

## Web retailers, states tussle over tax rules

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(AP) -- In a big break for online shoppers, Web retailers generally don't have to charge sales taxes in states where they lack a store or some other physical presence.

Increasingly, states aching under the weight of the recession are seeking a way around that rule. Because companies like Amazon.com Inc. get help drumming up sales from online affiliates - people who link to products on their blogs, promote Web shopping deals and offer coupons - several states say the Internet retailers should charge sales taxes in states where those affiliates are based.

The financial benefits may not be quite what the states anticipate, though. Rather than gearing up to collect taxes, Amazon and other Web retailers are simply shutting down their affiliate marketing programs. As the small businesses that participate in these programs get cut off, a state could lose tax revenue rather than add to it.

A look at what the affiliates do helps explain why. They're just one of several methods that e-commerce companies have for driving visitors to their Web sites, so nixing them is not necessarily a big loss for the companies.

It's a far bigger deal to people like Rich Owings.

By running Web sites like GPSTracklog.com from his home in Asheville, N.C., Owings serves as an affiliate for Amazon and other companies. Owings, 53, spends most of his time reviewing GPS [gadgets](#)

and covering industry news. He links to navigation products of his choosing on Amazon's site, and if his readers click through and buy one, he gets a commission.

Owings estimates he brought in about \$80,000 in affiliate revenue from various companies in 2008, about \$50,000 of which came from Amazon. After Amazon recently shuttered its North Carolina affiliate program in response to that state's attempt to collect sales taxes, Owings said he and his wife were thinking about heading elsewhere to run their business.

"We're terrified," he said. "We just bought a house here a year ago and we're looking at having to move out of state just to keep our business going."

The amount of money at stake overall for state governments is somewhat murky. According to a recent University of Tennessee study, uncollected state and local taxes from online sales could total \$7 billion this year. However, only a small part of this would stem from consumer purchases, because transactions between businesses make up the bulk of e-commerce sales. (Consumers are generally supposed to pay a "use tax" themselves on online purchases, but few do.)

Because any extra revenue is precious, several states, such as New York, have passed laws seeking to cash in on Web retailers' affiliate relationships, while others are considering doing so.

Amazon cut off affiliates in North Carolina in late June, anticipating legislation requiring it to collect sales tax will soon pass there. The company has also stopped working with affiliates in Rhode Island and Hawaii because of similar laws that already have passed. (Hawaii's Republican governor, Linda Lingle, vetoed the bill Wednesday, so Amazon plans to reinstate affiliates there if the state's Democratic majority does not override Lingle's decision.)

Discount retailer Overstock.com Inc. and online jeweler Blue Nile Inc. have also closed down affiliate programs in Hawaii, Rhode Island and North Carolina, and Overstock stopped working with affiliates in New York last year.

Rebecca Madigan, founder of the Camarillo, Calif.-based Performance Marketing Alliance, which represents affiliate marketers, called the new state rules "pretty devastating." Echoing opinions of several online retailers and associates, Madigan argues that the nation's estimated 200,000 affiliate marketers are advertisers, not salespeople.

"They don't deliver product, they don't take any money from a consumer, and most of the time they don't even know who the consumer is," she said. Because the tax crackdown could curtail the business generated by affiliates, "the states are sort of shooting themselves in the feet," she said.

That's not how the states see it. In 2008, New York started requiring retailers to collect sales tax if they solicit business in the state by paying anyone there for leading customers to them. Matt Anderson, spokesman for the state's Division of the Budget, said New York expected the change would bring in \$23 million for the fiscal year that ended March 31, and estimates \$34 million for the current fiscal year.

"We believe we have to keep the tax code in line with technology, and that online retailers shouldn't have an unfair competitive advantage over off-line businesses," he said.

Amazon and Overstock sued New York in 2008, arguing it unlawfully imposes tax-collection obligations on out-of-state entities. A judge dismissed the cases in January, and Amazon is collecting taxes in New York. The company has not shuttered its associate program there.

North Carolina expects it could collect an additional \$13.2 million in the coming fiscal year on sales generated by Web retailers that use affiliates, and from a new sales tax on downloads of music, video and software, according to a legislative fiscal analysis.

But while states may see these marketing programs as a way to shore up budgets, they're just one way these companies drive visitors to their Web sites. Companies also use ads on Google and links on comparison shopping sites.

Patrick Byrne, head of Salt Lake City-based Overstock, said sales made through affiliates account for less than 10 percent of Overstock's revenue. The amount of business it will lose by cutting about 8,000 of its 25,000 affiliates loose is a "small fraction" of what it would have to start collecting in taxes if it kept the affiliates, he said.

Judy Browning, 66, worries she's done collecting affiliate revenue from Amazon for her Vegetable Goddess Web site, which she runs from Honolulu. Browning did not want to say how much money she had been getting from Amazon, other than to call it a "tremendous" opportunity for her.

"If I don't get paid by Amazon, then I'm not making money," she said. "If I'm not making money, I can't spend money."

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