Should Amazon.com, Inc be enforced for sales tax?

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The invention of the internet is perhaps one of the best innovations in 20th century. Its growth has been an enormous and it becomes great tools for human to do almost anything; finding and sharing information, socializing, shopping, studying, and even dating. As for businesses, internet is making the business transaction more efficient and effective. The process of buying and selling products or services over internet is known as E-commerce ("Electronic Commerce", 2011) Amazon.com is notably the most practical example for e-commerce website. Amazon.com, the world's largest online retailer and one of the nation's biggest book sellers, is one of the iconic companies of the Internet era. It was founded in 1994 by Jeffrey P. Bezos, a former financial analyst for the New York hedge fund D.E. Shaw & Company (Eells, 2010, par. 1). Amazon did not made any profits for its first couple years of operation. However, its sales topped $960 million in the fourth quarter of 2000 (Nichols, 2001, par. 25). Amazon became the example for many new and existing brick and mortar retailers, such as Wal-Mart, Sears, Staples, etc., which soon followed the steps and created online website to boost their sales besides their physical store. Still, Amazon.com was able to grow bigger and faster; it acquired several major E-commerce websites and subsidiaries to maintain and broaden its market share. Its most recent acquisition is zappos.com, the biggest online shoe store. Zappos.com was remarkably bought out in an $847 million deal (Stone, 2009, par.3). This acquisition was one of Amazon strategic plan to maintain its position in online retail industry. Amazon has two key advantages over other brick and mortar stores, which are low costs (no need to hire local people to stock the shelves, cash the checkout stands, and hire local contractors or buy supplies from local businesses) and sales tax exemption ("Amazon's threat", 2011). Nonetheless, there are huge debates over Amazon sales tax exemption that it should impose sales tax charges to its customers. It is broadly known that the difference between Amazon and brick and mortar retailers is tax collection. Amazon simply throws the responsibility of paying sales tax to each individual customer to report their own purchasing tax, which becomes a loophole for taxpayers. For all this time, Amazon is shielded by a 1992 Supreme Court (*Quill Corp. v. North Dakota*, 504 U.S. 298, 1992) ruling that retailers could be required to collect sales tax only in states where they had some physical presence. So far, it has been collecting tax on five states, Kentucky, North Dakota, Washington, Kansas, and New York. However, Amazon has kept itself innocent in other states using warehouses owned by subsidiaries. It has been exempted from sales tax because its office is located in Seattle, Washington, no physical stores, and most of its warehouses are located on states that are free from sales tax. In other words, Amazon.com managed to play a legal advantage for its business model. As the states are having budget deficit, they want to collect every penny they can get by pushing a new legislature bill to enforce sales tax collection by internet retailers. In 2010, Amazon's revenue reached $34.2 billion and its share of U.S. book sales is nearing 20 percent ("Amazon protecting its (tax-free) turf in state", 2011) Even so, tax revenue is essential for the states and the amount of uncollected tax has been too much to be ignored. The states are not alone; brick and mortar retailers stand on the line supporting for legislature approval to enforce online businesses to collect sales tax. Therefore, Amazon.com should be completely enforced to collect sales tax because: 1) Loss of sales tax revenues by many states, 2) Tax avoidance business model, and 3) Loophole to omit sales tax reporting for taxpayers.

Firstly, Amazon.com should be enforces to collect sales tax because states are losing revenues from sales tax. The development of new technologies and digital processes has had a profound effect on the U.S economy as e-commerce sales have grown from $995.0 billion in 1999 to $2,385 billion by 2006 (Bruce et.al.,2009). The rapid growth in e-commerce affects state and local economies. States continue to lose sales tax revenues because they are unable to

track sales and collect taxes that are due. After the recession, the trend is people try to save money to make sure that they have enough to cover life expenses if they lose their job. In order to do that, they cut expenses, look for cheaper products, substitutes because why would people pay more for something that they can get for less? Also, the increase sales of e-commerce means less sales on physical stores and that means less sales tax to be collected. Illinois estimates that it is losing more than $150 million a year in uncollected taxes; California is losing an estimated $300 million a year. That would cover more than half the planned cuts for the University of California system ("Amazon v. the states.”). On October 2010, Texas sent a $269 million bill to the Amazon for four years' worth of taxes, citing Amazon's Texas warehouse, owned by a subsidiary ("Amazon v. the states.", 2011). States are losing tax revenues, in other words, those loss funds could have been spent on something that build the communities, such as new roads and subsidies for schools. If this is to be left out, the future of retailer business might be in the hand of e-commerce retailer because physical retailers are going out of business. On the line nationally is about $6.8 billion in annual sales taxes online retailers like Amazon do not tack on transactions. In Florida that would be $500 million in extra state business-to-consumer sales tax revenue in 2012, according to a University of Tennessee study. Long term, e-commerce sales are rising faster than retail sales and eroding the tax base.
Floridians already owe sales taxes on online purchases. But few pay unless it is collected by a retailer (Albright, 2011) The amount of uncollected tax is overwhelming in the United States. Therefore, enforcing Amazon to charge sales tax would help states get back up in this budget deficit.

