right word; that would be overstating the case -- a fledgling application so you kind of wanted to shelter it a little bit and nurture it, whatever metaphor you want to use.

Everybody knew that wouldn't last forever and we had a situation two years ago where the moratorium almost didn't get extended on either Internet access or sales tax and what was then the Enzi amendment was pending. And the compromise was, well, let's extend the moratorium and then the states can all work towards the SSTP.

So could we reach a point where Internet access itself is so widespread that we say, well, it no longer needs to be protected from taxes? Yes. Of course, as Jonathan points out, the alternate is that it just sort of becomes so entrenched that it just kind of stays there.

I would say this much, that I think the impact on revenues, local, state or federal, from continuing the impermanency in moratorium of Internet access itself is minimal, to say the least.

SCOTT PETERSON: I guess I've always been a little bit confused as to why anyone would think that an industry, any particular industry would at some time in the future continue to need protection from taxation. For someone to say that those people who are providing Internet access today are part of a fledgling application need to come to my small town where I live and just start knocking on doors. Walk up and down the street in Pierre, South Dakota and try to find a house that doesn't have access to the Internet. It's going to be a very difficult thing to do.

It is everywhere. This is not a small industry. To provide a tax exemption to support something is illogical when the same effect is to impose a burden on everybody else who's in the field of services.

Now, your initial question about the future 50 years from now, are we going to tax it, I mean I agree with Tod, we're taxing it today. Sales over the Internet are taxable in South Dakota, dependent upon whether or not the individual has an obligation to collect the tax or whether or not I have the right as a tax administrator to enforce our laws on that individual.

That will change on the margin. I mean, at some point, I mean, I like to joke to my friends that at some point in time GE, Citicorp and eBay will own the whole world and at that point in time there will be taxes on everything because they'll have nexus everywhere. And a lot of the people that are collecting the tax have nexus everywhere.

But the fairness issue that Maureen and Tod are discussing isn't the one that I like to discuss. To me the fairness issue is why does my neighbor who lives in the same exact house that I do and has the same income that I have, the same number of children I do, uses the same amount of government services that I do get to pay less taxes than I do because they get to make choices and shop from people who don't have the same collection burden.

Now, could the state of South Dakota enforce its use tax? You bet we could. We'd have to police every home in the state of South Dakota, and the effect would be that the politicians would stop us from doing that and they'd make us either go back -- they'd make us go back to the spot we're at right now where the only people who are paying taxes in South Dakota are the people that shop downtown. Everybody else doesn't have to pay taxes. That's the fairness issue that I think is being left out of this discussion is we all share in the burden of government. We may not like it, we may think we may too much for it, we're thrilled to death that sometimes we don't use some of those services, but we all share in the burden and the tax system should spread that burden around to everybody that shares in the burden.

TOD COHEN: But don't you already run into the situation in South Dakota where you've got people that are very far from shopping malls, very far from downtowns who are discriminated more than anyone else in the country because of their lack of access to local shopping, and that what the Internet has allowed is not only the ability to buy anywhere in the world, it's also given them a global marketplace to sell anywhere in the world?

Our 150,000 sellers who are making their living are far more rural, are far older, are far poorer than the average small business people. They are the tiniest entrepreneurs and in the places where there's no access to cash. It's part of the reason why tonight we're sponsoring the SBA's 50th anniversary because eBay believes that it's the small business growth that makes the difference here and that what at least the Internet has done is evened the playing field for those types of people.

SCOTT PETERSON: There's no question that there are places in South Dakota that are extremely rural and, I mean, I live in the state capitol, which is the largest city in a two-hour drive. And you draw a circle around the state capitol, we're the largest city in two hours and there's only 13,000 people that live there. And we are a huge shopping Mecca for everybody that lives in that two-hour circle.

And I have members of my family who are one of the 150,000 --

TOD COHEN: Less than.

SCOTT PETERSON: -- and I do, too, and I'm glad they're able to do that.

And I am thrilled that people have the opportunity to make a living anyway they can, but they still have an obligation to support the people who are supporting them. There are people out there -- and everybody that's out there that's running a business today does so under the protection of the laws that the legislature and the Congress passes, under the protection of that fire truck that comes down the road, under the protection of that police car that comes down the road, the school system if they choose to participate in it. Everybody that's in that business has the right and I think an obligation to participate in the payment of those. Nothing is free in this world.

