Internet Retailers: Collecting Sales Tax for Nevada

Prepared for:
Retail Association of Nevada

March 15, 2011
Table of Contents

Findings in Summary ............................................................................................................ 1

Sales Tax Collection by Internet Retailers .......................................................................... 5
  Current Nevada Law ............................................................................................................. 5
  Potential Alternatives to Current Nevada Law ................................................................. 6
    Enact an “Amazon Law” .................................................................................................. 6
    Enact a Strong Use Tax Law .............................................................................................. 7
    Streamlined Sales and Use Tax Initiative ......................................................................... 8

Sales Tax Collection Policies of Major Internet Retailers ................................................... 8
  Amazon.com .......................................................................................................................... 9
  Best Buy (Website Sales) ...................................................................................................... 10
  Cabela’s (Website Sales) .................................................................................................... 10
  Overstock.com ..................................................................................................................... 10
  Walmart (Website Sales) ..................................................................................................... 10
  Zappos.com .......................................................................................................................... 11

Alternatives Enacted or Being Considered in Other U.S. States ..................................... 11
  New York “Amazon Law” (April 2008) ............................................................................... 12
  Colorado HB 1193 (February 2010) .................................................................................... 13
  Oklahoma HB 2359 (June 2010) ......................................................................................... 15
  Illinois HB 3659 (March 2011) .......................................................................................... 15
  California AB 155, AB 153, SB 234 and SB 655 (Not Yet Enacted) ................................. 16
  Other States .......................................................................................................................... 17

Submitted by:

Jeremy A. Aguero, Principal Analyst
Applied Analysis
Findings in Summary

Applied Analysis (‘‘AA’’) was retained to review and analyze readily available information regarding the potential requirement for Internet retailers to collect sales tax for state and local governments of Nevada. ‘‘Internet retailers’’ as used throughout this analysis is defined as any retailer conducting business using the Internet, rather than or in addition to, a bricks and mortar store. Depending on whether an Internet retailer has a physical presence in the state, it may or may not be legally required to collect sales tax on behalf of the state and local governments of Nevada when a Nevada resident makes a purchase over the Internet from the Internet retailer. The following summarizes the relevant findings of our analysis:

- Employment in Nevada’s retail sector has declined by approximately 11,000, or from 93,000 at the peak in 2007 to 82,000 today. Notwithstanding the significant share of this decline sourced to the economic downturn, it is inevitable that additional front-line retail trade jobs will be lost as the national trend towards shopping via the Internet as opposed to traditional bricks-and-mortar stores continues to gain traction. The National Retail Federation cites 24/7 convenience (40 percent of respondents), an easier time comparing prices (33 percent), and free shipping offers (32 percent) as the most popular reasons cited by consumers for shopping online. More germane to this analysis, approximately 10 percent of shoppers stated that they prefer to shop online because they ‘‘don’t want to pay sales tax.’’

![U.S. consumers who shopped online (2010 holiday season) 44%](image)

![U.S. consumers who shopped online to avoid paying sales tax 10%](image)

Source: National Retail Federation, 2010 Holiday Shopping Statistics

- Internet retailers that are not required to collect sales tax for Nevada may be seen to have an inherent advantage compared to both Internet retailers collecting sales tax (i.e., those also having a physical presence in the state)

1 National Retail Federation, 2010 Holiday Shopping Statistics; see, 2010 Holiday Survival Kit for retailers.
Internet Retailers: Collecting Sales Tax for Nevada
Retail Association of Nevada

and bricks-and-mortar stores in Nevada (which, with few exceptions must always collect sales tax). Based on current retail employment levels and estimates of taxable sales by Internet retailers where sales tax is not currently collected, as many as 900 retail jobs in Nevada could be theoretically attributed to this inherent advantage.2

- Internet retailers with a physical presence (i.e., having a store, warehouse or other facility) in Nevada currently collect sales tax on purchases shipped to Nevada residents. Examples of large Internet retailers collecting sales tax on behalf of Nevada include:
  - Certain Amazon.com merchants, including Electronic Arts, Target.com, Harper Collins Publishers, Penguin Group, Simon & Schuster Digital Sales and Zondervan Corporation. Note that Amazon does not collect sales tax on items purchased from Amazon.com LLC and other Amazon merchants in several states, including Nevada, where it has a warehouse. Amazon has reportedly assigned lease interests and/or ownership to a subsidiary or affiliate as one measure to avoid establishing a presence for tax purposes.
  - Best Buy
  - Cabela’s
  - Walmart
  - Zappos.com

- The Nevada Department of Taxation reported approximately $390 million in “nonstore retailer” taxable sales in calendar year 2010 and $372 million in fiscal year 2010, which would include sales conducted on the Internet by the Internet retailers listed above, as well as others collecting sales tax on behalf of Nevada. A brief history of reported Internet sales in Nevada follows.

