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Tax Base

Alibaba, a Chinese e-commerce company, recently garnered the largest Initial Public Offering to date. Because not much was known about the Chinese entity, many refer to it as China's version of Amazon. But Amazon and Alibaba share more differences than similarities. One thing Alibaba might share with its U.S.-based competition is the need to comply with sales and use tax laws if the company implements plans to allow its Chinese marketplace sellers greater access to U.S. consumers, Sylvia F. Dion explains.

Alibaba Differs From U.S.-Based Remote Sales Behemoths, But the Competitors Could Face Similar Sales Tax Issues



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Introduction

In September the world witnessed the largest Initial Public Offering (IPO) to date: the Alibaba IPO.¹ And while many in the U.S. previously knew little of the

¹ On Sept. 19, 2014, Alibaba Group Holding Ltd. (BABA), raised \$21.8 billion dollars in its Initial Public Offering. On Sept. 22, 2014, underwriters exercised an option to sell an ad-

Chinese Internet company, in the weeks and days leading up to the Alibaba IPO the e-commerce company was often referred to as the Chinese version of Amazon. Discussions as to whether Alibaba's presence in the U.S. could possibly threaten Amazon's U.S. market share assume that the business model of these two e-commerce giants is similar. However, in reality Alibaba and Amazon are much more dissimilar than they are alike. This article explains the Alibaba business model, the company's recent expansion into the U.S. e-commerce space, what Alibaba's marketplace sellers should know about federal and state efforts to require out-of-state (and out-of-country) sellers to collect sales and use taxes, the status of pending federal remote sellers proposals and the prospects of what may occur in the final days of the 113th Congress.

Alibaba Business Model

It is important to understand the Alibaba businesses model and how it compares to Amazon's and eBay's before launching into a discussion of state and federal remote seller collection developments and their potential impact on Alibaba.

While assumptions that Alibaba is the Chinese counterpart to Amazon have been frequent, the two e-commerce companies are quite different. One primary difference between Amazon and Alibaba is that Amazon is both a retailer, selling through its own retail entities,² and an online marketplace where third parties individual and business sellers can market and sell their goods. In recent years Amazon has also built distribution centers throughout the U.S. to facilitate the fulfillment of orders for both its own merchandise inventory and that of its marketplace sellers.

Alibaba, however, does not engage in direct sales and is *not* a retailer. In fact, when one speaks of Alibaba they are most likely speaking of the various e-commerce marketplace sites under the Alibaba umbrella.³

Perhaps the two most prominent of Alibaba's marketplaces, in terms of their dominance in Chinese e-commerce, are Taobao and Tmall.⁴ In some respects

Taobao is similar to eBay.⁵ For instance, like eBay, Taobao is an online marketplace where individual and small business sellers can sell their products directly to consumers. Another key similarity to eBay is that Taobao does not hold inventory or manage the fulfillment of orders for its marketplace sellers.

Although there are similarities between Taobao and eBay, there are key differences as well. Taobao, for instance, does not charge its sellers a commission on transactions as does eBay.⁶ Taobao's revenues come almost exclusively from advertising paid for by its marketplace sellers. With purportedly millions of Taobao marketplace sellers listing hundreds of millions of products on the site, the competition between Taobao's marketplace sellers is fierce, thus leading most Taobao sellers to pay for marketplace advertising in order to draw in potential customers.⁷ There is another reason most Taobao marketplace sellers are likely to advertise on the platform—a reason which highlights a comparison to yet one more U.S. technology giant; Google.

While many consumers in the U.S. might typically begin their search for a product on Google (and invariably end up at Amazon's or eBay's marketplace), most consumers in China are likely to conduct their product search exclusively on Taobao despite the fact that other Chinese search engines are available. Thus, Taobao is a marketplace, advertising platform and search engine all rolled into one.

So if Taobao can best be described as an eBay-Google, is Alibaba's other primary marketplace, Tmall, more similar to Amazon?

Not necessarily. Tmall is Alibaba's business-to-consumer marketplace for branded product and premium goods. While Taobao is primarily for individual and small business sellers, Tmall is where retail giants, such as Nike and the Gap, as well as upscale merchants, market and sell their goods. As noted previously, Alibaba does not own distribution centers and therefore, does not fulfill the orders of its marketplace sellers. Thus, product inventory is not warehoused or fulfilled for Tmall sellers. Unlike Taobao, whose revenues are primarily generated from advertising, Tmall's

ditional 48 million shares, including 18.2 million shares to Yahoo. The combined initial offering and additional shares sold on Sept. 22, 2014, brought the total raised to just about \$25 million, making it the largest public offering in history.

