

## Should Amazon buyers pay sales taxes?

Sunday, December 5, 2010



By:

Dave Flessner (Contact)

The world's biggest Internet retailer is proposing to open distribution centers in Hamilton and Bradley counties that could handle hundreds of millions of dollars of shipments a year.

But those sales won't necessarily generate any more sales taxes for Tennessee.

Unlike conventional brick-and-mortar retailers, Amazon doesn't collect taxes on most of its sales in Tennessee and 44 other states.

That could change in Tennessee if Amazon builds 1 million-square-foot warehouses in Chattanooga and Cleveland, Tenn. But it might not.

"We are having discussions right now with the state on this," said Fred Kiga, director of policy for Amazon. "The distribution centers here are not retailers, but rather drop shippers."

### **TAXING AMAZON SALES**

\* Amazon collects sales taxes on all items shipped to four states where it has operations -- Kansas, Kentucky, North Dakota and Washington -- but not in 14 states where it operates fulfillment and customer service centers.

\* Amazon began collecting sales taxes for New York purchases after that state adopted the so-called "Amazon tax" on the company's affiliates in the state. Amazon and Overstock.com are challenging the law in court.

\* Amazon collects sales taxes for shipments to nearly all states on books and other items it sells for retailers such as Target and Harper Collins Publishers.

\* In August, Texas billed Amazon \$269 million for uncollected sales taxes from December 2005 to December 2009, with interest and penalties. Amazon is appealing the action.

\* Amazon is in talks with Tennessee about sales tax collections as part of its plans for an Amazon affiliate to build distribution facilities in Hamilton and Bradley counties.

Source: Amazon, Center on Budget and Policy Priorities

Amazon has resisted having to collect sales taxes in all but five of the states where it sells goods. That includes most of the 18 states where it operates fulfillment centers like those planned in Southeast Tennessee.

Nationwide, states lose \$20 billion a year from Internet retailers that don't collect sales taxes for most of their goods -- Amazon, Overstock.com and CDW among them -- according to studies by the University of Tennessee's Center for Business and Economic Research.

Technically, consumers are supposed to pay sales taxes on all purchases, whether the merchant collects them or not. But UT economist Bill Fox, a national authority on Internet taxation, estimates that less than 2 percent of sales taxes due are paid if people are allowed to self-report and pay them after a purchase.

"This is not just a revenue question; it's important as an economic and fairness question to get this worked out," Fox said. "What we have today is an incentive for people to purchase goods out of state in a way that I don't think is in the best interests of our state's economy."

Advocates for conventional retailers and some state governments are moving to close what they claim is an unfair tax loophole for e-commerce. In Irving, Texas, where Amazon operates a distribution center, the state sent it a \$269 million tax bill this summer for uncollected sales taxes on goods it sold in the state over the last four years.

Amazon is appealing the levy. The company insists its distribution center is owned by a separate entity and does not meet the legal definition of a "physical presence in the state" that would make it a taxing retailer.

### **Tax revenue vs. jobs?**

With nearly 1,500 full-time and as many as 2,200 more part-time jobs planned for Amazon's proposed local distribution facilities, Tennessee may be cautious about getting too tough over taxes.

A ruling that Amazon's facilities constitute a physical presence under Tennessee's revenue definitions could mean the state would require Amazon to collect millions of dollars of sales taxes on Tennessee purchases. Tennessee consumers could be required to pay when they order online.

Amazon must collect sales taxes in some states where it has distribution warehouses, such as Kentucky and Kansas, but not in most others with warehouses, such as Indiana, Virginia and Nevada.

The Tennessee Department of Revenue and the state Department of Economic and Community Development are working together to recruit Amazon. Officials with both departments declined to discuss whether Amazon would have to collect state and local sales taxes in Tennessee if the proposed facilities are built.

Revenue Department spokeswoman Sara Jo Houghland said both offices "worked closely to develop and implement" tax and other incentives for businesses to locate in the state. But she said the state doesn't discuss taxes on any individual business.