<table>
<thead>
<tr>
<th>Nevada Taxable Sales (1)</th>
<th>Fiscal Year ($ in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonstore Retailers</td>
<td>$372</td>
</tr>
<tr>
<td>Total Sales</td>
<td>$37,772</td>
</tr>
<tr>
<td>Nonstore as Percentage of Total</td>
<td>1.0%</td>
</tr>
</tbody>
</table>

1 - Nevada Department of Taxation

2 Based on $18.3 billion in retail trade (i.e. motor vehicles and parts; furniture stores; electronics stores; building material and garden equipment stores; food and beverage stores; health and personal care stores; gasoline stations; clothing stores; sporting goods, hobby and music stores; general merchandise stores and miscellaneous store retailers) taxable sales in FY 2010 and 82,000 associated retail jobs as defined by the Nevada Department of Employment, Training and Rehabilitation, or one job per $224,000 in sales. An estimated $200 million sales in the state are sourced to Internet retailers not collecting sales tax (see page 2 and 3 and related discussion).
Internet retailers that do not have a physical presence in the state do not collect Nevada sales tax, and thus would not report taxable sales to the Nevada Department of Taxation. Such sales are generally not reflected in the table above, although technically use tax is due from the purchaser on taxable items. Estimates of the amount of Internet sales to Nevada residents for which no sales tax is collected range from $200 million to $350 million.3

In April 2008, New York enacted Tax Law Section 1101 (b) (8) (vi) (also referred to as the “Amazon law”, the “click-through nexus statute” or the “sales tax nexus presumption law”) which creates a presumption that a seller of taxable property or services is presumed to be a vendor if the seller enters into agreements with residents of New York State under which residents receive consideration for referring potential customers to the seller by links on a Web site or otherwise (e.g. “affiliates” or “associates” create a “click-through nexus”), and the value of the sales in New York State made by the seller through those agreements totals more than $10,000 in the preceding four sales tax quarters.

Several U.S. states, including Rhode Island, North Carolina, and most recently, Illinois have followed New York’s lead by enacting a so-called “Amazon tax”. Several other states are considering enacting a similar law, including California, Virginia, Arkansas and Vermont. Additional states, such as Connecticut, Hawaii, Maryland, Minnesota, Mississippi, New Mexico, Tennessee and Wisconsin considered, but did not enact, similar legislation during the past two years. The table that follows summarizes the estimated impact of the “Amazon tax” on states that have enacted the law or developed estimates. An estimate for Nevada is provided based on a presumption that the state would experience a similar impact as other states and that Amazon would not terminate its Nevada affiliates. Note that the timing of possible collections in Nevada could be delayed even if such a law were enacted due to litigation that may arise against such legislation, as has been the case in other states. Furthermore, it is worth considering that costs of litigation would offset revenue gains.

3 Source: Nevada Department of Taxation and estimates based on reports by other U.S. states.
Retail Association of Nevada

<table>
<thead>
<tr>
<th>State</th>
<th>Total Sales and Use Tax Collections (1)</th>
<th>Estimated Impact of “Amazon Law”</th>
<th>Percent Impact</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York</td>
<td>$21.8 billion</td>
<td>$70 million</td>
<td>0.32%</td>
<td>2</td>
</tr>
<tr>
<td>California (a)</td>
<td>$26.6 billion</td>
<td>$317 million</td>
<td>0.79%</td>
<td>3a</td>
</tr>
<tr>
<td>California (b)</td>
<td>$26.6 billion</td>
<td>$234 million</td>
<td>0.59%</td>
<td>3b</td>
</tr>
<tr>
<td>Virginia</td>
<td>$3.3 billion</td>
<td>$17 million</td>
<td>0.52%</td>
<td>4</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>$0.6 billion</td>
<td>$0</td>
<td>0%</td>
<td>5</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$6.1 billion</td>
<td>$0</td>
<td>0%</td>
<td>6</td>
</tr>
<tr>
<td>Nevada</td>
<td>$2.9 billion</td>
<td>$16 million</td>
<td>0.54%</td>
<td>7</td>
</tr>
</tbody>
</table>

1 - State and local sales and use tax for FY 2010. California total includes only state collections. Virginia collections are for FY 2009 (latest available). Rhode Island collections are for FY 2008 (latest available) and are the amount reported by the Dept. of Revenue.

2 - New York Department of Taxation estimate; revenues include sales tax collected from Amazon as litigation is ongoing.

3a - California Board of Equalization estimate assumes Amazon does not terminate its affiliates in California. Total state and local collections of $317 million. Analysis assumes two-thirds of this amount goes to state, with a state rate of 6 percent and a total rate of approx. 9 percent in California.

3b - Same as 3a, but CA BOE assumes Amazon does terminate its affiliates in California (estimate is for FY 2012-13).

4 - Virginia Department of Taxation estimate assumes Amazon does not terminate affiliates in Virginia.

