Taxation of the Peer-to-Peer Sharing Economy and Update on Remote Sales Tax

Jake Lestock
Interim Study Committee on Fiscal Policy
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The Advent and Growth of E-Commerce

The estimate of U.S. retail e-commerce sales for the second quarter of 2018 totaled $120.4 billion.

For the last six years, e-commerce grew by 15% in each year and now accounts for around 10% of total retail sales and 8.4% of total sales.

Source: U.S. Census Bureau Quarterly Retail E-Commerce Sales
The sales tax is the largest contributor to state-local own-source revenue, accounting for 34% of state revenues.

Most states’ sales taxes apply to goods, with few services included in their tax bases.
Definitions of the “P2P” economy vary.

A collection of virtual marketplaces that connect individuals looking to trade goods and services with one another through digital platforms.

The P2P model is not a new way of conducting business.
Collaborative Economy Honeycomb Version 1.0

The Collaborative Economy enables people to efficiently get what they need from each other. Similarly, in nature, honeycombs are resilient structures that efficiently enable many individuals to access, share, and grow resources among a common group.

In this visual representation, this economy is organized into discrete families, sub-classes, and example companies. To access the full directory of 9000+ companies visit the Mesh Index, at meshing.it/companies managed by Mesh Labs.

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Collaborative Economy Honeycomb Version 2.0

The Collaborative Economy enables people to get what they need from their community. Similarly, in nature, honeycombs are resilient structures that encourage many individuals to allocate, share, and grow resources among a common group.

In the original Honeycomb graphic, six distinct families of start-ups were represented by the inner track of bees. In a very short period of time, this movement has expanded, as reflected in the six additional bees on the outer perimeter.

This visual representation of the movement is organized into families, clusters, and start-up examples. In a complete directory of over 8000 start-ups worldwide, evidence by Josh Elman, managed by Wark Labs. http://hivesblog.com

By Jeremiah Owyang
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Collaborative Economy Honeycomb Version 3.0

The Collaborative Economy enables people to get what they need from their community. Similarly, in nature, honeycombs are resilient structures that encourage many individuals to allocate, share, and grow resources among a common group.

In the original Honeycomb graphic, six distinct families of start-ups were represented by the inner track of bees. In a very short period of time, this movement has expanded, as reflected in the six additional bees on the outer perimeter.

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Peer-to-Peer Businesses

- Web-based platforms provide technology that allows individuals easy access to functions like payment intermediation functions, which allow rapid exchange of value between users with low barriers to entry.

- Most platforms adopt a fixed or variable commission-based approach, with commissions charged ranging from 1-2% for lending to up to 20% for transportation network companies.

- Platforms closely guard data on users.

Source: IMF Working Paper: Taxation and the Peer-to-Peer Economy
Implications of the P2P Economy for Tax Policy and Administration

- What are the economic impacts of the P2P economy?
- Are current tax policies sufficient to deal with them?
- Does the current tax structure allow for greater avoidance by participants in the P2P economy?
How Should We Tax the P2P Economy?

- As noted before, the P2P business model allows alternative provision of goods and services, while the actual goods and services themselves remain unchanged.
- Level the playing field?
- Alternative system of taxation?
Short-Term Rentals

- 2018 Legislation.
- Only one state signed a bill into law.
A recent collection method spearheaded by Airbnb has become increasingly popular. The company has been entering into voluntary contract agreements with departments of revenue to collect and remit taxes on hosts’ behalves. According to Airbnb’s website, they are collecting and remitting state taxes on behalf of hosts in 34 states. [Indiana is not one.]

However, it’s worth noting that these contract agreements have not been favored by everyone. They have been praised for increasing feasibility for hosts’ tax collection, but also are criticized for not being transparent. A former Montana Department of Revenue director authored a report that critically examined these agreements, which was supported by the American Hotel and Lodging Association.
Short-Term Rental Collections

There has been difficulty with proper collection and remittance of sales and/or lodging taxes at the state and local levels. In a report released by the New York State Attorney General’s Office only examining Airbnb, it found that New York City hosts were liable for over $33 million in taxes from 2010 to 2014, not including fines or penalties. The report found that “few” hosts had filed necessary paperwork with New York City to collect and remit these taxes, resulting in a large amount of unpaid occupancy taxes. Additionally, proper reporting related to income from short-term rentals has made it difficult to collect accurate amounts for personal income tax purposes.

