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CFO JOURNAL

E-Retail Faces Patchwork of State Sales-Tax Laws

Finance Chiefs' Hopes for Change Fade

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By **BRYAN KEOGH**
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Bloomberg News

Finance executives at online retailers face an increasingly complex patchwork of state rules to collect sales taxes as hope fades for an overarching solution from Washington this year.

Discount retailer [Overstock.com](#) Inc. OSTK -2.64% has invested \$1.3 million for special software for a handful of current states where it operates and expects to spend

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as much as \$100,000 for each additional state where it is forced to collect taxes. AmeriMark Holdings LLC, a catalog retailer of everything from apparel to health-care items, has ended relationships with affiliate marketers in 17 states that passed tax-collection laws.

This month, Florida became the 21st state where [Amazon.com Inc.](#) (AMZN +1.49%) collects sales tax, ahead of the opening of two distribution centers there. The Seattle-based retailer loses an estimated 9.5% in revenue in the states where it collects taxes because customers turn to rivals that don't, according to research released last month.

And tens of thousands of other e-tailers are being affected, from established companies, such as online jewelry retailer [Blue Nile Inc.](#), (NILE -1.12%) to small businesses selling products across state lines through [eBay Inc.](#) (EBAY -0.71%) and other online platforms.

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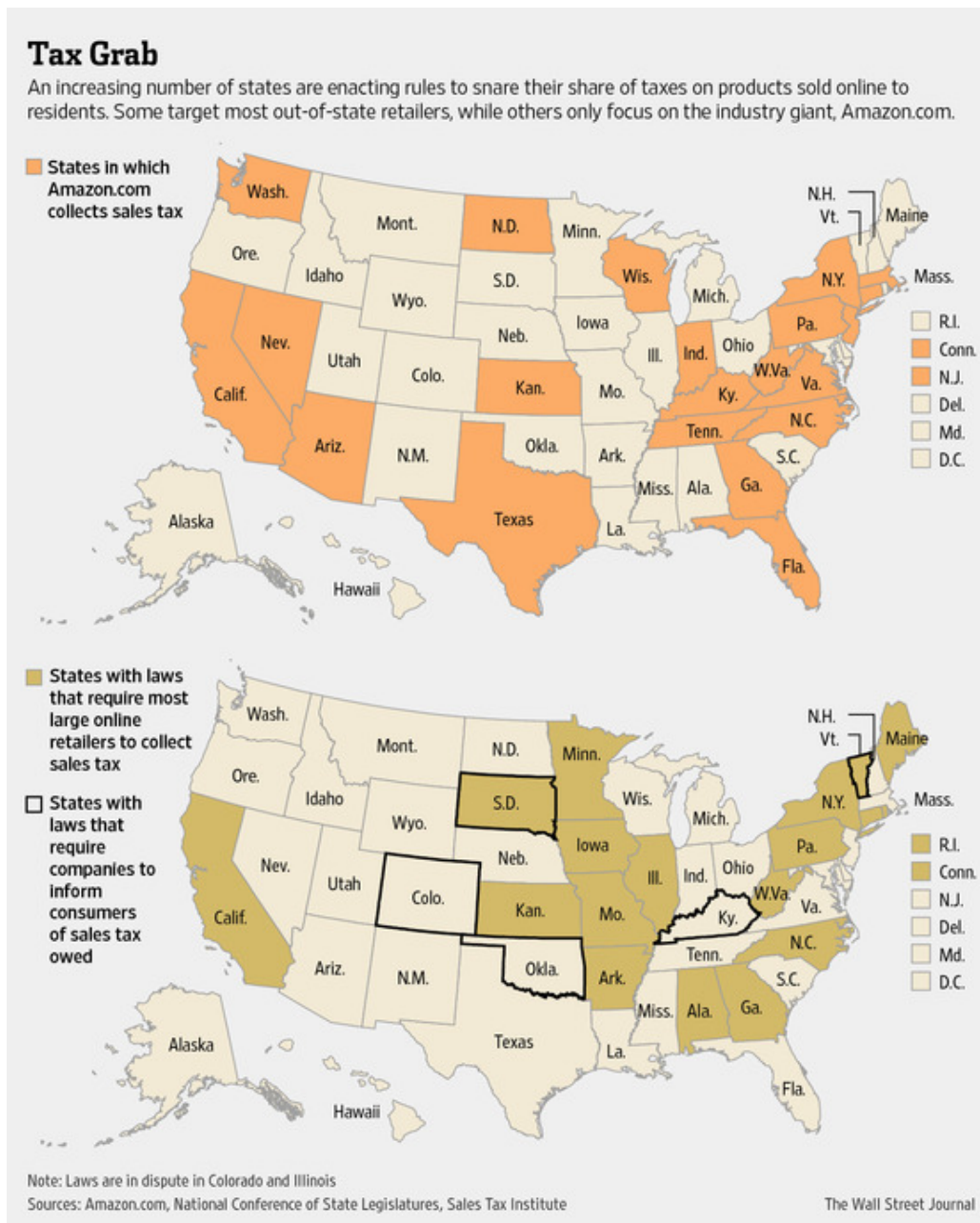
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"Other retailers hit by sales taxes would suffer a similar drop in sales," said Itzhak Ben-David, an associate professor of finance at Ohio State University and co-author of the research report. "If you need to collect a sales tax, you would be at a disadvantage to a retailer that doesn't."