5 - According to Rhode Island Department of Revenue, the law has resulted in no new collections.

6 - North Carolina is pursuing Amazon for taxes from prior years when affiliates were operating; Amazon cut all affiliates when the law was passed and thus the state has seen no new collections. The state claims that either Amazon or its customers owe $50 million.

7 - Nevada estimate assumes Amazon does not terminate affiliates in Nevada and that the percent impact is equal to the average of NY, CA scenario (a) and VA.

- Other states, including Colorado and Oklahoma, have enacted stronger use tax laws.
  - In February 2010, Colorado enacted HB 1193, which is currently suspended while a legal challenge brought by the Direct Marketing Association proceeds. The law requires that Internet retailers with more than $100,000 of annual web sales in Colorado that do not collect Colorado sales tax send notifications and reports to both the consumer and the Colorado Department of Revenue on taxable sales made from the Internet retailer to the Colorado resident, similar to the way in which a Form 1099 is sent from a bank to a resident and applicable taxing authorities reporting interest income on which the resident must pay dividend and interest income tax. The law also contains an “Amazon law” component, making affiliates cause for nexus declaration.
  - In June 2010, Oklahoma enacted HB 2359, which requires that non-collecting retailers (i.e., a retailer that makes sales of tangible personal property from a place of business outside of Oklahoma for use and who is not required to collect Oklahoma sales taxes) post a readily
visible specified notice (typically on the retailer’s website) that Oklahoma use tax is due on nonexempt purchases of tangible personal property and should be paid by the Oklahoma purchaser.

- Importantly, based on Amazon’s reaction to click-through-nexus laws when proposed in other states, there is a probable risk that Amazon would terminate its affiliates in Nevada if such a law were enacted in the state, meaning Amazon would not be covered under the click-through nexus law. Nevadans could still go directly to Amazon.com to make their purchases and pay no Nevada sales tax (though use tax is technically due from the Nevada resident). Approximately 1.5 percent of Amazon sales in New York were through affiliate sites; it is reasonable to assume a similar percentage of Amazon sales in Nevada are through affiliates, meaning a relatively insignificant amount of purchases would be lost from Amazon in Nevada if such a law passed and Amazon terminated its affiliates in Nevada.

- Additionally, as noted by the California Board of Equalization in its analysis of similar legislation in that state, if Amazon terminates its affiliates, the state may suffer a net loss in terms of personal income and potentially, jobs. If, as in Texas, Nevada determines that Amazon’s subsidiary or affiliate-owned or leased warehouse facilities in the state constitutes a physical presence, Amazon may close its warehouse as it has reported it will do in Texas, which would result in net job loss, personal income loss, and potentially result in a decline in property tax revenues in Nevada. Job losses could be significant, with several hundred year-round workers employed in Nevada facilities, and an additional 2,000 workers hired for the 2010 holiday season.

Sales Tax Collection by Internet Retailers

Current Nevada Law

Under Nevada Revised Statutes Chapter 372, Internet retailers collect sales tax on purchases made on the Internet and shipped to Nevada if the retailer has a physical presence (store, warehouse, or other facility) in Nevada.

Large Internet retailers currently collecting sales tax for Nevada include Cabela’s.com, Best Buy.com, Walmart.com, Zappos.com, and certain associates of

---

4 Source: Tax Foundation
5 See review of California AB 153 and 155 in the section within this analysis entitled “Alternatives Enacted or Being Considered in Other U.S. States.”
6 Full-time employment estimate based on standard fulfillment center staffing per square foot as well as Amazon job descriptions for open positions in Nevada. Seasonal hiring estimate based on November 2010 Associated Press article, “Amazon to fill 2,000 jobs in NV to fill holiday orders.”
Amazon.com who have a physical presence in Nevada, such as Target.com and Electronic Arts Inc.

Amazon does not collect sales tax on items purchased from Amazon.com LLC and other Amazon merchants in several states, including Nevada, where it has a warehouse. Amazon has reportedly assigned lease interests and/or ownership to a subsidiary or affiliate as one measure to avoid establishing a presence for tax purposes. In late 2010, Texas determined that the retailer’s Dallas-area warehouse, owned by a subsidiary, qualified as a local address under state tax rules and sent Amazon a sales tax bill. The dispute will be decided in a future administrative hearing. In response, Amazon has reported that it will close its Dallas-area warehouse and cancel plans to build another one in Texas. An estimated 120 workers will lose their jobs when the Amazon facility closes in Dallas, according to a letter the company sent to the Texas Workforce Commission in February 2011.

Potential Alternatives to Current Nevada Law

Several U.S. states have enacted or are considering various types of legislation to increase tax collections on purchases made by their residents over the Internet. As an alternative to the status quo, Nevada could consider one or more of the following potential alternatives regarding taxation of Internet purchases.

