

Colorado considers new tactic to tax online sales

COLLEEN SLEVIN - Associated Press Writer - Associated Press

Colorado lawmakers are considering a new tactic to go after tax revenue from online sales. They want out-of-state online retailers to either start collecting the tax or send annual notices to their customers telling them to pay the tax themselves.

The proposal, which was set to be debated Monday in the full Senate, is part of an overall package of tax bills to cover a \$1.5 billion shortfall due to the recession.

The amended measure (House Bill 1193) would require retailers like Amazon.com Inc. and Overstock.com Inc. to either start collecting sales tax on March 1 or send notices to their customers stating how much they spent with them in the previous year and telling them how much they owe in state sales tax.

Technically, everyone who buys items tax-free online is supposed to file a form with the state at least once a year and pay the tax if the purchase would have been taxed by an in-state company. But hardly anyone knows that or does it.

To help enforce the law, the bill would allow the state Department of Revenue to ask online retailers with annual sales of more than \$100,000 to provide a list of summarizing what each Colorado resident bought in the previous year.

Opponents say that could violate the privacy of customers if retailers have to list details of what books, for example, were purchased. But Phil Horwitz, the department's tax policy director, said he thinks most retailers would simply choose to collect the tax to avoid the more unpleasant option of having to send tax notices to their customers.

As online sales have grown and state tax revenues have dropped, at least three other states — New York, North Carolina and Rhode Island — have tried to get out-of-state retailers to start collecting taxes. The U.S. Supreme Court has ruled that only companies with a physical presence in a state have to collect taxes. However, these states have argued that people within their borders who earn money by linking customers to online stores — called affiliates — amount to stand-ins for those out-of-state retailers and therefore require the online stores to collect taxes on all sales they make in the state.

Colorado was headed that same way until the state's approximately 4,200 affiliates — many of them small, home-based businesses — began warning lawmakers that online retailers would just cut ties to them, as they had done in those other states, causing them to go out of business.

The bill was changed earlier Monday to take affiliates out of the equation and instead focus on going after the retailers directly.

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The bill has been backed by retailers like Target Corp., The Home Depot Inc. and Tattered Cover, which say they are at a disadvantage because they have to charge sales tax on their online orders since they have stores in Colorado.

Sponsor Sen. Rollie Heath, D-Boulder, said lawmakers should help protect those stores, which also support the state with their property taxes.

"There's no new tax. We're just collecting what's already on the books," Heath said.

However, the Colorado Retail Council, the trade group that represents many large stores, isn't sure the new approach will work.

"I hope they can make it happen," said Chris Howes, the council's lobbyist.

Amazon.com opposed the previous bill, and a representative of the Seattle company didn't immediately return a telephone call seeking comment on the amended bill.

Sen. Greg Brophy, R-Wray, doesn't think online sellers will give in.

"Amazon is not saying uncle. Amazon is saying something that starts with an 'f' and taking them to court," predicted Brophy, who is concerned that customers' privacy could be violated.

Horwitz acknowledges a court challenge is likely but he thinks the state would prevail.

If the bill becomes law, fiscal analysts expect it will bring in \$4.7 million in the first full year of collections. It won't be pure profit though. The state estimates it will have to spend \$40,000 in the first year to pay for the expected lawsuit and \$91,584 to pay for two employees — one to investigate retailers and build a database to track information and the other to help with policy and legal research to respond to the potential lawsuit.

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