



Robert W. Wood
THE TAX LAWYER

Jul. 1 2011 – 10:08 am

Californians Prepare to Pay Amazon Sales Tax

Some states now require online sellers to collect sales or use tax. See [Paying Sales Tax On Internet Purchases?](#) There are ongoing [court battles](#) and more brewing. It's about revenue and about perceived unfairness. And Amazon and California are squaring off over California's law taking effect July 1st. See [Internet Sellers Must Collect Tax, Like It Or Not](#) and [Amazon to California: Read My Lips, No Online Sales Tax](#).

Taxes level the playing field between main street merchants who collect sales tax and online merchants who don't. The impact goes beyond mom and pop sellers. Huge chains and [big box stores](#) have a stake in this fight given their competition with the online world.

[Amazon taxes](#) are imposed in states such as New York, Illinois, Rhode Island, North Carolina, and Colorado. Laws are proposed in Arizona, Hawaii, Minnesota, Mississippi and Vermont. Some estimate the tax dollars could total more than \$10 billion a year.

California passed the newest and toughest of law, requiring many online merchants to collect California sales tax on shipments into California. See [California Law Pressures Amazon](#). California's law reaches far beyond making retailers collect tax if they have a physical presence. Online affiliates in the state trigger the obligation. Plus, California collects sales tax if the retailer (directly or through a subsidiary) designs or develops products sold by the retailer. Amazon has a subsidiary in California, so that's enough. As expected, Amazon has cut ties with its

California affiliates. See [Letter Regarding Amazon Position on Sales Tax Nexus Bills](#). Court challenges are expected.

Sales tax is almost always paid by the buyer, but the only effective collection mechanism is getting the seller to collect it. Many states have become aggressive, but the U.S. Constitution prohibits taxing “interstate commerce.” See [Is Internet Tax Constitutional?](#) No state can force an out-of-state merchant to collect or pay sales/use tax unless it has a “nexus” in the state.

Catalog companies long battled how much nexus was enough. Then in 1992, the U.S. Supreme Court ruled in [Quill Corp. v. North Dakota](#) that a business had to be **physically present** in a state before it was required to collect tax. Merely shipping into a state isn’t enough but a warehouse, showroom or office in the state is. Even an agent in the state taking orders, assembling merchandise, or making deliveries can be enough.

Yet as more court battles heat up and merchants, consumers and activists cry foul, the federal government may step in. Senator Dick Durbin (D. Illinois) is poised to [introduce a measure](#) giving member states of the [Streamlined Sales and Use Tax Agreement](#) authority to require **all retailers** to collect sales taxes in the 45 states and the District of Columbia that have them. Apart from addressing the more obvious aspects of the online battleground, this would simplify state and local sales tax systems. It would turbo-charge the [Streamlined Sales Tax Project](#), a joint state and business effort started in 1999.

Buying online? Get ready to pay.

For more, see:

[California tells online retailers to start collecting sales taxes from customers](#)

[Has Amazon Lost South And Tea Party In Internet Tax War?](#)

[Amazon Tax Attacks](#)

[Amazon.com’s affiliates take hit for state tax law](#)

[Amazon won't collect sales tax; cuts off California affiliates](#)

[Amazon Pressured on Sales Tax](#)

[Amazon: Sales Tax Requirements](#)

[Connecticut Tax Hikes Target Rich In Death, Too](#)

[The Internet Taxman Cometh](#)

[Margins Narrowing. Amazon Faces a Well-Financed Campaign to Force it to Collect Sales Taxes](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009, [Tax Institute](#)), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*