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**THE CHALLENGES OF TAXATION ON E-COMMERCE IN BRAZIL:
LESSONS LEARNED FROM THE UNITED STATES**

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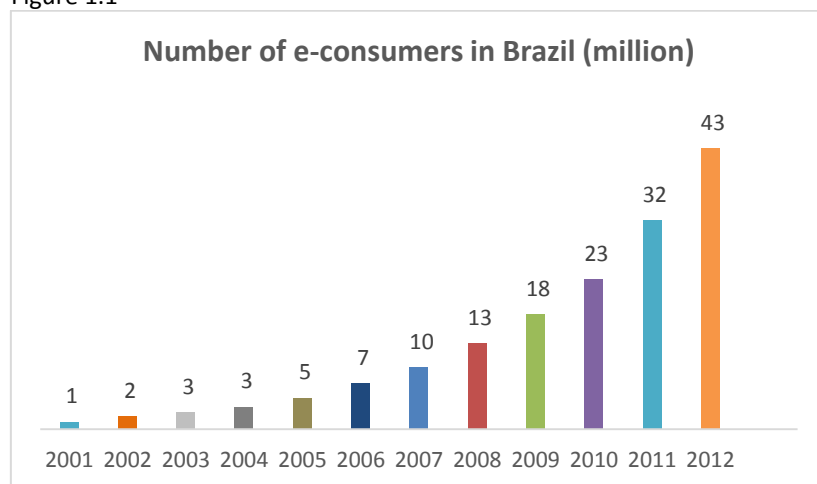
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1. INTRODUCTION

The internet has shortened distances and, nowadays, it has been used as an efficient mechanism for trade. The buying and selling of goods and services on the Internet is commonly known as Online Trade, Electronic Commerce, or e-commerce. In the past few decades, we have seen an increase in e-commerce worldwide, and the situation is not different in Brazil and The United States.

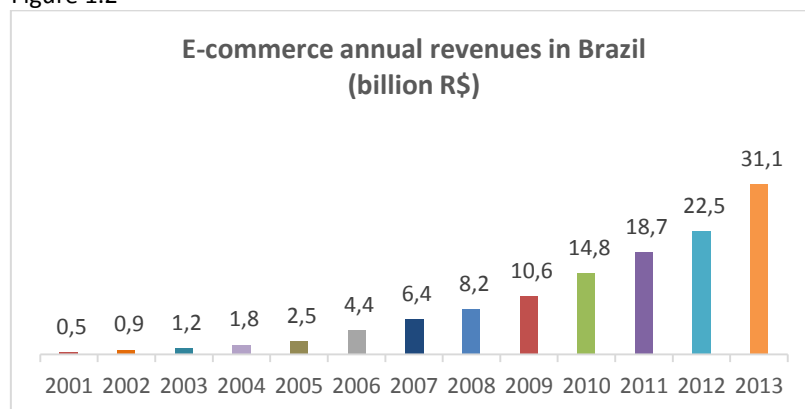
As shown in the following figures, 43 million Brazilians have bought goods over the internet in 2012. The revenues of e-commerce in the country have achieved R\$ 31.11 billion¹ in 2013, not considering vehicles, airline tickets and online auctions.

Figure 1.1



Adapted from e-commerce.org.br

Figure 1.2



Adapted from e-commerce.org.br

¹ Approximately US\$ 12.89 billion.

In the United States, e-commerce has been growing even more. In the fourth quarter of 1999, when the U.S. Department of Commerce began to measure e-commerce, U.S annual revenues from online sales reached \$5 billion. In 2013, e-commerce faced an increase of 16.9% compared to the previous year, representing \$262.51 billion, according to the U.S. Department of Commerce.

Online Trade involves the selling of goods or services provided by a virtual establishment, an online store. Negotiations over telephones or any other electronic device are not included in the definition of e-commerce.

Online shopping has a variety of advantages. It is easier to compare prices and get other customers' opinions on a product; there are no concerns about traffic and parking; one can shop whenever it is more convenient, 24 hours a day, Monday to Sunday. Also, prices are usually better since the internet increases competition among sellers located in different regions and countries.

As the volume of remote sales in e-commerce increases, so does governmental desire to tax these types of transactions. Charging of goods purchased over the Internet has been questioned in many countries and further studies on this topic are crucial to help authorities on finding solutions to upcoming problems. This study focuses on conflicts among Brazilian States regarding taxation of tangible goods ²on e-commerce. We will also take lessons from the current experience in The United States. By doing this, we aim to bring new ideas for the debate in Brazil.

² Goods that can be seen, weighed, measured, felt, touched, or otherwise perceived by the senses. Intangible goods and services are not going to be taken into consideration on this study.