TOD COHEN: That's right and South Dakota has an income tax, correct?

SCOTT PETERSON: No.

MAUREEN RIEHL: No.

TOD COHEN: Okay, so you made a political decision in South Dakota that you would not tax income?

SCOTT PETERSON: Correct.

TOD COHEN: So that was a decision made by the politicians --

SCOTT PETERSON: Yes.

TOD COHEN: -- so you would impose a sales tax in its place?

SCOTT PETERSON: Yes.

TOD COHEN: But a state such as Delaware, which has chosen not to impose a sales tax doesn't get that same benefit under the SSTP?

SCOTT PETERSON: That's correct.

TOD COHEN: All right, so that's a political decision and that's just as unfair. We could just as easily say we would like every state that doesn't have a sales tax to impose a mandatory state income tax and the reverse. So there are plenty of states that make another decision.

And one of the things that we believe is important, especially in a rural state, is the ability for people to stay in that state and grow the state. I believe that one of South Dakota's largest problem is people leaving the state, because there aren't economic opportunities there. We think the Internet gives them economic opportunities at home.

SCOTT PETERSON: It only does so to the extent that the taxes we pay continue to develop and infrastructure by which they can continue their business. Those little brown trucks are all over South Dakota. They're using the highways that those little brown trucks drive on and the police that keep them from being robbed, those people wouldn't be able to build a business anywhere.

TOD COHEN: But the decision was made to not impose an income tax to pay for that.

SCOTT PETERSON: That's true.

TOD COHEN: So that was a decision made by the state not to try to impose a tax on distant sellers.

JONATHAN CHAIT: And if I can interject myself on the sales tax side of the debate, and it may have already been said, but I mean I think Senator Wyden was probably being overly generous when he pegged the total amount of online commerce as a percentage of total commerce. He put it at 2 percent; it's probably more like 1 percent. And then you take out of that your multi-channel merchants and Steve and Michael in a very excellent paper that they've just published they mention this, you think about that. The Best Buys of the world that under the Quill decision have nexus in just about every state, you buy on their online site, they are probably meeting sales tax and use, starting with a gross of that 1 percent of all goods and services sold are done online, need to be transactions already collecting remittent taxes. Consumer purchases from retailers that have nexus are already remitting taxes under Quill so you're getting down to literally a fraction of 1 percent, so I just think I mean, yes, does it have some impact? I mean, clearly it's not zero but I think that that impact is very small.

ROB ATKINSON: I think that's a huge issue, which is if it is really small then we're just sort of wasting a lot of time and a big effort on nothing and I think that's a key question.

I guess I'd dispute the issue that it's really small though. If you just look at the Census Bureau, go to census.gov and click on e-stats, then they have the quarterly reports every quarter on e-commerce sales and I looked this morning and e-commerce retail, which isn't the B2B but it's B2C, has grown pretty much every time I've ever looked at it anywhere between five to seven times faster than non e-commerce retail.

Now, obviously it's starting from small dates but I don't see any reason why that trend isn't going to keep going. As more and more people are online, the longer they're online the more they buy, whether it's eBay or Amazon or wherever else. So, yeah, it's a little bit small now but it's going to keep growing.

And the second thing is, you know, this huge debate, it's in Steve's paper on is it the UT study or is it the DMA study. And I looked very carefully at the UT study, what was it, 30-something billion and the DMA study is 2 billion or something like that. It's in our paper as well. And I looked pretty carefully at both of those studies and talked to at least the UT authors and my, whatever, best conclusion on that is that there is sort of a top and a bottom end, but the bottom end, that's the bottom end; it's something above that. It's not as high, I don't think, as the UT study. I think they use some numbers and some estimates that were a little over-optimistic.

So having said that, I don't see it as a small amount, I don't see it as a huge amount either but it's something that I think is still sizable and likely to continue to grow, so in our assessment it's something that has to be taken seriously.

