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Isaac M. O'Bannon • Sep. 05, 2014

Not too long ago, I wrote about [“the problem with online sales tax”](#) on our blog [www.CPATechViews.com](http://www.CPATechViews.com). There's a long-reaching history with states wanting to get revenue from sales to their residents when the merchant isn't in that state. It started long before the internet (think mail order catalogues), but e-commerce has certainly aggravated the situation, as have the budget problems faced in many states.

It always comes down to nexus- whether a merchant has a physical presence in a jurisdiction. And so, over the past few years, the states have been trying various ways to redefine nexus, and the term “physical presence” as well.

In its latest effort, [California has taken an approach](#) similar to one recently taken by New York: Redefining “physical presence” to include merchants who have affiliates there. [Amazon](#) is not happy, and calls the law unconstitutional, because they say they don't have a physical presence there (the company is headquartered in Seattle, Washington, and maintains its servers elsewhere, as well.) But quite obviously people in California are buying stuff from Amazon. If these were the only factors, it would be pretty clear that the consumers would be responsible for self-reporting use tax (good luck there).

But the issue comes down to affiliates of Amazon... not major suppliers or big name companies you may have heard of, but often blogs and personal and business websites that include links to Amazon account. If it were an eBay situation and the affiliate/person selling their own product is located in California, there's a case to be made that sales taxes should be collected. But Amazon sells its own products- and [its affiliate program](#) is simply made up of mostly small websites/blogs/etc that include links to the products for sale on Amazon, and for which they receive what amounts to a commission if a sale results from that click-through.

So, should Amazon be responsible for collecting and reporting sales taxes in

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Will this happen anytime soon? Although states are increasingly promoting their autonomy under states rights arguments, I think the most efficient way to resolve this would be for a national program. While the [Streamlined Sales Tax](#) does offer this in a way, it is voluntary and can't be enforced across state lines very easily. I think it will eventually take the consent of the states and their federal representatives to agree to a national solution. Not all states would see full revenue recognition, but I think all of them would end up bringing in more than they currently do. Of course, this solution wouldn't make Amazon or the other large online retailers happy, either.

Oh- and a reminder: Our annual review of sales and use tax compliance systems will be in the upcoming August issue of CPA Practice Advisor.

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