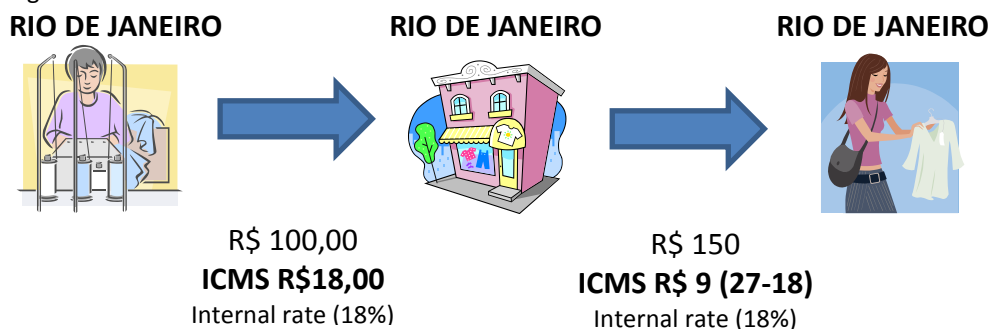
2. THE BRAZILIAN CASE

It is known that online trade has increased over the years. In Brazil, interstate trade over the internet has led to conflicts concerning the taxation of goods. Understanding the problem though, requires basic notions of the tax involved: the ICMS (Imposto sobre Circulação de Mercadorias e Serviços).

2.1 UNDERSTANDING THE ICMS (STATE VALUE ADDED TAX)

The ICMS (in Portuguese, Imposto sobre Circulação de Mercadorias e Serviços), is a value added tax collected by Brazilian States on goods and selected services. The invoice-credit mechanism is used in order to make it a non-cumulative tax. In most cases, the internal rate for trades within a State is 18%.³

Figure 2.1



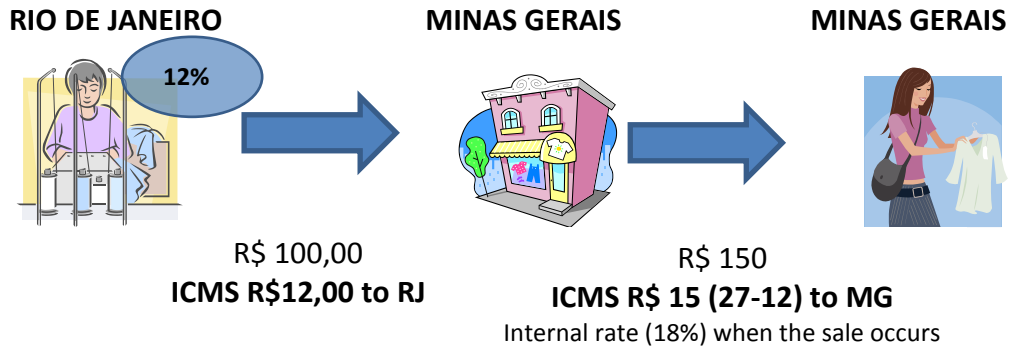
Interstate trade is taxed at different rates to compensate the State that is importing the goods for the ensuing revenue losses. So in those cases both States could benefit from taxation. There are two types of interstate rate: 12% and 7%, depending on the State of origin and destiny of the good.⁴ The interstate rate applies only when the buyer is an ICMS-registered taxpayer. Suppose, for instance, that a clothing store

³ Many different rates apply, depending on the type of good or the state. A minimum internal rate applying for all 27 Brazilian States can be imposed by the Brazilian Senate, though it has not been established yet. The Federal Constitution imposes that no internal rate will be inferior to the interstate rate, which is 12%, unless there is a specific collective agreement signed by all States.

⁴ South and Southeastern States (excluding Espírito Santo) are considered rich states. North, Northeast and Western states (including Espírito Santo) are considered poor states. According to these definitions, if a rich state is selling to another rich state, the 12% interstate rate applies. If a rich state is selling to a poor state, the 7% interstate rate applies. The logic of this system is to permit bigger revenues for the poor states when trading with rich ones. The same system is used when a poor state sells to a rich one: 12% interstate rate will apply in this case.

located in Minas Gerais is buying clothes, in order to sell, from Rio de Janeiro⁵. As shown below, the interstate rate will apply:

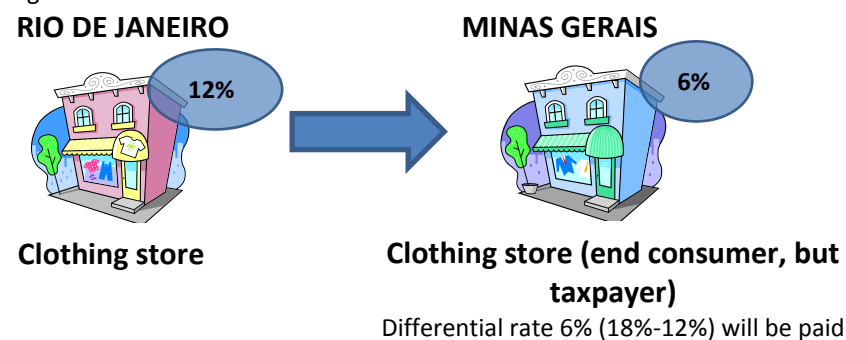
Figure 2.2



When the buyer is an end consumer, located in a different State, we have two different cases. The first one is when the acquirer is a registered ICMS-taxpayer. Under this circumstance, the interstate rate will be collected at the State of origin of the good and the buyer will pay the difference between the interstate and the internal rate for its State (differential rate).

Take, for example, a clothing store located in Minas Gerais (a registered ICMS-taxpayer) buying uniforms from a store in Rio de Janeiro, for the specific usage of its employees.⁶ As mentioned, the interstate rate applies and each State will get a percentage of the ICMS.

Figure 2.3



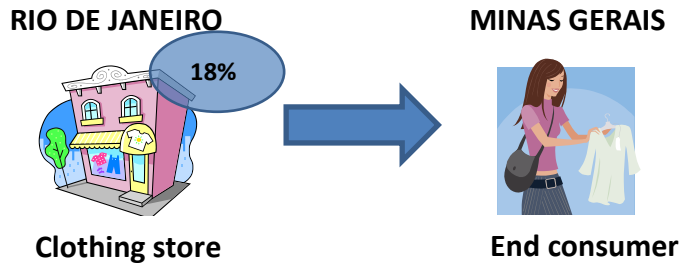
The second case is when an end consumer, which is not a registered ICMS-taxpayer, buys from a store located in a different state rather than her/his. Since this consumer

⁵ Both States, Rio de Janeiro and Minas Gerais, are considered rich States.

⁶ The clothing store here is acting as an end consumer, since it is not going to sell the uniforms.

is not a taxpayer of the ICMS it is not possible to apply the differential rate as in the previous case. Thus, the internal rate will apply and the ICMS revenue belongs solely to the state of origin of the merchandise.

Figure 2.4



This mechanism of interstate distribution of the ICMS' revenues has been working quite well, despite some problems that are not to be focused on this study. The advent of the internet and the possibility to purchase goods from virtual stores has completely changed commercial relationships, leading to tax conflicts among Brazilian States.

2.2 TAXATION ON E-COMMERCE IN BRAZIL

The vast majority of purchases from virtual stores are done by consumers who are the end-users of the products, and therefore, persons that do not pay the ICMS. This type of commerce is called B2C, or Business to Consumer.

As previously seen, this would be the case where the merchandise is taxed exclusively in the State of origin (figure 2.4). Even though the sale happens over the internet, the virtual store uses the physical premises of an establishment, normally a distribution center, from which the good will be shipped to the purchaser.

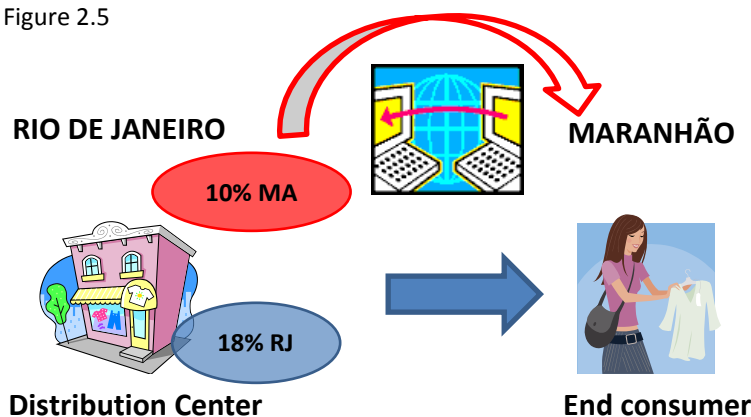
In Brazil, most distribution centers of online stores are located in the Southeast, mainly in São Paulo and Rio de Janeiro. This means that the majority of the ICMS revenues from online sales rest in these two States. It is also important to point out that, as internet sales become safer and deliveries become faster, there is a tendency for consumers to migrate more and more from physical to online stores. Thus, consumer

States tend to lose revenue from regular sales on their territory to online purchases, from which they do not benefit at all.

In this scenario, net importer States⁷ signed the Protocol 21, on 21st April 2011, creating a rule that compiles out-of-state sellers to collect part of the ICMS due on interstate transactions involving non-ICMS taxpayers to the State of destination. What they really mean by doing that is changing the logic of the ICMS so that the destination State of the good will also benefit from the trade. As these States cannot make the individuals (which are not taxpayers of the ICMS) pay for the tax⁸, they impose that the seller will act as a substitute of the individual, collecting the tax in its place.

