

Internet Taxation

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Internet Taxation

- Because government revenue is generated through the taxation of commerce, it is important to consider the effects and operation of taxation on electronic commerce

EC Taxation

- Taxation on the state level
 - Jurisdiction
 - Tax Types
 - Access to markets

EC Taxation

- International Taxation
 - Taxation between sovereigns
 - Taxation of services or products
 - Taxing authority

Tax within the United States

- Types of Taxation regarding the use or operation of electronic commerce elements
 - Income taxation
 - That which is generated through the payment for goods or services
 - Sales taxation
 - That which is generated through the transaction process

Tax within the United States

- Income Taxation
 - Corporate
 - All states except, Michigan, Nevada, South Dakota, Washington and Wyoming
 - Individual
 - Taxation on the income received by an individual
 - Can include “earned income” and “capital gains”

Tax within the United States

- Sales and/or use tax
 - All states except, Alaska, Delaware, New Hampshire, Missouri, Oregon
- Taxation of the right for a bargained for exchange

Legal Issues

- Constitutional Questions
- Commerce Clause
 - Trade and exchange amongst the states
 - Federal or state issue
- Due Process Clause
 - 14th amendment

Legal Issues

- Jurisdiction
- Quill Corp v. North Dakota
504 U.S. 298 (1992)
- The Due Process and Commerce clauses impose limitations of the taxing acts of the various states.

Jurisdiction

- A state could exercise taxing powers consistent with the Due Process clause yet still run afoul of the Commerce clause.
- Likewise an action may be duly authorized through the commerce clause, yet violated the Due Process clause.

Jurisdiction

- Congress has the power to regulate commerce between the states and thereby may authorize in the states a power to action, yet the acts must fall within the acceptable bounds of the Fourteenth Amendment with regard to the burdens placed on interstate commerce.

Due Process

- Requires some definite link, some minimum connection between the state and the person property or transaction it seeks to tax
- Thus income that is taxed must be rationally related to the particular jurisdiction claiming the right to tax.

Jurisdiction

- *Scripto, Inc. v. Carson*
362 U.S. 207 (1960)
Seller had sales personnel in jurisdiction that taxed
- *Nat'l Bellas Hess, Inc. v. Dept. of Revenue of Ill.*
386 U.S. 753 (1967)
Physical presence constitutional prerequisite for jurisdiction

Jurisdiction

- *Int'l Shoe Co. v. Washington*
326 U.S. 310 (1945)
Provided the minimum contacts theory to maintain due process in order to claim jurisdiction
- Purposeful availment not physical entry

Commerce Clause

- *Complete Auto Transit v. Brady*
430 U.S. 274 (1977)
Created four part test

Commerce Clause

1. Tax must be applied to an activity with a substantial nexus to the taxing state
2. Tax must be apportioned fairly
3. Tax must not discriminate against interstate commerce
4. Tax must be fairly related to services provided by state
