

From: Maybank, Burnet R. III <BMaybank@nexsenpruet.com>
To: Maybank, Burnet R. IIBMaybank@nexsenpruet.com
Date: 12/3/2013 11:06:35 AM
Subject: SALT LS: Amazon and Marketplace Fairness Act update (2 articles)

Amazon Rejected by U.S. High Court on New York Sales Tax

By Greg Stohr - 2013-12-02T22:14:57Z

Stock Chart for Amazon.com Inc (AMZN)

The U.S. Supreme Court stayed out of the multibillion-dollar fight over Internet sales taxes, leaving intact a New York law that forces Amazon.com Inc. (AMZN) to collect money from customers in that state.

Acting on one of the biggest online-shopping days of the year, the justices made no comment in rejecting appeals by Amazon and Overstock.com Inc. (OSTK), another Internet retailer. The companies said the law, upheld by New York's top court, violates the Constitution by demanding tax collection from businesses that don't have facilities in the state.



Enlarge image
Amazon.com Homepage



Andrew Harrer/Bloomberg

Although Amazon.com Inc. has agreed to collect taxes in some states as it sets up distribution centers around the country, it has resisted efforts by others to impose sales taxes unilaterally.

Although Amazon.com Inc. has agreed to collect taxes in some states as it sets up distribution centers around the country, it has resisted efforts by others to impose sales taxes unilaterally.

Photographer: Andrew Harrer/Bloomberg



2:04

Dec. 2 (Bloomberg) -- Bloomberg's Greg Stohr reports on Amazon's fight against New York state online sales tax. He speaks on Bloomberg Television's "Market Makers." (Source: Bloomberg)

States lose an estimated \$23 billion a year in uncollected sales taxes from web retailers. Although Amazon has agreed to collect taxes in some states as it sets up distribution centers, it has resisted efforts by others to impose sales taxes unilaterally. New York's measure is among a handful that have been dubbed "Amazon laws" because they affect only the largest online sellers.

The New York law "subjects Internet retailers to significant burdens on pain of serious civil and criminal penalties," Seattle-based Amazon argued in its appeal. The world's biggest online retailer now collects taxes in 16 states.

The rebuff leaves it to Congress to craft a nationwide approach to the sales-tax issue. Amazon supports federal legislation that would explicitly let states require tax collections by all online retailers above a certain size.

'Physical Presence'

The legal dispute revolved around a 1992 Supreme Court case involving a mail-order company. The court said retailers can be forced to collect a tax only in states where they have a "physical presence."

The rise of the Internet has increased the stakes since then, putting tens of billions of dollars at issue. New York alone lost \$1.8 billion in 2012 on Internet and catalog sales, according to the National Conference of State Legislatures. Although consumers are supposed to pay the taxes themselves, few do unless the seller collects the money.

New York has a 4 percent statewide sales tax, and local jurisdictions impose additional levies. In New York City, the total tax rate is 8.875 percent.

Today's Supreme Court action "validates New York's efforts to treat both online and brick-and-mortar retailers equally and fairly by requiring all retailers with a presence in our state to collect sales taxes," New York Attorney General Eric Schneiderman said in a statement.

In-State Affiliates

Under the New York law, retailers without a physical presence in the state must collect tax if they use a local resident to solicit business online. Amazon is subject to the law because it gets business through New York-based affiliates, paying them commissions for hosting online links to the retailer.

The New York Court of Appeals, the state's highest court, said affiliation agreements had the effect of creating an "in-state sales force."

Amazon fell \$1.32 to \$392.30 at 4:30 p.m. in Nasdaq trading in New York.

Overstock said in its appeal that the New York court ruling "functionally abrogates the physical-presence requirement."

Overstock suspended its own affiliates program in New York when the law was enacted, sparing the Salt Lake City-

based discount Internet retailer from having to collect taxes. Overstock was seeking to re-establish that program so it could generate more business in New York and potentially other states.

Commerce Clause

Amazon and Overstock sued to challenge the New York law soon after it was enacted. They argued that the measure violates the Constitution's commerce clause, which the Supreme Court interprets to limit state taxing power. The court has said taxes must bear a "substantial nexus" to activity within the taxing state.

Amazon has struck tax deals with some states as it adds distribution centers that will let the company get products to customers more quickly.

Those states include California, where the company agreed to collect sales taxes after a one-year reprieve and dropped efforts to repeal the tax measure through a referendum. Amazon has since opened three distribution centers in California. Nationwide, it has spent \$14 billion and added 50 new facilities since 2010.