**Enact an “Amazon Law”**

The state could enact a “click-through nexus” law (aka “Amazon law” or “Main Street Fairness Act”) such as that in New York since 2008, Rhode Island and North Carolina in 2009, and Illinois as of March 10, 2011 (and currently being debated in California). Such a law would require retailers, such as Amazon, that have affiliates located in Nevada who are paid commissions by Amazon when Nevadan residents “click-through” the affiliates’ page to Amazon and make a purchase, to collect and remit sales tax to Nevada.

Based on Amazon’s reaction to such laws when proposed in other states, there is a probable risk that Amazon would terminate its affiliates in Nevada, meaning Amazon would not be covered under the click-through nexus law. Importantly, Nevadans could still go directly to Amazon.com to make their purchases and pay no Nevada sales tax (though use tax is technically due from the Nevada resident). Approximately 1.5 percent of Amazon sales in New York were through affiliate sites; assuming a similar percentage of Amazon sales in Nevada are through affiliates, a relatively

---

9 Source: Tax Foundation
insignificant amount of purchases would be lost from Amazon in Nevada even if the law passed and Amazon terminated its affiliates in Nevada.

Due to differences in population and structure, there may be a commonly-held presumption that more retailers have a physical presence in New York than in Nevada, and as such, a click-through-nexus law would result in relatively more sales tax revenue in Nevada than in New York. This is not likely the case, considering the presence of nearly all the major U.S. chain retailers in Nevada (i.e., Bed Bath & Beyond, Best Buy, Lowe’s, Home Depot, Walmart, Target, Macy’s, Nordstrom, Neiman Marcus, etc.), as well as nearly all prevalent high-end retailers in upscale Las Vegas locations such as the Forum Shops at Caesars Palace or Crystals Retail & Entertainment at CityCenter (i.e., Dolce and Gabbana, Elie Tahari, Christian Dior, BCBGMAXAZRIA, Louis Vuitton, Versace, Prada, Hermes, etc.).

Furthermore, if Internet retailers having a physical presence in New York, but not in Nevada, do not make use of so-called affiliates, the passage of a click-through-nexus law in Nevada would have zero impact on these retailers. It is unlikely that there are a material amount of retailers that would be affected by a Nevada click-through-nexus law that were not impacted by the same passage in New York because they already had a physical presence there.

Enact a Strong Use Tax Law

As an alternative to requiring Internet retailers with click-through-nexus in Nevada to collect sales tax, the state could enact a strong use tax law such as that in Colorado, which in essence would require retailers, such as Amazon, that have no physical presence in the state to send detailed purchase reports to Nevadans who purchase from their site as well as to the Nevada Department of Taxation in order to make binding the purchasers’ requirement to pay use tax. This would require increased funding for the Nevada Department of Taxation to ensure that all Nevadans paid the use tax they owed per the reports sent from the Internet retailer.

Importantly, it is necessary to note that the Colorado use tax law has been suspended pending the outcome of a legal challenge brought by the Direct Marketing Association.

As another alternative, the state could enact a weaker use tax law such as that in Oklahoma, which requires retailers, such as Amazon, who have no physical presence in the state to post notices on their websites advising Oklahomans of the requirement to remit use tax on purchases where no sales tax is collected. The intent of the Oklahoma law is simply to remind residents of their legal requirement to remit use tax on taxable purchases on which no sales tax was paid. The potential tax yield associated with this alternative would likely be significantly less than the others outlined above.
Streamlined Sales and Use Tax Initiative

As a third option, the state could encourage progress on and wait for the Streamlined Sales and Use Tax (SST) initiative, of which Nevada is currently a full member to the governing board, to evolve or be embraced by out-of-state retailers.

According to the SST, the initiative can be described as follows:¹⁰

The effort that became the Streamlined Sales Tax Governing Board began in March 2000. The goal of this effort is to find solutions for the complexity in state sales tax systems that resulted in the U.S. Supreme Court holding (Bellas Hess v. Illinois and Quill Corp. v. North Dakota) that a state may not require a seller that does not have a physical presence in the state to collect tax on sales into the state. The Court ruled that the existing system was too complicated to impose on a business that did not have a physical presence in the state. The Court said Congress has the authority to allow states to require remote sellers to collect tax. The result of this work is the Streamlined Sales and Use Tax Agreement. The purpose of the Agreement is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance.

The SST initiative’s end goal is to overturn, or provide a work-around, for Quill v. North Dakota, which determined that the Commerce Clause of the U.S. Constitution, which reserves to Congress the power to regulate commerce among the states and with foreign nations, barred a state from requiring an out-of-state company to collect use tax on goods sold to customers located within the state when the company had no outlets, sales representatives, or significant property in the state.

