

Judge: Free speech protects Amazon buyers' data

October 26 2010, By EMERY P. DALESIO , AP Business Writer

(AP) -- Lists that identify the books, music and movies individual customers bought from online retailer Amazon.com Inc. are protected from North Carolina tax collectors, a federal judge has ruled.

Amazon said in a lawsuit it filed in April in its hometown of Seattle that disclosing the names, addresses and purchases of its customers as requested by the North Carolina Revenue Department would harm anyone who may have bought controversial books or movies.

U.S. [District Judge](#) Marsha Pechman ruled late Monday that the First Amendment protects a buyer from the government demanding to know the books, music, and audiovisual products they've bought.

Amazon and the American Civil Liberties Union, which later joined the case, "have established that the First Amendment protects the disclosure of individual's reading, listening, and viewing habits," Pechman wrote.

At stake are potentially millions of dollars in taxes that North Carolina contends Amazon was responsible for collecting for years before a state law was changed last summer.

"The ACLU is not taking issue with the department's authority to collect taxes on these purchases, but there is no legitimate reason why government officials need to know which North Carolina residents are reading which books or purchasing which specific brands of products," said Katy Parker, legal director for the ACLU of North Carolina Legal

Foundation.

Revenue Department spokeswoman Beth Stevenson said attorneys were reviewing the ruling and no decision has been made on whether to appeal the judge's ruling. The agency neither wants nor needs titles or similar details of products purchased by Amazon customers.

"This case has been twisted into something it is not," Stevenson said in a statement. The agency "wants to collect the sales tax that is due to the state and nothing more."

Amazon spokeswoman Mary Osako declined to comment, citing a company policy against discussing active litigation.

North Carolina requires residents to pay taxes on online purchases if buying the same item in a physical store would result in a sales tax. But out-of-state retailers can't be forced to collect North Carolina's tax if they have no physical presence in the state.

The dispute is over the state's definition of whether Amazon had a North Carolina presence.

Last year, state legislators passed a law making Amazon responsible for collecting sales taxes because it had a network of local affiliates - North Carolina residents who linked to products on their blogs, promoted Web shopping deals and offered coupons.

Before the change was adopted, Amazon cut its ties to those North Carolina affiliates. The company also stopped working with affiliates in Rhode Island and Colorado because of collection-enforcement laws passed in those states.

North Carolina's tax agency decided to pursue Amazon for taxes it

argues should have been collected during the years those affiliates were operating, even before the new law was passed.

Lawyers for the tax agency said either Amazon or its customers owe North Carolina \$50 million in sales and use taxes on Internet purchases.

Since the recession slashed tax collections, states have been stepping up efforts to collect from online retailers.

In 2008, New York became the first state to treat local affiliates as enough of state presence to require retailers to collect sales taxes. Lawmakers in Iowa, New Mexico, Vermont and Virginia have considered similar laws, according to the Tax Foundation, a Washington, D.C.-based research group.

In its latest quarterly report filed Friday, Amazon said it received an assessment in September from Texas seeking \$269 million in uncollected sales taxes for a four-year period ending in December 2009, plus interest and penalties. Amazon said the assessment lacks merit. Amazon's disclosure was reported earlier by the Wall Street Journal.

Annette Nellen, a San Jose State University professor who has tracked efforts to collect use taxes on online purchases, said states should do more to encourage consumers to pay the tax. States could run campaigns explaining that paying up as the law requires helps school and storefront retailers, she said.

"If they want to make collection of use tax easier, it's not just Amazon, they need to find a way to have consumers get more compliant," Nellen said.

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