Current federal law requires a retailer to collect taxes only in states where it has a physical presence, such as a store or warehouse. Consumers are supposed to report any uncollected sales duties with their income tax, but few do.

Online retailers have become a juicy target for cash-strapped states looking to snare a larger share of the \$263 billion e-commerce market. More than 20 states have passed so-called Amazon laws to expand the definition of physical presence and force more e-tailers to collect the taxes or inform consumers how much they owe.

Separately, Amazon has agreed to collect taxes in Florida and a host of other states where it has built distribution centers.

Amazon says the tax laws don't affect its ability to set low prices and that it favors federal legislation to simplify the sales-tax landscape.

In Washington, the House Judiciary Committee discussed a proposal in March that would require all businesses to tax interstate sales based on where the seller is located. The approach's proponents argue that is essentially how brick-and-mortar retailers operate now. States would then periodically return a share of the taxes to other jurisdictions.

But that idea is the opposite of the bill passed a year ago in the Senate, which would force companies selling at least \$1 million of goods a year to collect taxes based on the purchaser's location.

Opponents of the Senate bill argue it would burden small businesses, forcing them to comply with almost 10,000 state and local tax authorities.

"Main Street businesses are going to get smacked right between the eyes" if the Senate bill becomes law, said Overstock Chairman Jonathan Johnson. "Ultimately Overstock believes Congress should step in and provide a federal solution so there's not a patchwork."

Overstock, which is based in Salt Lake City, has ended relationships with affiliate marketers in 13 states to avoid their sales-tax-collection requirements, Mr. Johnson said.

Joe Albanese, chief financial officer at Cleveland-based AmeriMark, which operates 10 catalogs and seven websites, said the Senate legislation would compel the company to calculate each state's rates, tax holidays and exemptions. And then there is the cost of updating software, integrating systems and hiring staff to check dozens of additional tax returns, which Mr. Albanese estimated would cost the company \$500,000 a year.

"I'm opening up to audits from 50 states," Mr. Albanese said. "The states are looking for revenue. If you're going to start filing a return, they're going to want to come in and audit."



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But the worst part, he said, would be the law's potential impact on sales.

AmeriMark, which has about \$400 million in annual revenue, still gets about 35% of its orders through the mail, typically from older customers. Ensuring that a customer adds the right amount of sales tax to a mail-in order would be difficult, Mr. Albanese said, and the confusion likely would hurt business.

He says finance chiefs at any company that might be affected by an Internet

sales tax should be doing their own estimates and figuring out what it will take to comply.

With about 11 weeks until Congress's summer recess and midterm elections in the fall, CFOs' hopes that a solution will be found soon are receding.

Until a federal law is passed, more states are expected to demand that online retailers collect sales taxes on their behalf.

New York was the first to pass a law, in 2008, which became the template for other states. Amazon and Overstock challenged the law's constitutionality, but in December the Supreme Court declined to overturn a New York ruling upholding it, allowing states to continue pursuing the taxes from online retailers. Since the law passed, New York has collected about \$500 million in taxes from online and remote retailers, according to its Department of Taxation and Finance.

States generate about 32% of their revenue from sales taxes, which are dwindling as more retail activity gravitates online, making the burgeoning e-commerce market an irresistible target, said Max Behlke, manager of state-federal relations for the National Conference of State Legislatures.

"When you're not able to collect your largest revenue stream and it's evaporating, that's a problem," he said. "That's why there needs to be a federal solution...States are going to keep finding different ways to collect this."

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