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A taxing situation for shippers

Tax bill aimed at online businesses could hit logistics industry

by Perry A. Trunick

The **Business Activities Tax Simplification Act** currently before Congress (**H.R. 1956**) could be a "costly speed bump in interstate commerce," says Jack Boyd, president of site selection consulting firm *The Boyd Company* (www.theboydcompany.com). It could change the "tipping point" where companies decide to outsource logistics or operate their own private warehouse, and it could affect which states are considered in a siting decision, Boyd predicts.

There are limits on how much states can regulate interstate commerce, but the U.S. Supreme Court says the U.S. Congress can allow states to tax interstate commerce. The new bill, H.R. 1956, could subject shippers to more state taxes.

Typically, companies with no physical operations in a state are not subject to state taxes related to their business activities there. In its present form, H.R. 1956 says that a physical presence is established by leasing or owning tangible personal property in the state for more than 21 days, observes the *International Warehouse Logistics Association* (ILWA) (www.ilwa.com/bat). That could mean a company using a public warehouse or 3PL could be deemed to have a physical presence by virtue of the inventory the third party holds and/or distributes on the company's behalf.

IWLA is pushing an exemption from the rule for "tangible personal property held in a public warehouse for distribution in interstate commerce."

According to Boyd, a site selection consultant for the past 30 years, third-party warehousing has seen phenomenal growth in recent years. The site tax could have a serious impact on the vitality of the 3PL providers, Boyd believes, because it could make those companies — and their customers — the target of states wishing to extend their taxing authority to out-of-state companies. Typically, companies with no physical operations in a state are not subject to state taxes related to their business activities there.

The bill is intended to deal with state tax authorities' issues with the online economy, says Pat O'Connor, Washington counsel for the IWLA. For financial services companies and similar service-based companies doing business over the Internet, the 21-day physical presence standard is no problem. But for companies engaged in physical movement of goods in interstate commerce, the 21-day test easily establishes a presence.

Discussions with Congressional staffers yielded an interpretation that the goods themselves were not the test but a relationship with a public warehouse that

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Do you have 3PL relationships in states where you have no other presence?

Yes	73%
No	27%

Source: LogisticsToday.com

Is your supply chain at risk?

Supply chain decisions require an intense focus on risk, cost and revenue

by Helen L. Richardson

The first step in managing risk is identifying where a company is at risk. The tendency for most companies is to think of risk in a fairly narrow context, suggests David Closs, a professor at *Michigan State University* (www.msu.edu). He believes companies need to be aware of the risk factors in a broad range of business decisions.

Closs notes forecasting is particularly risky but investment often can be rewarding. Better forecasts lead to better decisions as to positioning resources while potentially reducing a company's need for inventory.

One tool to better forecasting is data warehousing that allows companies to gather information intelligence by running what-if scenarios. For example, several auto manufacturers are using data warehouses to integrate sales and manufacturing data across vehicle platforms, according to Gustavo Gaeta, partner in *IBM Corp.*'s (www.ibm.com/bcs) supply chain management business consulting practice. Vehicles can have as many as 25,000 different option configurations.

Manufacturers mine data warehouses to identify less popular combinations. Combining sales forecasts with these configurations, they understand what buyers want per region, enabling a reduction in both parts and finished goods inventory.

While technology tools such as data warehouses can be invaluable for some

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lasted over 21 days would establish a presence in a state.

Excluding the goods as the measure might have been easier. An old *Interstate Commerce Commission* (ICC) case involving *Armstrong World Industries* and the *Texas Railroad Commission* established goods stored in transit were still in interstate commerce. That decision has been upheld in various U.S. courts. IWLA is not neglecting that argument, even though, according to O'Connor, the Congressional staffers' interpretation was to view the rule as applying if you have a relationship with a public warehouse for longer than 21 days.

If the rule was to be applied to inventory stored over 21 days, that equates to 17 inventory turns a year, and a quick survey of members of IWLA indicates an average of four or five turns a year. Inventory or relationship, the rule would catch nearly everyone who uses a third party, O'Connor observes.

"At a time when the overall supply chain is being hit with soaring taxes on other fronts (fuel, real property and sales) the imposition of new personal or inventory taxes is bad economic policy," Boyd adds. The federal law would establish the conditions under which a state could charge a non-resident company for various business activity taxes.

Boyd draws a parallel to a bellwether court ruling in the 1980s that allowed Illinois to extend its state sales tax to interstate commerce in the telecommunications market. Companies could be taxed on their interstate voice and data telecommunications bill, including toll-free phone line service, Boyd notes. This opened the door for states to tax those telephone bills and created a competitive advantage for states that refrained from applying the tax.

Boyd sees a couple of potential consequences of the Business Activity Tax Simplification Act. One is that where states apply taxes to public warehouse and third-party relationships that had not previously borne those costs, it could change the "tipping point" where a company would decide to own and operate a facility rather than outsource. Another is that companies that are looking at expanding their logistics network or are reevaluating it could elect to locate in states that are tax friendly.

At the very least, it adds one more negotiating point for companies siting a distribution center. States can be generous in providing tax exemptions for businesses they value.

What should shippers do? O'Connor says contact Congressional sponsors of the bill and members of the U.S. House of Representatives Judiciary Committee to express concern. The bill passed in a sub-committee in December and will be brought before the full Judiciary Committee says O'Connor. The full committee will likely consider the bill in April or May.

Some regional and metropolitan economic development groups have identified logistics as a target industry, and they may be able to help in negotiating some relief from the state if it is an issue. In the meantime, lobbying efforts are underway to hold off the impact of H.R. 1956, at least as far as the public warehouse/3PL issue is concerned. **LT**