

# Boston Business Journal

## It's not just Amazon: Mass. goes after online taxes

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Last week, the Baker administration hauled Amazon.com Inc. to court over its refusal to share tax records, spurring debate about whether the move would hurt the state's chances of landing Amazon's second headquarters.

But the administration's aggressive action toward online retailers isn't limited to the largest company in that field. In recent months, Massachusetts has established itself as a national leader in states' fight to extract taxes from the industry. The administration says it's missing out on over \$30 million in annual revenue.

As of Oct. 1, out-of-state online retailers are responsible for paying sales taxes to Massachusetts, thanks to a new Baker administration rule. Few other states have made such a move. The Bay State is claiming online vendors' presence on customers' computers and smartphones gives it license to tax them, a novel theory that could ultimately go before the U.S. Supreme Court.

What's received less attention is another recent move that, on its face, seems like a friendly gesture. In August, Massachusetts joined more than 20 other states in offering amnesty to online vendors that haven't paid their taxes in years past. Businesses have until Oct. 17 to come forward.

Most states that have made the offer are offering total forgiveness. They're saying, register with us now, and we'll forget about the taxes you haven't paid.

Massachusetts is not making that offer. Instead, it wants online retailers to fork over taxes they haven't paid for the past three years, plus interest.

### Treasure hunt

It's not that Gov. Charlie Baker has any particular animus toward Internet sellers. It's that the state is in deep need of revenue, and online vendors are a major source of untapped tax dollars.

"They're counting on this money. They need the tax, and they need the interest," said Morris Robinson, a Boston tax lawyer and accountant.

It's difficult for the administration to collect much of that money, however. If a business doesn't have a physical presence in Massachusetts, it can argue it's protected from taxation under a 1992 U.S. Supreme Court ruling.

Some vendors don't have a location of their own in Massachusetts, but their products are stored here by another business, like Amazon, before they're sent to consumers.

In that case, if the company's products are stored in Massachusetts for even a day, the state can argue that it's owed income tax from that company for the entire year, in addition to sales taxes for in-state purchases.

There's one problem, though. It's hard for the DOR to know which vendors are storing products in-state. That's why the state is demanding that Amazon share records showing the third-party products it stores in Fall River and other facilities. It's also why the state is trying to entice vendors to come forward by offering amnesty.

#### Fights ahead

The Baker administration can expect pushback. Amazon has yet to respond to the court action, but said in its most recent quarterly report that it planned to "vigorously" defend itself against a similar lawsuit filed by South Carolina.

Similarly, industry groups have not yet filed a legal challenge to the new rule requiring out-of-state retailers to pay sales taxes. However, two groups sued over an earlier, similar proposal, with one vowing to sue again.

Online vendors have until Oct. 17 to join the amnesty program, which is overseen by the Multistate Tax Commission. To date, 158 vendors nationwide have signed up, MTC official Richard Cram said this week. He expects another 150 or so more.

That would still represent less than 1 percent of the vendors that contract with businesses such as Amazon to store and ship their products, according to Cram. The MTC initiative only scratches the surface of the estimated \$2 billion in uncollected sales taxes on purchases made through the Amazon program alone, he said.

That means if Massachusetts wants to tax businesses that store their products in the state through a third party, it's going to have to extract it from them involuntarily, for the most part. There, too, the state could find itself facing legal challenges. Vendors in such programs don't necessarily have control over where Amazon, for instance, stores their goods, said Paul Graney, the state and local tax leader in Marcum's Boston office, so they may argue taxation is unconstitutional.

—Greg Ryan