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New York eCommerce

Attention Online Shoppers:
Sales Tax on Internet Purchases May be in Your Future

Under US Supreme Court precedent, online retailers that do not have a physical presence in New York (i.e. a retail store or warehouse) have not been required to collect sales tax. This has often resulted in lower prices on goods than would be available at traditional bricks-and-mortar stores. Because of the stagnant economy, the growing outcry from bricks-and-mortar businesses in New York and the state's desire to generate more revenue, some online purchases may now be losing their financial advantage.

In 2008, New York State enacted a tax law, sometimes called the 'Amazon Law' because it is clearly targeted at Amazon and other very large online sellers. Under this law, the seller of a taxable product will be presumed to have a physical presence in New York, and thus have to register with the state for sales tax purposes and collect state and/or local taxes as applicable, if two conditions are met:

- It contracts with a New York resident to compensate the resident (sometimes called an "affiliate") in some manner for referring potential customers.

- The out-of-state seller's cumulative gross receipts from sales to New York customers that resulted from referrals by any New York resident it contracted with exceeded $10,000 during the preceding four quarterly sales tax periods.

The so-called Amazon Law has been upheld by the New York State Court of Appeals, the state's highest court. In December 2013, the US Supreme Court decided not to hear an appeal challenging the constitutionality of the law. As a result, if an online retailer solicits sales of taxable tangible personal property or services through employees, salespersons, independent contractors, agents, or other representatives located in New York State and sales exceed $10,000 per year, it is required to register with the Department of Taxation and Finance and collect sales tax.

The implication of this law and set of court decisions is that out-of-state sellers have to decide if the revenue generated from contracting New York-based affiliates to try and generate sales is worth the potential cost of collecting tax on every sale from a New York customer. They will also need to determine if agreements to have New York-based affiliates merely passively advertise (which the Court found not to be solicitation) or work to develop business exclusively from customers in other states is worth the risk of being found to have met the two conditions listed above, potentially subjecting them to legal liabilities in New York. For shoppers, the apparent discount on purchasing goods online could now be significantly reduced after tax is added in. Consumers should keep in mind that under existing New York State tax laws, in cases where an online retailer is not obligated to collect sales tax, it is the customer's responsibility to pay the tax to the state - in which case it is known not as a sales tax but, rather, a "use tax."