What happens in practice is that, the State of origin taxes the merchandise as the Federal Constitution rules provide (internal rate: 18%), and the State of destination also taxes it, normally at a rate of 10%, in a completely new system. So in the end, the merchandise is going to be taxed twice, at a rate of 28%, as shown in the following figure.

Figure 2.5



This new logic imposed by consumer States violates constitutional principles, since it is determined in the Magna Carta that in these cases, the ICMS is entirely due to the seller State (Rio de Janeiro). Nonetheless, when the merchandise gets to the frontiers

⁷ The States that have signed the Protocol 21 are: Acre, Alagoas, Amapá, Bahia, Ceará, Distrito Federal, Espírito Santo, Goiás, Maranhão, Mato Grosso, Mato Grosso do Sul, Pará, Paraíba, Pernambuco, Piauí, Rio Grande do Norte, Rondônia, Roraima and Sergipe.

⁸ As we observed in figure 2.3.

of the destination State without the payments of the additional tax (10%) being done, it is confiscated by authorities, another illegal action.⁹

As one can imagine, this is causing a chaotic situation for enterprises and consumers. In the end, the tax rate will be transferred to the price of the merchandise, which is going to increase by 28%. Also, consumers acquiring goods online can face a delivery delay due to confiscation of the goods.

In trying to solve the problem, many enterprises and related associations have started to take legal actions, in order to release goods seized by the tax authorities as well as to prevent new confiscations. Others, have transferred their distribution centers to States that have signed the Protocol 21, thus avoiding the additional tax rate. There is also a group of companies that have decided not to sell to consumers located in these States that unconstitutionally tax the merchandise. Whatever is the case, there are high additional costs involved, harming enterprises, consumers and States.

It is a fact that the whole mechanism of interstate distribution of ICMS' revenues was designed to help poor Brazilian States by giving them a bigger fraction of the revenues when trade occurs with a rich State. It is also true that the technological advances and the rules governing the judicial framework do not go hand in hand. The Brazilian Constitution, that provides the rules concerning the ICMS, was promulgated in 1988. By that time, internet was not widespread and they could not predict the boom of e-commerce sales.

It is undeniable that under the Constitutional rules, importer States are being harmed by e-commerce. Adopting the measures stated on the Protocol 21, however, is not solving the problem, but creating new ones. The issue is now being discussed in the Federal Supreme Court and the Brazilian Constitution is about to be changed by means of the enactment of a Constitutional Amendment.¹⁰

⁹ The Federal Supreme Court of Brazil has already established that the tax authorities must not confiscate goods in order to force the payment of a tax. (Docket 323).

¹⁰ Amending the Brazilian Federal Constitution requires Congressional approval (from both Senate and Deputies' House). There was a proposal to change the ICMS rules for online sales in 2008, but the debate on both Houses has not been concluded so far.

But as Cláudia Maluf (2012) points out, the reason why taxation remains solely to the seller State in these cases is because none of the parties involved is subject to the tax administration of the State of destination. Thus, the adoption of the proposed sharing system, making the virtual store to collect the tax to the importer State, would cause the following:

(...)the virtual stores would then be subject to 27 different tax jurisdictions, which would certainly demand a great amount of financial effort for the stores to meet countless primary, i.e, payment, and ancillary, e.g. filing returns, tax obligations. In this scenario, smaller virtual stores would either fatally succumb to the costs inherent in such a huge effort or end up restricting their geographic area of operations. (MALUF,2012)

As one can conclude, changing the Constitution, if it is going to happen, may not be the answer for all problems related to the taxation on e-commerce in Brazil. Since the United States is also facing a related problem concerning the “sales tax” in internet purchases, it would be interesting to examine their situation .

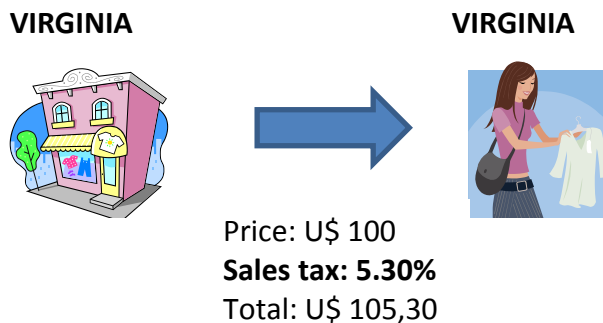
3. THE AMERICAN CASE

Parallel to the situation in Brazil, the United States is facing an issue concerning taxation over sales generated online. The taxes involved, although similar in their purposes, are very different in their mechanisms from the one in Brazil. Thus, this paper will start by providing a brief overview of the sales and use taxes.

