

REPORT OF THE ADVISORY COMMISSION ON ELECTRONIC COMMERCE

PERSONAL STATEMENT OF

DAVID POTTRUCK

PRESIDENT & CO-CHIEF EXECUTIVE OFFICER

CHARLES SCHWAB CORPORATION

MARCH 31, 2000

OVERVIEW

The nineteen members of the Advisory Commission on Electronic Commerce (ACEC) sifted through proposals and debated varying perspectives in an attempt to form the basis of a balanced recommendation that addresses the most pressing issues raised by all parties. Undoubtedly, this was hard work. The more we seriously weighed the competing issues, the more complex the challenges appeared.

The taxation of remote sales raises difficult issues that have been studied for decades. The new world of electronic commerce only complicates these issues. While different perspectives emerged during our Commission discussions, each Commissioner participated with an earnest desire to craft a workable solution that meets the needs of individual taxpayers, our state and local governments and our nation as a whole.

Throughout the process, I have observed that some broadly held general views were shared by most if not all Commissioners. There was far less that separated the Commissioners' objectives and policy principles than portrayed in the press. I do not believe that concepts alone would provide adequate guidance to Congress and give it the true benefit of our labor. The effort by the Business Caucus to provide Congress with something more than generalities made the forging of consensus very difficult. The more specifics we included, the more room there was for disagreement, and the harder it became to achieve consensus.

PRINCIPLES OF CONSENSUS

A number of broad principles of consensus emerged from the Commission's work. First, the Internet should not be a target for new taxes and there should be no action that would

expand the “digital divide,” i.e. reduce the availability of the Internet to Americans at the bottom of our socioeconomic ladder. Accordingly, the majority proposal recommended that no new taxes be imposed on the Internet and that the temporary moratorium on taxes on Internet access be made permanent.

Second, there is no compelling reason to impose taxes exclusively targeted at electronic commerce. The Commission’s Issues and Options paper proclaims “It is in the national interest to establish an environment that continues to foster innovation and technological advancement in the development of the Internet and electronic commerce.”

Discriminatory taxes on electronic commerce will not create such an environment and will further expand the digital divide. Accordingly, the current moratorium barring multiple and discriminatory taxes should be extended.

Third, the current myriad of taxes applied to “telecommunications” puts an unnecessary compliance burden on that industry, creates a competitive disadvantage internationally, and ultimately increases the cost to consumers. The oldest of these taxes—the federal excise tax on telecommunications—was enacted to pay for the Spanish American war and no longer serves a policy purpose. It should be repealed. The telecommunications tax system should be dramatically reformed to reduce the overall tax burden on consumers and simplified so that consumers can have lower access costs to the nation’s information highway.

Fourth, the issue of privacy. The administration of any tax system that includes large multitasked computers collecting information about the spending habits of Americans creates significant trepidation. Individuals harbor great fears that such information will be used in ways that impinge upon their privacy. Consumers’ privacy rights must be protected, even though such protection could provide significant obstacles to the formulation of any new approach which requires remote sellers to collect sales taxes. Thus, tax collection systems should be designed to limit, wherever possible, the amount of personal information collected specifically for tax purposes.

Finally, the issue of the collection of taxes on remote sales over the Internet. The current rules for remote sales tax collection are guided primarily by the set of interpretations and practices emanating from the U.S. Supreme Court *Quill* decision, which essentially said that remote sellers are not responsible for collecting sales taxes for taxing jurisdictions where they do not have physical nexus. We have lived with this construct for decades and it has guided the tax policy of direct merchants and catalogue sellers for years. The reality is that sales taxes apply to electronic commerce conducted over the Internet just as they do to sales conducted by direct mail and catalog firms. Any Internet seller that has nexus with a taxing jurisdiction is required to collect and remit such taxes today.

So why the current great debate? There is concern among state and local taxing authorities that the anticipated growth in remote electronic sales will adversely affect the ability of states and localities to raise the revenues they need to provide essential government services. Today, state revenues are at an all time high, and most states are

running budget surpluses. States and localities, however, fear what may happen when this rosy financial picture comes to an end.

This fear is tied to the fact that “bricks and mortar” retailers are being transformed into “clicks and mortar” retailers as the cyberspace and physical worlds of commerce continue to merge. In a world like this, if remote sales over the Internet are taxed differently than intra state sales we will have a system based upon a tangle of legal maneuvering that will create separations between local merchants and their Internet counterparts and a playing field that will be viewed as inherently unfair. Such unfairness, if left to fester, will bring contempt and non-compliance.

So, what to do? If the debate in this Commission has made anything clear, it is the need for a structured process that will lead to the substantial simplification and reform of state and local sales tax systems, with the objective of reducing, and making comparable, the tax collection burdens on local and remote sellers. It is hard to argue with the need for simplification of state and local sales taxes that can pave the way toward a system that does not discriminate between methods of access. The burden and responsibility of such structural reform lies with the state and local governments.

The taxation of remote sales does not appear to be a problem demanding a solution instantly. Evidence suggests that our current robust economy, partially fueled by the vitality of technology and the Internet, is the most important factor in ensuring all Americans’ standard of living continue to rise. Moreover, electronic commerce is still a very small percentage of total commerce. However, our job on the Commission was to suggest a solution that conforms to the new economy, not the old. Electronic commerce is growing exponentially and only if we start the process today of developing a tax system that contemplates the burdens the new economy will place on our existing structures will we be prepared to face the challenge.