MAUREEN RIEHL: And I mimic what Rob has said and it's not an insignificant number. Even if you take the DMA, it's not insignificant and it's growing, as you see the migration to larger numbers of users through an eBay kind of platform.

I think it's important to note, if anyone is of the mindset that this is going to apply to any seller, including grandma trying to sell her doilies online, that's not going to happen unless there's a small business exemption that's always existed in any version of this bill, it will continue to exist, it's supported by retail and there's even problems within the retail community that why are you picking on big business to the exclusion of small business. And small business is designed in this exemption according to the Small Business Administration levels. And actually we limit a little farther in this and you'll see this in the bill next week: 5 million in gross remote annual sales. That is a huge number. Now, anybody that falls below that threshold is exempt from collecting sales tax; that's a huge number. That is not a small business if you fall over that threshold.

So I mean I think we're trying to be accommodating so that we're not suppressing individuals trying to grow a business through the use of an Internet platform but when you get to a level you're no longer a small business.

TOD COHEN: Well, we support a de minimis and we think that's a great idea. We do think that it does put a cap on it but that's the nature of any type of de minimis. We do think it also needs an escalator for inflation, because I mean 5 million ten years ago was a lot, 5 million today is a lot, but in 50 years -- I mean, if we're trying to put together this and granting the states forever the right to tax distant sales, then you need to at least build in some type of an escalator in that.

We think that the last point is what Rob says. There is also a tradeoff in other parts of the economy, that it's not simply the taxes. Really there are still burdens, huge burdens in selling distantly that you don't have when you sell locally. Best Buy sells an enormous amount online and you have the right to go and return that item to Best Buy if it doesn't work, if it's broken, I mean there's a whole variety of reasons, even if you don't like it, but that's not ever as easy when you're buying distantly and selling distantly.

MAUREEN RIEHL: I think that it's all well said, what you've indicated, Tod, and one of the biggest learning curves that retail has experienced in this process and working with state government is helping state government understand that under the current system there are enormous burdens that retailers face in the collection that we're never compensated for. It's been agreed with working with government that those are both recognized, they will be addressed and dealt with. It's probably like that bricks and mortar are probably not going to get a better deal than we have in the 17 states that give us a pittance of what it costs to collect right now, but I will say that remote sellers are going to benefit greatly, because 100 percent of revenue that you're not collecting from a remote seller right now, as it's done by the remote seller on behalf of its customers, even 3 or 4 percent off the top of it, the state still benefits by 96 percent of income that they didn't previously get. So remote sellers are going to have an opportunity to have their burden, wherever it still exists, compensated. That also is being accommodated in this bill.

So again where is the beef? I mean, if it's going to be paid for and it's going to be itemized, then still that's a strong pressure on government to continue to move towards simplifications and Scott knows this. If it's going to be burden free, then that necessarily means it's cost free. If there's a cost then you've got to pay for it.

TOD COHEN: Can I ask a question about the sourcing rules, because we are concerned that that part of the political deal seems to be disappearing from the SSTP.

SCOTT PETERSON: I think that's premature. Is sourcing an issue? Absolutely. I was in Kansas two weeks ago and spoke to an interim committee about their transition from origin to destination. And the issue that we all faced in trying to arrive at simplification where people are collecting sales tax in this country today is if you can't make it simple you have to make it uniform. And we weren't uniform when it came to sourcing. Even in Kansas they're not uniform. They never were uniform. There are many businesses in Kansas who have always been destination: utility companies.

TOD COHEN: So what's the status of Texas? Is Texas in the SSTP? Did they comply or not?

SCOTT PETERSON: Texas -- well, in my opinion, Texas is not in compliance with the Streamlined Sales Tax Agreement because they have not adopted destination sourcing.

MAUREEN RIEHL: And they cannot take advantage of mandatory collection until they change their sourcing rules. That is the bailiwick that we hold over the states that have not done 100 percent of compliance. They can't collect if they're not in compliance, period.

SCOTT PETERSON: I've never understood why -- and frankly, one of the things that I've found fascinating in the streamline process is watching the entrepreneurs. When I was in Kansas two weeks ago there were two organizations that gave presentations at that interim committee about that software that they had just created on their own from about the 1st of June to the date of that hearing to help businesses in Kansas resolve their tax administration problem going from origin to destination.

