

**PUBLIC HEARING:**

**SB 61, SB 252, SB 519, SB 660**

**TAPES 074-075, A/B**

## **SENATE REVENUE COMMITTEE**

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**March 15, 2001 — 8:30 A.M. - HEARING ROOM A - STATE CAPITOL BUILDING**

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Members Present: Senator Ted Ferrioli, Chair

Senator Lee Beyer, Vice Chair

Senator Susan Castillo

Senator Tony Corcoran

Senator Gary George

Senator John Minnis

Senator Charles Starr

Staff: Paul Warner, Legislative Revenue Officer

Richard Yates, Economist, Legislative Revenue Office

Carol Phillips, Committee Assistant

Witnesses: Senator Jason Atkinson, SD25

Rep. Bruce Starr, RD3

Elizabeth Harchenko, Director, Department of Revenue

Jim Craven, American Electronics Association

Russ Walker, Citizens for a Sound Economy

Jeff Vanek, Citizens for a Sound Economy

**TAPE 074, SIDE A**

005 Chair Ferrioli Meeting called to order at 8:38 a.m.

017 Richard Yates Explained that SB 660 prevents the state or any political subdivision of the state from imposing a tax on electronic commerce, the Internet, or use of the Internet. It does grandfather in any tax that exists at this time. It prohibits the state from assisting any other state or political subdivision of any other state from collecting such tax. The bill does not, however, specifically define electronic commerce.

Questions and answers interspersed.

043 Chair Ferrioli Advised that Rep. Shetterly should be brought to this committee at a later date to explain fully how the concept works and answer all questions.

Further questions and answers.

#### OPENED PUBLIC HEARING ON SB 660

070 Sen. Jason Atkinson Testified in support of the bill. Discussed differences between the old economy and the new economy, i.e. Standard Oil versus Amazon.com. The new economy has a lot to do with business that is transacted over the Internet. Electronic commerce increased in the late 1990s. In 1998 the federal government moved to keep the growth going by passing a federal moratorium on Internet taxes. During review in 2000, the continuation of a ban on Internet taxes was passed in the House but the Senate failed to act. Thus, the federal moratorium expires this October. Sen. Wyden of Oregon has been leading the charge to get the Senate to reconsider to keep the ban going.

104 Sen. Atkinson SB 660 puts into statute a state moratorium on Internet taxes. This bill would allow these e-commerce businesses to continue to grow and site themselves here in Oregon, and basically make Oregon a safe haven for e-business. Is hoping with SB 660 to take on at the state level what the federal level did not continue, and that

is a ban on Internet taxes here in Oregon.

124 Rep. Bruce Starr Primary reason for supporting this bill is the opportunity to attract investment in Oregon. Stated that is a good reason to ban Internet taxing here. No taxation would provide a safe haven for Internet companies to locate here and help Oregon's economy.

Extensive comments, with questions and answers.

153 Sen. Atkinson Gave example of a struggling antique dealer in Condon. After establishing presence on Internet, the owner saved the company by the volume of business coming in. He now has a niche selling Tiffany lamps. Since he saved his company, he is still a part of the local economy and supports it in many ways. E-commerce allows people and companies to grow and should be protected in statute.

184 Chair Ferrioli Added a little-known fact about Condon. Stated there is a Powell's Book Store located there that is a subsidiary of the square-block-sized location in Portland.

209 Sen. Atkinson Continued testimony in support of SB 660. Gave another example of a small business in a small Oregon town doing a large business over the Internet. Confirmed that he intent of the bill is to preclude a sales tax on Internet commerce.

254 Elizabeth Harchenko Stated that 24 hours ago she testified before a US Senate Committee on Commerce regarding Internet taxation. Stated the Senate Commerce Committee is very interested in the issue to taxes as they relate to the Internet and transactions that take place over the Internet. The Internet Tax Freedom Act of 1998 prohibits states from imposing taxes on access to the Internet, not on sales or transactions that take place on it. Commented on "blended"

economy, which combines brick and mortar stores and Internet access. Consumers like Internet ordering, but still want a physical store in which to see and touch merchandise. Believes the moratorium on taxation of access to the Internet will be continued.

325 Harchenko Further discussion of SB 660. Stated there should be a level playing field; that the medium through which a transaction takes place should not establish a tax advantage, but should be tax neutral. The argument has shifted away from taxing access to the Internet...that seems to now be assumed "No"; to how should the tax structure treat transactions that are fundamentally achieving the same result if they are occurring through different mediums. States that have sales tax are finding it difficult to deal with taxing Internet sales. There are too many taxing authorities in cities, counties, town, districts, etc. to have predictability and uniformity of rates.