At the same time, the company supports proposed federal legislation that would let states collect taxes from online retailers with at least \$1 million in annual out-of-state sales.

"Amazon is in favor of having to deal with a single bureaucracy rather than 50," said Michael Pachter, an analyst at Wedbush Securities in Los Angeles.

Senate Vote

The Senate passed the Amazon-backed legislation May 6 on a bipartisan 69-27 vote, and opponents vowed to fight in the House. Other supporters include Wal-Mart Stores Inc. (WMT) and Best Buy Co.

The measure "would protect states' rights to make their own revenue policy choices while allowing them to collect more than a fraction of the revenue that's already owed," Ty Rogers, an Amazon spokesman, said in an e-mail.

The House Judiciary Committee, led by Republican Representative Bob Goodlatte of Virginia, hasn't held a hearing or released a schedule for considering the measure.

Goodlatte said he wants changes to the Senate bill and he released a set of principles in September. At the time, he said he wanted the legislation to be so simple that it wouldn't require a small-business exemption.

Congressional Action

"We wish the House was further along, but the same can be said for just about any legislative initiative this year," said Betsy Laird, senior vice president of the International Council of Shopping Centers.

Rachelle Bernstein, vice president and tax counsel at the National Retail Federation, said she is hopeful that Congress will pass a law this year or next.

"There was always a need for federal legislation to provide some uniformity and simplicity to this area of the law and that need is still there," said Bernstein, whose group represents Macy's Inc. and The Container Store Group Inc.

EBay Inc. (EBAY), operator of the largest online marketplace, opposes the legislation. The company didn't take a position on the Supreme Court appeals. Newegg Inc., which sells electronic products, backed the Amazon and Overstock appeals.

The cases are *Overstock.com v. New York State Department of Taxation*, 13-252, and *Amazon.com v. New York State Department of Taxation*, 12-259.

To contact the reporter on this story: Greg Stohr in Washington at gstohr@bloomberg.net

To contact the editor responsible for this story: Patrick Oster at poster@bloomberg.net

The US Supreme Court Refuses To Enter The Internet Sales Tax Debate

BY [Bryan M. Wolfe](#) on Mon December 02nd, 2013 [amazonlegaloverstock](#)

States in the U.S. are increasingly turning to online sales taxes to fill their coffers. That trend is likely to continue thanks to the United States Supreme Court.

According to [Reuters](#), the high court has decided not to consider the question of whether Internet retailers should be required to collect sales taxes in states where they have no physical presence. The cases declined were brought by Amazon and Overstock.com Inc. Each company claimed that a New York state law was unconstitutional.

Because the U.S. Supreme Court declined to take either case, the challenges to the law have failed.

In March 2013, the New York Court of Appeals said Amazon and Overstock could be compelled to collect tax from online sales, even if they have no physical presence in the state. The companies said this wasn't allowed due to the Commerce Clause of the U.S. Constitution.

There is no national sales taxes in the U.S., and Congress has never moved ahead with proposed legislation that would give states the power to enforce their sales tax laws on Internet retailers. Because of this, courts have been intervening on a case by case basis.

In 1992, the U.S. Supreme Court ruled that retailers without a physical presence in a state did not need to collect and remit taxes in that state on each sale. Consumers are supposed to calculate and remit these payments themselves. Few do this, however.

Amazon does not currently collect sales taxes in states where they don't have a facility. This has given them a pricing edge over traditional retailers. This is often cited as one of the reasons states want companies like Amazon to collect taxes, even when they have no physical presence in the state.

To date, Amazon only [collects sales taxes](#) in Arizona, California, Connecticut, Georgia, Kansas, Kentucky, Massachusetts, New Jersey, New York, North Dakota, Pennsylvania, Texas, Virginia, Washington, West Virginia, and Wisconsin.

The cases are *Overstock.com v. New York State Department of Taxation and Finance* and *Amazon.com v. New York State Department of Taxation and Finance*, U.S. Supreme Court, Nos. 13-252 and 13-259.

Burnet R. Maybank, III

Nexsen Pruet, LLC

1230 Main Street, Suite 700 (29201)

P.O. Drawer 2426

Columbia, SC 29202

T: 803.540.2048, F: 803.253.8277

Cell: 803.960.3024

bmaybank@nexsenpruet.com

www.nexsenpruet.com

NEXSEN | PRUET

[Bio](#)

[vCard](#)

[Home](#)

[Practice Areas](#)

[Attorneys](#)

[Offices](#)

*** CONFIDENTIAL COMMUNICATION *** The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not

belonging to you may violate federal or state law.

*** IRS CIRCULAR 230 NOTICE *** Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.