I don't know why eBay doesn't become the largest certified software provider in the world. They are the perfect organization in the perfect setting with the right combination of resources and abilities to completely solve the collection, not only future collection but current sales tax collection issues that their members face every day. Every day somebody on eBay is having to say, "Okay, you live in Pennsylvania or is it going to Pennsylvania, because if you do I've got to charge sales tax. Then you've got to tell me where you live so I can charge you the right city sales tax." Who better than the organization that provides the mechanism for them to operate to provide that service.

TOD COHEN: We think that's perfectly acceptable also with regard to every credit card company.

SCOTT PETERSON: Oh, we do too.

TOD COHEN: That American Express or Visa or MasterCard could go ahead and enter that business. That's anybody's prerogative to enter that business. We just don't think it should be imposed upon the intermediary to be the collector, be the remittance officer and to be the auditor fundamentally.

SCOTT PETERSON: We agree.

TOD COHEN: I mean, we've just gone through an enormously expensive and complex project to deal with the EU's new directive on electronic services and that's destination based for just the eBay service that we provide our sellers in Europe. And the complexities and the idiocy in the collection is so little compared to the amount of money that we've spent to go ahead and do it is just staggering, and that's simply just on the percentage of the cost of what we charge the seller, which is between 30 Euro cents and 3 Euros and then the final value fee, the percentage, which is below 5 percent.

JONATHAN CHAIT: All right, why don't I throw it open to questions from the audience now? Anyone who has anything for any of the panelists, why don't you go ahead, I'll recognize you. You could ask from your seat or you could step up to that mike right there.

QUESTION: A couple of folks talked about the discriminatory aspects, and I'd just propose something for you to think about. In today's world bricks and mortar merchants collect one and only one sales tax for the jurisdiction where it's sold. And an Internet purchase, or a telemarketer collects sales tax only (off mike).

MAUREEN RIEHL: Only, one, if you're a small business and you have one location. As I stated earlier, most retailers of any size -- and this gets to the bigger company issue -- will centralize that. Sears has their sales tax centralized in Hoffman Estates, Illinois. The same is true for Wal-Mart in Bentonville, Arkansas and go on down the list. It's not done on a state-by-state individual location-by-location basis; it's centralized. So they're filing for upwards of 7,600 jurisdictions if they're in every place that has state, local taxation and in some instances the bigger they are, the more they file, the more frequently they file and so on and so forth. So it's not one unless you only have one store or two stores in a particular location.

When it comes to the online merchant the way that the system is being designed right now is that you'll have an option to have this basically you can go with a third party provider that will be cost free to you as a merchant. You don't have to pay to hook up to them. They do all of your back-end processing, collecting and remitting for you. All you do is through Electronics Benefits Transfers, EBTs and other things like that, you give them a statement at the end of the day, you transfer the funds electronically and you have no paperwork responsibilities.

There are other models that an individual remote seller could apply. They could adopt their own software and have that certified within house. They might even have their own system already in place. Look at an Amazon, which is doing portions of this. They may choose that they're going to be certified by the states themselves.

And so again a remote seller that has to invest in a link, purchasing software, there's options for them. They'll be compensated for that.

QUESTION: How will they be compensated?

MAUREEN RIEHL: That is yet to be determined and I think that it would behoove any remote seller that's not currently involved in this project to get involved with Scott, the way that Amazon and others have been involved in this process. If you have a percentage in mind or if you want certain things paid for by government, then that has to be discussed in the context of the skewing. I think that that's definitely something that retail is going to stand alongside bricks and mortar, stand alongside with clicks and mortar and say we demand to have our costs covered for this.

TOD COHEN: Are we going to require the same standard for newspaper classified ads, which benefit from distant sales of their --

MAUREEN RIEHL: That's an unconstitutional collection of taxes and services. That's an infringement on free speech, and I think if you want to revisit that, you're welcome to do that.

TOD COHEN: No, no, no, not the newspapers, the publishing of the newspaper and the printing of the newspaper. As for the classified ads that run and then eventually get sold and they give you a free classified ad if your item doesn't sell.

