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*Amazon.Com LLC v. New York State Dept Case Brief*

Facts:

Amazon has been operating a retail internet business which sells to New York, as well globally. Amazon does not have offices in New York, nor does it have any employees. Amazon does; however, have an “associate” program, whereby participants are compensated by providing links on their own websites. Amazon compensates associates, including those residing in New York by “paying "a percentage of the proceeds of the sale" (Mastro Aff., Ex. 1, at ¶ 23)” (*Amazon.Com LLC v. New York State Dept*). Sales to New York customers originating from New York-based Associate referrals constitute less than 1.5% of Amazon's New York sales (Comfort Aff., at ¶ 6). Amazon is questioning NY Tax Law §§ 1131[1], 1105 and the related requirement whereby amazon must now collect sales tax from New York sales.

Law:

Amazon, LLC is questioning the basis of NY Tax Law §§ 1131[1], 1105 which requires the collection of sales tax from out of state vendors that contractually agree to pay commissions to New York residents for referring potential customers to them, provided that more than $10,000 was generated from such New York referrals during the preceding four quarterly periods. Amazon affirms that more than $10,000 was generated. Once the Commission-Agreement Provision was enacted, Amazon began collecting taxes from its New York customers under protest (Comfort Aff., at ¶¶ 14-15). Amazon opposes the collection of taxes under the basis that” "violates the Commerce Clause of the United States Constitution, both facially and as applied to Amazon, because it imposes tax collection obligations on out-of-state entities who have no substantial nexus with New York" (Verified Complaint, at ¶ 3[b]).”

Analysis:

Amazon’s complaint was dismissed in its entirety because the entity failed to state a cause of action (CPLR 3211[a][7]). Therefore, even “accepting all the facts alleged to be true, there is no basis upon which Amazon can prevail” (*Amazon.Com LLC v. New York State Dept.*) Citing the commerce clause, “substantial nexus” was established due to existing presence, which need not be substantial. “Amazon acknowledges, physical presence "can be actual or imputed based on the in-state solicitation of sales by an employee, agent, or independent contractor of the retailer on its behalf" (Amazon's Memorandum of Law ["Amazon Mem"] at 14) (*Amazon.Com LLC v. New York State Dept*).)

Amazon also claimed that the Commission-Agreement Provision "violates due process by attempting to camouflage its blatant violation of the Commerce Clause as a statutory presumption'" (Amazon Mem at 30) (*Amazon.Com LLC v. New York State Dept*).)) New York argued that the Constitutional challenge does not apply as there is a legislative presumption that there is a rational connection of ultimate fact and the law not be on a purely arbitrary basis. Also the court dismissed the due process challenge as “vague and standardless.”

Conclusion:

Internet sales poses a new challenge for determining “substantial nexus” as defined under *Quill Corp v. North Dakota*. As for now, other companies such as Overstock are challenging the New York precedent, as well as terminating their version of an associate program ([^](http://en.wikipedia.org/wiki/Overstock.com#cite_ref-register_23-0) [Overstock and Patrick Byrne sue New York over Amazon Tax](http://www.theregister.co.uk/2008/06/02/overstock_sues_new_york/), by Cade Metz, The Register, 2 June 2008). The establishment of local taxation under the Commerce Clause and subsequent rulings has defined an operable framework. Online and out of state retailers, however, arguably contribute to the tax-gap of states. *Amazon.Com LLC v. New York State Dept.* represents the wide net and broad interpretation of establishing nexus that is sure to reverberate through other states, as tax collection relative to state budgets are low.

An alternative approach for states attempting to collect sales tax could be stricter implementation of use tax rules. The burden of sales tax compliance may be shifted to the individual consumer of products, as they are the responsible party when purchasing out of products out of state. What will states implement next in the blatant grab for any tax dollar that could be received? California has implemented sending letters to thousands of businesses to encourage use tax compliance. The level of tax compliance and related administrative costs is only increasing. I fear the day when I attend a flea market and there is the Board of Equalization at the exit, examining my goods, and demanding the associated tax due. The pressure of state tax collectors to collect is immense, as budget deficits continue to increase exponentially. I will be interested to see the creative solutions that will be implemented and the effective tax rate / burden that will be passed to the consumer.