



## Robert W. Wood

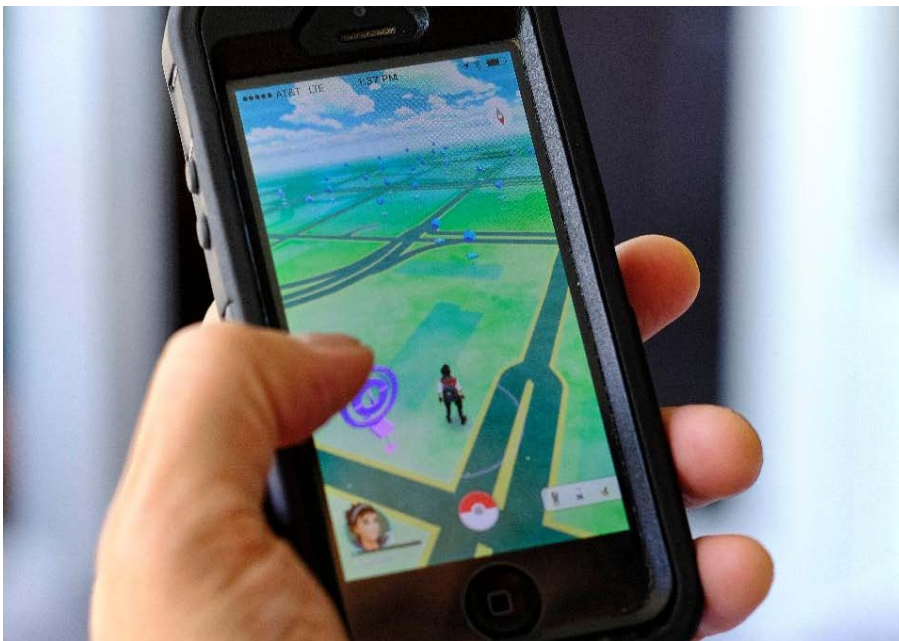
THE TAX LAWYER

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### Pokémon GO Taxes Are Coming -- In Fact, They're Already Here

Pokémon GO has exploded onto the scene, with all manner of people searching like crazy for funny little creatures that sort of don't exist, but sort of do. The game uses geolocation to place Pokémon characters in the honest-to-goodness physical world. That way, players use their smartphones to search for Pokémon in the *real world*. So it actually takes you out and about. Compared to many games, that might even be healthy.

New resources are springing up, including the popular guide listing [ten things I wish I knew when I started 'Pokémon GO'](#). You may also want to check out this Vox [Explainers installment](#). It has already been downloaded a [reported 15 million times](#) in the U.S., a number that surely is increasing.



(AP Photo/Richard Vogel)

If you don't care to play, you can watch the stock market. This mere game has already raised Nintendo's stock price by billions of dollars. Shares of Nintendo [skyrocketed 53%](#) in three days, adding \$12 billion to the company's market value. It might even eclipse [Twitter users](#), which is saying something!

Pokémon GO is free, of course, but is it? Nominally yes, although there is already buzz about [the scary ways that Pokémon Go is making money off you](#). That's a little mysterious, but add-on buys aren't. The game itself is free, but revenue is generated on in-game virtual sales of "incense" and "lure modules." If you like the game enough, what's a few dollars for more fun and success? That's what taxing authorities think too.

If you do buy an incense or lure module, is it like buying music? A book? Is it tangible or intangible property? Or maybe just a service? It isn't just a theoretical question, since there are potential sales [taxes](#) at stake. As a consumer, you don't have much control over such things. And they vary significantly from state to state. For good surveys of [sales of digital goods](#), [check out Avalara](#).

In California, the State Board of Equalization says that sales of electronic data products like software, data, eBooks, mobile applications, and digital images are not taxable when transmitted to customers over the Internet. The transfer of a downloadable file such as an eBook or an "app" without purchasing any physical storage medium is not a taxable transaction. But sales are taxable when accompanied by a physical disk or flash drive. Check out California's [Publication 109 on Internet sales](#), or [California Internet sales tax from Nolo.com](#).

Of course, as more money goes to downloads, there is always change afoot. For example, [a digital download tax](#) was just added in Pennsylvania. The 6% sales tax on buying items in a store will hit [online purchases](#) too. The digital download tax is expected to generate \$50 million in revenue for the 2016-17 fiscal year. As you might expect, the [digital download tax is to close a budget shortfall](#).

But not everyone wants this tax even if it does help budgets. Pennsylvania Rep. Stephen Bloom (R-Cumberland) has criticized taxes on mobile phone application purchases, tweeting that, "Yes, Gov. Wolf's [#PokemonTax](#) is about to hit Pennsylvania. For real." Of course, you may not care about Pennsylvania if you are not there, but where exactly is your purchase happening?

If you purchase an in-game incense or a lure module in New York where you are located, does New York get to tax you? How about where the computer servers for the game might be? Is the payment locale important, if I use my credit card using my home address? It's a brave new world.

*For alerts to future tax articles, email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not legal advice.*