² Amazon's retail entities include Amazon.com LLC, Amazon Digital Services, Inc. and Warehouse Deals, Inc.

³ Per The Alibaba Group Holding Limited, Securities and Exchange (SEC) Commission, Form F-1, Registration Statement, since the founding of Alibaba.com in 1999, the Company has launched several e-commerce and related sites including: Taobao Marketplace (2003), Alipay (2004, a formerly owned escrow service solution), Aliwangwang (2004, a buyer/seller instant messaging service), Tmall Marketplace (2008, an online shopping site for branded and premium products), Alimama (2007, an online marketing technology platform), Alibaba Cloud Computing (2009, a data management solution), AliExpress (2010, a global consumer marketplace), and Juhuasuan (2010, a group buying marketplace).

⁴ While most U.S. consumers are likely not familiar with Tmall or Taobao, as these two marketplaces have largely operated exclusively in China, some may be familiar with Alibaba.com, which is an Alibaba B2B marketplace that connects manufacturers and suppliers to business consumers all over the world, including in the U.S. Thus, U.S. business suppliers

and consumers currently have access to the Alibaba.com marketplace. For purposes of this article, the focus is on Alibaba's B2C marketplaces – those which can best be compared to Amazon, eBay and other US B2C marketplaces.

⁵ Per the Alibaba Group Holding Limited, Form 1, Registration Statement, "According to iResearch, Taobao Marketplace was the number one consumer-to-consumer, or C2C, marketplace in terms of gross merchandise volume in China in 2013."

⁶ Ebay refers to their commission as a Final Value Fee. Depending on the type of seller and type of product, these range from 4 percent to 10 percent on the total amount of the sale.

⁷ The Alibaba Group Holding Limited, SEC Form F-1, Registration Statement states under the "Our Businesses" Section, "We are the largest online and mobile commerce company in the world in terms of gross merchandise volume in 2013, according to industry sources. We operate our ecosystem as a platform for third parties, and we do not engage in direct sales, compete with our merchants or hold inventory. We operate Taobao Marketplace, China's largest online shopping destination, Tmall, China's largest third-party platform for brands and retailers, in each case in terms of gross merchandise volume, and Juhuasuan, China's most popular group buying marketplace by its monthly active users, in each case in 2013 according to iResearch. These three marketplaces, which comprise our China retail marketplaces, generated a combined GMV of RMB1,542 billion (US\$248 billion)."

revenues are generated primarily through an annual technology and service fee and transaction commission which are based on the type of product sold.⁸

Lessons From U.S. Remote Sellers

Given its recent and highly successful U.S. IPO, Alibaba is well poised financially to compete in the U.S. e-commerce space. In addition to seeking to connect U.S. consumers with its China-based Taobao and Tmall and other Alibaba marketplace sellers this past June, less than one month after filing its registration statement with the Securities and Exchange Commission (SEC), Alibaba launched its first U.S.-based e-commerce marketplace, 11Main.com.⁹

In some ways, 11Main.com's business model will be similar to eBay's and Amazon's with sellers paying transaction-based commissions and other fees. However, 11Main.com hopes to distinguish itself from eBay and Amazon by re-creating a Main Street boutique type shopping experience where each marketplace seller will have its unique identity on the site. Upon its launch, the 11Main.com marketplace was limited to 1,000 upscale specialty shops and boutiques, all of whom were "invited" to sell on the site.¹⁰

Consistent with its Chinese marketplace model, a network of Alibaba owned distribution centers and order fulfillment services will not be available to its 11Main.com marketplace sellers. While this will provide 11Main.com marketplace sellers complete control over the location of their inventory and the fulfillment of their orders, 11Main.com will exercise a certain level of control over its marketplace sellers such as by approving all marketplace sellers' product descriptions, images, and other aspects of their online store.¹¹

Sales Tax Nexus. As noted, Alibaba is well poised financially to compete in the U.S. e-commerce space. Indications are that Alibaba plans to expand in the U.S. and has already done so through its launch of 11Main.com.