3.1 UNDERSTANDING THE SALES AND USE TAXES

In the United States, taxation over the internet involves the sales and use taxes. While the net result is the same, conceptually these taxes differ. The sales tax is a tax on the sale at retail of tangible personal property ¹¹and certain taxable services. It is a transaction tax, calculated as a percentage of the sales price, unlike the value added tax. Rates vary widely by jurisdiction and in States they range from 2% to 7%. The sales tax is collected by the seller at the time of sale, as shown in the following figure:

Figure 3.1



The jurisdiction to levy the sales tax belongs to the location where the transaction occurs and where the title to the item is transferred. Although local governments can also impose sales tax, this paper will focus only on the taxes levied by States. Nowadays, forty-five States ¹²and The District of Columbia levy general sales tax.

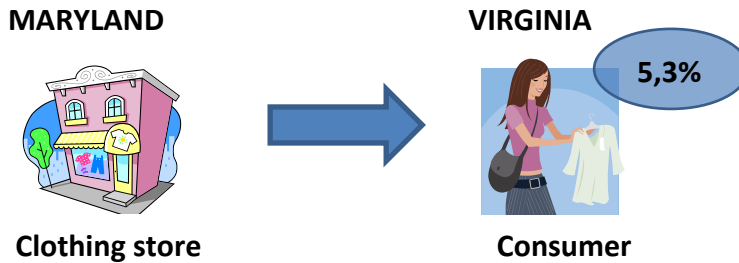
The use tax (sometimes referred as a compensating or complementary tax) is levied on the use, storage, or consumption of tangible property in the State when the sales tax has not been paid. Generally, it is imposed on transactions that would have been subject to the sales tax if both the buyer and the seller were located in the same

¹¹ Tangible personal property refers to property, except land or buildings, that can be seen, weighed, measured, felt, touched, or otherwise perceived by the senses.

¹² New Hampshire, Oregon, Montana, Alaska and Delaware do not levy general sales taxes.

State¹³. The sales tax and the use tax normally have the same rates. The use tax is self-assessed by a purchaser, meaning that he/she will indicate and pay the amount due to the Department of Revenue of his/her state.

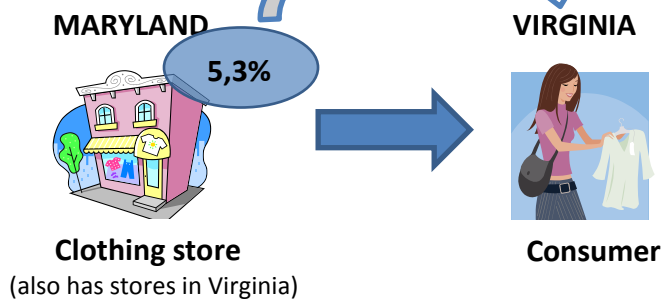
Figure 3.2



The purpose of the use tax is to protect local merchants, who must collect the sales tax, from unfair competition from out-of-state sellers who do not collect it. Even though States have penalties and interests for non-filing the assigned forms regarding the use tax, the rate of compliance is very low.

When the out-of-state seller has a connection (nexus)¹⁴ with the State of destination of the merchandise, States can enforce the seller to collect the use tax from the purchaser on behalf of the State. In the example below, a retailer, located in Maryland but also with stores in Virginia, sells to a Virginian consumer. In this case, the seller is going to collect the use tax to the State of Virginia and the consumer is exempted from this responsibility.

Figure 3.3



¹³ For example, sales tax is not always added to purchases through the internet, telephone, mail order catalogs, etc.

¹⁴ There is a huge debate about what should be considered nexus in these cases: physical presence, distribution house, salesman, minimum contacts, presence of a corporate affiliate or subsidiary, etc. This is going to be discussed in the next section.

Because a few consumers actually comply with the use tax, States would rather always impose the duty of collecting the tax on sellers. However, special conditions may apply before a State is legitimized to do it. These conditions are especially important when considering sales generated online.

3.2 TAXATION ON E-COMMERCE IN THE UNITED STATES

As is similar in Brazil, e-commerce has been increasing in the United States, facilitating interstate trade to occur. In the U. S., States can impose sales and use taxes on online transactions similar to what can be seen in figures 3.2 and 3.3. Nonetheless, if the out-of-state merchant does not have a constitutionally sufficient nexus to the State, the seller is under no enforceable obligation to collect a use tax. One should notice that this does not exempt the buyer from the duty to pay use tax on these cases.

