

ANOTHER STEP CLOSER TO FULL TAXATION OF ONLINE SALES

The U.S. Supreme Court yesterday refused to accept certiorari and review a dispute over New York state's efforts to tax online sales by e-tailers who do not have a physical brick-and-mortar presence in the Empire State. The High Court's failure to act leaves standing a New York Court of Appeals decision upholding the expansive New York tax law. Although the Supreme Court does not have to explain why it declines to hear cases, it may have been swayed by New York Attorney General Eric Schneiderman, who argued in defense of the law that recent developments favored delaying consideration of the issue. He cited the possibility of congressional action and pending challenges to other state laws as reasons why it would be better to wait.

In a March of this year, the New York State Court of Appeals ruled for the state government, declaring that Amazon and Overstock could be compelled by the state to collect tax from online sales. Both companies sought the U.S. Supreme Court's review of the ruling, citing the Commerce Clause of the Constitution, which limits the power of states to regulate interstate commerce. The decisions denying certiorari are issued in *Overstock.com v. New York State Department of Taxation and Finance* and *Amazon.com v. New York State Department of Taxation and Finance*, U.S. Supreme Court, Nos. 13-252 and 13-259, respectively.

New York's success may prompt more states to attempt to collect taxes on Internet sales. According to the nonpartisan **Tax Foundation**, 12 states have adopted laws that allow them to collect state sales taxes from out-of-state Internet sellers that do not have a physical presence within the state, using criteria such as having an "agent" or a "local affiliate" of the company in the state. Those states are: Arkansas, California, Connecticut, Georgia, Illinois (struck down by the state supreme court), Maine, Minnesota, New York (upheld by that state's highest court), North Carolina, Rhode Island, Texas and Vermont.

Check out this posting on the *New York Times*' blog:

http://www.nytimes.com/2013/12/03/business/new-york-ruling-on-sales-tax-collection-by-online-retailers-will-stand.html?_r=0

Declining to review the expanded New York tax laws could have significant repercussions for wineries and retailers who are selling alcohol beverages online and across state borders without collecting sales tax on their transactions. Although this latest development is most relevant to purchases by New York consumers, the consequences will be even greater if other states looking for new sources of tax revenue choose to follow New York's lead.