- According to the Bloomberg Tax 2018 Survey of State Tax Departments, 25 states place the collection obligation on the owners of short-term rental accommodations to collect sales tax and 14 states place it on the third-party facilitator. Over twenty states include any fees paid to the facilitator in the taxable price of short-term vacation rentals.
“To promote tax parity, states should consider legislation that requires short-term rental marketplaces that act as a financial intermediary to collect and remit applicable taxes on short-term rentals facilitated through those marketplaces.”
Transportation Network Companies (TNCs)

- 7 major cities and 12 states have some type of fee or tax on TNC trips.
- Surcharges, sales tax, fees.
- Can TNC taxes and fees provide parity with traditional taxi services?
- Can TNC taxes offset negative effects?

Resource: States that levy taxes or fees on TNCs
Car Sharing

- Roundtrip car sharing vs. peer-to-peer.
- Rental Car parity?
- Double Taxation?
- Separate Tax structures?
Sales Tax Collection Obligations

- **Transportation Services** (e.g., Uber or Lyft)
  - Owner/Driver: 4 states
  - Third Party: 10 states

- **Short-Term Accommodations** (e.g., Airbnb)
  - 25 states: Owner/Driver
  - 14 states: Third Party

- **Short-Term Rental of Owners’ Vehicle** (e.g., Getaround, Turo)
  - 20 states: Owner/Driver
  - 11 states: Third Party

*NOTE: Some states provided more than one “yes” response. DC and NYC are treated as states for the purposes of this chart. AK, DE, MT, NH, and OR do not impose a sales and use tax. AR, FL, NYC, OH, OK, and SC did not participate in this portion of the survey. As a result, these 11 states are not included in this chart.*

*Source: Bloomberg Tax 2018 Survey of State Tax Departments*
Other Tax Issues to Consider

- Employment Classification
  - Employees vs. independent contractors
- Long Term Effects on Direct Taxes
Enforcement Concerns?

- The expansion of p2p sales may give rise to an enforcement challenge for tax authorities.
- Platforms record data on all the transactions taking place in the virtual markets they oversee.
- Platforms will be reluctant to provide information, but if digital platforms would provide access to this information, tax administration could improve dramatically.
Update on Remote Sales Tax in the States and Future Implications of the SCOTUS Decision
2010 – Colorado’s Reporting Requirements

- Requires retailers that do not collect sales or use taxes to notify any Colorado consumer of the state’s use tax payment requirement and to report tax-related information to those customers and the Colorado Department of Revenue.

- December 10, 2016 – Direct Marketing Association v. Brohl
  - The U.S. Supreme Court declined to review the Tenth Circuit’s decision upholding Colorado’s reporting regime against a Commerce Clause challenge.
  - Any out-of-state business selling into Colorado is required to comply with the new notice and reporting requirements.
South Dakota v. Wayfair

- S.B. 106 (2016)
  - Requires out-of-state seller to follow all applicable procedures and requirements of law as if the seller had a physical presence in the state if they:
    - Generated more than $100,000 in revenues from sales into the state the previous calendar year, or
    - Had more than 200 separate transactions (sales) into the state the previous calendar year.

- June 21, 2018
  - In a 5-4 decision the Court found that “economic and virtual contacts” are enough to create a “substantial nexus” with the state, allowing the state to require collection.
The Court Gave States Guidelines

- Although, the Court eliminated the physical presence standard, it recognized that undue burdens could be sufficiently reduced through other means, or a combination of means, including:
  - A safe harbor for small sellers;
  - No retroactive tax collection;
  - Single, state-level administration of sales taxes;
  - A simplified tax rate structure; and
  - Uniform definitions and other rules
On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of “economic nexus” and “notice/reporting” laws across the country.
Remote Sales Tax Implementation

On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of when each state will begin enforcing their sales tax laws on remote sellers. Please check with individual states for specifics.

*Click on each state to visit their Department of Revenue (DOR) website.*
State Marketplace Laws

On June 21, 2018, the U.S. Supreme Court, in South Dakota v. Wayfair, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of “marketplace” laws across the country.

*Marketplace law vary by state. Please check specific state for more information.

**Marketplace collection provisions aim to require online and other marketplaces to collect and remit sales and use tax if a retailer sells products on the marketplace.

**Types of Marketplaces
Standard” or “traditional” marketplaces where multiple sellers sell products, sometimes the same products, on a single platform.

“Referral” marketplaces are where customers may search for products and are then referred to a place to purchase those products.

Legend
- **Enacted Marketplace Law**
- **No Enacted Marketplace Law**
- **Non-Sales Tax States**

July 31, 2018
Online marketplaces are e-commerce sites where products or service information is provided by multiple third parties, but transactions are processed by the marketplace operator.

Minnesota enacted legislation in 2017 that extended the duty to collect and remit sales tax to Internet marketplace providers located in the state unless sellers on the marketplace site are already collecting the tax.

Washington state enacted legislation in 2017 that requires marketplaces to collect retail sales or use tax on taxable retail sales into the state OR comply with certain sales and use tax notice and reporting provisions.
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