

THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, LLC,

Plaintiff,

v.

KENNETH R. LAY,

Defendant.

No. 10-cv-00664-MJP

**FIFTH DECLARATION OF  
H. ALAN WOODARD IN SUPPORT  
OF NORTH CAROLINA'S REPLY  
TO INTERVENORS' OPPOSITION  
TO DEFENDANTS' MOTION TO  
DISMISS COMPLAINT IN  
INTERVENTION  
(Fed. R. Civ. P. 12)**

JANE DOE 1, JANE DOE 2,  
JANE DOE 3, JANE DOE 4,  
JANE DOE 5, JANE DOE 6, and  
CECIL BOTHWELL,

Plaintiffs-Intervenors,

v.

KENNETH R. LAY, and  
AMAZON.COM, LLC,

Defendants in Intervention.

1 I, H. Alan Woodard, do hereby depose and say as follows:

2 1. I have previously provided four Declarations in this matter in support of North  
3 Carolina's motions to dismiss and in opposition to Amazon's motion for summary judgment. I  
4 am providing this Fifth Declaration in Support of North Carolina's Reply to Intervenors'  
5 Response to Motion to Dismiss Complaint in Intervention. The information provided in the  
6 previous Declarations is incorporated herein by reference.  
7

8 2. I explained in an earlier declaration NC Revenue's Internet Transaction  
9 Resolution Program that sought voluntary collection of sales taxes in lieu of efforts to collect use  
10 tax from internet retailers' customers. *See* Woodard Decl. II, ¶ 10. I have also provided  
11 information on the scale of the losses to North Carolina and other states as a result of internet  
12 retailers failing to collect sales taxes or their customers to pay use taxes. *See id.* ¶ 12; Woodard  
13 Decl. III, ¶¶ 2, 3. With tax revenues suffering from the current economic conditions, North  
14 Carolina and other states must seek to ensure that sales and use tax liabilities are collected to the  
15 fullest extent possible.  
16

17 3. For example, a bill has been introduced in Congress that would authorize states  
18 which are part of the Streamlined Sales Tax Agreement to require remote retailers to collect and  
19 remit sales taxes on purchases in their states. H.R. 5660. States, however, are not waiting for  
20 Congress to act. A number of states have adopted what have been termed "Amazon" laws  
21 requiring on-line retailers to collect sales tax.  
22

23 4. Because of business decisions by some internet retailers, including Amazon,  
24 seeking to avoid sales tax collections, many states are increasing their use tax enforcement  
25 efforts. For example, Colorado has enacted a law that requires on-line retailers to inform their  
26 customers of the amount of use tax that the customer owes the state. Oklahoma recently adopted  
27  
28

1 a similar law. The Colorado legislation also requires the retailer to file reports with the state that  
2 contain each customer's name, purchase amounts and category of purchase. Amazon on its  
3 website indicates that the Colorado notice provisions were enacted "over our strong objections."  
4 *See* Exhibit 1, p. 4. In addition, Alabama recently sent letters to a random sample of taxpayers  
5 informing them of their obligation to pay use taxes on their on-line purchases. Nebraska is  
6 currently pursuing use taxes against charities, including the March of Dimes. South Carolina has  
7 reported that it is aggressively collecting the use tax. The Multistate Tax Commission, of which  
8 North Carolina is a member, is drafting a uniform regulation modeled after the Colorado and  
9 Oklahoma laws that would impose reporting requirements on retailers to enable states to more  
10 easily enforce existing use tax laws.

11  
12  
13 5. Examples of articles detailing the states' efforts to collect taxes due on online  
14 purchases are attached. Alex Johnson reported on msnbc.com: "States working harder to collect  
15 online sales taxes: With budgets in crisis, enforcement efforts gather steam." *See* Exhibit 2.  
16 Martin Swant reported in the Birmingham News: "State of Alabama sending tax notices to some  
17 consumers for online, out-of-state purchases" and quoted a tax expert describing the collection of  
18 use taxes as "low-hanging fruit for the state." *See* Exhibit 3.

