

"Amazon tax" takes another blow -- but it's still not dead

by David Harsanyi

Posted 04/04/2012 ET

In early 2010, I wrote a column about the efforts of Colorado Democrats to tax Internet sales via the so-called [Amazon tax](#). During the debate over the tax, some opponents were likened to [tyrants](#) and one critic was even accused of partaking in [liquid lunches and "mendacity"](#) (only half true, I assure you!). So, needless to say, it was satisfying to learn that a Federal judge had recently [shut down](#) the state's Amazon tax.

The bad news, though, is that some form of Internet tax will likely end up being implemented in most states -- including Colorado -- via bipartisan Federal legislation.

Though there is [evidence](#) that Amazon taxes hurt economic growth, [produce little revenue](#), and [cause](#) job losses, a University of Tennessee Center for Business and Economic Research [study](#) claims that states lost (as if *your* money is theirs to lose) around \$10 billion or more nationally every year. With online sales growing and state governments searching for revenue streams, political pressure to tax online sales will surely grow.

You may be wondering: How can, say, California, demand that a company outside its authority -- with no presence, building, storefront, employee or office -- collect state taxes? Consumers in California already pay plenty of taxes on the benefits of living within that state and out-of-state businesses do not receive any of those benefits.

And if that kind of power is OK, what else can states demand of companies in other areas of the country?

How would out-of-state businesses even collect these taxes? In Colorado, online businesses would have been forced to ask customers to 'pretty please' pony up local sales taxes and keep detailed records of all purchases. Though larger corporations like Amazon or eBay can probably swallow the cost of these regulations, for smaller companies it could easily become prohibitive. In fact, if I ran a giant rent-seeking corporation I might be inclined to support this kind of legislation to dissuade upstarts and competition (more on that in a minute).

While it is surely a burden for retailers to track sales in every state, there is also the issue of privacy. In Colorado, companies would have been required keep lists of all their consumers and hand the records over to the state's revenue department. Once you're on a list, the state has subpoena powers and your customer data becomes a matter of state record -- an average consumer walking into a brick-and-mortar establishment would probably find such an imposition intrusive. In North Carolina, a District Court [struck down](#) an Amazon tax over First Amendment and privacy concerns.

It is also unconstitutional. In 1992, [the Supreme Court ruled](#) that an out-of-state business could not be required to collect sales tax in a state where it does not have a physical presence. The Colorado law was already temporarily blocked in federal court last year, but now U.S. District Judge Robert Blackburn [has reaffirmed](#) that the state's Amazon tax was unconstitutional as it "impose(s) an undue burden on interstate commerce."

While the case is a victory for Coloradans, the Federal government, naturally, can do whatever it like. Congress can enact a law that enables states to join in what Daniel J. Mitchell of the Cato Institute rightly calls [a "cartel"](#), freeing states to institute an Amazon tax. The National Conference of State Legislatures goes as far as to [claim](#) that legislation would "enhance state sovereignty." Taxpayers might want to keep an eye on bills adorned with class-conscious titles like [Main Street Fairness Act](#) (and, really, what's more fair than double taxation?) that would streamline taxation.

Supported by Democrats like Dick Durbin and John Conyers, the idea has also been backed by Republicans Mike Enzi and Lamar Alexander and, yes, Amazon. Bipartisan support with big business buy-in is a bad sign to be sure. Once the process become a Federal law, you can bet there will be calls to ratchet up enforcement, bring more regulatory control, enhance fairness, etc ... and a bad idea will morph into a terrible one.

Other state-level Republicans [are on board](#). Haley Barbour, for instance, claims that failure "to level the playing field threatens to, and in fact has, run many" businesses out of Mississippi. Nikki Haley says that she supports Amazon in her state, "but we want you to do it on a level playing field."

Once a national compact is formed under federal legislation it will all be perfectly legal. But "leveling the playing field" is just a cheery political euphemism for bad economic policy. Amazon, and other online players, after all, aren't suiting up on the same field as brick-and-mortar stores. A technological explosion a few years back created a brand new field. And, anyway, Washington should be "leveling the playing field" it should be moving out of the way and allowing innovative companies to bring consumers the products they want as cheaply as they can.