Because of the low compliance rate with the use tax and the fiscal crisis of the past few years, States are attempting to develop new ways in which they can collect taxes on the rising business of e-commerce. This is the reason why they have been enacting the often called “Amazon laws”¹⁵. Briefly, under these laws States impose tax collection or notification requirements on out-of-state internet retailers. Questions about whether these laws can be considered constitutional arose and a great debate is going on all over the country.

Under the United States Supreme Court jurisprudence, nexus is required by two provisions of the Constitution: the Due Process Clause¹⁶ and the Commerce Clause¹⁷.

Due process requires there be a sufficient nexus between the state and the seller so that (1) the state has provided some benefit for which it may ask something in return and (2) the seller has a fair warning that its activities may be subject to the state’s jurisdiction. The dormant Commerce Clause, meanwhile, requires a nexus in order to ensure

¹⁵ In reference to the largest internet retailer, Amazon.

¹⁶ U.S. CONST. Amend. 14, §1 (...) “nor shall any State deprive any person of life, liberty, or property, without due process of law (...)”.

¹⁷ U.S. CONST. art. 1 §8, cl. 3 “The Congress shall have power (...) to regulate commerce with foreign nations, and among the several states, and with the indian tribes.”

that the state's imposition of the liability does not impermissibly burden interstate commerce. (LUNDER, 2013).

As one can see, the nexus standard is not the same under both clauses and they actually have different purposes. Together, these clauses impose that in order to levy tax liability on an out-of-state retailer it is important that: (1) some type of nexus between the remote vendor and the State exist; and (2) States do not discriminate against out-of-state sellers. In other words, while a State may, consistent with the Due Process Clause, have the authority to tax a particular business, imposition of the tax may violate the Commerce Clause.

The U. S Supreme Court last weighed in on the issue of whether remote sellers must collect use tax in 1992, in the *Quill v North Dakota case*. The Quill Corporation, based in Delaware, used to sell merchandise through a catalog to North Dakota, where it did not maintain an office. Although they did send computer software to customers in the State to enable them to place the order through the inventory, they did not collect use tax. The Court ruled in favor of Quill, stating that computer software could not be interpreted as physical presence, thus no tax duties could be imposed on the business.

In a previous case, *National Bellas Hess, Inc. v Department of Revenue of Illinois (1967)*, the Supreme Court also rejected the attempt by Illinois to impose use tax collection obligations on Bellas Hess. They observed that:

National Bellas Hess did not maintain in the state "any office, distribution house, sales house, warehouse or any other place of business... Nor did it have in Illinois any agent, salesman, canvasser, solicitor or other type of representative to sell or take order, to deliver merchandise it sells... Finally, National Bellas Hess did not own any tangible property, real or personal, in Illinois; it had no telephone listing in Illinois and it has not advertised its merchandise for sale in newspapers, on billboards, or by radio or television in Illinois. (ISAACSON).

The aim of The Supreme Court in restricting State taxing authority on interstate trade was to recognize the complexity and the significant costs implied on the task of collecting tax to multiple jurisdictions, with different rules, definitions, tax bases, rates, exemptions, sales tax holidays, etc. Also, there are costs related to administrative

record-keeping requirements. Costs that could be daunting for small/medium sized business.

As one can see, in order to have nexus under the Supreme Court jurisprudence, the company must have some type of physical presence in the state. Aware of their limitations on imposing the duty of collecting the use tax on a remote seller, States are now focused on defining the outer reaches of the concept “nexus”.

New York was the first to enact a so-called Amazon Tax law, in 2008. Under the New York law if an “out-of-state vendor entered into a contract with an in-state affiliate that puts the vendor’s Internet link on the affiliate’s computer website to promote sales with an annual gross revenue of \$10,000 or more, the vendor is required to collect sales tax from the in-state buyer”.¹⁸(YANG, 2013).

Amazon.com, an online retailer, filed a lawsuit with the New York Court of Appeals arguing the law violates the Constitution. The Court ruled in favor of the Department of Revenue understanding that affiliation agreements had the effect of creating an “in-state sales force”. Amazon.com¹⁹ appealed the case to the U.S Supreme Court who rejected the appeal without any comment in December, 2013. Rhode Island and North Carolina have adopted legislations similar to New York’s and after the rejection of the appeal it is possible that other States do the same.