19  
20 6. As indicated in an earlier declaration, NC Revenue's latest request to Amazon  
21 sought customer names and replacement disks containing the purchase data for North Carolina  
22 transactions with the ASIN numbers deleted. *See* Woodard Decl. IV, ¶¶ 14-16. We have been  
23 informed by Amazon that replacement disks with ASIN numbers deleted will be provided.  
24 However, Amazon continues to refuse to provide customer names.  
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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, and that the foregoing declaration was executed on September 24, 2010.

By: H. Alan Woodard  
H. Alan Woodard, Director Examination Division

# **EXHIBIT 1**

Help. [Sign in](#) to get personalized recommendations. New customer? [Start here.](#)

Sell on Amazon - 30 days FREE\*

Your Amazon.com | [Today's Deals](#) | [Gifts & Wish Lists](#) | [Gift Cards](#)

Your Account | [Help](#)

[Shop All Departments](#)

Search

[Cart](#) [Wish List](#)

[Help](#) > [Payment, Pricing & Promotions](#) > [Sales Tax](#)

**Topics**

[Payment, Pricing & Promotions](#)

- [Credit Cards & Check Cards](#)
- [Understanding Your Credit Card Statement](#)
- [Amazon.com Rewards Visa](#)
- [Pay Directly from Your Checking Account](#)
- [Amazon Gift Cards](#)
- [Amazon Payments](#)
- [Amazon.com Store Card](#)
- [Amazon Payments Balance](#)
- [Purchase Orders](#)
- [Membership Rewards](#)
- [Invoices](#)
- [Pricing](#)
- [Sales Tax](#)
- [Target Gift Cards](#)
- [Promotional Certificates](#)
- [Promotional Offers](#)
- [Amazon Student](#)
- [Amazon Mom](#)
- [Rebates](#)
- [Amazon Currency Converter™](#)
- [Reward Certificates](#)
- [Making Payments to an Amazon.com Credit Card](#)

**Other Help Areas**

- [Shipping & Delivery](#)
- [Changing or Canceling Orders](#)
- [Returns and Refunds](#)
- [Problem with an Order](#)
- [Payment, Pricing & Promotions](#)
- [Placing an Order](#)
- [Kindle](#)
- [Digital Products](#)
- [Gifts, Gift Cards & Gift Registries](#)
- [Privacy, Security & Accessibility](#)
- [Site Features](#)
- [Selling at Amazon.com](#)
- [Author, Publisher & Vendor Guides](#)
- [Business Opportunities](#)

Topic or Keyword

# Sales Tax Requirements

- [Orders Subject to Sales Tax](#)
- [How Tax Is Calculated](#)
- [Viewing Tax Assessed on an Order](#)
- [Items Purchased from Merchants](#)
- [Items Purchased from Marketplace Sellers](#)
- [Tax-Exempt Customers](#)
- [Internet Tax Freedom Act](#)
- [Colorado Sales Tax](#)

Companies selling over the Internet are subject to the same sales tax collection requirements as any other retailers. For more information about sales tax charged on your order, view the topic sections on this page.

## Orders Subject to Sales Tax

The amount of tax charged depends upon many factors, including the identity of the seller, the type of item purchased, and the destination of the shipment.

Items sold by Amazon.com LLC, or its subsidiaries, and shipped to destinations in the states of Kansas, Kentucky, New York, North Dakota, or Washington are subject to tax.

For sales tax purposes, electronically delivered products (e-books, e-documents, and electronically delivered software) are considered to be shipped to your credit card billing address.

No sales tax is charged when purchasing gift certificates; however, purchases paid for with gift certificates may be subject to tax.

## How Tax Is Calculated

If an item is subject to sales tax in the state to which the order is shipped, tax is generally calculated on the total selling price of each individual item. In accordance with state tax laws, the total selling price of an item will generally include item-level shipping and handling charges, item-level discounts, gift-wrap charges, and an allocation of order-level shipping and handling charges and order-level discounts.

The tax rate applied to your order will generally be the combined state and local rate for the address where your order was shipped. Therefore, the sales tax rate applied to your order may be different for an order shipped to your home address than it is for an order for the very same items shipped to your work address. Amazon.com obtains sales tax rates from a leading tax rate service provider.

Note that many factors can change between the time you place an order and the time of credit card charge authorization, which could affect the calculation of sales taxes. The amount appearing on your order as Estimated Tax may differ from the sales taxes ultimately charged.

