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AMAZON BLOG

SALES TAXES

Amazon sales tax deals with states may be unconstitutional

by Ben Miller and Aislyn Greene on Monday, December 5, 2011, 8:43am PST
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Amazon.com Inc. | John Swain | Walter Hellerstein

[Amazon.com Inc.](#)'s recent deals with two states — [South Carolina](#) and [Tennessee](#) — which created distribution centers and thousands of jobs in exchange for the Seattle online retailer being exempt from collecting sales taxes there, may be unconstitutional, according to legal experts.



According to [Forbes](#), a new report by two law professors indicates Amazon may be violating the U.S. Constitution's commerce clause because Amazon's deals with the states discriminates against other out-of-state retailers.

Based on a 1992 Supreme Court ruling, the clause requires that retailers only collect sales-and-use taxes in states where they have a physical presence. People are supposed to pay their own sales tax on online purchases in many states, but rarely do.

Amazon, which has used the clause as it has built its wildly successful online retail business, has faced increasing conflict with cash-strapped states looking to force the retailer to pay taxes. After Amazon [threatened to scrap plans](#) to build a distribution center in South Carolina, the state passed a law that offers a tax exemption through 2016 to any company that invests at least \$125 million in distribution centers and creates 2,000 jobs.

In October, Amazon agreed to invest \$350 million and create 3,500 hundred jobs in exchange for a two-year reprieve on collecting sales taxes in Tennessee. The legislation still awaits approval.

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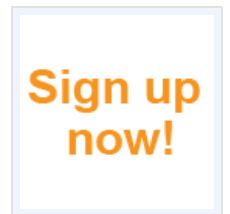
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ASSISTANT MANAGING EDITOR FOR DIGITAL MEDIA: MICHELE MATASSA FLORES
mflores@bizjournals.com
206-876-5421
[@michelefm](https://twitter.com/michelefm)

MANAGING EDITOR/CHIEF ONLINE STRATEGIST: ALWYN SCOTT
ascott@bizjournals.com
206-876-5432
[@alwynscott](https://twitter.com/alwynscott)

INTERIM EDITOR: GREG LAMM
greglamm@bizjournals.com
206-876-5435
[@greglamm](https://twitter.com/greglamm)

CONTRIBUTING WRITER: AISLYN GREENE
aislyngreene@gmail.com
206-963-3134
[@aislyngreene](https://twitter.com/aislyngreene)

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Now two law professors, Walter Hellerstein of the University of Georgia and John Swain of the University of Arizona, say these exemptions likely violate the commerce clause by discriminating against other out-of-state online retailers that can't operate a physical presence in the states without collecting sales tax, reports Forbes.

Amazon only collects sales tax on goods shipped to five states -- Washington, New York, North Dakota, Kansas and Kentucky -- but operates warehouses in states across the country.

Hellerstein and Swain also take issue with Amazon's claim that its warehouses don't count as a physical presence because they're operated under an independent subsidiary.

Despite its fight for tax exemptions, Amazon has said it supports a "simple, nationwide system of state and local sales-tax collection, evenhandedly applied to all sellers, no matter their business model, location or level of remote sales."


It recently [threw its weight](#) behind a bipartisan tax bill, [The Marketplace Fairness Act](#), introduced last month in Congress to create a federal online sales tax.

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INTERN: ANTHONY JAMES
ajames@bizjournals.com
206-876-5441
[@ajames1307](#)

PUBLISHER: GORDON PROUTY
gprouty@bizjournals.com
206-876-5402

DIRECTOR OF ADVERTISING: JOE HESLET
jheslet@bizjournals.com
206-876-5447

TECH JOBS: MICHAEL WALL
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The accounting implications to the "Rush to Mobile"

With the growing demand for the seamless delivery of information, leveraging mobile capability is becoming an integral part of corporate business plans at tech companies.



Mobile computing presents, perhaps, the largest opportunity for the technology sector since the advent of the PC or the web. In fact, according to ABI Research, more than 240 million business customers will be leveraging cloud computing services through mobile devices by 2015.

The technology industry has traditionally dealt with some of the most complex accounting rules applicable under GAAP. To learn more about the accounting implications of companies operating in the cloud, follow the link <http://www.bdo.com/download/1862> and contact Paul Martini at 206-403-2469.

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