

Michigan's New Internet Sales Tax Takes Effect

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A recent stroke of Michigan Gov. Rick Snyder's gubernatorial pen has changed everything when it comes to Internet sales and how they are now taxed by the state.

On Jan. 15, Gov. Snyder signed into law what has been termed the "Mainstreet Fairness Act." The new legislation, which is also referred to as the "Amazon Tax," a reference to the extremely popular consumer products website Amazon.com, requires that remote sellers (Internet sellers) collect Michigan sales and use tax derived from sales made to Michigan residents.

The purpose of the law, PA 553-554, is to create more competition between local retailers and remote sellers with respect to tax collection. Currently, Michigan residents are legally obligated to report all Internet purchases on their tax returns as a use tax which is generally ignored. This law will allow the state to collect currently existing, but unpaid, use tax liabilities estimated to amount to tens of millions of dollars. The new authority is expected to impact sales on and after the effective date of the Act.

The new law creates a tax collection requirement for remote sellers that meet one of two new statutory criteria. The first test, often called "click-through" nexus, imposes a presumptive collection obligation if a remote seller has representatives located in Michigan who facilitate sales by using click-through links that can be accessed on the Internet by Michigan purchasers. The second test, the remote seller is presumed to be obligated to collect tax on sales to Michigan consumers if the seller has an "affiliate" located in the state.

The new "Amazon Tax", will not affect small remote sellers from the tax collection obligation. It contains a *de minimis* exception for those businesses that have less than \$50,000 in gross receipts during the immediately preceding 12 months. Although the new law creates two presumptions, they are rebuttable. For a remote seller to rebut the presumptive tests outlined above, the seller must establish that it is not availing itself of the Michigan market in a manner that is sufficient to create the minimum contacts required under the Constitution. *Quill v North Dakota*, 504 US 298.

As briefly mentioned above, this is not a new tax, but rather, a shift from making the remote seller the responsible party instead of the consumer. The idea is to create parity between the remote seller and the in-state sellers (who already collect the sales tax at the point of sale). Notwithstanding these new collection obligations, Michigan purchasers owe a six percent use tax on all out-of-state purchases that they make online. The law simply seeks to place the burden of collection on the remote seller, instead of the purchaser.

MICHIGAN'S NEW INTERNET SALES TAX TAKES EFFECT Cont.

The new collection obligations are quite similar to laws in New York, Arkansas and many other states. Plunkett Cooney will continue to monitor new tax developments as they occur.

If you have any questions about how this or any other federal or state tax law affects you, please call the firm.