For example, tax law changes may occur between order placement and credit card charge authorization that could result in an increase or decrease in taxes charged. We also offer a number of flexible shipping options that could change the calculation of sales tax. Thus, we cannot know with certainty how allocations of shipping charges and promotional discounts will be made to individual items when we quote estimated taxes

**Self-Service**

**Most Popular**

- [Track or Manage Purchases](#)
- [Manage Payment Options](#)
- [Return Items](#)
- [Change Name, E-mail, or Password](#)
- [Manage Address Book](#)

**Other Self-Service Account Profile**

- [Change Name, E-mail, or Password](#)
- [Manage Prime Membership](#)
- [Update E-mail Communication Preferences](#)
- [Amazon Alerts E-mails](#)
- [Special Occasion Reminders](#)

**Billing & Addresses**

- [Manage Payment Options](#)
- [Manage Address Book](#)

**Ordering Settings**

- [Update 1-Click Settings](#)
- [Subscribe & Save Settings](#)

**Lists**

- [Shopping List](#)
- [Wish List](#)
- [Baby Registry](#)
- [Wedding Registry](#)

**Your Content**

- [Your Media Library](#)
- [Your Browsing History](#)
- [Recommended for You](#)
- [Improve Your Recommendations](#)

Get Express customer service or contact us by e-mail or phone.

at the time your order is placed.

## Viewing Tax Assessed on an Order

To identify whether an item ordered from any other seller has been taxed, visit the relevant order summary in Your Account and click the "See tax and seller information" link.

If you have already received your order, you can also find the identity of the seller printed under the name of each item on your packing slip. Items identified as "taxed" have been subjected to sales tax. All other items have not been taxed, either because the seller is not required to collect the tax or the item is not subject to tax. See below for more information regarding sales tax on items sold by our online merchants.

## Sales Tax on Items Purchased from Select Amazon Merchants

In order to offer you the widest selection and the most convenient shopping experience, Amazon.com has teamed with many other merchants. Your order may contain items from one or more of these online merchants. Each of these online merchants may have different sales tax collection obligations, depending upon their business policies and the location of their operations. Amazon.com calculates sales taxes on the merchants' behalf in accordance with their instructions. These instructions vary depending on the tax laws in each state.

The following is a partial list of merchants selling items at Amazon.com which may be included in your order, and the states in which they charge sales tax.

- Amazon.com LLC: KS, KY, ND, NY and WA
- Amazon Digital Services, Inc.: KY, ND, NY and WA (Kindle content, MP3s, and digital videos are **only** taxable in KY and WA)
- Magazine Express, Inc.: AL and WA
- Synapse Services, Inc.: WA only
- Target.com: All states other than VT
- Hachette Digital, Inc.: AL, AZ, CO, CT, DC, HI, ID, IN, KY, LA, ME, MS, NC, NE, NJ, NM, SD, TN, TX, UT, VT, WA, WI and WY\*
- Harper Collins Publishers, LLC: All states other than AK, AL, AZ, DE, HI, MT, NH, NV, OK, OR, SD, VT and WY\*
- Penguin Group (USA) Inc: All States\*
- Simon & Schuster Digital Sales, Inc.: All states other than AK, DE, MT, NH, and OR\*
- Macmillan: AZ, CO, CT, DC, HI, IN, KY, ME, MS, NC, NE, NJ, NM, SD, TN, TX, UT, VT, WA, WI and WY\*
- Zondervan Corporation LLC: CA, CO, FL, GA, IA, IL, IN, LA, MA, MD, MI, MO, NC, NV, OH, PA, SC, TX and WA\*

\* Kindle books sold by various publishers are subject to sales tax based on the publisher's state tax reporting obligations and the taxability of digital books in those states. As a result, sales tax for Kindle books sold by the publisher may differ from the sales tax to which you've been accustomed for Kindle books.

If you have questions about tax on items purchased from these listed merchants, please [contact Amazon.com Customer Service](#). For questions about sales tax on items purchased from all other merchants, please see below.

