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New York State: Court's Sales Tax Ruling a "Major Victory" for Main Street

By [Dave Grogan](mailto:dave@dave@bookweb.org) on Wednesday, Nov 10, 2010

The New York State Department of Taxation is hailing an appeals court's recent decision that the state's affiliate nexus law is, in fact, constitutional as a "major victory."

On Thursday, November 4, the New York State appellate court dismissed claims by Amazon.com and Overstock that substantively challenged the constitutionality of New York State's sales tax fairness law. The court concluded that the State's new law is constitutionally sound "on its face" and is legal and enforceable with respect to Internet retailers whose business practices bring them within the scope of the new law.

"This is a victory not only for the state, but for all of its 'Main Street' retailers who employ New Yorkers, pay property tax, and contribute in other ways to the local community," said Jamie Woodward, acting commissioner of the Department of Taxation, in a statement. "Until this law was enacted, some Internet retailers had an unfair price advantage because they did not collect sales tax for the state." In a release, the Department of Taxation referred to the law as one of "national significance."

ABA CEO Oren Teicher called the November 4 decision "significant" and said, "The New York State appeals court has upheld what we have long contended – namely, that online affiliates are sales agents and, as such, represent a physical presence in the state that requires such companies as Amazon.com to collect sales tax. The court's ruling makes this clear. We fully expect this decision to have significant and positive impact on our efforts in other states. We could not be more pleased with the court's decision."

"The appeals court decision is a very important victory for New York," said Michael Mazerov, senior fellow at the [Center on Budget and Policy Priorities](http://www.cbpp.org/) (CBPP). "The key issue is that the court held that the law is constitutional. That should, and I believe will, encourage other states to copy it. If other states do copy it, they can level the playing field for many of their in-state merchants, because most of the large Internet retailers operate affiliate program. "

The court ruling did order that two of Amazon.com and Overstock's claims be reinstated for further proceedings to allow the companies the opportunity to avoid sales tax collection by arguing that their online affiliates are not soliciting business and that the affiliates' activities are not "significantly associated" with the companies' ability to do business in New York. However, the opinion suggests that existing evidence demonstrates it will be difficult for the companies to factually support such contentions in order to avoid sales tax collection. Amazon.com currently collects sales tax on New York State sales. Overstock discontinued its affiliate relationships after the sales tax fairness law was enacted.

"The law inherently provided Internet retailers with an opportunity to demonstrate that their affiliates don't engage in any in-state solicitation, so the fact that Amazon will now have a chance to do that isn't really a surprise," said Mazerov.

Judge James M. Catterson dismissed the idea that online affiliates are just advertisers. He stressed that Amazon's online affiliate program is not designed for the passive advertiser, "but seeks growth by reliance upon representatives who will look to solicit business." He wrote: "The majority concludes that, the statute in question would be valid 'when a New York representative uses some form of proactive solicitation which results in a sale by Amazon, and a commission to the representative; and the representative has an in-state presence sufficient to satisfy the substantial nexus test.'"

Under New York State's Internet Sales Tax provision, the state collected about \$70 million for the fiscal year 2009 - 2010.

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