But if Alibaba's plans are to allow its Chinese marketplace sellers greater access to U.S. consumers, it should know that doing so may subject its marketplace sellers to the U.S. sales tax laws.

Alibaba's Chinese marketplace sellers may believe that the U.S.-China tax treaty¹² which offers protection from U.S. federal taxation extends to the states. How-

⁸ According to the Tmall Fee Schedule, sellers also pay a security deposit based on the type of goods which will be sold on the marketplace. The Tmall Merchant Fee Schedule can be found at: http://about.tmall.com/tmall/fee_schedule?spm=3.7128697.0.0.Fpe0nJ#place

⁹ See "Alibaba launches 11Main.com in the U.S.," by Katie Evans, Internet Retailer, June 11, 2014; also "Alibaba takes on eBay, Etsy with U.S.-based shopping site," by Gail Sullivan, Washington Post, June 11, 2014.

¹⁰ The 11Main.com Terms of Use document states under its general description of the marketplace, "11 Main curates this marketplace, and endeavors to recruit and limit participation in this marketplace to high-quality artisans, creators, brands, and sellers that deliver a high-quality buying experience." Available at: <https://11main.com/terms>

¹¹ 11Main.com Merchant Agreement.

¹² The U.S. -The People's Republic of China Income Tax Convention (Tax Treaty) can be found at: <http://www.irs.gov/>

ever, these foreign sellers may be surprised to find out that in general, the states do not recognize tax treaties that have been entered into between the U.S. and a foreign country. Because states are not a "party to" bilateral tax treaties, even if a foreign seller is not subject to U.S. federal taxation, the foreign seller could be subject to the sales tax laws of the various U.S. state and local governments.¹³ Indeed Alibaba sellers may be surprised to find out how easily they can become subject to the U.S. sales tax laws.

'Click-through' Nexus Provisions. In recent years many states have enacted aggressive laws that redefine what constitutes a "physical presence" within their borders by focusing on the passive efforts of in-state marketing affiliates, individuals or businesses that post web links on their in-state website that refer customers to the online stores of remote retailers with whom they have contracted. In these states, a nexus presumption is created for an out-of-state retailer that engages in-state marketing affiliates which refer customers to the out-of-state retailer's online store and which are compensated for referred sales generally via commission.

In 2008, New York enacted the nation's first "click-through nexus" or "Amazon law," which was nicknamed as such after the law's most visible target, but also because Amazon and Overstock sued New York after the law was enacted.¹⁴ To date, presumptive "click-through" nexus provisions have been enacted in Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Kansas, Maine, Minnesota, Missouri, New York, North Carolina, Rhode Island, Texas and Vermont.¹⁵

As noted previously, Taobao marketplace sellers are accustomed to paying for marketplace advertising space and are keenly aware that advertising is what drives potential consumers to their products. Many may see marketing affiliate campaigns as a viable way to reach their new targeted consumer, the U.S. consumer. Thus, Alibaba marketplace sellers would be wise to understand how these laws could create a tax collection obligation for them.

Businesses/International-Businesses/China—Tax-Treaty-Documents

¹³ For a further discussion on how bilateral tax treaties do not protect foreign sellers from the U.S. sales tax rules and how certain activities which do not create a Permanent Establishment could create nexus for sales tax purposes see: "Tax Treaties and U.S. Sales Tax Nexus: What Foreign Sellers Need to Know," by Sylvia Dion, SalesTaxSupport.com Industry Blog, June 18, 2013.

¹⁴ For an excellent analysis of the Quill Physical Presence Rule, the Streamlined Sales Tax Project, State "Amazon" Tax Laws, the Hybrid Origin-Sourcing Proposal, and Proposed Federal Legislation, see, "The Marketplace Fairness Act: A Primer," by Joseph Henchman, Tax Foundation Background Paper, July 14, 2014.

¹⁵ Ark. Code Ann. §26-52-117(d)-(e); Cal. Rev. & Tax Code §6203(b)(5); Conn. Gen. Stat. §12-407(a)(12)(L); Ga. Code Ann. §48-8-2(8)(M); 35 Ill. Comp. Stat. 105/2 & 110/2; Me. Rev. Stat. Ann. tit. 36, §1754-B(1-A)(C); Minn. Stat. §297A.66(4a); N.Y. Tax Law §1101(b)(8)(vi); N.C. Gen. Stat. §105.164.8(b)(3); R.I. Gen. Laws §44-18-15(a)(2); Tex. Tax Code Ann. §151.107(a)(3) & Tex. Tax Code Ann. §151.107(a)(8); Vt. Stat. Ann. tit. 32, §9783(b)-(c) (Vermont's law not effective until 15 states have passed similar legislation).

