

The Seattle Times

Senate to pass internet sales- tax bill blessed by Amazon

With the number of states where it must collect sales taxes growing, Amazon.com is backing uniform national rules in Congress that would largely do away with tax-free Internet shopping.

By: Kyung M. Song – May 6, 2013

If the U.S. Senate approves legislation Monday giving states the right to require most Internet retailers to charge sales taxes, the vote will have blessing from Amazon.com.

The Seattle company's endorsement — coming from a chief beneficiary of the tax advantage the bill is intended to eliminate — is widely viewed as an acknowledgment that the days of tax-free shopping online are numbered.

The vote is scheduled for Monday afternoon, and is expected to pass.

Yet Amazon's change of heart was hardly that dramatic. Amazon executives have said they decided more than a decade ago it made sense for Congress to circumvent a pair of longstanding Supreme Court rulings that protected retailers from having to tack sales taxes on purchases in states where they lack stores or other legal physical presence, called nexus.

The company has prepared for that eventuality ever since, even as it fended off revenue-hungry states demanding uncollected taxes.

Amazon's opposition all along has been less against expanded tax collection than making sure it applies to as many sellers as possible. The company supports a provision in the Senate's Marketplace Fairness Act exempting online and mail order businesses with less than \$1 million in annual sales from having to collect taxes.

That has set up a clash between Amazon and eBay, whose chief executive, John Donahoe, is seeking to raise the exemption to \$10 million. Donahoe is mobilizing his vendors to preserve their tax-free advantage by derailing the current bill when it reaches the House.

The two companies' interests diverged as Amazon reached a tipping point on tax-free shopping.

Since June, Amazon has gone from collecting sales taxes in just five states, including Washington, to nine. New Jersey is set to become No. 10 in July. Come January, Amazon will collect taxes in 16 states, covering 51 percent of its U.S. customers. Amazon has or is building warehouses and other physical facilities in most, but not all, of those states.

"Amazon reversed itself because its financial interests changed," said Daniel Mitchell, a senior fellow and tax expert at the Cato Institute, a libertarian think tank in Washington, D.C. "It has nexus in too many states and decided it was better to appease the political class."

Mitchell argues the legislation would undermine tax competition between states and raise costs for consumers.

Retailers in Oregon and four other states without sales taxes also would have to calculate the taxes on sales outside their borders. States that choose to pursue the taxes would have to provide retailers with free software to calculate the rates in hundreds of local and state jurisdictions.

States lose an estimated \$11 billion a year in sales taxes that aren't collected by online and mail-order retailers. Instead, consumers are supposed to remit them on their own, something they hardly ever do.

Washington stands to reap an estimated \$184 million for the 2013-15 state budget, and more than \$567 million in the following biennium as compliance rises, the state estimates.

Washington Sens. Patty Murray and Maria Cantwell support the measure; four Democratic House members from Washington — Reps. Adam Smith of Bellevue, Rick Larsen of Everett, Suzan DelBene of Medina and Derek Kilmer of Gig Harbor — are co-sponsors of the House version.

Some conservatives oppose the bill as an overreach of federal taxing authority.

Amazon has long voiced qualified support for uniform sales tax rules. In February 2006, Paul Misener, Amazon's vice president for global public policy, told a House committee that the company almost six years earlier had concluded that universal sales-tax collections would be reasonable and that Amazon would not be harmed by it.

"We've known all along that, because of the inherent consumer benefits of e-commerce as well as our confidence in our commitment to serve our customers, we don't need a sales tax price advantage to do very well with respect to our competition," Misener said.

But it wasn't until late 2011 that Amazon issued an explicit endorsement for the federal legislation. Misener testified in Congress in support of it last year, and wrote to lawmakers urging their vote.

Amazon's endorsement may propel the bill farther than ever in Congress, said Michael Mazerov, a senior fellow with the nonpartisan Center on Budget and Policy Priorities in Washington, D.C. The proposal has been around in various forms since 1973, two decades before Amazon's founding and when the tax fight pitted storefront businesses against mail-order retailers.

Mazerov, who has been tracking the issue since 1989, believes Amazon's embrace of the bill is genuine, if calculated.

For instance, Amazon is ignoring a new law in Georgia that attempts to define physical presence through local websites that direct customers to Amazon, Overstock.com and other retailers. And in March Amazon lost another round in a long legal battle in New York when the state's highest court upheld a law similar to Georgia's.

"Amazon is collecting taxes where they have to and they're not collecting where they don't have to," Mazerov said. "I don't question their sincerity. But they're keeping their options open."

Amazon spokesman Ty Rogers said the company has not announced whether it would appeal the ruling in New York.

Brian Bieron, eBay's senior director of global public policy, argues that small online vendors struggle to compete against behemoths like Amazon. Their shipment costs are higher, he contends, and their hassles of dealing with thousands of state and local tax rates will be bigger.

Amazon's support notwithstanding, Bieron said, "the current bill does not protect small businesses. That's been out focus since day one."