

Amazon deal with Calif. may set precedent for online tax collection

October 5 2011, By Josh Goodman

California braced for a fight this year when its budget deal included a provision to force online retailers - Amazon.com Inc. by far the most prominent among them - to collect sales taxes on purchases made by the state's residents.

This was something new. Other [states](#) have passed so-called "Amazon laws" requiring online tax collection, but the company has generally defied them. It took New York to court. It canceled its relationships with affiliates in Arkansas, Colorado, Connecticut, Illinois, North Carolina and Rhode Island, then argued that it wasn't required to collect sales tax in those states because it lacked a presence there. It even offered Texas 6,000 jobs if only the state would give up the idea of forcing it to collect.

For a couple of months, Amazon rebelled in California, too. It canceled its ties to California affiliates. It offered to create thousands of jobs in the state if [lawmakers](#) relented on the tax. Most dramatically, it organized a campaign to repeal the law at the [ballot box](#). Wal-Mart and other big [retailers](#) opposed Amazon, arguing, as they have nationally, that the online retailers get an unfair advantage over bricks-and-mortar merchants by not collecting [sales taxes](#). As a result, California looked as though it would be staging the biggest fight yet, with the nation's competing retail powerhouses spending tens of millions of dollars to woo California's 17 million voters.

Then something surprising happened. Amazon backed down. The company struck a deal that will require it and other online retailers to

begin collecting sales taxes in California starting in fiscal 2013, after a one-year grace period. Last month, Gov. Jerry Brown signed the agreement into law.

In an instant, California's deal with Amazon seemed to presage a thaw in the conflict between states and online retailers that has gone on for years, costing states billions of dollars.

"We think it's a game-changer," said Rick McAllister, president and [CEO](#) of the Florida Retail Federation, which supports a similar law. "We think that if Amazon would make the deal they made in California, we don't understand why they wouldn't make the deal in other states."

That optimism may be too hasty. California's circumstances are different from those of other states. What's more, the quickest way to resolve the issue once and for all would be through federal action, but navigating the politics of Congress won't be easy.

Still, Amazon's deal with California has given officials in other states reason to think they'll finally get the revenue they covet. More than they have for many years, state officials now have some reason to hope that the end is in sight for their lengthy, costly, contentious fight with online retailers.

As both sides are quick to point out, this dispute isn't about whether taxes are owed on internet purchases. Everyone agrees they are. The dispute is whether online retailers should have to collect them. If they don't, the responsibility falls to consumers, who often don't even know about the requirement. In practice, the taxes are rarely paid.

Many state officials view that arrangement as unsustainable. As more purchases move online, states' sales tax bases are getting smaller and smaller. One University of Tennessee study said states and localities may

lose \$11.4 billion in 2012 through failing to collect the taxes from online retailers.

The counter-argument is that requiring online retailers to collect nationally would cause them administrative burdens in calculating rates for every product in every jurisdiction. "It doesn't level the playing field," said Joseph Henchman of the Tax Foundation, who has testified against online tax collection laws.

So far, the courts have been on the side of the online retailers. In *Quill v. North Dakota*, a 1992 ruling involving a catalog company, the Supreme Court said that retailers are required to collect sales taxes in a state only when they have a physical presence in the state. Since then, online retailers have used that ruling to justify a general avoidance of collecting online sales taxes.

States have tried to get around *Quill* by citing online retailers' relationships with affiliates as enough of a presence to require the companies to collect. Amazon, for example, partners with other websites in different states to boost its own sales. Passing state laws has mostly failed to bring in the revenue states were looking for because, when pressed, companies can sever ties with these affiliates. But Amazon's California deal may change the rules altogether.

Now that the largest state in the country has seemingly pressured Amazon to change its policy, the result could be a flood of new online tax laws, as other states ask why Amazon can't treat them the same as it treats California.

Danny Diaz, spokesman for the Alliance for Main Street Fairness, a group trying to get the online retailers to collect taxes, says Amazon has undermined its own case by striking the California deal.

"You begin your argument by saying you can't do it, it's too complicated, it's unconstitutional and all of this," Diaz said, "and you end your argument by saying you'll do it in a year, it's legal, you can do it. Clearly, clearly the ground has shifted underneath your feet."

Other states, though, might not be in a position to get the same deal as California. For one thing, Amazon had more of a presence in that state than simply a bunch of affiliates. The company had several wholly owned subsidiaries in California, which made it tougher for the company to claim that it lacked a physical presence.

The other difference is that California is simply bigger, which may have made Amazon leery of cutting its ties there. The company said last month that it would add 10,000 jobs in the state in coming years.

"When you're California or New York across the table from an Amazon, it's a pretty big slice of the market," said Kevin Sullivan, commissioner of the Connecticut Department of Revenue Services. "We don't have the leverage that a New York has or the leverage that a California has."

For now, Amazon isn't indicating that it will offer other states the same deal it offered California. But the company is saying what it would like to have happen next: a federal solution. "We're committed to working with Congress, retailers and the states to pass federal legislation as soon as possible," Paul Misener, Amazon's vice president of global public policy, said in a statement after Brown signed the law. That isn't a new position. Amazon's case has long been that it isn't against collecting sales taxes, so long as a federal deal also makes collecting the taxes less burdensome.

That's actually what most state officials want, too. Legislation in Congress known as the Main Street Fairness Act would require online retailers to collect sales taxes in the state where a purchase is made, but

only if the state is among those that have made their sales taxes more uniform through an interstate collaboration known as the Streamlined Sales and Use Tax Agreement.

When state legislators came to Washington last month to give their view on federal debt negotiations, one thing they asked Congress for was passage of the Main Street Fairness Act. With Amazon and big brick-and-mortar retailers like Wal-Mart and Target forming an unusual coalition in favor of a federal law, their hope is that their side has the clout to win passage. If the California deal adds urgency to the efforts, all the better.

"We're going to face hundreds of millions, billions of dollars in (aid) reductions," said Neal Osten, director of the National Conference of State Legislatures' Washington office. "This is something Congress can do for the states."

Still, there are reasons for skepticism. For one thing, some online retailers are still taking a hard line against collecting sales tax. Jonathan Johnson, president of O.co (formerly known as Overstock.com), points out that Amazon's size and wealth positions it to cope with differing sales tax rates and definitions around the country. Smaller online companies might suffer more.

"I think the Main Street Fairness Act is anything but main street and anything but fair," Johnson said in an interview with Stateline. "Big retailers would like to create a barrier to entry for any new company."

The other reason for doubt is that Congress has struggled to forge compromises on all big issues lately. A proposal that would result in more taxes being collected - even if the taxes are legally already owed - will be an especially hard sell, even if the failure to pass it will likely result in a new round of messy fights between states and online retailers.

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