



Robert W. Wood

THE TAX LAWYER

Apr. 28 2012 — 12:00 am

Tax Alamo? Amazon Strikes Texas Tax Deal While Illinois Tax Goes Down

Up until recently, Amazon has been Alamo-fierce in its scrappiness about collecting sales tax nationwide. But if you like to click and buy tax-free, your territory is getting increasingly fenced in. The wide open spaces of the Internet are getting, well, downright civilized.



The Alamo, San Antonio Texas (Photo credit: Wikipedia)



Illinois Route Marker (Photo credit: Wikipedia)

That means more and more clicks will be taxed. If you figured Texas was safe you figured wrong, pardner. Yup, Amazon.com reached a tax agreement with Texas officials. Meanwhile, an Illinois court has ruled its [Amazon-tax law unconstitutional](#), a decision that seems certain to be appealed. There's no nexus, said the trial court, and that's the bone of contention with all Amazon taxes.

The Texas compromise calls for the online giant to start collecting sales tax on Texas sales and expand its operations in the state. Less than a year ago, Amazon shut down a Texas distribution center over a [\\$269 million tax bill](#) sent by Texas Comptroller Susan Combs. But now the settlement is expected to bring at least 2,500 jobs and \$200 million in capital investments to Texas.

Plus, Amazon will be passing the ten gallon hat to collect Texas sales tax commencing July 1st. Of course, Amazon surprised investors with stronger than expected [earnings](#) as [reported](#) here. The numbers have analysts positively giddy. Perhaps this month the company can do no wrong.

Still, with Amazon's sales tax compliance moves in California, Nevada and now Texas, many in the "we'll-pay-no-tax" camp may be scratching their heads. See [For Amazon Taxes, What Happens In Vegas Doesn't Stay In Vegas](#). Like many states, Texas requires companies with a physical presence there to collect sales tax. Amazon's Texas settlement resolves the \$269 million bill but doesn't resolve the larger question of just how much presence is enough.

No state can force an out-of-state merchant to collect or pay sales/use tax unless it has a "nexus" in the state. Like most online retailers, Amazon has long said it would collect state and local sales taxes only on purchases from residents of states where Amazon has physical retail operations. In [Quill Corp. v. North Dakota](#), the Supreme Court ruled that a business had to be physically present in a state before it was required to collect use tax.

Merely shipping into a state wasn't enough, but a showroom or office was. See [Amazon Tax Attacks](#). But as brick and mortar sellers complain and tax revenues drop, a number of states have passed legislation to make online retailers charge tax. See [Illinois Governor Signs Amazon Internet Sales Tax Law](#). While an Illinois court held its tax unconstitutional, an appeal seems inevitable.

Given Amazon's challenges and its grassroots campaign in California, many were surprised when Amazon backed a federal bill to permit states to collect online sales tax. See [Amazon Tax: Good, Bad and Ugly](#). Amazon claims it would make matters simpler than numerous state laws. In contrast, [EBay Inc.](#) argues it would hurt smaller businesses by putting them on the hook to collect sales tax.

If the [Main Street Fairness Act](#) passes it would impose a national tax standard. However, states abiding by the [Streamlined Sales and Use Tax Agreement](#) would be able to force Internet sellers to collect tax. The [Main Street Fairness Act](#) and [Marketplace Fairness Act](#) are two of three major

sales tax measures that would make it easier for states to require out-of-state sellers to collect sales tax from their residents.

What's next? In this election year, it could be another Alamo before we're done.

For more, see:

[Amazon Softens Stance On Texas](#)

[Illinois Judge Rules 'Amazon Tax' Unconstitutional](#)

[Why Amazon Naysayers Should Be Scared](#)

[For Amazon Taxes What Happens In Vegas Doesn't Stay In Vegas](#)

[Amazon Tax: The Good, The Bad And The Ugly](#)

[Amazon Taxes Are The REAL Hunger Games](#)

[Marketplace Fairness Tax Pits Amazon v. eBay](#)

*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 with 2012 Supplement, [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.*