

Electronic Commerce

Amazon Asking N.Y. Third-Party Sellers for Sales Tax-Related Data (1)

BNA Snapshot

- Amazon asking third-party sellers for marketplace sales information
- Company responds to request from New York state
- Part of efforts by a number of states to tax marketplace sales



By Gerald B. Silverman

Amazon is asking third-party sellers for information on their marketplace sales, in response to the latest effort by New York state to collect taxes on marketplace sales.

Amazon.com Inc. sent a memo to third-party sellers May 15 asking for the total amount of Amazon sales in 2014, the total amount to New York customers, and their contact information. It said the request was in response to “a valid and binding legal demand” from New York.

Amazon plans to turn over the information to New York by June 1.

New York's retailers applauded the move.

“It sends a signal that the state is serious about this,” Ted Potrikus, president and CEO of the Retail Council of New York State, told Bloomberg Tax May 18.

He said the state's new effort is slower and more labor-intensive than the legislative proposal put forth by Gov. Andrew M. Cuomo (D), but it will move things forward on an issue that brick-and-mortar retailers have been pushing for years.

Cuomo has pushed for a state law to require online marketplace providers to collect and remit sales tax when they facilitate third-party sales to New York residents, but the Legislature has rejected his proposal for the past three years. His plan would have raised an estimated \$136 million a year.

In its memo, Amazon said it would send the information for sellers who don't already use the company's tax calculation services for New York sales. “In many cases, sellers who register and file taxes in New York already provide information about their Amazon.com sales as part of their tax filings,” it said.

Cary B. Ziter, a spokesman for the Department of Taxation and Finance, told Bloomberg Tax that the Department had no comment on the matter.

New York's Aim

There are a number of possible reasons why New York is looking for the sales information, according to K. Craig Reilly, an attorney at Hodgson Russ LLP. In a May 16 post on the firm's “Noonan's Notes Blog,” he said the state may be looking for access to information that it was unable to get through Cuomo's unsuccessful legislative efforts.

The state might also be looking for information to help it collect unpaid sales taxes from sellers that already have nexus to New York under the state's existing statute, according to Reilly. He said the state may be preparing for a U.S. Supreme Court decision that ends the long-divisive physical presence requirement for when states may tax online sales—or establish nexus.

The high court heard oral argument April 17 in *South Dakota v. Wayfair*, a direct challenge to the 1992 decision in *Quill Corp. v. North Dakota*. *Quill*, which states for years have tried to “kill” through lawsuits and legislation, prohibits states from imposing sales tax collection obligations on vendors lacking an in-state physical presence. Practitioners expect a decision by late June.

“Regardless of New York’s motives, it is clear that states (and President Trump’s Twitter feed) are increasingly focused on Amazon’s online marketplace sales,” Reilly said. “Any marketplaces, vendors, or purchasers active in this area must ensure they are fully aware of their obligations and have a plan in place to address any potential exposure.”

Other States

In February, the Rhode Island Department of Revenue gained access to the contact information of Amazon’s marketplace vendors conducting in-state business.

And in January, Massachusetts received marketplace sellers’ contact information, including name, address, federal tax ID number, phone number, and estimated value of each marketplace seller’s inventory in Amazon’s Massachusetts fulfillment centers, based on the seller’s selling prices in late 2016 and 2017.

Minnesota, Oklahoma, Pennsylvania, Rhode Island, and Washington are the only states currently that require e-commerce giants such as Amazon, eBay Inc., and Etsy Inc. to collect and remit tax on transactions by the third-party sellers that move merchandise over their platforms. Connecticut has a pending proposal to join that short list.

Many states, including Alabama most recently, require Amazon-type marketplaces as sellers themselves to collect or report tax on the sales they make within their borders. The standards for when they must do so vary widely.

All states are eyeing their various laws regarding online sales taxation as the U.S. Supreme Court weighs the *Wayfair* decision.

Richard L. Jones, a partner at Sullivan & Worcester in Boston, said New York’s demand for information differs from the one from Massachusetts because the Bay State asked about third-party vendor merchandise in Amazon fulfillment centers as a way to determine if there was physical presence to establish taxable nexus.

He told Bloomberg Tax that New York may be preparing to use an “agency theory” to prove taxability, meaning that third-party vendors may have nexus to New York because Amazon does, and it’s an “agency” facilitating the sales.

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