



## **Amazon is Doing What?**

by Timothy Larason

I wrote in June of 2016 that states could not directly require all out-of-state internet sellers, those without in-state physical presence, to collect their sales tax without Congressional or Supreme Court action. This is the result of the *Quill* decision in 1992. So why has Amazon, the largest internet seller, decided to begin collecting sales tax for Oklahoma and for every other state that levies a sales tax?

I think this is a result of a federal court decision that upheld state laws that require such sellers to annually file “1099” type returns showing how much sales tax their customers technically owe their own state. These annual returns would be a new complication for internet sellers whose are already set up to collect sales tax for states where they have a physical presence. Once set up with access to an online database that shows the correct rate based on the recipients nine-digit ZIP code, the programs can add other states with a simple code change.

Colorado led the way with the annual report requirement in 2010. It was challenged by the Direct Marketing Association in the courts and went to the Supreme Court twice. Our own 10<sup>th</sup> Circuit issued the final decision, *DMA vs Brohl*, that the report requirement was not an undue burden on interstate commerce in violation of the Constitution. In December the Supreme Court declined to get involved again and the decision became final. Judge Gorsuch in the Tenth Circuit predicted other states would follow Colorado’s lead. At least eight states including Oklahoma did exactly that. Amazon could see that soon all states would soon have similar requirements. So it went national April 1.

It is reported Amazon represents a high percentage of internet sales. The total internet sales tax in Oklahoma has been estimated at \$2 million per year. Unfortunately the increase in collections cannot be added to the state budget until the money actually arrives. Amazon is reportedly the largest internet seller in the U.S.

Will other internet sellers begin to voluntarily collect? I predict yes. These developments may also make it easier for Congress or the Supreme Court to just throw out the physical presence test.