

Business Bullet ~
The Online Sales Tax Update
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So many businesses today offer online sales to their customers, whether or not they have a bricks-and-mortar location. There is a growing pressure to require the collection of sales tax on most online orders. That could significantly change the competitive position of online retailers vis-à-vis bricks-and-mortar stores. Online sales tax is once again a hot topic. Here is what Don Davis, Editor In Chief, Internet Retailer, says.

“2017 will mark the 25th anniversary of a U.S. Supreme Court decision that has exempted many online retailers from having to collect sales tax on purchases. It could also be the year when that exemption ends, and online retailers must be ready to respond to what would be a major change in their competitive position. While legislation to set a national rule on online sales tax collection has been blocked in Congress by conservative Republicans in the House, pressure is growing from state governments. States such as South Dakota and Alabama have passed laws or imposed rules that directly challenge the 1992 Quill VS North Dakota ruling by the U.S. Supreme Court that blocked states from requiring sales tax collection by retailers that do not have a physical presence in that state.

South Dakota has sued major web-only retailers that refused to comply with the law and trade associations representing web and catalog retailers have countersued, setting up a showdown that could well wind up at the Supreme Court. The states have been encouraged by the current Supreme Court’s seeming willingness to revisit the Quill decision. In 2013, the high court refused to review a ruling that let stand a New York State law significantly broadening the definition of what constitutes physical presence. And in 2015, Justice Anthony Kennedy openly invited a challenge to Quill, which he noted was a case decided before the explosion of online shopping that has changed the retailing industry. If an online retailer has to collect and remit sales tax, it could significantly increase the price of its goods. Consumers in Chicago, for example, pay a combined 10.25% local and state tax, and several other cities are at 10%. 45 states and the District of Columbia has sales taxes and two other states, Montana and Alaska, allow localities to impose their own sales taxes. In all, there are about 10,000 sales tax jurisdictions within the United States, according to the Tax Foundation.

The possibility that online retailers would be required to collect sales tax in all states raises a variety of issues that are covered in an e-book that is available from Avalara*. They include whether the sales tax would be determined by the location of the consumer or the seller—the concept of basing the tax on the seller’s location has been floated by Rep. Bob Goodlatte, the power House Judiciary Chairman, as a way of avoiding the problem of requiring every web retailer to be up to date on the taxes charged in each of the 10,000 local and state jurisdictions that impose sales tax. Related questions being debated by proponents of changing the status quo are how much to subsidize online retailers for the software they will need to keep up with state and local tax rules and rates. A related effort to standardize what items are subject to tax and at what rate has been the remit of the Streamlined Sales Tax Project, which has been hacking away at this thorny problem since 2000. As of now, 23 states have joined the project with one other, Tennessee, holding the status of associate member.

Another question up for debate is whether all online retailers will be subject to any national sales tax on online orders. The proposals under consideration offer varying exemptions, with most seeking to avoid the burden of requiring very small e-retailers to collect sales tax. It

was not many years ago that bills introduced in state legislatures designed to require out-of-state online retailers were called “Amazon tax” bills to reflect the growing influence of Amazon.com Inc., which until recently only collected sales tax in a handful of states. But that has changed as Amazon has built out a nationwide network of distribution centers so that it could offer free and fast delivery. As of mid-2016, Amazon was collecting sales tax in 28 states representing 84% of the U.S. population. That has removed Amazon from the center of the debate, and made the question of Amazon collecting sales tax moot. Amazon’s move to collect sales tax in many more states in recent years allowed researchers to test how much sales tax influences the buying decisions of online shoppers.



As reports in the e-book show, the data is mixed. An Ohio State study two years ago indicated collecting sales tax cut significantly into amazon's sales. But more recent data from Slice Intelligence shows no significant impact. Some argue that consumers increasingly shop online for convenience more than price and that collecting sales tax would have little impact on online retailers. That remains to be seen. What the articles in the e-book document is that there is growing pressure to require much broader collection of online sales tax, which will impact companies selling online to businesses as well as consumers.



The next year or two may well see a resolution of this long-simmering conflict and a significant shift in the competitive positions of bricks-and-mortar versus web-only retailers. The e-book seeks to provide a detailed look at the situation today, the proposals in play, and their likely impact for retailers of all types and sizes."

Of special note:

- South Dakota openly says the Supreme Court would have to reverse its stance on online sales tax to uphold a new state law.
- A Supreme Court justice says the prevailing online sales tax law harms states more than could have been anticipated.

More information and newspaper updates are available in the FREE e-book sponsored by Avalara "What New Laws Mean for Online Sellers", available through Website magazine.

Avalara also has a FREE publication called "Sales and Use Tax Compliance for Dummies"

If you would like us to email copies of these publications to you, simply contact Marilyn at: marilyn@marketingandbizpro.com and we will email back to you within 48 hours. Be sure to specify if you want just one or both publications.

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