



Greenberg: Will Sales Taxes Hurt Amazon?

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Early in its life Amazon.com took a lot of heat from critics (including yours truly) about whether its business model could really ramp.

It hasn't always been easy, but Amazon hasn't just ramped — it has become synonymous with online shopping.

And it's profitable.

It hasn't hurt that in most states, customers haven't had to pay sales taxes. For those of us who shop online, taxes can often be the tipping point on where we buy — whether it is offline, online, and if online, where? (I always start at Amazon and then go to multiple places, including Google and out-of-state retailer sites, ordering the least expensive with free shipping. Sometimes it's Amazon, sometimes it isn't. I confess to enjoying the hunt.)

The big question: What will happen to Amazon if it's forced to collect taxes on all of its sales?

Amazon and other online retailers have been avoiding taxes through a loophole created by a 1992 U.S. Supreme Court's ruling that says sales taxes don't have to be collected if a retailer isn't physically in the same state as the customer.

States have started to push hard to collect. Adding to the drama: Today the [Wall Street Journal](#) pointed out that, big retailers are joining in by backing a coalition to change sales tax laws in more than a dozen states, including Texas and California.

So far, Amazon hasn't said how a requirement to tax would impact its business. (My guess is that it doesn't really know.) And it didn't respond to our inquiry. But in its SEC filings it warns (albeit in boilerplate form): "A successful assertion by one or more states or foreign countries that we should collect sales or other taxes on the sale of merchandise or services could result in substantial tax liabilities for past sales, decrease our ability to compete with traditional retailers, and otherwise harm our business."

Amazon already collects taxes on various orders and in five states, including Kansas, Kentucky, New York and North Dakota. (You can read more about Amazon's tax policies [here](#)).

"We have no indication that would suggest that in those states, business is growing any slower than in states where they don't collect taxes," says analyst Youssef Squali of Jefferies & Co.

Furthermore, "The elephant in the room is use tax," San Francisco tax attorney Robert Wood, writes on Forbes.com. "The loud debate over Amazon taxes would be a whisper if people paid their use tax. You are subject to your state's use tax when you order out of state and have the item shipped into your state. There's no constitutional prohibition".

"In effect, your state can tax you as if you bought the item at your local store. For decades, you 'should' have been reporting your catalog, phone and now online purchases. While states historically didn't enforce use tax except against businesses, that's changing. Many state income tax forms now attempt to collect use tax."

"Expect more on this soon, and don't be surprised if you end up paying sales or use tax on all purchases."

So, how would a taxed Amazon do if its sales are taxed? Will convenience and habit outweigh taxes? Will its business model power through?

One clue: ConsumerEdge Research has created an "Amazon Tracker" to determine the number of Amazon Prime members, who pay \$79 a year for fast and free shopping across all categories. These are the true Amazon diehards, and ConsumerEdge estimates there are 14 million to 16 million in the U.S., "a substantial number by any measure," says ConsumerEdge analyst Faye Landes.

Her firm found that Amazon Prime members "buy many more categories on Amazon than non-members, with an astonishing 21 percent of Prime members having purchased eight or more categories on the site in the last 30 days."

Bottom line, she says, “Prime is greatly assisting Amazon in achieving its endgame of being a one-stop shop.”

My take: Nobody really knows what the tax impact will be, but it’s something investors really need to start thinking about.

Questions? Comments? Write to HerbOnTheStreet@cnbc.com

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