¹⁸ An example provided by The New York State Department of Taxation and Finance on its website is the following: XYZ Company (XYZ) is an Internet-based retailer of sporting goods specializing in downhill skiing equipment. XYZ is located in Vermont, where it has its administrative offices and its warehouse, which holds its inventory for sale. XYZ makes sales of its merchandise throughout the United States and has customers in New York State. The merchandise sold by XYZ is delivered by the U.S. Postal Service or by common carrier. As part of its marketing plan, XYZ has entered into agreements with several ski clubs located in New York State whereby the ski clubs will maintain links to XYZ’s retail Web site on the clubs’ own Web sites. XYZ will pay a commission to the ski clubs based on the sales that XYZ makes that originate from these links. From March 1, 2007, to February 29, 2008 (i.e., the preceding four quarterly sales tax periods), XYZ has gross receipts from sales of its merchandise based on these agreements with the New York State ski clubs totaling \$78,390. Based on the foregoing, XYZ is presumed to be making taxable sales in New York State by soliciting business in New York State through the use of independent contractors or other representatives and required to be registered as a sales tax vendor, collect New York State and local sales taxes, and file the required sales tax returns.

¹⁹ Overstock.com, another online retailer, not only sued the state but also ended its affiliate programs in New York. The petition asking the U.S. Supreme Court to review the New York decision was also rejected by the justices.

Another approach created by States to try to increase the revenues of use taxes was led by Colorado, in 2010. Colorado's law required internet retailers that do not collect the sales/use tax due to lack of physical presence to provide information to the State and the customer. Under this law, retailers must inform the in-state buyer of their duties on paying the use tax and submit a report to the Colorado Department of Revenue about the buyers' personal information. Although the State Court ruled against the Department of Revenue, this is still a burning issue and many other States have passed similar legislation.

Despite all the jurisprudence presented one should notice that the Congress has the power to regulate commerce among the several States under the Commerce Clause. Therefore, Congress can legislate and may come up with a different understanding of nexus than the ones presented. In the 1990s, bills that would allow States to collect taxes from out-of-state vendors without nexus were proposed in the Senate but failed.

In 2000, representatives from State governments and business community came together with a common goal of simplifying the sales/use taxes. The Streamlined Sales Tax Project (SSTP), was designed to develop measures to plan, test, and implement a simplified system of sales and use taxes. Organizers of the SSTP hoped that by taking out the differences among State taxation levels, it could be easier to convince Congress and the Courts to allow States to collect taxes from out-of-state vendors regularly.

In 2005, the SSTP gave way to the Streamlined Sales and Use Tax Agreement (SSUTA). SSUTA aims to provide uniform definitions, rate and administration simplification, State level administration, uniform sourcing rules, technological improvements, State funding and uniform audit procedures. Furthermore, vendors that voluntarily agree to join SSUTA have several benefits, such as amnesty for previously uncollected or unpaid taxes, monetary discounts and even a percentage of the tax collected for the first twenty-four months in order to offset the burden of collection. Although forty-four

States and the District of Columbia have approved the agreement, only twenty-three have actually signed it and adopted the simplification measures²⁰.

In parallel, the Congress, after many years of discussions and different approaches, is expected to approve the Marketplace Fairness Act of 2013. The Act would authorize States to impose sales/use tax collection duties on remote sellers if the State is a member of the SSUTA or, if not, has implemented minimum simplification requirements, as provided in the Act. The bill included an exception for “small sellers”, defined as having gross annual remote sales of U\$1 million or less. Either the terms of the SSUTA or the simplification requirements would mitigate much of the burden that collection of the taxes might otherwise impose on remote sellers.

Although the Senate has already passed the bill, it is still pending in the House of Representatives. With the enactment of the Marketplace Fairness Act, States would be able to require internet retailers to collect sales tax regardless of whether they have a physical presence in their State.

This new legislation seems to be a potential solution for States that rely on sales and use tax to provide public services (and lose millions of dollars on the not collected taxes every year). Moreover, it would diminish the burden that collection of the taxes might otherwise impose on remote sellers. Furthermore, unfair competition with “brick and mortar” stores, that also lose revenue when clients prefer online shopping in order to avoid taxation, would have an end.

Although one cannot guarantee the Marketplace Fairness Act is actually going to be enacted and implemented, it is possible to take lessons from the American experience in their search to find a solution to the challenges of taxation on e-commerce. In the following chapter this paper will analyze and take these lessons from the American experience to the Brazilian debate.

²⁰ According to the project’s website, those States are: Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

4. LESSONS LEARNED FROM THE UNITED STATES

Comparing taxation on e-commerce in Brazil and the United States can be challenging. Both their tax systems and current problems seem to be highly different. On one hand, Brazil has a situation where the tax on online sales is being paid twice. On the other hand, the United States is on the search of finding a solution for the taxes on e-commerce that are not being paid at all.

Despite the differences, the American experience seems to have interesting contributions to the current debate in Brazil. As seen in the previous chapter, the loss of revenue due to uncollected tax from online trade and the unfairness competition “brick and mortar” stores have been dealing with is possibly coming to an end in the U.S. More important, it is possible that it ends up with a good solution for all the parties involved.