MAUREEN RIEHL: There's a tax on the advertiser, on the advertising production company or on the newspaper.

TOD COHEN: Are we going to require the newspaper to adopt the mandate model that makes sure that if it's a Virginia buyer that from a *Washington Post* seller in Maryland that the collection is obligated for the Maryland seller? There's lots and lots of inequities in the current system.

MAUREEN RIEHL: Who does the collection? Who does the collection again, and I think that that's dicey when you start looking at methods of advertising and things like that. There is law that's completely separate from nexus that deals with those issues.

SCOTT PETERSON: That's an interesting point and I'm glad you brought that up because my staff thinks that the business that you run is unfairly competing with like businesses in South Dakota, to the extent that we tax everything sold at auction in South Dakota and we make the auctioneer liable for the collection of the tax. And my staff often asks me, "Well, why isn't eBay then -- why aren't we enforcing the same law on eBay, because why aren't they the same kind of setup?" And I explain the differences between the two of them.

But I find it interesting to see my local newspaper and the other newspapers in South Dakota trying to emulate your model and take their classified ads today and turn that into a little local eBay and it's an interesting question. And I honestly don't right now think that any of those newspapers are collecting any sales tax on the items that are sold through that medium because they are not -- like you, are not the retailer. If the person who has made the sale, who's collected the money is doing that as a business then we would expect that person to get a license and collect South Dakota sales tax.

TOD COHEN: And that's exactly what the auctioneer is. They stand in the shoe as the reseller.

SCOTT PETERSON: That's what we think.

TOD COHEN: They transfer the goods to the buyer. They have the obligation, they have the guarantee.

I mean, it's always the difference between intermediary taxation, which would always be -- it would be far more efficient I believe than if we required the shopping malls to collect all the states sales taxes because you'd only have to go to the five shopping malls and say you know every shopping mall in this country knows exactly how much merchandise goes through every one of their stores, because that's how most of them charge rent. They take a percentage of the sales of that store. So they have an enormous amount of compliance in calculation on this.

So if want to move to an intermediary taxation model, there's far more efficient ways to do it.

SCOTT PETERSON: And states have done that in the field tax. I mean, most states have moved their tax up to the rack.

TOD COHEN: And there's no question about that. I've told my legislatures many times that a simpler way to do this would be to tax the manufacturers. Find those individuals, figure out a way, because there's a lot fewer of them than there are retailers, it's a simpler tax to administer, probably get just as much if not more tax, get better effectiveness, but that is not the type of -- that contains the same burdens as the current system does, because the manufacturers aren't in South Dakota. I mean, sure, I could get the tax on the manufacturers that are located in South Dakota, but that isn't going to cover near the volume and range of stuff that's sold in South Dakota.

TOD COHEN: And one last point, and as Maureen said, those companies that have 7,600 locations or meet that, they do receive the benefits of the local fire department, they do receive the benefits of the local roads. That's why they put the stores in 7,600 locations. They are getting that benefit and paying for that benefit.

MAUREEN RIEHL: I have to make sure that you all understand that this is not a tax on business. What we're talking about in a vendor compensation scheme here is compensating businesses like eBay or anybody else that doesn't currently have a responsibility to collect for the cost of hooking into this system. This is the collection of a consumption tax on consumers. That's what a sales and use tax is.

The fact that we are captured as brick and mortar sellers, and by the way we have hundreds of independent sellers, we have online merchants as well as part of our family of the federation, and we think the difference there is in the view. This is a tax on the individual. Every single one of you that buys or sells and doesn't have that tax collected for you for the state in which you reside right now you are out of compliance with the law of the state in which you live. And if you think that that's okay, then that's what we've been fighting about right now is that there's tax avoidance going on every day anybody makes that kind of purchase.

I live in the Commonwealth of Virginia. The last time I bought furniture from the state of North Carolina I got a nice little bill of laden from the Department of Taxation that says your apportioned amount of tax due on this furniture that was delivered, we don't know what you bought, but we know that the general overall cost of the shipping mode was such and such, your proportionate amount was this amount of money and that's 4.5 percent of Virginia tax that you owe as a use tax.