Extensive discussion, with questions and answers interspersed.

433 Chair Ferrioli Stated that because Oregon is one of only a few states with no sales tax, people should be coming here to load up trucks with goods. Wondered if Oregon would maintain its relative advantage as a sales tax haven by not having one, and does that become more important to the Internet economy than it has been in the traditional economy.

**TAPE 075, SIDE A**

023 Chair Ferrioli Continued comments, with questions and answers interspersed.

047 Harchenko The main issue is whether the states have the authority to compel someone selling into that state via e-commerce to support via taxes taking advantage of markets, roads, benefits the state provides the court system, transportation

systems, etc. without contributing to the support of that infrastructure. That issue has been around for a long time with catalog sales. In the case of catalog sales, unless the seller had a physical presence in a state, that state could not compel the seller to collect sales tax on behalf of the state. In this new area of Internet sales, sellers are under the same standard.

077 Harchenko Told of companies making choices about where to site warehouses or distribution centers around edges of market states to take advantage of either a low sales tax rate or no sales tax at all and then selling into that market state. Discussion regarding how Gateway Computers operates both with physical presence and via electronic means to avoid collection of sales tax. This type of sales operation is becoming more prevalent with more companies.

Further discussion, with questions and answers interspersed.

154 Harchenko Explained that corporate income tax/excise tax is paid by companies for the privilege of doing business in Oregon. If a company comes into the state to do business and takes advantage of the infrastructure, employment base, raw materials, labor force, markets, court system, etc. it is appropriate for the state to ask in return a fair share of the income earned from the business activities conducted in the state.

Various questions and answers interspersed.

211 Harchenko Questions have been raised regarding definitions of Internet and electronic commerce. If they are determined to be one and the same, or determined to be two separate subjects will have great impact on issues of taxation. In many cases Web-enabled technology is defined as electric commerce. But in a tax context is not sure what it refers to. Convergence is occurring in technology and communications. She recently switched her home computer Internet

access from telephone line to cable. She then got an advertisement from the phone company saying they could provide wireless phone access, land line phone access, long distance, and Internet access all for one fee on one bill. She then wondered if all that would be considered electronic commerce, or is just the Internet access electronic commerce? The telecommunications people and the cable people could make strong cases that they indeed are in the e-commerce business.

241 Harchenko Summarized by stating there is a lot of detail not present in SB 660 at this time that must be specified in order to administer it properly. Fees and taxes and e-commerce must be more specifically identified and defined.

Comments, questions, and answers interspersed.

313 Sen. Corcoran Related information regarding "saving small book stores" in Oregon. Has a favorite small bookstore in Cottage Grove, and discussed how small operations might survive in wake of huge mega-stores that operate on-line and have large physical presence. Questions of taxation and use of infrastructure were discussed.

339 Harchenko Added that the method by which people do business is changing. More and more is conducted via Internet, but the economy will determine where the value is. Small books stores offer something not available on-line. That is a place to walk into, browse selections, have a cup of coffee, ask questions of a real person, and interact with other people. The physical bookstore offers something the virtual bookstore cannot, and there are probably enough people who want a physical store to keep them going. On the other hand, the physical store has costs that the virtual store does not. These are issues separate from a sales tax issue. Should taxes affect the economic reality in any way, or should they be neutral?

More comments, questions, and answers interspersed.

449 Jim Craven Testified in support of SB 660. Oregon is unique in that it is one of only ten states without a sales tax, and this raises endless questions in regard to e-commerce.

**TAPE 074, SIDE B**

029 Jim Craven Continued comments in support of SB 660. Polls taken across the country indicate voters do not want to pay time-on-Internet charges, and they do not want local or state governments taxing their on-line time. Members of the American Electronics Association support a permanent ban on access fees to Internet usage. They also support on-going efforts by the states to simplify the entire Internet sales tax collection issue. There are in excess of 30,000 sales taxing entities in the United States. For example, in Oakland, California you pay state sales tax, local county sales tax, and Bay Area Rapid Transit (BART) tax which add up to an effective rate, but that vary block by block. It would be impossible to accurately apply sales tax for every street address in the country.

091 Craven Agreed the phrase "electronic commerce" as stated in the bill may be problematic. Does not believe intent of bill sponsors was to exclude companies doing e-business from paying corporate excise taxes in Oregon. Believes Legislative Counsel has determined a definition for "Internet" and has used it in several bills under consideration at this time. Perhaps that definition should be incorporated into SB 660 for clarity.

