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The Net Changes Everything, Except Politicians

By PAUL A. GIGOT

Someone recently asked Bill Gates if the Clinton administration's assault on Microsoft had convinced him that Republicans were better friends of free enterprise than Democrats.

It's hard to feel that way, Mr. Gates replied dryly, when your fiercest critic is Orrin Hatch. Mr. Gates is right about the Utah GOP senator, who has walked antitrust point for Janet Reno and muddled the politics of high-tech regulation.

Now it looks like a second Utah Republican may do the same for e-commerce taxation. Gov. Mike Leavitt is leading a tax-the-Internet crusade that is pleasing liberals everywhere, especially Al Gore. Is there something in the water out there?

Mr. Leavitt heads the pro-tax faction in the backroom brawl now taking place within the Advisory Commission on Electronic Commerce. He had hoped to use the bipartisan commission to block any extension of Congress's current three-year moratorium on new e-taxes. Fortunately, he's run into opposition led by another GOP governor, commission chairman Jim Gilmore of Virginia.

The rumble is getting big enough that the brawlers are tossing each other into the streets. Mr. Leavitt chairs the powerful National Governors' Association, which he is turning into an e-tax vanguard.

This week an NGA press release claimed GOP Ohio Rep. John Kasich's new proposal to ban Internet sales taxes would mean "FEWER TEACHERS, LESS LAW ENFORCEMENT AROUND THE COUNTRY," among other all-caps evils. Since when did the "non-partisan" NGA start aping Bill Clinton's lines?

Mr. Gilmore, meanwhile, wants to become vice chairman later this month (and, automatically, chairman next year) of the Republican Governors Association. But in a recent RGA conference call, governors (including Tennessee Gov. and Leavitt tax ally Don Sundquist) discussed whether someone else should run against the Virginian.

That won't happen, but the call shows how much the gutsy Mr. Gilmore is alarming politicians who feel they have a right to tax anything that moves.

Mr. Leavitt is no fool and believes in his cause. He's worried that untaxed e-commerce will erode state sales-tax revenue. He's also a committed federalist who thinks states have the power to tax whatever they want.

Mr. Leavitt's main problem here is that his view of interstate commerce went out with the Articles of Confederation. The Supreme Court has ruled that it's fine for Maine to tax L.L. Bean sales in Bangor. But it violates the Constitution's Commerce Clause if Utah tries to tax L.L. Bean mail-order (or presumably cyberspace) sales in Salt Lake City. Bean after all benefits from the roads and other public goods in Freeport, Maine, but not from those in Utah. (See *Quill Corp. v. Heitkamp*, 1992.) [MJM Note: Explain to Mr. Gigot his misreading of *Quill*.]

As for tax revenue, states are rolling in it, thanks in part to the Internet boom. States piled up \$11.3 billion in surpluses last year, padding rainy-day funds to \$36 billion. New e-taxes would slow the growth of the very business helping to pile up these surpluses, assuming the taxes didn't first drive much of that business to non-U.S. tax havens.

E-Commerce might eventually affect sales-tax revenue. But as Mr. Gilmore points out, government should then adapt to the Internet, just as every business is now being forced to. Maybe states will find they can no longer justify 8% or 10% sales-tax rates, or that they can raise as much with a 4% rate from a bigger economic pie.

This explains why Mr. Leavitt's allies are mainly other politicians, especially on the left. Blocked by voters from raising income taxes, they'd love to tap into an indirect revenue source that would grow without much public attention. Once imposed, of course, such taxes are forever. If you doubt it, consider that Mr. Gilmore proposed this week to repeal the 3% federal tax on telephone service first imposed to fund the Spanish-American War in 1898.

Republicans are supposed to dislike this sort of taxation without honest presentation, and some still do. John McCain and Steve Forbes have both joined Mr. Gilmore in opposing all new cybertaxes. On the other hand, George W. Bush has stayed quiet, having promised his buddy Mr. Leavitt that he'd wait until the e-tax commission reports next April.

This is a missed opportunity, because the cybertax issue is one way to force such supposedly Digital Democrats as Mr. Gore to be honest. It makes them choose

between the Silicon Valley crowd they hit up for campaign cash and their political and union allies who want ever-more tax revenue.

Proof of this is the loud silence coming so far from the three E-tax commission members appointed by President Clinton. The last thing they want to do is declare themselves and tip voters off to Mr. Gore's true position. They're three of the swing votes on the polarized 19-member body.

Democrats are lucky that Mr. Leavitt's e-tax crusading blurs any partisan accountability. "He is undermining the Republican antitax position," says Grover Norquist, the GOP's market-Leninist and a member of the e-tax commission. "He is running interference for Al Gore."