Think about that; how fair is that? That wasn't identified to me personally but I still got that little bill and I had to have a little talk with Governor Gilmore about that.

So think about what it forces government to do. There are other things to do. You can talk about getting rid of the sales and use tax. That's politically feasible. That's not what retail has been arguing about, assuming, as we do, that it's here to stay, then let's apply it fairly.

TOD COHEN: Right, and if we want to apply it fairly then we would require all the Delaware retailers to ask the person when they come into the store where do you live, where are you going to consume this item and everybody who shops in Wilmington who lives in Philadelphia would pay their fair share.

MAUREEN RIEHL: Only if every merchant sends those goods to Philadelphia.

TOD COHEN: That's the current system.

MAUREEN RIEHL: If you walk out of the store, we would assume that it's used in the state of Delaware.

TOD COHEN: We assume that, but we all know that if they've got a Pennsylvania license plate they're consuming it in Pennsylvania.

MAUREEN RIEHL: And retailers are not interested in being the police force for our customers.

TOD COHEN: Nor are we. That's exactly right. Nor are we, and nor are our sellers. A huge number of them are members of the National Retail Federation.

MAUREEN RIEHL: It becomes irrelevant if it's already done at point of sale based on where you live. The only beneficiary of no sales tax are residents of the states that don't have that tax now.

QUESTION: (Off mike.)

MAUREEN RIEHL: But it's appropriate, isn't it? If it's a consumption base, if it's a consumption based tax, you purchase that, the local tax applies at point of sale.

QUESTION: (Off mike.)

MAUREEN RIEHL: That's a tax on UPS. It's not a tax on your sister, and it's a consumption tax.

QUESTION: First of all, I'd argue that all taxes are taxes on the consumers, but (off mike).

MAUREEN RIEHL: I'm just saying that in the case of sales and use tax it is not a tax on the business.

QUESTION: I understand that. That's not my point. The argument is that there somehow is (off mike) that there are taxes associated with online transactions. That is not correct.

TOD COHEN: I agree.

QUESTION: (Off mike.)

TOD COHEN: We have models out there where you are considered to consume it in the location that you're based in and when you leave that location they will reimburse you and in this instance it would be the value added tax in Europe. When you leave Europe you are refunded that amount. So we could create a system such as that.

Our concern is that the SSTP is a political compromise, as all political compromises are, and everyone understands that there's no way that Delaware is going to ask a person where they're located and where they're going to consume because Delaware would go -- unless the federal government imposes that rule, it can't be done.

MAUREEN RIEHL: We don't envision that happening under --

TOD COHEN: Right. So the point is that there will always be unfairness, because we always know that someone will be consuming it in the location where they're not going to pay their use tax. If we want to make it a fair system we will have the governor say, okay, if you buy distant we're going to impose a 5 percent use tax on everybody and that assumes that we are -- and you have the right to come in and prove that you didn't buy anything at a distance.

MAUREEN RIEHL: I think in our studying of this issue over time perhaps a person's definition of both simplification and fairness are all over the map. You have to deal within a political reality and that's what we're trying to work through this, and we have been these past several years.

I mean, maybe the only fair tax is for everybody get taxed at the same rate without exemption anywhere for everything. Is that the only fair thing? It's simple. It's the only thing that you can have certainty about. It's not a question. You pay 1 percent on anything you do sell, buy, whatever, earn. I mean, if you apply that, that's fair and simple. But is that the right way to go? I think that's not in the context of the political reality.

And all I'm saying is I'll get back to the fact that our assumptions from getting into this in the first place were that this was grossly complicated and we didn't have any certainty. We have moved away from those two statuses right now. We think that the sales tax -- we know, in fact, that it's here to stay and would, in fact, vigorously, you know, support a state's effort to do away with the sales tax; that alleviates a burden on business that we don't get paid for right now. However, again, that's not a political reality, so all of these things we talk about we still have to filter through what we can get done through the state legislatures and in Congress.

ROB ATKINSON: There is another issue with -- on the face of it, yeah, it does seem weird, you go to Delaware and you don't pay, but I think that's not the right way to look at it. I think the right way to look at it is origin or destination issue. I actually wrote a piece on this on international e-commerce, which if you want to get even more complicated, it's much more complicated than the state issues.

