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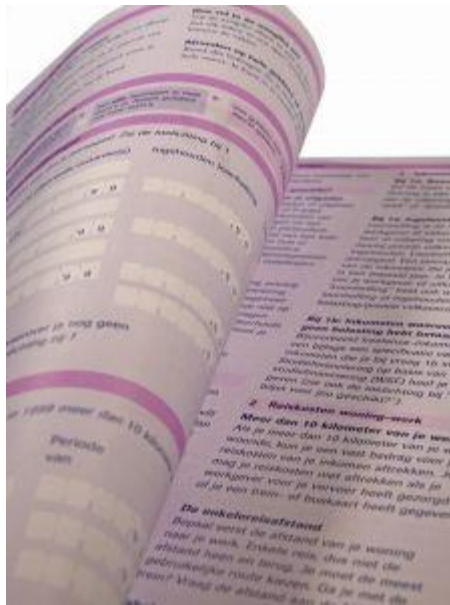
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Retailers Look to Challenge Colorado eCommerce Tax

by: Tremaya Reynolds

In response to the recent passage of a Colorado law requiring all online retailers to notify the state of purchases made by Colorado residents, two major retail groups are poised to take action. The Direct Marketing Association in conjunction with the American Catalog Mailers Association is urging their members and supporters to donate to litigation efforts that will challenge the legality and legitimacy of the law which took effect on March 1, 2010.

Facts about the New Law

Included in a budget package that was signed by the governor of Colorado, the bill not only requires out-of-state retailers to report purchases made by residents, but also demands the name, address and purchase amounts made by every customer in Colorado. Furthermore, retailers must also send residents a first class letter by January 31 of each year, informing them of the purchases they made during the prior year, as well as their obligation to pay sales tax in accordance to them.

Revenue Builder or In-State Protection?

Opponents of the bill view it- as well as other recent legal ecommerce tax rulings- as a dangerous legal precedent that is in direct odds with several business and consumer laws. President and Executive Director of the American Catalog Mailers Association, Hamilton Davison, argues that the state's attempt to enforce this law is clearly based on economics and not the protection of in-state retailers who pay property taxes, as cited by the bill's sponsor, Democratic Senator, Rollie Heath. Heath also states that the bill is not new and its recent enforcement is simply an attempt in "...collecting what's already on the books."

Opponents Refute Colorado's Legality

Davison believes that like so many other states, Colorado is looking to make up for shortfalls in state revenue and cites "out of state companies who do not use any state services and who do not elect state politicians are easy targets." As a result, the ACMA and DMA have hired attorney and state tax expert, George S. Issacson, to head their legal coalition.

In addition to potentially violating consumer privacy laws in Colorado, also at issue is the legality of the law under the 1992 US Supreme Court case, *Quill Corp v North Dakota*, in which it was found that retailers do not have to remit state tax in states where they do not have a physical presence. Others note that the law may also be in violation of the Commerce Clause of the US Constitution which authorizes Congress to regulate interstate ecommerce.

Is This Just The Beginning?

Colorado's ecommerce taxation law is not the first of its kind. Several other states including New York and North Carolina have also passed laws which require ecommerce retailers to report sales taxes if they work with online affiliates located in those states, while both California and Tennessee are considering passing similar laws. The Multistate Tax Commission, an organization that directs state policies governing taxation amongst companies who operate across state lines, is also looking to use Colorado's bill as a template for other states.