"Tennessee's approach has been highly successful, attracting more than 190,000 new jobs and \$33 billion in new capital investment over the past eight years," she said.

Michael Mazerov, a senior fellow at the Center on Budget and Policy Priorities in Washington, D.C., cautioned states against granting sales tax breaks to Amazon or other companies just to lure them to a state.

"Clearly in the case of Tennessee, which is so reliant upon sales tax revenue, giving [required sales tax collections by an online retailer] away for the warehouse jobs you get in a distribution warehouse is not a very good tradeoff," Mazerov said.

Gov.-elect Bill Haslam said last week that untaxed online sales are a growing problem for states such as Tennessee.

"I do think this is something we need to look at long term, but I do not think it needs to interfere with our recruiting of Amazon to Tennessee," he said. "That's a huge priority for us."

### **Defining a retailer**

The U.S. Supreme Court ruled in 1992 that retailers don't have to collect sales taxes in states where they have no physical presence, such as a store, office or warehouse. The legal term for this physical presence is "nexus."

The high court and online retailer advocates argue that requiring a company to comply with the varied rules and regulations of more than 7,500 local taxing jurisdictions would burden interstate commerce.

"Each of those jurisdictions applies the tax and determines who should be taxed differently," said Jerry Cerasale, a senior vice president of government affairs for the

Direct Marketing Association, which represents catalog and online retailers. "It is so complex, and getting more complex all the time with tax-free holidays and other changes."

### **Streamlining taxes**

To help standardize the definitions and rules for sales tax collections, the National Governor's Association and the National Association of State Legislators created the Streamlined Sales Tax Board in 1999.

In January, Georgia will become the 24th state to join the board.

Scott Peterson, executive director for the Nashville-based Streamlined Sales Tax Board Inc., said the group has helped bring more uniformity to sales tax rules. That allows software vendors easily to apply sales tax rates for any purchase.

The group is pushing Congress to adopt the Main Street Fairness Act to require online retailers to collect sales taxes for any states that adopt the streamlined standards.

Such legislation has yet to get out of committee in Congress, but Peterson said he remains hopeful.

"This is a states' right issue and gives Congress the opportunity to help states to manage their own affairs," Peterson said.

But Cerasale said the recommendations of the Streamlined Sales Tax Board "are streamlined in name only" and still too complex for many online retailers.

"This is not a question of whether taxes are owed on the sales," Cerasale said. "It's a question of whether a company should be forced to collect taxes in another state when it doesn't have any presence or voice in that state."

### **States get tough**

Some states aren't waiting for Congress or the Streamlined Tax Board to act. New rules known as "Amazon laws" in New York, Rhode Island and North Carolina require online retailers to collect state sales taxes on purchases.

The National Retail Federation, which represents the nation's biggest shopping centers and conventional retailers, is urging legislatures and Congress to treat online retailers the same as brick-and-mortar stores.

"The merchandise sold online is no different than what is sold in a store," said Maureen Riehl, spokeswoman for the National Retail Federation. "There is no reason one group of merchants should be given an unfair price advantage over another."

## California's gift to e-tailers

### Letting them leave out sales taxes for online purchases hurts the state's pocketbook, and it's unfair to brick-and-mortar stores.

George Skelton

December 9, 2010

Both governors — the incoming and the outgoing — have been scratching to find solutions to the state's incessant budget deficit. One is right under their noses.

They should look under a few Christmas trees. No doubt, they'll find gifts bought over the Internet without the purchaser having paid the required California sales and use tax.

This isn't an issue of the state raising taxes, a concept that sends shivers down the spines of Gov.-elect Jerry Brown and departing Gov. Arnold Schwarzenegger. It's an issue of collecting taxes already owed.

A state Board of Equalization report released Wednesday estimates that this year California will lose more than \$1.1 billion in revenue on out-of-state sales by dot-coms and mail-order outfits.