Secondly, sales tax should be collected by Amazon because its business is created based on tax avoidance. Since the day it was found, Amazon depended on 1992 supreme court rule and has avoided sales tax collection. It placed its headquarter in Washington and focused its business on the cloud. As it grew bigger, it started to acquire and affiliate with other warehouses and retailers; cleverly, their physical presences are always on free tax states. In other words, they intended not to pay tax from the beginning which other and every retailers are required to do. Recently, it started collecting sales tax on Kentucky, North Dakota, New York, Kansas, and Washington. Also, the “no tax” privilege that Amazon has is their strategy to attract consumer and make them assume that Amazon always has the lowest price compared to the competitors. For example,

> “Buy the latest John Grisham book at Barnes & Noble, and you will pay sales tax. Buy it from Amazon and you will not pay any tax. But order the same book from Barnes & Noble’s Web site, and you do pay the tax because any company with operations in the state must collect tax. Actually, the buyer of the book from Amazon technically owes the tax to state, but Amazon is not required to collect it for them, according to a 1992 Supreme Court ruling” (Hansell, 2008).

Now, as Amazon is forced to collect tax on several states, such as Texas, it pulled out, closing a distribution center near Dallas and moving a 1,000-worker addition to Arizona. They have been avoiding tax in several other states where it has warehouses and assigning the ownership to a subsidiary. Recently, as Amazon seeks to open warehouses in South Carolina and Tennessee, it is also pressing for specific legislation to exempt it from collecting sales tax, using the jobs created by the facilities as leverage ("Amazon v. the states.", 2010). It attempts to threat the states that states would actually “losing” than winning. Amazon.com threats to drop its 10,000 California affiliates if the Legislature approves a tax on online sales (“Amazon's threat”, 2011). It is estimated that the result would be losing more sales tax and increase rate in unemployment.

Would Amazon really want to threat states like that for something that they are obligated to? Therefore, the legislation bill to impose e-commerce sales tax collection has to pass to deter Amazon's behavior and also to avoid future incident.

Thirdly, if Amazon is imposed for sales tax collection, then it could help closing the loophole in the sales tax reporting. All this time, Amazon is protected by the rule that says business may only need to collect tax from states where they have physical presence.

> "A 1992 Supreme Court ruling holds that a retailer must collect sales tax only if it has a physical presence in the customer's state. So a bricks-and-mortar retailer that also operates online, like Target or Macy's, will collect sales taxes. Similarly, if you go through Amazon.com to buy something from, say, Target, Amazon will collect taxes from you on Target's behalf. But Amazon and some other purely online retailers do not generally collect taxes on their own sales." ("Amazon and Sales Tax.", 2010)

The book could have been sold in California which help the local business survive and states with the tax revenue. Can you imagine if Amazon has one million transactions from California in one year? How much tax revenue does the state lose? It is projected that the state of California could collect up to $300 million annually from uncollected E-commerce sales tax. That tax is legally due, but if online retailers do not collect it, it is up to the individual buyer to voluntarily pay the tax, which rarely happens and is very difficult for states to enforce. In other words, sales tax has to be collected no matter what. If the states forcing Amazon to collect tax from customers, it could help states generates uncollected sales tax. It is not something that Amazon pay from their pocket; Amazon only needs to collect and hold the sales tax amount from its customers, and then transfer it to the states accordingly. It does not cost them anything.

Therefore, imposing sales tax collection on Amazon would force the customers to contribute to state tax revenue and close the loophole that has been left uncovered for a long time.

There are arguments from opposition that insist on 1992 supreme court ruling, they prove that they are not required to collect sales tax in the states where they do not have physical presence by closing warehouses and cutting affiliates in the disputed states. Moreover, Amazon is threatening California, who plans to file the same legislation bill, that California would suffered massive unemployment from affiliates and warehouses that Amazon is planning to close ("Amazon's threat", 2011). Originally, the 1992 rule was supposed to stimulate the growth of technologies, so that people would want to try and creating job opportunities besides physical stores which was popular back then. Meanwhile, after 20 years the Internet has transformed in a way that scarcely could have been imagined in 1992, diverting growing piles of cash from public coffers. The Board of Equalization estimated losses from unpaid use taxes at $1.145 billion in 2010. That becomes especially difficult to ignore when the state is staring at a $26.6 billion budget hole, and tallying the number of parks to close and teachers to can ("Amazon protecting its (tax-free) turf in state.", 2011). The law and rules have to be revised because everything changes. It is true that the 1992 rule says not to tax businesses with no physical presence in the states but, amazon.com has been very well known in the United States and its sales increased every year. However, it is the right time to revise the law. Smart people are out there looking for holes in the law to take advantage. The reason they fight for it is because no tax is their absolute advantage in the e-commerce industry. Therefore, the rule (*Quill Corp. v. North Dakota*, 504 U.S. 298,1992) has to be overturned into applying sales tax to sales regardless of the sellers physical presence.