Affiliate, Attributional Nexus Laws. However, “click-through” provisions are not the only nexus expanding provisions Alibaba’s marketplace sellers should be aware of. In recent years many states have enacted “Amazon laws” that focus on nexus being created for an out-of-state retailer when a related party, such as subsidiary or other commonly owned entity, owns or leases property, such as a distribution center, in a state; performs services on the goods or property that are sold by the remote retailer; uses common trademarks in the state; or in general, engages in other specified activities that enhance the remote retailer’s market in the state.

Incidentally, many of the states that have enacted a “click-through” nexus provision have *also* enacted an affiliate, i.e., related party, nexus provision. Thus, in states such as California, Georgia, Maine and Texas, nexus may be attributed to an out-of-state retailer that either engages in-state marketing affiliates or whose in-state corporate affiliates engage in the types of activities specified in that state’s related party provision as creating nexus for the out-of-state retailer.

The lesson here for Alibaba sellers is that selling in the U.S. could create tax collection requirements in many states. As noted, Taobao sellers, who comprehend the benefits of marketplace advertising may see the use of U.S.-based marketing affiliates as a viable means to refer customers back to the online stores. But contracting with U.S.-based marketing affiliates could create compliance requirements for these foreign sellers. Additionally, as Alibaba continues to grow its U.S.-based presence through its 11Main.com marketplace, Alibaba may realize that U.S. consumers have become accustomed to rapid delivery, thus necessitating the need to provide fulfillment services. Even if Alibaba stayed true to its existing business model and opted not to provide warehouse space and fulfillment services, Alibaba’s marketplace sellers could engage third parties to act as fulfillment agents on their behalf, thus creating nexus through an agency relationship.

Federal Remote Seller Legislation. While it might not seem that congressional efforts to pass remote seller legislation would impact Alibaba sellers, in particular China-based Taobao and Tmall marketplace sellers, should one of the pending, or future, federal remote seller proposals be enacted, many of Alibaba’s China-based marketplace sellers may find that the states’ tax collection requirements could very well extend to them.

During the 113th Congressional session, there have been several federal remote seller proposals introduced.¹⁶ With only a short time remaining before the 113th Congress adjourns, it seems uncertain whether federal remote seller legislation will be enacted.

Still, it is worthwhile to provide a high level review of the two competing proposals, and how their provisions would grant the implementing states’ collection authority over foreign-based sellers. Additionally, Congress has made numerous attempts over the years to pass a federal remote seller proposal, and even if legislation is not enacted by the time the current Congress

¹⁶ The first two remote seller proposals introduced during the 113th Congressional session were the Marketplace Fairness Act of 2013, S. 336, and the Marketplace Fairness Act of 2013, H.R. 684, 113th Cong., 1st Sess. (2013). These companion proposals were both introduced on Feb. 14, 2013.

adjourns, it is likely that similar federal remote seller legislation will be re-introduced by the 114th Congress.

Current Contenders for Federal Remote Seller Legislation. As of the date of publication, the two remote seller collection proposals that remain under consideration are S. 743, The Marketplace Fairness Act of 2013,¹⁷ which was introduced on April 16, 2013 and passed by the U.S. Senate on May 6, 2013,¹⁸ and S. 2609, The Marketplace and Internet Tax Fairness Act,¹⁹ another Senate proposal, which was introduced on July 15, 2014.²⁰ The latter proposal combines the remote seller collection provisions found in the Marketplace Fairness Act (MFA) with a temporary extension of the Internet Tax Freedom Act.²¹

Similar Key Provisions, Remote Seller Definition Extends to Foreign Sellers. By and large, the remote seller collection provisions of the Marketplace and Internet Tax Fairness Act (MITFA) are identical or similar to those in the MFA. In particular, both proposals grant collection authority to *full-member Streamlined Sales Tax (SST) states*²² and non-SST states that implement the alternative simplification requisites detailed in the proposals.²³

¹⁷ The Marketplace Fairness Act of 2013, S. 743, 113th Cong., 1st Sess. (2013). April 16, 2013.

