

States push harder for online sales tax collection

March 21 2011, By RACHEL METZ , AP Technology Writer

(AP) -- Tax-free shopping is under threat for many online shoppers as states facing widening budget gaps increasingly pressure Amazon.com Inc. and other Internet retailers to start collecting sales taxes from their residents.

Billions of dollars are at stake as a growing number of states look for ways to generate more revenue without violating a 1992 U.S. Supreme Court ruling that prohibits a state from forcing businesses to collect [sales taxes](#) unless the business has a physical presence, such as a store, in that state.

States are trying to get around that restriction by passing laws that broaden the definition of a physical presence. Retailers are resisting being deputized as tax collectors.

Until recently, the [Supreme Court ruling](#) has meant that Wal-Mart Stores Inc., based in Bentonville, Ark., would collect taxes from shoppers in all states with sales taxes, whether those shoppers buy items on or off the Web, because it has stores nationwide.

But Amazon, based in Seattle, wouldn't collect taxes from Floridians because it doesn't have a presence there. Although in such cases, shoppers in Florida are supposed to pay the tax directly to their state, few actually do.

With the new laws, those living in Evanston, Ill., or Providence, R.I., can

no longer expect to avoid paying taxes when shopping online even though Amazon and others have no traditional operations there. States backing these laws argue that a retailer has a physical presence when it uses affiliates - people and businesses that refer customers to the retailer's website and collect a commission on sales. These affiliates range from one-person blogs promoting the latest gadgets to companies that run coupon and deal sites.

Illinois passed a law this month requiring Internet companies with affiliates in that state to collect taxes on sales to Illinois customers. In Vermont and Arkansas, similar bills scored initial legislative victories in recent weeks. New York, North Carolina and Rhode Island have already adopted similar laws.

In Colorado, a law requires online retailers to either collect the tax or send customers an annual notice letting them know how much they owe their state. Retailers would also have to report that to Colorado officials.

Several other states including Arizona, Massachusetts and California are considering passing their own flavor of online sales tax collection legislation. California lawmakers had passed a bill in 2009, but the governor vetoed it.

It's not known exactly how much in uncollected taxes is due to states from online sales, but a 2009 study from the University of Tennessee estimated that it could total \$10.14 billion this year, assuming total e-commerce sales of \$3.49 trillion. Only a fraction of this owed tax would result from consumer purchases, however, because most e-commerce sales are from one business to another.

The tax revenue would only be one plug in the states' budget holes. The total gap is expected to reach \$112 billion in the fiscal year that begins in July, according to the Center on Budget and Policy Priorities, a policy-

research organization.

The states are getting extra prodding from brick-and-mortar retailers, which have long thought it unfair that online retailers could essentially give customers better deals by not collecting sales taxes.

"The choice of the merchant by the customer should not be based on tax policy. It should be based on service, convenience, on the shopping experience and, of course, price - but not price based on tax policy," said David Vite, head of the Illinois Retail Merchants Association.

Online retailers such as Amazon.com and Overstock.com Inc. disagree with the states' actions, and they're fighting back.

After Illinois passed its law, Amazon and Overstock said they would dump their affiliates in that state - Amazon on April 15, and Overstock on May 1. Online retailers earlier dropped affiliates in several states that are now requiring them to collect taxes. Rebecca Madigan, executive director of California-based Performance Marketing Association, said those affiliates then saw 25 percent to 30 percent declines in revenue.

According to Madigan, there are 200,000 Internet retail affiliates across the country, some of which are fighting the legislation in their own ways.

FatWallet, which runs a coupon and deals website in Rockton, Ill., is planning to move to another state - probably neighboring Wisconsin, founder Tim Storm said.

Storm believes the new law could cost his business \$4 million to \$5 million in revenue this year, which would be about a 30 percent to 40 percent hit, if it stays in Illinois. Already, the company has received notices from Amazon, Overstock, electronics site Newegg and musical instrument retailer Musician's Friend on their plans to end affiliate

programs in Illinois.

Storm believes Illinois' law would backfire as affiliate companies such as his leave.

The strategy of cutting off affiliates might also backfire against Amazon and its competitors online.

Bricks-and-mortar retailers such as Walmart and Barnes & Noble Inc. have been recruiting affiliates being abandoned by Amazon and others. That means sales could go to these companies instead.

Walmart and Barnes & Noble are also among the businesses large and small that support a Washington, D.C.-based group called the Alliance for Main Street Fairness, which is in favor of the changing of tax laws in various states so that online retailers would have to collect sales taxes.

Amazon, Alliance spokesman Danny Diaz argues, is "working feverishly to exploit a loophole."

Amazon does collect sales taxes in North Dakota, Kansas, Kentucky, and its home state of Washington. It collects in New York, too, as it fights the state over a 2008 law that was the first to consider local affiliates enough of an in-state presence to require sales tax collection.

Amazon is also tussling with Texas, which contends the company owes it \$269 million in uncollected online sales taxes because it operates a distribution center near Dallas. Amazon plans to close that facility in April and scrapped plans to expand elsewhere in Texas over the dispute.

Paul Misener, Amazon's vice president of public policy, said Amazon isn't against the principle of collecting sales taxes. Rather, it wants "a constitutionally permissible system that is applied evenhandedly."

Congress could give states authority to require tax collection by out-of-state retailers. Michael Mazerov, a senior fellow with the Center on Budget and Policy Priorities, believes such a federal law would be the best way to ensure that states get their taxes, but he understands why such efforts have stalled in Congress.

"It's tough legislation politically because you're asking Congress to pass legislation where they will be unfairly and inaccurately criticized as imposing a new tax," Mazerov said.

For now, online sales tax bills will continue to pop up across the country, gaining support from some and inciting ire from others as more and more people shop online.

"It's a little like 'Groundhog Day,'" Madigan said.

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