The case determined that only the U.S. Congress has the authority to require out-of-state vendors without a physical presence in the state to register and collect that state’s tax. Under the SST initiative, states expect that out-of-state businesses without a requirement to collect sales tax will voluntarily collect tax when the states adequately streamline their sales tax.¹¹

Sales Tax Collection Policies of Major Internet Retailers

Most large U.S.-based Internet retailers collect sales tax for purchases shipping to Nevada because they have a physical presence in the state. Collecting retailers include, but are not limited to: certain Amazon.com merchants including Electronic Arts, Target.com, Harper Collins Publishers, Penguin Group, Simon & Schuster Digital Sales and Zondervan Corporation; Bed Bath & Beyond; Best Buy; Cabela’s; Lowe’s;

¹¹ Source: Virginia Department of Taxation 2010 Fiscal Impact Statement, Bill Number SB 660
Macy’s; Walmart; and Zappos.com. General sales tax policies of selected large retailers are outlined below.12

Amazon.com

The amount of sales tax charged depends upon many factors, including the identity of the seller, the type of item purchased, and the destination of the shipment. Items sold by Amazon.com, LLC, or its subsidiaries, and shipped to destinations in Kansas, Kentucky, New York, North Dakota, or Washington are subject to tax. Electronically delivered products (e-books or electronically delivered software) are considered to be shipped to the credit card billing address.

Sales tax on items purchased from select Amazon Merchants is calculated on the merchants’ behalf in accordance with their instructions. Amazon Merchants charging sales tax on items shipped to Nevada include, but are not limited to: Electronic Arts, Inc.; Target.com; Harper Collins Publishers, LLC; Penguin Group USA Inc; Simon & Schuster Digital Sales, Inc.; and Zondervan Corporation LLC.

Amazon Marketplace sellers are responsible for the sales tax on any items sold on Amazon.com, and if necessary, they generally add this cost into the price of their items. Therefore, a purchaser will not be charged any additional sales tax for Marketplace purchases.

Amazon notes that for states imposing sales or use taxes, the purchase is subject to use tax unless it is specifically exempt from taxation. Details on how to file such use tax returns may be found on the website of the respective taxing authority.

Amazon notes that for Oklahoma purchasers, the tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use return [Form 21-1]. Amazon is required to provide the notice (but not the reports) for Oklahoma purchases based on Oklahoma law (HB 2359) enacted in June 2010.

For Colorado purchasers, Colorado HB 1193, which was enacted in February 2010, required online retailers to provide a detailed purchase report to customers with more than $500 of annual Colorado purchases by the 31st of January annually. The retailer is also required to provide a summary purchase report with the total amount of each customer’s annual Colorado purchases to the Colorado Department of Revenue by March 31st of each year. This law is currently the subject of a legal challenge brought by the Direct Marketing Association and others. In the meantime, the U.S. District Court has suspended enactment of the law while the legal challenge proceeds.

---

12 Source: Individual companies.
Best Buy (Website Sales)

Where sales taxes are applicable, an online order will show tax charged for the shipping, delivery or pickup destination, based on current tax rates. Shipping charges may also be subject to tax in certain states. Best Buy is required to collect tax in all states where it has a physical presence (including Nevada). A purchaser can estimate tax by entering his postal code. The tax rate is based on where the purchase is being shipped, delivered or picked up.

Cabela's (Website Sales)

Sales tax is charged on mail, Internet, and telephone orders for deliveries in Arizona, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, Pennsylvania, South Dakota, Texas, Utah, Washington, West Virginia and Wisconsin. Cabela's does not collect sales tax from Montana as they do not charge sales tax. Cabela's is not required to, and does not, collect Oklahoma sales or use tax.

The company makes the following disclosure about Oklahoma on its website: (1) This purchase is subject to Oklahoma use tax, unless it is specifically exempt from taxation; (2) Purchasing merchandise over the Internet or from a catalog does not exempt the purchase; (3) The State of Oklahoma requires purchasers to report all purchases that were not taxed and to pay tax on those purchases; (4) The tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use tax return [Form 21-1].

In addition, all orders shipped from a Cabela's retail store to a state in which there is a Cabela's retail store present, will be charged the applicable sales tax of that state.

Overstock.com

Overstock collects sales tax on purchases shipping to North Carolina and Utah. The company does not collect sales tax for purchases shipping to Nevada.

Walmart (Website Sales)

Items may be purchased from Walmart.com (sales tax is charged) or a Walmart Marketplace Retailer (sales tax may or may not be added). For items purchased from Walmart.com, tax is charged for orders shipped to U.S. states, protectorates and territories where sales taxes are applicable. The amount of tax charged is based on current tax rates. Gift-wrap and shipping charges may also be subject to tax in applicable states.
Items may also be purchased from a Walmart Marketplace Retailer. If the order details page in “My Account” shows the seller of the item to be anyone other than “Walmart.com,” the item is being purchased from a Marketplace Retailer. Marketplace Retailers are responsible for collecting and remitting the sales tax for the items they sell. They may choose to add the cost of tax to the price of their items, or they can list the tax separately. A Marketplace Retailer may not charge tax in all 50 U.S. States and U.S. territories. This means the customer may or may not see a charge for tax in his or her cart. Walmart Marketplace Retailers include: ebags, CSNStores.com, Pro Team, Shoebuy.com, and ToolKing.com.