¹⁸ S. 743 was passed by the full Senate on April 16, 2013, by an overwhelming majority vote of 69-27. Upon its passage, S. 743 was referred to a House Judiciary Committee. Despite activity in the months following the Senate’s passage of S. 743 that might have suggested the House Judiciary was ready to debate the proposal’s merits, such as the Judiciary Committee’s Sept. 18, 2013 issuance of its “7 Principles for Remote Sales Tax” which were intended to guide a discussion on the “Internet sales tax” issue and spark creative solutions, and a Judiciary Committee hearing on March 12, 2014 to consider alternative solutions to the Internet Sales Tax Issue, to date S. 743 has not progressed further.

¹⁹ The Marketplace and Internet Tax Fairness Act, S 2609, 113th Cong., 2nd Sess. (2014). July 15, 2014

²⁰ The Marketplace and Internet Tax Freedom Act, S 2609, 113th Cong., 2nd Session (2014). S. 2609 was introduced by the same key sponsors of S.743, Senators Mike Enzi (R-WY), Lamar Alexander (R-TN), and Richard (“Dick”) Durbin (D-IL).

²¹ The introduction of the Marketplace and Internet Tax Fairness Act (S. 2609) was an immediate response by the Senate to the passage of H.R. 3806, The Permanent Internet Tax Freedom Act by the full House on July 15, 2014. H.R. 3086, would make permanent a 16 year moratorium prohibiting federal, state and local government from imposing taxes on Internet access, discriminatory “Internet only” taxes, and multiple taxes on electronic commerce.

²² As of Oct. 31, 2014, the 23 SST full members are Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Vermont, Utah, Washington, West Virginia, Wisconsin and Wyoming.

²³ Although an in-depth discussion of S. 743 and S. 2609 is beyond the scope of this article, it should be noted that both proposals require states to comply with various requirements, such as the appointment of a single state-level entity to administer all sales and use tax laws, a single audit for all state and local taxing jurisdictions within the state, and the provision of free software to remote sellers that calculates the sales tax due on each transaction at the time the transaction is complete, files SUT returns and is updated to reflect tax rate changes. Additionally, the sourcing rules which determine the state to which a sale is sourced are also the same under both proposals. Key difference between S. 743 and S. 2609 include the ad-

But foreign sellers should be particularly aware of the definition of a remote sale and a remote seller over which collection authority may be exercised. These definitions are identical under the MFA and the MITFA. They broadly define a remote seller as a seller which, under the proposals' sourcing provisions, makes remote sales into a state "in which the seller would not be legally required to pay, collect or remit State and local sales and use taxes" were it not for the provisions of the proposal.²⁴ Neither proposal states that a remote seller must be a U.S.-based seller. Thus, foreign sellers making remote sales who do not meet the definition of a "small-seller" would be required to comply with the MFA's or the MITFA's remote seller collection requirements. Regarding the definition of an "exempt small seller," both proposals state that remote sellers with total annual U.S. remote gross receipts of \$1 million or less would be exempt from collecting tax in states in which they meet this threshold.²⁵

Are the Federal Remote Seller Proposals in Political Purgatory? With the 113th Congress officially adjourning on Jan. 3, 2015, but more importantly, with the House set to adjourn as soon as Dec. 11th, there is not much time remaining for the final passage of the MFA or the MITFA. On Nov. 4 voters across the country chose their representation for the next Congress, thus allowing a Lame Duck Congress to push through the MFA or the MITFA with little repercussion from their constituents who have already voted for or against them.

The May 6, 2013 passage of the MFA represented the first time in history that a federal remote seller had been passed by at least one chamber—making the desire to see the MFA or the MITFA become final law even greater. There have also been suggestions that supporters of the MFA or the MITFA will not allow the final enactment of legislation which would make the Internet Tax Freedom Act permanent unless federal remote seller legislation is also enacted.²⁶

However, just one week after the Nov. 4th elections, the same week in which the Lame Duck Congress was set to convene, House Speaker John Boehner (R-OH)

ditional requirement under S. 2609 for states to provide remote sellers with 90-days' notice regarding tax rate and tax base changes and an extended effective date of the legislation with regards to the initial collection of sales and use taxes from remote sales. (S. 2609 imposes an additional limitation on the initial collection of sales and use taxes from remote sales by providing that a state may not begin to exercise its collection authority any sooner than one year after the date on which S. 2609 is enacted and if the one-year anniversary of the date of enactment occurs between October 1st and December 31st, initial remote sales collection authority cannot occur until the following January 1st.)