## Sales Tax on Items Purchased from All Other Merchants

If you have questions about tax on items purchased from any merchant not listed above (including Office Depot, Inc.), please view that merchant's information at [Ordering from Amazon Merchants](#), or through links made available on product detail pages. Sales tax information for these merchants can usually be found in the merchant's Shipping and Tax Information section. If you still have any other tax-related questions, please contact that merchant directly using the contact information provided in the merchant's Contact Customer Service section.

## Sales Tax on Items Purchased from

Exhibit 1, pg. 7

## Amazon Marketplace

Marketplace sellers are responsible for the sales tax on any items sold on Amazon.com, and if necessary, they generally add this cost into the price of their items. Therefore, you will not be charged any additional sales tax for Marketplace purchases. If you have further questions about a particular Marketplace seller's tax practices, feel free to contact the seller directly.

## Tax-Exempt Customers

If tax has been charged on any portion of your order and you need to take advantage of your tax exempt status, the process will differ depending on the merchant who sold the taxed items.

If the taxed items were sold by any of the following merchants, Amazon Customer Service can facilitate a refund.

- Amazon.com LLC
- Amazon Digital Services, Inc.
- Target.com/ITC

If the taxed items were sold by any other merchant, please contact that merchant directly using the contact information provided in the merchant's Contact Customer Service section.

In those cases where Amazon.com can facilitate a tax exempt refund, you will need to provide us with acceptable proof of exempt status for the state where the items will be shipped.

### United States Government Purchasers

Sales tax does not apply to purchases made by the United States Government. In order to document that a sale has been made to the U.S. Government, we need to obtain a copy of one of the following:

- Federal tax ID certificate
- Certificate of exempt status
- Photocopy of your qualified U.S. Government Credit Card (Smart Pay Card)
- Government Voucher
- Check from the U.S. Government payable to Amazon.com

### Other Exempt Purchasers

All other exempt purchasers need to provide us with a copy of a state resale certificate, exemption certificate, or other acceptable proof of your exempt status for the state where the items will be shipped.

The documentation submitted should include the name of the merchant who sold the items and the name of the organization that purchased the items.

### How to submit this information

First, place your order through our Web site. After you've received your shipment confirmation, please submit the necessary information by fax in order to receive a refund of any sales tax. Our fax number is (206) 266-2005.

Please include the following:

- Your order number (17 digits in this format: XXX-XXXXXXX-XXXXXXX)
- E-mail address
- Acceptable proof of your exempt status (as outlined above)
- The name of the merchant who sold the items
- The name of the organization that purchased the items
- Mark your fax "Attn: Amazon Tax Exempt"

While you need to submit this information to us once for each applicable merchant, you do need to contact us after placing each order to ensure you are refunded the tax on your purchase.

## Effect of the Internet Tax Freedom

Exhibit 1, pg. 8



## Act

Companies selling over the Internet are subject to the same sales tax collection requirements as any other retailers. Remote sellers (including Internet retailers and catalog companies) are generally required to collect taxes where they have a physical selling presence. If they do not have any such presence, they are not required to collect sales taxes.

The Internet Tax Freedom Act (ITFA) has been renewed through November 1, 2014.

Please note, the ITFA was primarily intended to prevent state and local governments from imposing new or discriminatory taxes on Internet transactions and on Internet access. Despite the name of the Act, ITFA does not preclude state and local governments from imposing existing sales tax collection requirements on companies selling over the Internet.

## Colorado Sales Tax

For those customers purchasing from Amazon.com LLC, Amazon Digital Services, Inc. or Warehouse Deals, Inc. and shipping to Colorado:

*We are not obligated to, and do not, collect Colorado sales tax. Your purchase is subject to Colorado sales tax unless it is specifically exempt from taxation. The purchase is not exempt merely because it is made over the Internet or by other remote means. The State of Colorado requires that the taxpayer file a sales/use tax return at the end of the year reporting all of the purchases that were not taxed and pay tax on those purchases. Retailers that do not collect Colorado sales tax are obligated to provide purchasers an end-of-year summary of purchases in order to assist purchasers in filing their tax report. Details of how to file this return may be found at the Colorado Department of Revenue's website, [www.taxcolorado.com](http://www.taxcolorado.com). Retailers that do not collect Colorado sales tax are required by law to provide the Colorado Department of Revenue with a report of the total amount of all of your purchases at the end of the year above certain thresholds set by the Colorado Department of Revenue.*

Some customers have asked why these new requirements exist. We are required to provide the notice and the reports described above are based on a Colorado law (HB 1193) enacted in February 2010 over our strong objections.

