



## North Carolina Law Life

### Amazon v NC Taxman: Round Two

**By: Donna Ray Chmura. *This was posted Tuesday, April 27th, 2010***

[Amazon.com](#), the Seattle-based online retailer, recently filed a [lawsuit](#) against the North Carolina [Department of Revenue](#), trying to fend off the state's request for customer names, addresses and purchases.

Amazon claims this request violates its customers' First Amendment rights and is an invasion of privacy. North Carolina wants the information so that it can collect use tax on purchases made by its citizens. [The Department of Revenue [indicated](#) that it never asked for titles, and hopes attorneys for the parties can work things out.]

As I blogged [previously](#), under current state law, if a retailer does not have a brick-and-mortar location, employees or another "nexus" with the State, it does not collect sales and use tax on an online transaction. Instead, the buyer is supposed to self-report the purchase and pay the sales and use tax when he files his income tax return. As you might imagine, few buyers actually self-report and pay this tax, and the state is losing sales tax revenues.

The NC General Assembly has two bills in the respective finance committees ([House Bill 558](#) and [Senate Bill 487](#)) that would shift the collection burden to the retailer, who would collect the sales tax at the time of purchase and remit it to the state.

The legislation clarified, among other things, that an affiliate relationship is a "nexus" with the state that would allow Amazon to collect sales tax rather than have citizens self-report. Certain retailers, including Amazon, use "affiliates" who have various ads on their web sites (the web sites are unrelated to Amazon). If someone clicks through to Amazon from the affiliate web site, the affiliate earns a commission.

Amazon reacted by terminating its affiliate program in NC. Apparently, the Department of Revenue has sought records from Amazon so it can collect the use taxes directly, and Amazon takes exception.

My take is that there is a lot of posturing on both sides. Amazon is not as concerned with protecting customer data/First Amendment rights as it is with preventing other states from following suit. It will take additional personnel at Amazon to track, collect and remit sales tax, yet other retailers with a physical presence here do it

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(Borders or Wal-Mart for example). And the State of NC certainly does not need to know WHAT book you purchased, only the amount of purchases in any given year.

What do you think? How far should the state of NC go to collect its taxes?

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