The Marketplace Fairness Act, which has not yet been enacted, would authorize States to impose sales and tax collection responsibilities on remote sellers with no physical presence in the State under specific conditions. States would have to choose between adopting the Streamlined Sales and Use Tax Agreement (SSUTA) or implementing minimum simplification requirements. Interestingly, the American approach involves that considerations about the burden of compliance with legislations of thousands of different jurisdictions is taken into account before Congress empowers States to impose new responsibilities on e-business.

The substantial nexus required under the U.S Supreme Court jurisprudence goes in the same direction, imposing duty responsibilities to collect tax only if the business is already related to the State. In theory, for a business that has nexus, compliance with the State’s legislation would be easier and less costly.

In Brazil, the opposite seems to happen. States that have signed the Protocol 21 and are engaged in making business, that have already accomplished with their duty of collecting taxes, pay for it again, are now trying to amend the Constitution. Although

this might end the debate of the constitutionality of the Protocol 21, the burden that this new ICMS system might impose on e-business is not being considered.

As previously stated, the reason why revenues of taxation of goods sold directly to end consumers in Brazil remains in the seller State is because none of the parties involved is subject to the tax administration of the State of destination of the goods. Adoption of the proposed sharing system, making the virtual stores to collect taxes also on behalf of the destination State, would increase substantially the costs of compliance on e-business. These costs could impede the continued growth of online trade, especially for small companies that see on e-commerce a great opportunity to make business.

Another important aspect of the American debate is being left behind in Brazil. The complexity of the Brazilian tax system is not being considered on the search for a solution to taxation. While in the United States representatives from State governments and business community came together with a common goal of simplifying the sales and use tax system, in Brazil no such action has been seen. The focus is on solving the constitutional aspect of e-commerce taxation, regardless of what this change could do to an already very complex tax system.

The Streamlined Sales and Use Tax Agreement requires States to simplify their tax administrations. They must also agree to technological improvements, State funding and uniform audit procedures. Retailers are given technological models to choose from in determining how they will remit taxes. Vendors that voluntarily agree to join SSUTA have several benefits, such as: amnesty for previously uncollected or unpaid taxes, monetary discounts and even a percentage of the tax collected for the first twenty-four months in order to offset the burden of collection. Although further studies on SSUTAs procedures are necessary, it would be interesting to have similar initiatives in Brazil.

One last aspect of the debate of taxation on e-commerce in both countries is the necessity of cooperation among States. While in the U. S. all States that levy sales and use taxes tend to benefit from the new federal legislation expected to be enacted, in Brazil, the gains for one State represents a loss for another. This is due to the

mechanism of interstate distribution of ICMS' revenues. Thus, if the Constitution amendment passes in order to incorporate the Protocol 21 system, States like São Paulo and Rio de Janeiro will lose a great amount of revenue.

If the tax system was designed to help poor Brazilian States by giving them a bigger fraction of the revenues when trade occurs with a rich State, this aim is not being achieved regarding online trades. Nowadays, richer States (like Rio de Janeiro and São Paulo) are the greater beneficiaries of e-commerce taxation revenues, leaving poor States with nothing. Therefore, overcoming these challenges of taxation on e-commerce in Brazil would involve a great amount of effort by the parties and cooperation among the States in order to give the taxation rules some rationality.

If Brazilian States continue to focus solely on increasing the revenues of taxation at the expenses of creating an even more complex system, we might end up "killing the goose that lays the golden eggs". In order to take advantage from the great benefits of e-commerce on generating revenues to governments, Brazilian States should learn from the American experience and try to implement simplified and less costly tax legislation that enable e-business to grow.

5. CONCLUSION

With the growing popularity of online shopping, conflicts over taxation on e-commerce have arisen and intensified in Brazil and the United States. Although concerns faced by both countries are very different, this paper has demonstrated that Brazilian States can take lessons from the American experience.

In spite of the fact that the U.S. has not yet solved the problem of taxation on e-commerce, a potential solution in place involves considerations of the burden of compliance imposed on business, simplification of the tax system and cooperation among governments and the business community. In Brazil, none of these aspects are being taken into account and States are focusing only on amending the Constitution, regardless of what the consequences on e-business could be. Further studies on the Streamlined Sales and Use Tax Agreement procedures and the Marketplace Fairness Act would be interesting in order to implement in Brazil some of the lessons learned from the American experience.

One thing is clear: overcoming the challenges of taxation on e-commerce in Brazil requires more than changing constitutional rules. It involves implementing a simple and less costly tax system in order to enable e-commerce to grow even more. By cooperating and bringing the business community to the debate, Brazilian States can take advantage from the great benefits of e-commerce on generating revenues. It is not an easy task, but the American experience may have proven it is a possible one.

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