But if I go to Delaware and let's say, I don't know, I consume some service and it's a non-regulated service, so let's say it's, I don't know, maybe getting some fitting for optometrist of something like that, well should I say to them, "I live in Maryland; you have to obey the Maryland regulation." No, I mean, that would be ridiculous. I'm going to Delaware. I'm saying I'm going to take my chances. I'm hoping they're regulated and I have no idea whether they are. I know in Maryland if I go get a contact lens they're regulated. Say Maryland decides they're not going to have any regulation, I'm going to that jurisdiction and therefore I am subjecting myself to their laws. It's very different than if I ask them to come to me and maybe a lawyer is better, I'm going to ask you to come into my state. Well, then you have to comply with my state's laws that I understand.

And the tax issue is exactly the same. If I go to Delaware, fine, I'm going with their laws. If I ask them to come to me, which is essentially I go to a Delaware merchant and I say, "Send this to me in my home in Maryland," then I'm saying okay, I'm complying with Maryland law.

So I think on the face of it, it sounds unfair, but I don't see other than what Maureen said the only way to make it fair would be that every single law, every single regulation, every single tax is exactly the same and that we don't want that in this country and that's why we have states.

TOD COHEN: Well, I also think that part of this is -- I mean, we all like the thought that there will be a fabulous system put into place to reimburse sellers for the collection obligations. I mean, I'm more than willing to say then that let's have it in practice for a few years and see what happens in states. I mean, Kansas, they're not happy right now in Kansas. There's a reason why the governor decided not to continue to enforce the law. There are a lot of people that are out there saying let's not jump to the next step, which is to reverse Quill at this moment.

SCOTT PETERSON: Very few people in Kansas are unhappy. They have 100,000 retailers. No more than 25,000 of them are going to have to collect a tax different than the one at their store and very, very few of them are going to have to collect a tax, more than two or three taxes.

TOD COHEN: So why did the governor stop enforcement?

SCOTT PETERSON: The governor didn't stop enforcement. The governor has --

TOD COHEN: Delayed enforcement.

SCOTT PETERSON: -- relaxed -- let's stop enforcement. She did, the governor did stop enforcement. She said that we were going to give retailers an opportunity and some time and the benefit of the state's expertise in working toward the adoption of this at some point in the near future, after which they would be held liable for not collecting the right tax.

What she said was we're not going to hold you liable in the interim for not collecting the right tax, but there will be a point in time when that would change. She didn't stop enforcement because the number one question the retailers in Kansas are asking today is what do we do, do we change now or do we wait until six months from now and change, what do we do. They all want to change.

TOD COHEN: We had the same problem in the Netherlands because they didn't adopt the EU VAT directive in time. Do we collect in the Netherlands or not? And our concern is that our sellers don't have the time, energy, patience or desire and the burden put upon them to keep track of which state decides at this point to not move forward in the same way that it was two weeks before.

And the other part of this is about tax holidays, because tax holidays are about you have to know that they exist to take advantage of them. And our sellers and even if they're large sellers and are just experimenting on e-commerce and are in the midst of 5 million in distant sales from one state to the next, they say, "Okay, I feel comfortable with selling into the state of Pennsylvania because I'm based in New Jersey and I can provide services to my buyers in that location," and they're big, you do 5 million or you're in a new line of business because the way that the definition is based is based upon affiliates so it's basically the whole company. There is always going to be the ability for some companies, the Sears of the world, who have the tax structures in place to take advantage of all of that.

And what we're trying to say is that we're not ready yet. We admire what the states have done. You've not heard us talk, at least at this table, anything about the candy and the cookie exemption, all right? We admire all of the definitional pieces and we agree with the regional federation that that's a big step forward, so let's make it work for a few years and then realize if we're ready to reverse Quill because we don't think we're ready yet.

JONATHAN CHAIT: Let me interrupt. Dave, I don't mean to put you on the spot, but is there anything that you've been meaning to say but haven't quite had the chance to jump in? You've just been a little bit reticent.

