

Keep track of your purchases, lawyers

By Robert W. Wood

Businesses and consumers in California are painfully aware of our state sales tax. With recent increases, the state sales tax rate is now 7.5 percent. What's more, with local add-ons, the rate can be as high as 10 percent. When you buy goods at retail in San Francisco, you'll pay 8.75 percent. In Los Angeles, you pay 9 percent. The retailer collects and remits it, but the tax is almost invariably passed along to the buyer.

Lawyers render a service so they do not have to collect California sales tax on their fees. However, lawyers—and everyone else in California—are subject to paying *use* tax when they buy goods outside the state and bring them home or have them shipped into California. Classic examples are office supplies, computers, and furniture ordered from out-of-state. You may not pay sales tax when you buy them outside California, but use tax is due. And enforcement is ramping up.

The use tax is the mirror image of the sales tax. It applies when the merchant does not collect sales tax but you bring or have the goods shipped into California. In many states today (including California), you must report use tax on your income tax return. It is only the *collection mechanism* for the tax that is debatable.

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Online sellers are already required to collect sales tax from customers in their own states. In addition, under the U.S. Supreme Court's landmark 1992 holding in *Quill v. North Dakota*, 504 U.S. 298 (1992), retailers are required to collect sales tax from out-of-state customers if they have a physical presence (such as a store, warehouse or office) in the customer's state. The Court held that the 45 state and 7,600 local sales tax systems across the nation were too complicated for a retailer to follow. In effect, a large part of the concern is administrative rather than constitutional.

Online merchants that collect California sales tax save you the trouble of reporting your use tax. If you buy from a website that has a brick-and-mortar store in California, you will pay sales tax which is collected by the merchant and remitted to California's State Board of Equalization. This is so even if you buy online and the goods are shipped from out-of-state.

If the Internet retailer does not have a store in California, a warehouse or distribution facility may be enough for the merchant to collect sales tax. Many states (including California) have expanded the types of nexus triggering the merchant's duty to collect sales tax. Sometimes, special deals are also made, as where an online seller agrees with California officials to remit sales tax on purchases made to California customers.

On Oct. 15, 2012, Amazon started collecting California sales tax on shipments to California. However, purchases shipped or brought into California prior to that date are still subject to use tax.

This is so whether you bought goods from Amazon or any other retailer. Even today, although Amazon is now collecting California sales tax, many other online merchants do not.

Technically, you should keep track of all such purchases so you can report and pay use tax. Many consumers find this a difficult pill to swallow and figure they will not get caught. But income tax forms now ask for use tax reporting. And business returns—whether or not you make sales of property—are more likely to be examined on this issue.

That means California lawyers should keep track of purchases subject to use tax even though the lawyer is only providing a service. California sales and use tax officials have at least three years (and in some cases up to eight years) to pursue unpaid sales and use taxes. Even though Amazon and some other online retailers are now collecting California sales tax, the tax due on past purchases can add up.

And more legislation is coming. After a hiatus in federal legislation and three competing federal bills to regulate state sale taxes, there is now a renewed push to get federal legislation passed. The revitalized Marketplace Fairness Act has bipartisan support in Congress and has strong support from retailers. The bill is being characterized as a long overdue leveling of the playing field. Brick-and-mortar retailers have grumbled for years that Amazon had an unfair advantage.

Since Amazon's 1994 founding, it avoided collecting sales taxes nationwide, but Amazon now collects tax and supports the change in the law. Supporters include Amazon, Best Buy, Barnes & Noble, Gap, Home Depot, J.C. Penney, REI, Sears, Target and Wal-Mart. One of the big opponents is eBay. The money that is at stake is enormous.

The Congressional Research Service determined that state governments collect 32 percent of their total tax revenue from sales and use taxes. Local governments derive 11.2 percent of their tax revenue from sales and use taxes. Estimates of lost state and local revenue from new e-commerce in 2012 are approximately \$11.4 billion. California is projected to lose \$1.9 billion; Texas, \$870.4 million; and New York, \$865.5 million.

Despite criticism that the Marketplace Fairness Act would create "new" taxes, it would not impose a federal sales tax. In fact, it is a states' rights approach to providing uniformity to the sales tax collection. Time will tell, but regardless of whether you think it is fair, even if you are not already paying sales and use tax, it is likely you will be soon.



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