List of which states and which orders get charged sales tax. Instructions for tax-exempt buyers.

<b>Get to Know Us</b>	<b>Make Money with Us</b>	<b>Let Us Help You</b>
<a href="#">Careers</a>	<a href="#">Sell on Amazon</a>	<a href="#">Shipping Rates &amp; Policies</a>
<a href="#">Investor Relations</a>	<a href="#">Join Associates</a>	<a href="#">Amazon Prime</a>
<a href="#">Press Releases</a>	<a href="#">Advertise Your Products</a>	<a href="#">Returns</a>
<a href="#">Amazon and Our Planet</a>	<a href="#">Self-publish with Us</a>	<a href="#">Help</a>
	<a href="#">› See all</a>	



[Canada](#) [China](#) [France](#) [Germany](#) [Japan](#) [United Kingdom](#)

<a href="#">AmazonWireless</a>	<a href="#">Askville</a>	<a href="#">Audible</a>	<a href="#">DPRReview</a>	<a href="#">Endless</a>	<a href="#">Fabric</a>	<a href="#">IMDb</a>	<a href="#">Shopbop</a>	<a href="#">Small Parts</a>	<a href="#">Warehouse Deals</a>	<a href="#">Zappos</a>
<a href="#">Cellphones &amp; Wireless Plans</a>	<a href="#">Community Answers</a>	<a href="#">Download</a>	<a href="#">Digital Photography</a>	<a href="#">Shoes &amp; More</a>	<a href="#">Sewing, Quilting &amp; Knitting</a>	<a href="#">Movies, TV &amp; Celebrities</a>	<a href="#">Designer Fashion Brands</a>	<a href="#">Industrial Supplies</a>	<a href="#">Open-Box Discounts</a>	<a href="#">Shoes &amp; Clothing</a>

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# **EXHIBIT 2**

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**LifeLock**  
#1 In Identity Theft Protection

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# States working harder to collect online sales taxes

## With budgets in crisis, enforcement efforts gather steam

**USE TAX:** (Purchase from an out-of-state retailer)  
Non-taxable transactions  
Code: \_\_\_\_\_

Necessary military personnel (Statement as to Home of Record (HQR) MUST be attached)  
Note: The sales of trucks, boats and mobile are taxable.  
 Tax paid to 252 registered tax-out-of-state register.

Place "X" in the appropriate box:

<input type="checkbox"/> 1. Motor Vehicle	<input type="checkbox"/> 4. Motor (Outboard)	<input type="checkbox"/> 7. Semi-Trailers	<input type="checkbox"/> 10. Recreational Vehicles
<input type="checkbox"/> 2. Motorcycles	<input type="checkbox"/> 5. Airplanes	<input type="checkbox"/> 8. Manufactured Homes	<input type="checkbox"/> 11. OTHER
<input type="checkbox"/> 3. Boats	<input type="checkbox"/> 6. Trailers	<input type="checkbox"/> 9. Campers	

If purchase is non-taxable, enter non-taxable transaction code:  
Skip lines 1 through 10 (Computation of Tax and Sign Return).

ATTACH CHECK HERE	Sales Tax Subject to Maximum Tax or Purchased after May 31, 2007		Sales Tax Subject to Maximum Tax or Purchased Prior to June 1, 2007	
	Column A (A)	Column B (B)	Column A (A)	Column B (B)
1. Sales Price	\$	\$	\$	\$
2. Sales Tax Allowance	\$	\$	\$	\$
3. Balance Subject to Tax	\$	\$	\$	\$
4. Tax Due (See 2 for rate of column A; B 33.00 if exempt or state)	\$	\$	\$	\$
5. Local Tax (See instructions for rates that are subject to \$200.00 tax cap)	\$	\$	\$	\$
6. Local Option Tax (1% of line 5 if applicable - fee attached)	\$	\$	\$	\$
7. Other Local Tax (One to three line 5 if applicable Local Tax Rates)	\$	\$	\$	\$
8. Total Tax Due (add lines 4, 5, 6, and 7)	\$	\$	\$	\$
9. Total Tax Due (add lines 4, 5, 6, and 7)	\$	\$	\$	\$
10. Total Amount Due (add line 8, column A and B)	\$	\$	\$	\$

Name of County or Municipality \_\_\_\_\_ County or Municipality Code \_\_\_\_\_  
(See instructions)

Under penalty of law, I certify that the information provided herein is correct and to the best of my knowledge is true and complete.