So far, Amazon has been collecting tax on five states where physical presence has been proven that they are owned by Amazon. To be fair, it is better to start enforcing this sales tax collection onto Amazon on every state that incurs sales tax. If this is to be omitted, the states are going to be struggling even more because they could not get the revenue they should have gotten. Also, it is to maintain tax fairness and fair competition for other physical retailers because in the long run, they might not be able to survive competing with Amazon that could provide "cheaper" price. One of the solutions would be to enforce Amazon to collect sales tax to buyers based on their shipping location. For example, if buyers are located in California, Amazon has to charge California's sales tax, where at the end of the day, Amazon pays the tax back to the state of California; on the other hand, if buyers are located in free sales tax states, such as Oregon or Nevada, then they would not be charge for sales tax. The enforcement of sales tax collection to online retailers will maintain a fair market competition among any types of retailers, and it provides states with sales tax revenues that they should have generated to sustain public benefits for all citizens.

References

Albright, Mark. "RETAILERS PRESSURE AMAZON OVER TAXES." *St. Petersburg Times* [St. Petersburg, FL] 29 Mar. 2011: 3B. *Gale Opposing Viewpoints In Context*. Web. 29 Apr. 2011.

"Amazon and Sales Tax." *New York Times* 7 May 2010: A26(L). *Gale Opposing Viewpoints In Context*. Web. 21 Apr. 2011 http://ic.galegroup.com/ic/ovic/NewsDetailsPage/NewsDetailsWindow?displayGroupName=News&prodId=OVIC&action=e&windowstate=normal&catId=&documentId=GALE7CA225709736&mode=view&userGroupName=ranc95197&jsid=b89ee2c13df3960b7417cdd99b6b5628

"Amazon protecting its (tax-free) turf in state." *San Francisco Chronicle* 13 Mar. 2011: D1. *Gale Opposing Viewpoints In Context*. Web. 22 Mar. 2011.

"Amazon's threat." *San Francisco Chronicle* 7 Mar. 2011: A11. *Gale Opposing Viewpoints In Context*. Web. 3 May. 2011.

"Amazon v. the states." *New York Times* 18 Mar. 2011: A28(L). *Gale Opposing Viewpoints In Context*. Web. 24 Mar. 2011.

Bruce, D., Fox, W. F., & Luna, L. (2009, April 13). State and Local Government Sales Tax Reven ue Losses from Electronic Commerce .*The University of Tennessee Knoxville*. Retrieved April 17, 2011, from http://cber.utk.edu/ecomm/ecom0409.pdf

Eells, Scott. "Amazon.com Inc." *New York Times*. 20 July 2010. Web. 22 Mar. 2011. <http://topics.nytimes.com/top/news/business/companies/amazon_inc/index.html>.

"Electronic commerce." *Wikipedia, the Free Encyclopedia*. Web. 23 Mar. 2011. <http://en.wikipedia.org/wiki/Electronic_commerce>.

Hansell, S. (2008, February 13). Amazon Plays Dumb in Internet Sales Tax Debate - NYTimes.com. *Technology - Bits Blog - NYTimes.com*. Retrieved April 26, 2011, from http://bits.blogs.nytimes.com/2008/02/13/amazon-plays-dumb-in-internet-sales-tax-debate/

Kopytoff, Verne G. "Amazon Pressured On Sales Tax." *New York Times* 14 Mar. 2011: B1(L). *Gale Opposing Viewpoints In Context*. Web. 12 Apr. 2011.

Nichols, Martha. "The Benefits of Internet Business Are Overhyped." *Women's Review of Books* 18 (Feb. 2001): 15. Rpt. in *Does the Internet Benefit Society?* Ed. Cindy Mur. San Diego: Greenhaven Press, 2005. At Issue. *Gale Opposing Viewpoints In Context*. Web. 23 Mar. 2011

Stone, Brad. "Amazon to Acquire Zappos for $847 Million - NYTimes.com." *Technology - Bits Blog - NYTimes.com*. 22 July 2009. Web. 23 Mar. 2011. <http://bits.blogs.nytimes.com/2009/07/22/amazon-to-acquire-zapposcom/?scp=4&sq=zappos&st=cse>.