125 Russ Walker Exhibit 4. Testified in support of SB 660. Citizens for a Sound Economy represents between 8,000 and 12,000 members based in Oregon. Discussed two proposed multi-state tax schemes to collect taxes from Oregon businesses. First is the Streamlined Sales & Use

Tax Project (SSUTP), then there is the proposed National Conference of State Legislators Plan (NCSL). When he refers to a "multi-state coalition or cartel" he is referring to either one of these two plans.

176 Walker

Continued that both plans have been created for the purpose of figuring out a way to collect use taxes currently not being collected. Because most individual consumers do not bother with reporting use tax on their tax returns, states would require under either one of the two previously mentioned plans Internet-based or other Oregon businesses to collect the use tax for individual states. The core issue is whether or not an Oregon dot.com business or brick and mortar/dot.com business should have to be required to collect use and sales taxes for another jurisdiction. SB 660 is designed to protect Oregon businesses from what could become very complicated and burdensome regulatory structure.

247 Walker

If a state wants to collect a use tax, they should be responsible for doing so themselves. They should not have the authority to require Oregon businesses to do their job for them. If they have a problem with non-compliance of their own citizens with paying taxes, that is an issue that must be addressed within their own state. It has become an unpopular issue because it would require audits by states acquiring people's Visa records or warranty records to determine if and how much tax should have been forwarded to a state. Proposed software to be used by these two entities would track every single sale made by Oregon businesses, which would raise major privacy issues.

270 Chair Ferrioli

Asked Mr. Walker to clarify exactly what he expects SB 660 to accomplish. Does he mean for the bill to affirm the status quo in not having additional tax reporting forced on Oregonians, or does he intend the bill to get into the entire issue of what is electronic commerce. That might be a concept far broader than what the Chair feels the intent of the bill is. As if Mr.



Walker was aiming at the broader application or at the access question.

- 296 Walker Answered that the bill is aiming at the access question as well as the Internet sales question. Again discussed issue of North Carolina, for example, going to consumers in Oregon, for example, and making consumers in Oregon pay North Carolina sales tax. The problem is the state of North Carolina does not want to have to deal with tracking down consumers and performing audits because it is a very unpopular issue. North Carolina wants Oregon to deal with it instead. There is an issue related to the interstate commerce clause. North Carolina does not have the authority to come into Oregon and require Oregon businesses to collect taxes for them. North Carolina does not currently have that authority but is in the process of authorizing that authority.
- 323 Chair Ferrioli Pointed out that Oregon has a Weight/Mile Tax that creates almost the same situation where Oregon auditors travel to 49 other states and essentially demand and receive access to transportation records of companies based outside Oregon and yet do interstate transportation through Oregon. On the Weight/Mile basis, we go get those records.
- 337 Walker Agreed that in the Weight/Mile example, interstate companies have physical use of Oregon's roads. Oregon businesses get no benefit from North Carolina roads. Questions raised by the Director of the Oregon Department of Revenue regarding that issue have not been answered.
- Questions and answers interspersed.
- 409 Sen. George Stated that it is one scenario if a retailer sends out a catalog in a mass mailing and solicits business but it is another for an individual to look on the Internet for an opportunity to buy

something similar to items available in a mass-mailed catalog. Depending on who solicited whom and how delivery occurred could result in different taxing opportunities. Thinks there is a real difference in the two.

432 Chair Ferrioli Agreed with Sen. George, and detailed the three-day Right of Recission available to people who buy something from a door-to-door sales person but not available to someone who goes to a car dealer and buys a new or used car.

465 Jeff Vanek Testified in support of SB 660. Gave overview of SuperTrax and how it conducts its consumer business over the Internet but is based in Oregon.

**TAPE 075, SIDE B**

023 Vanek Continued comments. Learned about the concept of electronic commerce while in Utah. Wanted to return to Oregon and his association with SuperTrax made that possible.

Assorted questions and answers followed.

243 Chair Ferrioli Meeting adjourned at 10:16 a.m.

Submitted by, Reviewed by,

Carol Phillips Kim Taylor James

Committee Assistant Revenue Office Manager

Exhibit Summary:

1. SB 660, Yates, Staff Measure Summary, 1 pp.
2. SB 660, Yates, Revenue Impact Statement, 1 pp.
3. SB 660, Yates, Fiscal Impact Statement, 1 pp.
4. SB 660, Walker, Written testimony dated March 15, 2001, 3 pp.
5. SB 660, Drew, Written testimony dated March 15, 2001, 3 pp.

6. SB 660, Vanek, Issue Analysis, 8 pp.
7. SB 660, Williams, Written testimony, 1 pp.
8. SB 660, Oregon Internet Commission, 41 pp.