Signature of Purchaser \_\_\_\_\_ Date \_\_\_\_\_

In many states, residents who buy online are expected to complete complicated forms, like this one from the South Carolina tax return and voluntarily send in sales and use tax payments



**By Alex Johnson**  
Reporter

msnbc.com

updated 9/17/2010 7:39:27 AM ET

It's too early to know exactly how much the Nebraska chapter of the March of Dimes raised this week at its annual Signature Chefs Auction in Omaha, but odds are that more than 10 percent of the charity's proceeds are going straight to the tax man.

That's because the March of Dimes went online when it bought about 4,000 T-shirts from a Florida vendor to give to donors during

its March for Babies Walk last April. The charity often buys supplies and other materials online, and it also raises money online by selling items at auction — racking up a big tax bill in each case.

"We didn't know that," said Rosemary Opbroek, director of the Nebraska chapter. "We wish the law was different. It is taking money away from helping ... babies."

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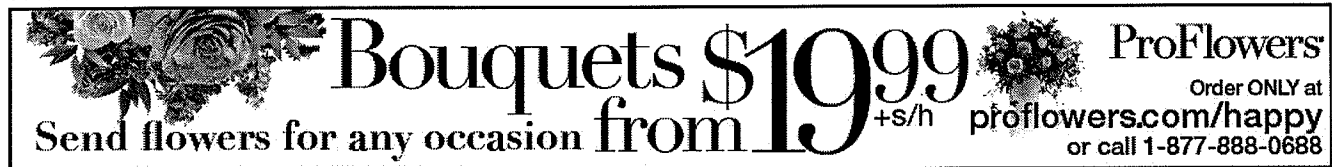
**GIVE US A CALL TODAY!**

\*Prices start at \$29.99 but may vary by model.

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Exhibit 2, pg. 11

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 or call 1-877-888-0688

 **msnbc.com**

against enforcing existing tax policies on online purchases, which are often misleadingly characterized as attempts to “create” a new “Internet sales tax.”

Specifically, it is taking away about \$26,000, the amount the State of Nebraska says the March of Dimes owes for unpaid taxes on the April purchase and other online transactions over the past five years.

Opbroek acknowledged that “we owe the money,” which she said would have to come out of proceeds from this week’s fundraiser. Assuming the final tally is the same as last year’s, about \$215,000, the state tax bill will eat up nearly 13 percent of the donations.

The law the March of Dimes stumbled over is similar to statutes in most other states — arcane regulations that mean you are probably a tax scofflaw, along with just about everybody else who has bought something online. That’s roughly 80 percent of all U.S. adults, Nielsen Online calculates.

The reasons are complicated, because they involve variations in tax codes in the 46 states (plus the District of Columbia) that collect sales taxes, not to mention thousands of local tax regulations across the country. That leads to confusion even among advocates for or

Sales taxes or similar levies have always been in place on most online purchases in most states. But they are almost never paid. And with their budgets in crisis, states are more

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Exhibit 2, pg. 12

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determined than ever to get their share.

**Do you have a ‘physical nexus’?**

The confusion boils down to who does the collecting and when. As with everything involving tax legislation, there are exceptions and other complications from state to state. For example, if you live in Delaware, Montana, New Hampshire or Oregon, which have no sales taxes, none of this applies.

Under a 1992 Supreme Court ruling, businesses are responsible for collecting sales taxes on every sale they make in a state where they have a “physical nexus.” In other words, if the business has a store, an office or even a single sales rep in your state, it’s supposed to tack the state’s sales tax onto your bill.

