

## Amazon reacts to new Colo tax, costing affiliates

March 15 2010, By COLLEEN SLEVIN , Associated Press Writer

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In this photograph taken on Friday, March 12, 2010, Kristie McNealy, second from left, works on her laptop computer while her children, from left, 4-year-old Camden, 1-month-old Maverick, 7-year-old Riley and 2-year-old Sawyer join her at the dining room table in the family's home in the east Denver suburb of Aurora, Colo. Kristie McNealy, like other bloggers and web site coordinators in Colorado, lost a chunk of their business when Amazon.com announced that it was cutting ties with local affiliates because of a new Colorado law requiring the firm to collect state sales tax for online sales. (AP Photo/David Zalubowski)

(AP) -- Kristie McNealy blogs from her suburban Denver home about raising four children and health issues. Her husband, Rob, a floor installer, runs another Web site offering product reviews and advice on hardwood floors.

It's not just for fun. Whenever someone clicks on a link to buy a book or

product that their sites mention from an online seller, the McNealys get a commission. And if that customer comes back the next day to that same retailer and buys a television, they get a cut of that, too.

Last week, the McNealys, along with at least 4,000 others like them, lost a chunk of their business when Amazon.com announced it was cutting ties with its Colorado-based affiliate marketers - Web sites and bloggers that help it sell products.

In severing those ties, Amazon blamed a new state law requiring it to collect up to an estimated \$4.6 million in online sales taxes a year, which will help the state close a \$1.3 billion [budget shortfall](#).

Kristie McNealy said the move will mean a loss of roughly \$300 a month, money that has helped make up for a drop in her husband's income during the [recession](#) and enabled her to stay home and homeschool her children. She worries other companies may follow Amazon's lead.

"Losing the Amazon account has been a financial blow, but losing the rest of our accounts will change the way my husband and I do business and provide for our family," McNealy said.

Amazon has dropped affiliates in two other states - North Carolina and Rhode Island - that passed laws requiring the company to collect state sales tax on online purchases. Those states claimed that in-state affiliates were akin to outposts for online retailers, and therefore the companies had to collect sales tax. Getting rid of the affiliates got Amazon off the hook from doing so.

In Colorado, the situation is different. The state's new law doesn't link paying the tax to the presence of affiliates; instead, it requires out-of-state retailers to help enforce collection of the 2.9 percent state tax that

online consumers in Colorado are technically supposed to pay already, though few know about it or do it.

Each year, retailers would have to tell their customers what taxable items they bought and that they need to pay the tax to Colorado. Retailers also would have to turn over those documents to the state to help enforce the law.

State revenue officials have acknowledged that retailers may want to avoid all of that, and just collect the tax themselves.

Backers of the law say that Amazon still will have to comply, whether it has affiliates in Colorado or not. So why did Amazon fire the affiliates? To make a point in a larger battle over online sales taxes, and to deter other states from adopting Colorado's approach, they believe.

Democratic state Sen. Michael Johnston of Denver said the affiliates are being used as hostages by Amazon.

"They're punishing the one hostage they can kill, so they're killing them," he said.

Katharine Leppert, a Denver freelance writer who uses money earned on her blogs to cover costs and justify the time spent on her hobby, said she's angry at Amazon for dropping her.

"They are throwing their weight around and using power that no corporation should have," she said.

An Amazon spokeswoman declined to comment on the issue.

In an e-mail to Colorado affiliates, Amazon didn't directly say what cutting them had to do with the new tax. The company said the law was

aimed at inducing it to collect taxes itself and that it would reinstate the affiliates if the law was repealed or if Colorado followed a "constitutional" approach to collecting taxes.

A 1992 U.S. Supreme Court ruling found that states can only make companies collect sales tax if they have a physical presence in the state to prevent out-of-state sellers from having to deal with thousands of separate tax jurisdiction.

Republican Sen. Greg Brophy of Wray thinks Amazon might be trying to avoid possible liability for paying back taxes in case it loses a pending legal challenge to New York's online sales tax. That first "Amazon law," passed in 2008, does link the requirement to pay to online affiliates based in New York.

Brophy said it doesn't really matter why Amazon did what it did and that he wants Colorado's law repealed to help affiliates. Majority Democrats aren't inclined to do so, saying that would reward what they see as corporate bullying.

There are signs that other states are interested in Colorado's approach.

Joe Huddleston, executive director of the Multistate Tax Commission, which advises states on tax policy, said officials from about 20 states participated in meetings in person and by phone in Denver last week to discuss the Colorado law.

He said they're interested in any approach that's successful in helping plug budget deficits and protect in-state retailers who make up a big part of their tax base.

"I would be very surprised if there weren't any number of states that will consider what Colorado has done in this legislative year," he said.

The National Council of State Legislatures, meanwhile, has been working for the last decade to get Congress to help states collect online [sales taxes](#).

A bill could be introduced in the coming weeks, said Neal Osten, NCSL's federal affairs counsel, but it would only help the 23 states that have aligned their tax laws so that, for example, they all have the same definitions of what items of clothing are taxable and which aren't.

That would leave out [Colorado](#) and some of the largest states, including California, that haven't joined the effort.

California lawmakers are once again considering a New York-style Amazon law that was vetoed by Gov. Arnold Schwarzenegger last year. The Washington, D.C.-based Tax Foundation says similar bills are pending in Iowa, New Mexico, Vermont and Virginia.

Rhode Island is considering repealing its law after failing to collect any revenue by the end of 2009.

Fred Nicely, tax counsel for the Council on State Taxation, a nonprofit trade organization Amazon belongs to, said his group favors a national solution. If other states adopt Colorado's approach on their own, he said the confusion over what is taxed and what isn't will grow.

"The potential for it to spread, it is definitely a possibility," he said.

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Citation: Amazon reacts to new Colo tax, costing affiliates (2010, March 15) retrieved 26 April 2024 from <https://phys.org/news/2010-03-amazon-reacts-colo-tax-affiliates.html>

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