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States Pressure E-Tailers to Collect Sales Tax

By [GEOFFREY A. FOWLER](#)

The economic slump is helping rekindle a debate on whether online retailers should have to collect state sales taxes, a question that has pitted the new economy against the old.

A half dozen cash-strapped states are contemplating new laws that would require e-commerce sites to charge shoppers local sales tax on purchases.

On Wednesday, Maryland legislators heard testimony from local merchants and Web site operators on a bill that could compel Web sites that employ local marketing affiliates to collect sales tax in the state. That followed a hearing Monday in Connecticut over a similar proposal.

Colorado last month passed a law that requires e-commerce sites to either collect sales tax or share information with the state about purchases made by residents, ostensibly so that it can require those consumers to pay. Legislators there hope to collect \$4.6 million in additional online sales taxes each year, a small step toward closing Colorado's current \$1.3 billion budget shortfall.

Proponents of sales tax for online merchants, such as the American Booksellers Association, say it is a matter of fairness to tax online purchases the same as bricks-and-mortar ones.

"It isn't the role of government to pick favorites between one group of retailers as opposed to another," said the organization's chief executive, Oren Teicher.

Mary Osako, a spokeswoman for [Amazon.com](#) Inc., the largest online retailer by revenue, said state-by-state laws are creating a "very complex sales tax regime," and that the company would only support a "simplified system, fairly applied to all business models." Amazon is in favor a national streamlined sale-tax effort that would mandate sales tax collection by out-of-state retailers in 23 states that have voluntarily signed on to the program. "We aren't opposed to collecting sales tax within a constitutionally permissible system applied even-handedly," Ms. Osako said.

A 1992 Supreme Court ruling prohibits states from forcing retailers without a physical presence in the state to collect sales tax on their behalf. Many states technically require local residents to pay so-called use tax on such purchases, but most taxpayers ignore those rules.

After doing nothing about the issue for a decade, many states are now reconsidering it out of budget desperation. "It took the impetus of the economic crisis to push states over the edge and say, 'Go get this money,'" said Joe Huddleston, the executive director of the Multistate Tax Commission, which represents state tax officials.

A study released last year by the University of Tennessee estimated that uncollected Internet sales taxes would cost state and local governments more than \$11 billion a year by 2012.

Efforts to collect online sales taxes have gathered steam in the past two years. In 2008, New York state found a new way to force e-tailers to pay. It passed a law that counted in-state marketing affiliates—people who earn a fee for providing links to online retailers on their own Web sites—as local sales agents, thus giving the sites physical presence in the state.

Amazon is challenging the law in court. The company describes affiliates as advertising channels, and rejects the idea that they are sales agents and that they constitute a physical presence in the state on the part of Amazon.

Last year, North Carolina and Rhode Island both passed laws similar to the one in New York. Amazon, like many online retailers, responded by severing ties with affiliate marketers in North Carolina and Rhode Island—but not in New York. Amazon currently doesn't collect sales tax in North Carolina and Rhode Island, but does in New York.

Now some Rhode Island legislators, who worry about the loss of income to local affiliate businesses, are contemplating repealing the law. They will hold a hearing on a potential repeal on Thursday.

Meanwhile, North Carolina is getting more aggressive. A spokeswoman for the state's Department of Revenue says it is discussing asking e-tailers to pay back taxes for sales that happened even before its law went into effect.

North Carolina and Rhode Island officials both say they don't have estimates on how much additional revenue they have brought in because of their laws. New York says its law helped bring in an additional \$34 million in fiscal 2009 and expects to collect \$70 million in fiscal 2010.

Seattle-based Amazon didn't testify in person at the state hearings this week, but has been working behind the scenes on the issue, spending \$570,000 in the fourth quarter of last year to lobby in Washington over tax and Net-neutrality issues. Amazon said it doesn't discuss the details of any of these efforts.

After Colorado passed its law, Amazon dropped its affiliates in the state, telling them it made the move as a result of the new law. Yet unlike in other states, Colorado's law doesn't specifically implicate affiliates as creating a physical presence in the state. Some affiliates say Amazon is using the affiliates as a political weapon. Amazon spokeswoman Ms. Osako said the regulations are burdensome and no other state has similar rules.

It isn't clear how much of an edge online retailers get over traditional retailers just from tax savings. In the first half of 2009, comScore Inc. found that the sales conversion rate at online-only retailers declined 7.4% across the country—and 11.4% in New York state. That is a sign that New York state residents were more likely to think twice about finalizing an online purchase after they saw sales tax added to the final bill.

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