Online retailers like Amazon.com typically don’t add the tax, except in the states where they’re based or where they have physical facilities like warehouses or distribution centers. Amazon, for example, collects sales taxes only in Washington (its home state), Kansas, Kentucky, North Dakota and New York.

The tax is still supposed to be paid, however. And if the seller’s not responsible, then you, the buyer, are. In general, you’re supposed to voluntarily file your own report and pay the standard tax on your out-of-state online purchases. (The appropriate forms are available on state tax agency websites, revenue officials are happy to remind you.)

But it turns out that the vast majority of

Americans are completely unaware of those rules, so the forms don’t get filed and the taxes don’t get paid — to the tune of \$8.6 billion in 2010 alone, the National Conference of State Legislatures estimates.

That’s a big problem, because sales taxes (as they’re called when they’re handled by a retailer) and use taxes (as they’re called when the customer handles them after an out-of-state transaction) most often pay for schools and public safety.

**NCSL data sheet: Uncollected taxes on out-of state sales (PDF)**

“It’s just a lack of education,” said Adrienne Fairwell, a spokeswoman for the South Carolina Department of Revenue, which is estimated to have missed out on \$94 million in uncollected online taxes last year.

“There are taxpayers that are willing to comply

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with the law and remit the appropriate amount of taxes that are due, but they don't know that that's what they're supposed to be doing," Fairwell said.

South Carolina, like most states, relies on consumers to be honest. But if you happen to be audited and you haven't paid up, you could be in for a world of hurt.

"The Department of Revenue realizes that there is concern and there are issues with collecting the use tax," Fairwell said. "But we aggressively go after that."

**'Amazon laws' draw support**

As the economic downturn has gouged ever-bigger holes in their budgets, officials have started to turn up the heat. That's why Nebraska Tax Commissioner Douglas A. Ewald went after the March of Dimes — one of several charities he said the state is pursuing.

Numerous other states are considering legislation or studying proposals that would crack down on non-payment of online taxes:

- The Alabama Department of Revenue is sending letters to random taxpayers, telling them to review their last three years of online purchases and send in a check.
- In February, Colorado enacted the so-called Amazon law, declaring that online retailers were part of an "economic

nexus" with state residents. Under the law — which has been challenged in federal court — Amazon and other online retailers are required to calculate the sales tax on every transaction and tell their customers how much they have to pay the state. They're also required to disclose the identities of their customers and how much they spent, which has set off a fierce dispute over Coloradans' privacy rights. Amazon says the law was enacted "over our strong objections."

- Three other states have enacted laws like the Colorado statute since 2008: New York, Rhode Island and North Carolina. And at least a dozen more are considering following their example.

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Rep. William Delahunt, D-Mass., in July introduced legislation that would give states legal authority to compel payment of taxes on online purchases, as long as they sign up for the Streamlined Sales and Use Tax Agreement, which the NCSL and the National Governors Association created in 1999. So far, 23 states have joined the effort to set up a nationwide tax collection standard.

Delahunt's bill is before the House Judiciary Committee and its prospects are unclear, but it has picked up the vocal support of influential industry groups like the National Retail Federation and the Retail Industry Leaders Association. They argue that besides funding vital state programs, a national standard would even the playing field for in-state businesses that have to go through the red tape of calculating and collecting taxes for the state.

"The Internet retailer, when they're not collecting that sales tax, they've got a 5 percent advantage," said George C. Peyton, vice president of the Virginia Retailers Federation, which is backing an Amazon law in

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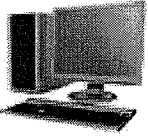
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Virginia.

For Amazon and other online outfits, "it's almost like having a sales tax holiday every day," Peyton said.

Kelly Justice, owner of the Fountain Bookstore in Richmond, is among those lobbying for such a measure in Virginia. She said that it's only fair and that she is willing to assume the tax collection burden for her online customers in other states that enact Amazon laws.

"There are advantages to the Internet; I don't dispute that," Fountain said. "But I think that we really need to look at seriously playing with the same rules."

**For consumers, a rude awakening**

The wild card in the deck is how everyday consumers will react.

Sharif Johnson of Columbia, S.C., was flummoxed when he learned that he was supposed to pay taxes on his Internet purchases, "because from my understanding, you don't have to — that's what I always understood."