**Zappos.com**

Zappos Retail, Inc. is required by law to collect sales tax on orders shipped to Kentucky, Nevada, New York and North Carolina. If the purchaser is shipping to any of these states, the appropriate charges will be added to the merchandise total and displayed on the final order confirmation.

Zappos does not collect sales or use taxes in all states. For states imposing sales or use taxes, a purchase is subject to use tax unless it is specifically exempt from taxation. A purchase is not exempt merely because it is made over the Internet or by other remote means. Many states require purchasers to file a sales/use tax return at the end of the year reporting all of the taxable purchases that were not taxed and to pay tax on those purchases. Details of how to file these returns may be found at the websites of the respective taxing authorities.

For Oklahoma purchasers, the tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use tax return. [Form 21-1] The referenced forms and corresponding instructions are available on the Oklahoma Tax Commission website, [www.tax.ok.gov](http://www.tax.ok.gov).

Zappos may be required by Colorado law to provide purchasers an end-of-year summary of Colorado purchases in order to assist purchasers in filing their tax returns. Zappos also may be required by law to provide the Colorado Department of Revenue with a report of the total amount of all your purchases at the end of the year. Zappos will not provide any transactional details to the Department other than the total amount of your purchases.

**Alternatives Enacted or Being Considered in Other U.S. States**

As many states continue to face budgetary shortfalls in the aftermath of the Great Recession, they have increasingly looked to uncollected sales and or use tax on Internet purchases to improve state tax revenues. Importantly, such tax is legally due one way or the other; purchases made from Internet retailers such as Amazon are not
tax-exempt in Nevada. The following summarizes the legislative efforts undertaken or currently under consideration in several states, as well as some of the difficulties these states are facing in connection with actually enacting new laws.

**New York “Amazon Law” (April 2008)**

New York legislation enacted in April 2008 (also referred to as the “Amazon law” or the “click-through nexus statute” or the “sales tax nexus presumption law” (Tax Law Section 1101 (b) (8) (vii))) creates a presumption that certain sellers of taxable property or services are sales tax vendors who are required to register for sales tax purposes and collect state and local sales tax.

Although Amazon.com and Overstock.com have challenged this law in New York's court system, the law remains in full force and effect. Any business with a tax collection obligation under this law must register as a sales tax vendor. Businesses already registered as sales tax vendors as a result of the 2008 legislation are required to collect and remit sales tax.

Under the presumption, a seller of taxable property or services is presumed to be a vendor if the seller enters into agreements with residents of New York State under which residents receive consideration for referring potential customers to the seller by links on a Web site or otherwise (e.g. “affiliates” or “associates” create a “click-through nexus”), and the value of the sales in New York State made by the seller through those agreements totals more than $10,000 in the preceding four sales tax quarters.

On January 15, 2009, the New York State Supreme Court granted the State’s motion to dismiss Amazon.com’s suit alleging that the sales tax vendor presumption statute is unconstitutional. (Amazon.com claimed that the law violates the commerce clause of the U.S. Constitution, as well as the due process and equal protection clauses of the U.S. and New York State Constitutions.) The court dismissed a similar complaint brought by Overstock.com.

Both companies appealed the trial court’s decision. On November 14, 2010, the Appellate Division of the State Supreme Court issued a unanimous opinion that: 1) confirmed that the companies' claims that this law is facially unconstitutional are unfounded, 2) held that further discovery is needed before it can resolve Amazon.com’s and Overstock.com’s claim that the statute is unconstitutional as applied to their specific facts, and 3) granted both plaintiffs the opportunity to return to the Supreme Court to present evidence that the law is unconstitutional with respect to their business practices.
According to an article published by the Center on Budget and Policy Priorities\textsuperscript{13}, New York tax officials believe that approximately 30 retailers began collecting its sales tax because of the new law; it estimates that these retailers generated $25 million in new state sales tax collections in fiscal year 2009 and predicts they will generate $33 million in new state revenue in 2010. Local sales tax collections for each year are approximately equal to the state collections, meaning that the tax law change is raising approximately $50 million annually.\textsuperscript{14} A more recent estimate of $70 million for fiscal year 2009-2010 has been cited by the New York State Department of Taxation. However, this amount will be reduced by the cost of litigation that New York incurs to defend its legislation.

According to the New York State Department of Taxation and Finance Annual Statistical Report of New York State Tax Collections, the state portion of Sales and Use Tax Collections totaled $10.4 billion in fiscal year 2009 and $9.9 billion in fiscal year 2010. The local portion was $11.9 billion in fiscal year 2010. This means the incremental amount estimated to have been collected under the click-through nexus law is approximately 0.32 percent, or less than 1 percent of total sales tax collections.


