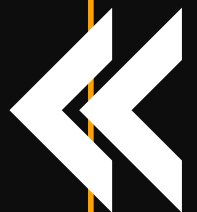




Amazon gets a billion-dollar tax break from a California court



Amazon gets a billion-dollar tax break from a California court

According to the California Court of Appeals, a tax case- *Grosz vs DTFA*, on January 9, 2023, favored the latter with its final verdict, this could cost Californian businessmen billions of dollars in unpaid sales taxes. It concerns California's sales tax, which all retailers, whether brick-and-mortar or online, are responsible for collecting. It has long been a state regulation that extends the collection obligation to consignment shops, whether they operate in physical storefronts or online, whose owners hold third-party property, but control all aspects of the sale. Amazon, on the other hand, gets benefitted with this development saving a hefty amount of money as a tax.

Amazon fulfills orders for products from third-party merchants through a program called Fulfillment by Amazon (FBA). As stated in the First Amended Complaint (FAC), the state agency, which is responsible for collecting sales and use taxes is the California Department of Tax and Fee Administration (DTFA), but Amazon has historically not collected sales and use taxes from its FBA program customers. Under section 526a, plaintiff filed a taxpayer action seeking a declaration that the tax authority (DTFA) "has a mandatory duty" to evaluate and collect sales and use tax from Amazon. Plaintiff's DTFA, Amazon entities, and Amazon entities were all demurred to the FAC. Responses' demurrers were sustained without leave to amend.

In its decision, the Second Appellate District upheld the trial court's order sustaining Respondents' demurrers. It was explained by the court that neither statute nor regulation conclusively indicates that the DTFA must pursue Amazon for sales tax and use tax related to FBA transactions. Section 6015, subdivision (a) of the Revenue and Taxation Code makes clear that the DTFA may consider multiple "persons" as "retailers" for the purpose of a single transaction. Based on the statutory framework of the Sales and Use Tax Law and the statutes conferring DTFA administration authority over that framework, the court concluded that determining whether a taxpayer qualifies as a retailer under the law of Sales and Use Tax is not a ministerial responsibility but a discretionary one.

Background

Legislation to tax online sales was introduced by California representative Nancy Skinner on January 19, 2011. Online sellers with affiliates in California are required to collect sales tax on purchases made by state residents. According to Skinner, AB153 could generate between \$250 million and \$500 million in new revenue each year.

It was reported in 2011 that Amazon threatened to terminate roughly 10,000 affiliates located in California if legislation that would consider them as nexuses for sales tax collection passes. Affiliates who refer customers to Amazon in California will no longer receive commissions. Amazon.com was boycotted by a coalition of California non-profits over its opposition to rules that would require it to collect sales tax.

Amazon has at least seven operations in California, according to the American Independent Business Alliance.

During the opening of Amazon's first distribution center in California in September 2012, the California state sales tax agency (then the California State Board of Equalization, now the Department of Tax and Fee Administration (DTFA)) disagreed with Amazon, saying that Amazon's consignment sales were subject to tax. A day later, the agency reversed itself, stating that Amazon's obligations should be borne by businesses that supply their products through its Fulfilled by Amazon program. Small business owners received surprise back tax bills that forced them into bankruptcy.

In 2019, Stanley Grosz, owner of a Fresno camera store, filed a taxpayer lawsuit under California's "taxpayer waste" law against the CDTFA (California Department of Tax and Fee Administration) and Amazon, alleging that Amazon was owed the tax under the relevant regulations and a law prohibiting business entities from evading sales taxes when a number of corporations act together as retailers or agents. As of Oct. 1, 2019, the state passed the Marketplace Facilitator Act, requiring the collection of tax from FBA sales transactions. The trial court dismissed the suit, ruling that the agency has discretion to determine who the retailer is. It said the CDTFA had the discretion not to collect taxes from Amazon and instead pursue third-party merchants on Amazon's platform with back sales taxes "as a result of the language of several interrelated statutes."

California's Court of Appeals affirmed the trial court's ruling, holding that, even if Amazon was required to pay the tax under Regulation 1569, it did not have to collect it from Amazon.

During 2019, California State Assemblyman Bill Brough announced plans to introduce special economic incentive legislation which could give Amazon billions of dollars in tax breaks over the next decade. "This legislation shows that California is serious about reshaping its image as a non-business friendly state and can accommodate the 50,000 new high-paying jobs Amazon wants to create," said Brough. As many as 50,000 people would be employed at Amazon's headquarters, making an average salary of \$100,000.

With the reestablishment of the California Legislature's "Capital Investment Incentive Program" (CIIP), local governments will have the tools needed to attract large facilities to invest and locate in their communities by allowing a property tax abatement for up to 15 consecutive years. Furthermore, Amazon would be eligible for an expanded hiring credit in Orange County equal to 17/4% of wages paid to full-time California employees.

For queries, please contact



Shishir Lagu

Partner,
US Tax Services



markets@knavcpa.com



Neerali Shah

Manager,
US Tax Services



www.knavcpa.com

India Offices:

Mumbai

7th floor, Godrej BKC, Bandra Kurla Complex, Mumbai 400051

Bangalore

306, 3rd Floor, Embassy Square, 148, Infantry Road, Bangalore 560001

Other offices: USA | Singapore | Canada | UK | Netherlands



PARTNERS BEYOND BOUNDARIES

KNAV International Limited is a global association of independent firms. Its key objective is to serve accounting and consulting member firms with an internationally recognized presence as a charter international umbrella organization experienced in all phases to offer a complete suite of public accounting services which includes set up, accounting, assurance, taxation, international transfer pricing, global risk consulting, and business advisory services. It also aims to facilitate seamless business growth through mergers and acquisitions. In assurance services, it offers attest (audit under various country GAAS and certification services) and accounting advisory (US GAAP, IFRS, Indian GAAP, IND As, various country GAAP & accounting opinions). Under Tax & regulatory services, it provides domestic & international, direct & indirect tax advisory; compliance and outsourcing (including payroll, accounting & secretarial); transfer pricing (including documentation study and country by country reporting, global search, accountant's report); and inbound & outbound. Further to that, KNAV offers specialist advisory services for transaction support (due diligence & valuations), lead advisory, strategic advisory & fiduciary services. KNAV also provide risk advisory services, which encompasses internal audits & management assurance; assessment of internal financial controls (IFCs/IFCR in India, SoX, SOC); enterprise-wide risk management; forensic & investigative services; primary and secondary research services and human resource advisory (including recruitments).

KNAV refers to one or more member firms of KNAV International Limited, which itself is a not-for-profit, non-practicing, non-trading corporation incorporated in Georgia, USA. KNAV International Limited is a charter umbrella organization ("The Charter Association") that does not provide services to clients. Each firm within KNAV's association of member firms, is a legally separate and independent entity. Services of audit, tax, valuation, risk, and business advisory are delivered by KNAV's independent member firms in their respective global jurisdictions. All member firms of Charter Association in India, North America and the United Kingdom are a part of US\$ 2.01 billion, US headquartered Allinial Global, which is an accounting firm association that provides a broad array of resources and support for its member firms across the globe.