Of that total, \$795 million is owed by consumers and \$350 million by businesses. It breaks down to an average of \$61 per household and \$102 per business.

To put this in perspective, the state is facing a roughly \$6-billion shortfall in general fund spending for the fiscal year that ends June 30. If that red ink is pushed into the next fiscal year, there'll be a total \$25.4-billion deficit — at least — through mid-2012. The state's current general fund budget is \$92.5 billion.

The deficit hole could be deeper if the tax deal between President Obama and congressional Republicans holds. That's because under the agreement, California would lose \$2.7 billion in inheritance tax revenue it was counting on, Brown and Capitol politicians were informed Wednesday by the state Finance Department.

Only a small part of the problem could be remedied by collecting the sales and use tax that online buyers owe. But the missing tax wasn't even mentioned as a partial solution during a two-hour wonky budget briefing hosted by Brown for 400 legislators and local government officials Wednesday.

In fairness, Brown didn't want the gathering to turn into an ideological debate over solutions. His purpose was to inform everyone how very ugly the money picture was. But others brought up possible solutions anyway, including tax hikes.

Brown warned that the state's fiscal situation "is much worse than ever before" and emphasized that Sacramento must start "paying bills with real cash" rather than "borrowing just to keep

going."

OK, well, there's a pot of sales and use tax going uncollected. That's potential cash.

Background: The sales and use tax are one and the same. The sales tax is collected by a merchant and sent to the state. If it isn't collected, the consumer still owes the tax if he uses the product in California. That has been the law since 1935.

But the law is virtually unenforceable except for big-ticket items such as cars and boats. In those sales, the purchaser is intercepted by the DMV when the vehicle is registered. There's no such enforcement mechanism for TVs, tools, boots and books.

State officials all over the country have been fighting for the last decade to force Internet e-tailers to collect sales taxes. Some progress has been made, but federal law is a big obstacle.

The law requires out-of-state merchants to collect sales tax only if they have a physical presence in California — a nexus — such as a traditional brick-and-mortar store or a warehouse.

One way around that law, many believe, is to redefine physical nexus to include a dot-com's "affiliates" — other website operators that provide a link to the e-tailer in return for a commission on any sales. New York state passed such a law that so far has survived court tests.

Schwarzenegger last year vetoed a similar measure. He and Gov. Gray Davis before him were skittish about making any move that might offend even one soul in donor-rich Silicon Valley.

But advocates are hoping for a more open-minded Brown.

It's not just a revenue problem, they note. Perhaps more important, it's about fairness — about unfair competition between traditional brick-and-mortar retailers and giant dot-coms that drive local stores out of business in part by not charging a sales tax.

The biggest culprit is Amazon, which began killing off small booksellers years ago and now is undercutting all types of merchants by offering tax-free goods.

"I've gone into Home Depot, and it's practically empty," said Democrat Betty Yee of Sacramento, a Board of Equalization member who has been pushing for sales tax collections by all e-tailers. "It's like one big showroom now. Consumers go in and touch and feel and test products, and then they go home and order online from out of state.

"I know people who do it. I try to shame them into doing the right thing. ... It's really perverse when you think about it."

Another board member, Democrat Jerome Horton of Monterey Park, also has been fighting for Internet sales tax collections.

"A lot of consumers aren't aware it's the law," Horton said. "They believe this [tax-free buying]

is an entitlement.

"If they knew that an out-of-state company was exploiting California, that billions were being taken away from education, public safety, all the things they rely on, they would be very frustrated."

Probably not. But Horton continues:

"The business model of not complying with California law is putting California businesses at a competitive disadvantage. And it restricts the ability of California retailers to create jobs."

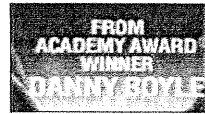
True enough.

And do beware that when you give a tax-free present, you're robbing a school kid. Bah. Humbug.



