THE WALL STREET JOURNAL.

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BUSINESS

Wal-Mart Deal Could Jeopardize Jet.com's Sales-Tax Advantage

Isn't yet clear how Wal-Mart will handle tax collections on Jet.com

An employee checks the contents of a customer order before sealing the package for shipment at the Jet.com Inc. fulfillment center in Kansas City, Kansas. Kansas is one of the seven states where Jet.com must collect sales tax. *PHOTO: BLOOMBERG NEWS*

By **ROLFE WINKLER** and **SARAH NASSAUER**
Updated Aug. 10, 2016 4:03 p.m. ET

Jet.com Inc. pitches itself as a lower-priced alternative to Amazon.com Inc., partly by not tacking on sales taxes in most states.

But tax experts say Jet's sale to retail giant Wal-Mart Stores Inc. could jeopardize that price advantage by forcing it to collect taxes nationwide.

A 1992 Supreme Court ruling allows retailers to avoid collecting sales taxes in states where they don't have a physical presence like a warehouse, a local store or office. With far more distribution centers nationwide, Seattle-based Amazon collects sales taxes in 28 states covering most of the U.S. population. New York-based Jet collects taxes in just seven states, avoiding big ones like California and Texas.

On Wednesday, both Amazon and Jet each listed a Le Creuset French oven for $319.95. But an Amazon shopper in Chicago, for example, would have to pay sales taxes of $32.79, unlike the Jet shopper.

Wal-Mart has a physical presence in every state, according to a spokesman, so it does collect sales taxes for items it sells itself on Walmart.com in all states that impose them.

Once the acquisition is closed, it isn't clear how Wal-Mart will handle tax collections on Jet.com. Tax experts say it will depend on how ownership and operational integrations are structured.

If Jet uses Wal-Mart stores for returns or in-store pickup, or its parent company's warehouses to store inventory, then it should have to collect sales taxes in those states, says Diane Yetter, who runs a namesake sales-tax consulting firm.

One benefit for Jet linking up with Wal-Mart would seem to be access to the retail giant's warehouses and storefronts to bulk up its own inventory at low cost. The companies on Monday said many of those details haven't yet been determined.

A Wal-Mart spokesman said "we are committed to complying with all tax laws," but didn't specify what policy it would follow for Jet. On a conference call describing the deal Monday, Wal-Mart Chief Executive Doug McMillon said Jet would operate independently, but that the companies would be integrated behind the scenes.

Jet Chief Executive Marc Lore said the company will "comply with all the regulations around sales tax."

Zappos and Diapers.com, which were acquired by Amazon.com in 2009 and 2010, operate as independent businesses, managing their own warehouses and websites. But Amazon collects sales taxes for those sites in the same 28 states as it does for itself.

In a study conducted this year using three years of Amazon.com pricing data, Professor Itzhak Ben-David of Ohio State University said he found Amazon's sales declined 9% in states where it started collecting sales taxes. Amazon didn't respond to a request for comment.

Mr. Ben-David said Jet would likely suffer a similar decline if it started charging taxes, partially offset by lower operating costs from tying up with Wal-Mart.

A Jet spokesman said in an email that the site doesn't "see any difference in conversion/sales rates" between states where they do and don't collect sales taxes.

Fierce competition and easy price comparisons among various sellers force them to "take advantage of every edge they have," says Guru Hariharan, chief executive of research firm Boomerang Commerce.

Jet and other online retailers may need to pay sales taxes nationwide, regardless, in the coming years. Congress is weighing a bill called the Marketplace Fairness Act that would require online retailers to collect sales tax in every state. The measure has the broad support of both Amazon and Wal-Mart, which argue it would create a level playing field and erase customer confusion.

Last year Supreme Court Justice Anthony Kennedy wrote in a judicial opinion that he wanted to reverse the 1992 precedent that has allowed out-of-state sites to avoid sales-tax collections.

Bradley Tusk, whose firm Tusk Strategies helps startups deal with regulatory compliance, points to a South Dakota law passed this year directly challenging the old case, one that if appealed to the Supreme Court could give Justice Kennedy his opportunity to revisit the law.

—Greg Bensinger contributed to this article.

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