DAVID BAKER: Well, as I say, I mean, I'm mostly coming from the Internet access side of the debate, although I would say that I've got great sympathy for trying to keep e-commerce as tax free as possible. I mean, I think that as I stated earlier it was one thing five years ago originally and then two years ago when we said, well, e-commerce still needs a little protection. I mean, I think probably the thing to do -- I mean, I think the glide path is established. We all though when the moratorium got extended two years ago that the states would have in sufficient numbers ratified the SSTP. We're not there yet, but I don't think that lack of coordination, if not necessarily lack of action on the part of various state legislatures should impede the work that needs to be done here and now.

I mean, we've got a November 1st deadline. This act needs to be extended. As I understand it, there will still be the attainment out there in the future of SSTP and therefore uniform patches being applied to e-commerce, but I think that the points that Tod has made and that Steve made earlier about sort of having a reverse discriminatory effect, that is online merchants being subject to various taxes that bricks and mortar merchants aren't is at least a danger to look out for, and I think that to a large extent that's the idea behind SSTP is that it kind of harmonizes those two things. Yes, we will collect for online sales but, no, we won't have tax tables with 7,600 cells in them.

JONATHAN CHAIT: Any other questions from the audience?

QUESTION: (Off mike.)

SCOTT PETERSON: We initially gave some thought to not origin sourcing but origin administration. If you were based in Pennsylvania then every sale that you made the tax would be collected by Pennsylvania and that Pennsylvania would be responsible for administering that tax and distributing that tax throughout the states. That model does exist in the field tax area and the IRP where every state has a tax. They've gone together. They like to think they've eliminated the administrative burden. I think it's more complicated in some ways.

No, we have never given any thought just going from origin to destination because it is not a tax on the business, it's a tax on the consumer, and where the consumer resides is where the tax needs to be collected.

What we're trying to create is a tax administration simplification. We're not trying to impose taxes on anybody. Businesses collect -- not pay but they collect almost all the tax that's collected in this country. I get penalized under the Internal Revenue Code if my employer, if I haven't instructed my employer to withhold at least 90 percent of the income tax I'm going to pay. My employer collects a minimum of 90 percent of the income tax in this country, as every other does. I'd like to know at some point in time if somebody could tell me how much of the property taxes in this country are paid by banks. I don't have a mortgage so I pay my property taxes. Everybody I know that has a mortgage, their bank pays their property taxes.

Businesses are the tax collectors of this country. I don't collect taxes. I'm the director of the sales tax division of the state of South Dakota. I don't collect a dime in taxes, zero. But the people who have to live under the tax regime that the South Dakota legislature has created, they're the tax collectors and I think my job is to make their job as simple as it can. To understand the sales tax holidays is a great example. That holiday has absolutely zero value if I'm not out there telling people that there's the holiday and you've got to take advantage of this, why aren't you taking advantage of this. That's one of the reasons Amazon.com was so involved

I the Streamlined Sales Tax Project because they're being whipsawed by consumers and their competitors over the differences in our sales tax holidays.

So I've read some articles on origin, I don't think anyone will ever go that way because I think it defeats the purpose of the tax, which is a tax on consumption and that consumption is where I am.

TOD COHEN: We would very much support anything that was an origin based administration side because of the difficulty with the 50 state issue. Even the EU has agreed to a single point of registration, which makes it somewhat easier to deal with some of the complexities of different member states.

We have looked at what Michael Greeve released a paper last week about origin based sales taxes. I mean, the biggest problem with that is the political reality that if you ever moved to that you have a race to the bottom and we'd all be Delaware so you would eliminate the sales tax, which may be a good thing, because we tend to believe that -- I mean, as much as we're not happy with the VAT system it also protects -- VAT at least is based on the theory that you've added value to the thing along the line. So one of the things that means for eBay sellers in Europe, there's no VAT obligation for the resell of any used goods. There's no value that's been added to that. And in the value added system you are taxing the increase in the value.

I used to work for Bruce Babbitt and he wanted a consumption tax and he didn't do well.

JONATHAN CHAIT: I think we've got to start wrapping up now. I wanted to thank our panel. We had a terrific discussion with lots of great points of disagreement, which were very interesting.

I wanted to thank our sponsors.

All right, well thank you all very much for coming.

(Applause and end of event.)

END