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November 29, 2010

## In a Holiday Indicator, Retailers Say Online Sales Remain Strong

By VERNE G. KOPYTOFF and LIZ ROBBINS

Online shoppers started buying on Thanksgiving and did not let up on so-called Cyber Monday, the day retailers designated for more discounts and promotions. By 6 p.m. on Monday, Eastern time, sales were 20 percent higher than during the same time period on the Monday after Thanksgiving a year ago, according to Coremetrics, a research firm owned by I.B.M. that tracks online sales.

Cyber Monday was created five years ago to encourage people to shop online from work, where they could use a high-speed Internet connection that they lacked at home. It never was the busiest online shopping day. But now that broadband Internet connections have replaced dial-up access in most American homes, fewer consumers are waiting until they get to their work computers to shop online.

The day has evolved into a way for online retailers to keep up the spending momentum that began in earnest on the day after Thanksgiving.

Shop.org, the online arm of the National Retail Federation, a trade group, said that the percentage of people shopping online from work on Monday was expected to drop more than one percentage point from last year, to 12.1 percent.

"We saw a lot of companies jumping the gun by doing a Thursday-only sale," said Charlie Graham, the founder and chief executive of ShopItToMe.com, a personal shopping site that works with more than 200 retailers. "There are still some retailers who did a different deal on Friday than on Monday," Mr. Graham said, "and you'll see retailers who put a deal up Thursday through Monday."

And yet, he said, there were enough shoppers who waited until they got back to work on Monday to visit retail Web sites that the day is still a marketing tool.

The scene at the fulfillment center of Zappos.com, the online shoe retailer, outside Louisville, Ky., offered physical evidence of this year's online holiday shopping trends. To satisfy the demand, not only did the company expand its warehouse to a second building, but Zappos.com also plans to add 500 employees this week.

"It's absolutely crazy," Craig Adkins, the vice president for fulfillment operations, said early Monday afternoon. He said orders were "significantly larger than we thought."

At Target.com, books were discounted 60 percent, and the discount for a JASTI Mini Projector — \$50 for a savings of 50 percent — was available all week, the company said.

Industrywide, online retail sales for the month through Nov. 26 were up 13 percent, to \$11.6 billion, according to comScore. Consumer spending — both online and in stores — increased 6 percent over the four-day weekend to an average of \$365, according to a survey of 4,300 Americans by the National Retail Federation.

Online retailers were careful to note that while the strength of sales on Friday and Monday might be indicators of the season, they were only the beginning. The peak shopping day for many online retailers comes in mid-December as shipping deadlines approach. Many companies offer deals like free shipping throughout the holidays.

One of them, Amazon.com, says the busiest day comes near the final day of its free shipping offer for Christmas delivery.

On Monday morning, a spokeswoman for Amazon.com, Sally Fouts, described business as "very busy," with hundreds of thousands of packages already shipped out of Amazon's distribution center in Phoenix, where she was working. The biggest seller, as is the case on most days, was the Kindle e-reader, she said.

But like other retailers, Amazon.com also got an early start, offering its holiday discounts as early as October in its electronics category. Thousands more deals were added on Friday, including a number of limited-time offers.

Ms. Fouts said that Amazon sold out of 47-inch Visio televisions, each on sale on Monday for \$600, or \$300 off its list price.

Shoppers are increasingly using cellphones to shop online, whether to buy products or simply to research. Shop.org said that it expected around 7 percent of people to use their cellphones to shop on Monday, nearly double from last year.

Another relatively new phenomenon is the use by online retailers of social media sites like Facebook to get the word out. Land's End, for instance, created "12 hours of Twitter" on Monday, during which it promoted its discounts, some of which were played up only on Twitter.

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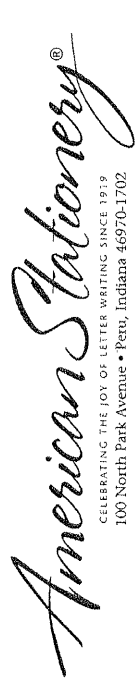
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