**Colorado HB 1193 (February 2010)**

Colorado HB 1193 (enacted February 2010; law is currently suspended while a legal challenge brought by the Direct Marketing Association proceeds) essentially requires that Internet retailers with more than $100,000 of annual web sales in Colorado that do not collect Colorado sales tax send notifications and reports to both the consumer and the Colorado Department of Revenue on taxable sales made from the Internet retailer to the Colorado resident, similar to the way in which a 1099 is sent from a bank to a resident and applicable taxing authorities reporting interest income on which the resident must pay dividend and interest income tax. The law also contains an “Amazon law” component, making affiliates cause for nexus declaration.

Amazon notes that it has terminated its advertising contracts with Colorado affiliates, and has collected no sales tax for the state of Colorado, nor paid any referral fees since then to any Colorado in-state affiliates.\textsuperscript{15}


\textsuperscript{14} Source: Personal communication between the Center on Budget and Policy Priorities and the New York State Department of Taxation and Finance.

\textsuperscript{15} Source: Letter from Paul Misener, VP for Global Public Policy for Amazon, to Senator George Runner, Member, California Board of Equalization, dated February 24, 2011.
Section 1 (3) of the law begins by defining “doing business in this state” as the selling, leasing, delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This includes the soliciting, either by direct representatives, indirect representatives, manufacturers’ agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

According to Section 1 (II), commencing March 1, 2010, if a retailer that does not collect Colorado sales tax is part of a controlled group of corporations, and that controlled group has a component member that is a retailer with physical presence in this state, the retailer that does not collect Colorado sales tax is presumed to be doing business in this state. This presumption may be rebutted by proof that during the calendar year in question, the component member that is a retailer with physical presence in this state did not engage in any constitutionally sufficient solicitation in this state on behalf of the retailer that does not collect Colorado sales tax.

Section 2 (c) (I) states that each retailer that does not collect Colorado sales tax shall notify Colorado purchasers that sales or use tax is due on certain purchases made from the retailer and that the state of Colorado requires the purchaser to file a sales or use tax return.

Section 2 (d) (I) (A) states that each retailer that does not collect Colorado sales tax shall send notification to all Colorado purchasers by January 31st of each year showing such information as the Colorado Department of Revenue shall require by rule and the total amount paid by the purchaser for Colorado purchases made from the retailer in the previous calendar year. Such notification shall include, if available, the dates of purchases, the amounts of each purchase, and the category of the purchase, including, if known by the retailer, whether the purchase is exempt or not exempt from taxation. The notification shall state that the state of Colorado requires a sales or use tax return to be filed and sales or use tax paid on certain Colorado purchases made by the purchaser from the retailer.

According to Section 2 (II) (A), each retailer that does not collect Colorado sales tax shall file an annual statement for each purchaser to the Department of Revenue on such forms as are provided or approved by the Department showing the total amount paid for Colorado purchases of such purchasers during the preceding calendar year or any portion thereof, and such annual statement shall be filed on or before March 1 of each year.
Oklahoma HB 2359 (June 2010)

Oklahoma HB 2359 enacted June 2010 (See Chapter 65, Sales and Use Tax, Subchapter 21, Use Tax; 710:65-21-8: Out-of-state retailers or vendors not registered in Oklahoma) requires that non-collecting retailers (“non-collecting retailer” means a retailer, not currently registered to collect and remit Oklahoma sales and use tax, who makes sales of tangible personal property from a place of business outside of Oklahoma to Oklahoma for use and who is not required to collect Oklahoma sales and use taxes) must, effective October 1, 2010, give notice that Oklahoma use tax is due on nonexempt purchases of tangible personal property and should be paid by the Oklahoma purchaser. “De minimus retailers”, or those with total gross sales in Oklahoma in the prior year of less than $100,000 may be exempt from the requirements to post the notice.

The notice must be readily visible and contain the following information:

1. The non-collecting retailer is not required, and does not collect Oklahoma sales or use tax;
2. The purchase is subject to Oklahoma use tax unless it is specifically exempt from taxation;
3. The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means;
4. The State of Oklahoma requires Oklahoma purchasers to report all purchases that were not taxed and pay tax on those purchases. The tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use tax return [Form 21-1]; and,
5. The referenced forms and corresponding instructions are available on the Oklahoma Tax Commission website, www.tax.ok.gov.

With the program only in effect for several months, the effectiveness of this law has not yet been evaluated.

