

## States push for piece of online sales

By David Becker

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Story last modified Fri Apr 09 04:00:00 PDT 2004

### Are you sure you didn't buy anything online last year?

Lots of nagging consciences will be asking that over the next week, as taxpayers confront new sections on state returns that ask them to fork over unpaid sales taxes for items purchased out of state, including online transactions.

All states have provisions for "use tax," which requires businesses and residents to pay local and state sales taxes on items purchased outside the state but intended for use in the state.

Businesses generally have to register with state tax authorities and keep records of out-of-state transactions. But use tax compliance for individuals had generally been handled on a voluntary basis. If you bought a nice sofa in New Jersey and hauled it back to your Manhattan apartment, you were supposed to fill out state use tax forms and attach a check within 20 days.

Needless to say, voluntary payment has never been much of a hit. And with states facing cash crunches and more sales occurring in the nebulous tax territory of the Internet, states have decided to get more in-your-face about collecting use tax.

For the 2003 tax year, California and New York for the first time added use tax lines to their income tax returns, joining 17 states that ask taxpayers to add up qualifying out-of-state purchases, including those made over the Internet, and remit the tax due as part of their return.

Vic Anderson, supervisor of the audit support unit for California's Board of Equalization, called the use tax one of the most misunderstood and frequently ignored aspects of state tax legislation. Last year's legislative mandate to add a use tax line to returns is the latest in a series of steps to encourage compliance, he said.

"This was just the next step in our process to educate the average individual taxpayer," Anderson.

But the average individual taxpayer may be more confused than educated at this point. Since online shopping sites vary widely in their policies on collecting sales tax, consumers have to review transaction-by-transaction which purchases might carry a year-end liability. Then they have to negotiate sometimes miniscule distinctions to determine which purchases qualify for which rate of taxation. Tennessee, for example, charges a higher use

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tax on [candy](#) than flour-based food products. Finally, they have to figure out local tax rates based on where they live.

Taxware, which sells accounting software for calculating use tax and other liabilities, documents the complexity of state laws in its annual list of ["Top Ten Most Unusual Sales Tax Laws."](#) This year's honorees include Texas, which taxes doughnuts only if you buy fewer than half a dozen, and Washington, for setting separate tax rates for cubed versus block ice.

A spokesman for the [E-Fairness Coalition](#), a group that supports consistent collection of sales tax by online merchants, agreed that current use tax laws are confusing. The group is promoting the Streamlined Sales Tax and Use Tax Agreement, already adopted by 20 states, that creates uniform tax policies, supported by congressional action authorizing states to collect sales taxes on all transactions, offline and online.

"We support taking the use tax burden off consumers," spokesman Tripp Funderburk said. "We think it's a better system to require retailers to uniformly collect sales tax."

"It's terribly, terribly difficult for a consumer to know what's going on," said David Hardesty, an accountant in Larkspur, Calif. "If you pay to download a piece of software, for instance, it's very hard for people to know if that's taxable...And when you look at the instructions (accompanying tax returns), they're not exactly giving you a whole lot of information. I think the states are just putting it out there and hoping for the best."

Hardesty said his primary advice to clients is to honestly compute and report their use tax liability. His secondary advice is to leave the line blank rather than enter a zero if you don't want to bother.

"What I've been advising my clients with big use tax potential...is that they can either calculate what they owe or leave it blank and see if California sends them a letter," he said. "If you do put in a number, then all of a sudden you're on the line for tax fraud. If you put in zero, you need to be able to support that."

Others have been less sanguine. A New York Daily News editorial characterized the addition of use tax to state returns as a rip-off and advised taxpayers to fill in a zero on the line. "They've got to be crazy, and you are, too, if you comply," according to the newspaper.

Officials in California and New York said leaving the use tax line blank wouldn't trigger an audit on its own, but you might be asked about it if other factors flag your return.

"It will just be one of many, many processes we use to develop an audit if that's what we have to do," said Tom Bergin, a spokesman for New York's Department of Taxation and Finance. "It becomes one of the many things an auditor looks at."

States have been struggling to [collect sales taxes on online sales](#) every since e-commerce took off. Several [major online retailers](#) voluntarily collect local taxes based on the customer's residence, but policies vary widely among merchants.

More than 30 states have joined the [Streamlined Sales Tax Project](#), which aims to enforce uniform tax policies on online sales, but the effort had drawn widespread opposition from retailers and federal lawmakers.

Hardesty said the new efforts to add use tax to state returns indicate states will increasingly take matters into their own hands.

"I've been predicting for years that states will gradually increase the pressure to collect use tax," he said. "They have a lot of tools they have not yet used. And if they can't get authorization from Congress to force online sellers to collect tax, which seems unlikely, they're going to get more aggressive."

"I remember hearing a governor say that at some point, it's going to come down to having his highway patrol stop all the little brown (United Parcel Service) trucks and see where the stuff is from and where it's going."

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