²⁴ S. 743, §4(6), S. 2609, §103 (6).

²⁵ Under S. 743, §2(c) and S. 2609, §101 (c), a remote seller with total annual U.S. remote gross receipts of \$1 million or less cannot be required to collect tax on remote sales. The gross receipts for purposes of determining whether the small-seller exception applies to a specific seller is based on the seller's gross receipts for the preceding calendar year. The Act also requires remote sellers to include the sales of related businesses, such as corporate members of the same controlled group, when determining if they meet the small-seller exception. Whether another business is considered related is based on the attribution rules under IRC §267 or 707(b)(1).

²⁶ See, "Advocates plan massive push for online sales tax," by Megan R. Wilson, Bernie Becker, TheHill.com, Nov. 4, 2014.

publicly stated that the Marketplace Fairness Act, S. 743, would not be addressed during the Lame Duck Session.²⁷ There is much to be seen in the final days of the 113th Congress—and remote sellers, both U.S. and foreign sellers—would be wise to keep close watch on developments.

Concluding Thoughts

There are many lessons to be learned from the recent expansion of Alibaba into U.S. e-commerce space. One is that Alibaba is not the Chinese equivalent of Amazon, and in fact, the two Internet giants are quite different. Amazon, which is both an online retailer and an online marketplace, has been aggressively expanding its distribution center network throughout the country. Alibaba is an Internet company which owns various online marketplaces. The two that dominate the Chinese e-commerce space are the Taobao and Tmall marketplaces. Alibaba's business model, however, has not included distribution centers and order fulfillment services. However, Alibaba may soon realize that U.S. consumers are accustomed to speedy delivery and may also find that in order to compete with Amazon, it may need to provide fulfillment services to its marketplace sellers.

Another lesson to be learned by Alibaba and its marketplace sellers—both those in China that wish to reach out to the U.S. consumer and its U.S.-based 11Main.com marketplace sellers—is that states have become quite aggressive in enacting laws which push the nexus envelope. Alibaba's marketplace sellers who are accustomed to paying for marketplace advertising may see the use of U.S. marketing affiliates as beneficial if they wish to grow their U.S. presence. Additionally, even if Alibaba did not establish fulfillment services in the U.S., Alibaba's foreign sellers might seek out these types of services from other order fulfillment providers, thus increasing the likelihood that they could create a physical presence in various states. Thus, foreign sellers should pay particular attention to the activities in which they engage.

Two proposals remain under consideration by the U.S. Congress, the Marketplace Fairness Act (S. 743) and the Marketplace and Internet Tax Fairness Act (S. 2609). Because both proposals define a remote seller quite broadly – and do not except foreign sellers from this definition – Alibaba marketplace sellers that do not meet the definition of a small seller could find they will have tax collecting requirements in many states. Although the desire of supporters to see federal remote seller legislation become final law has perhaps never been greater, the 113th Congress officially adjourns on Jan. 3, 2015. However, indications are that the House may adjourn as soon as Dec. 11, 2014— and neither of the two Senate proposals can become final law if the House adjourns without considering them. Still, the Marketplace Fairness Act and the Marketplace and Internet Tax Fairness Act remain in the hands of a Lame Duck Congress. With supporters making a strong last ditch effort to see federal remote seller legislation pass,

²⁷ See, "Boehner Kills Internet Sales Tax Bill," by Steven Dennis, Roll Call, Nov. 10, 2014; "Internet sales tax bill dead in Congress," by Grant Gross, IDG News Service, ComputerWorld, Nov. 11, 2014; and "Republicans Signal Demise of Internet Sales Tax Bill," by Barney Jopson, CNBC via Financial Times, Nov. 11, 2014.

though it appears unlikely— anything could still happen. And if neither proposal becomes final law, it is likely federal remote seller legislation will be re-

introduced by the 114th Congress and further likely that a new proposal, like the current ones, will apply to both U.S. and foreign remote sellers.