Illinois HB 3659 (March 2011)

On March 10, 2011, Illinois Governor Pat Quinn signed HB 3659, also called the “Mainstreet Fairness Act”, into law. The bill is similar to the Amazon law enacted in New York in 2008. Senate President John Cullerton announced upon passage that the bill will generate an additional $150 million in tax revenue.
However, Amazon has already notified its Illinois-based affiliates that it will terminate their contracts if the governor signs the bill, and already the leadership of another state has invited Illinois affiliates to relocate there.\textsuperscript{16}

Tim Storm, the CEO of a large Illinois-based Amazon affiliate, www.FatWallet.com, implied he may leave the state, saying, “The reality is that as a business owner with 52 employees, we’re not just going to get shut down because of a law Illinois passes. Our customers don’t care whether we’re in the state of Illinois.”

It remains to be seen whether Illinois HB 3659 will result in any additional sales tax collections or whether all major Internet retailers not already collecting for the state will terminate (or help relocate) affiliates creating click-through-nexus in Illinois.

\textbf{California AB 155, AB 153, SB 234 and SB 655 (Not Yet Enacted)}

California’s legislature is currently considering four bills intended to increase sales tax collections on purchases made over the Internet. In testimony by Robert Ingenito, Chief of Revenue Estimates for the State Board of Equalization, on February 28, 2011 at the California State Assembly Hearing for AB 153 (Calderon) and AB 155 (Skinner), which resemble the New York law, he indicated revenue estimates are “subject to considerable uncertainty”. According to Mr. Ingenito, any revenue would be delayed for several years as litigation on the bill played out in the courts.

Applying the New York model to California as well as eBay impacts in California that were not present in New York, the total revenue estimate is $317 million. However, because Mr. Ingenito has received confirmation from Amazon that it would terminate its affiliate program if California enacts such law, it was necessary to reduce the revenue estimate by $83 million, reaching an estimate of $234 million for 2012-2013. Mr. Ingenito cautions that if other retailers terminate affiliate programs, following Amazon’s lead, this figure will drop further.

Mr. Ingenito also cautioned in his testimony that with 10,000 Amazon affiliates in California, if Amazon makes good on its threat to terminate affiliates in California if the law is passed, personal and corporate income tax could decline.

According to the California 2011-2012 Governor’s Budget General Fund Revenue Forecast,\textsuperscript{17} general fund sales and use tax collections totaled $26.6 billion in fiscal year 2009-2010, which means that the incremental amount estimated to be collected by an affiliate nexus law is less than 0.40 percent of state sales and use tax collections if allocating two-thirds of the $234 million estimate (state rate of 6 percent and average total rate of 9 percent in California) to the state.

\textsuperscript{16} Source: Letter from Paul Misener, VP for Global Public Policy for Amazon, to Senator George Runner, Member, California Board of Equalization, dated February 24, 2011.

\textsuperscript{17} See, \url{http://www.ebudget.ca.gov/pdf/BudgetSummary/RevenueEstimates.pdf}
Both SB 234 (Hancock) and SB 655 (Steinberg) contain language similar to AB 155 and AB 153 in that they attempt to create a “click-through-nexus” for retailers “engaged in business” in the state (i.e., having affiliates).

**Other States**

Several other states have considered, or are currently contemplating, enacting laws similar to that in New York. Illinois, Rhode Island, and North Carolina have enacted similar rulings as in New York. However, according to Amazon’s letter to Senator George Runner dated February 24, 2011, Amazon terminated (and in Illinois, will terminate if enacted) its affiliates in those states. Amazon states that it has collected no sales tax for any of the states, nor paid any referral fees since enactment to affiliates in North Carolina and Rhode Island.

In Rhode Island, Paul L. Dion, Rhode Island Department of Revenue, stated in December 2009 that the six-month old law had resulted in no revenue collection. Because Amazon reacted by discontinuing its affiliate program, former Rhode Island Amazon affiliates are earning less income and paying less income tax. A repeal of the bill was introduced as HB 7071 in 2010.18

After Amazon cut its ties to North Carolina affiliates, North Carolina’s tax agency pursued Amazon for taxes it argues should have been collected during the years the affiliates were operating, even before the new law was passed. The state claims either Amazon or its customers owe North Carolina $50 million in sales and use taxes on Internet purchases.19

Additional states have considered or are considering similar laws, including:20

- Connecticut: Considered in 2009 but not enacted.
- Hawaii: Passed by the legislature in 2009 but vetoed.
- Iowa: Introduced as HF 2510.
- Maryland: Introduced as SB 824. Considered in 2009 but not enacted.
- Minnesota: Considered in 2009 but not enacted.
- Mississippi: Rejected in committee (SB 2927)
- New Mexico: Introduced as HB 50
- Tennessee: Considered in 2009 but not enacted.
- Vermont: Introduced as HB 661
- Virginia: Introduced and passed in one house (SB 705/SB 660)
- Wisconsin: Considered in 2009 but not enacted.

---

19 Source: Raleigh, NC, Associated Press, Colorado Amazon Tax Could Be Affected By North Carolina Decision, October 27, 2010
20 Source: Tax Foundation, list current as of March 2010