South Carolina's laws are typically perplexing, or, as James Rowson, another Columbia resident, put it, "totally unrealistic with all that we have to keep track of."

Residents like Rowson are expected to keep track of their online purchases. At the end of the year, they're supposed to categorize each purchase by the county where the item will

predominantly be used and apply the sales tax as calculated by that county — a special headache for someone who might live in a county with a 6 percent sales tax but run a business in a neighboring county with an 8 percent levy.

The calculation is supposed to go on line 26 of the state return, where it's labeled not as "sales tax" but as the less familiar "use tax." The check, of course, is supposed to go to the state.

The law is similarly complex and similarly ignored in Florida, where Amanda Grout of Panama City said she spends hundreds of dollars a year buying books and clothes online but has never paid the use tax.

"I'm not going to go out of my way to go fill out all these forms and mail them in to pay more money," Grout said.

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In a sentiment that must hearten backers of the streamlined national tax agreement, she added:

“The only way I would do it is if they set it up on eBay or the website and forced me to do it.”


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# **EXHIBIT 3**



## State of Alabama sending tax notices to some consumers for online, out-of-state purchases

Published: Sunday, September 05, 2010, 10:00 AM Updated: Wednesday, September 08, 2010, 11:13 AM



**Martin Swant --- The Birmingham News**

**By Martin Swant --- Birmingham News**



Some state residents are receiving letters from the state of Alabama saying they might owe taxes on purchases made on Amazon and other online and out-of-state retailers. (Special)

If Alabama taxpayers thought they had finished filing for the year, they might be surprised. Some are receiving letters from the state tax man saying they might owe taxes on purchases made on Amazon and other online and out-of-state retailers.

The Alabama Department of Revenue is sending letters to a number of residents in an effort to collect unpaid consumer use tax from 2006 through 2008. Set at 4 percent, the state's consumers use tax applies to items subject to sales tax that wasn't collected at the time of purchase. This includes computers, books, electronic equipment and clothing, according to the revenue department.

For most years in the past decade, only about 6,000 to 7,000 of the 1.8 million Alabama tax returns reported a use tax. With researchers finding that states are losing millions of dollars each year through uncollected use taxes, many states are stepping up the search.

Besides the letters, Alabama tax authorities are implementing tax-tracking computer systems, and

Exhibit 3, pg. 19

suggesting that audits are possible -- all in an effort to collect part of the estimated \$100 million a year the state is due.

The Alabama revenue department says about a third of the taxpayers who have received the letters already have complied and sent in checks, including some for several thousand dollars.

However, tracking who's telling the truth might be too tedious of an endeavor for the state to truly crack down on the average consumer, some experts say.

"It's low-hanging fruit for the state if it can scare people into thinking they're going to get audited by the state," said Brannon Denning, a law professor at Samford University.

Retailers without a physical presence in the state are not required to collect sales tax because collecting and reporting the levy would be too burdensome, based on a U.S. Supreme Court ruling from 1992, said James Bryce, a tax law expert at the University of Alabama.

When the seller does not collect it, however, the burden falls on the consumer to pay it.

"Our records indicate that you did not include consumers use tax on your Alabama income tax returns for tax years 2006 through 2008 and we would like to bring this to your attention this possible oversight," the letter from the Alabama Department of Revenue to taxpayers states.

Revenue department spokeswoman Carla Snellgrove said the agency began sending letters last year to a random sample of taxpayers who didn't mark an amount due for use tax on their state income tax form. But as this is a pilot project, not everyone received a letter, even if they didn't fill in the line, which has been included on tax forms since 2000.

The letters are meant to be educational, as many people are unaware of the tax, said Joe Cowen, director of the department's Sales, Use and Business Tax Division.

That doesn't mean the state isn't hoping to get money from as far back as four years ago. Cowen said the state loses about \$100 million a year from unpaid taxes on items. The money Alabama collects as use tax is bound for the state's Education Trust Fund.

"You could build a couple of high schools with that money," Cowen said.

The letter requests a response within 15 days. After that, a second letter would be sent. And if a report still isn't filed after that, Cowen said an audit could be conducted if necessary.

## USE(LESS) TAX?

Few Alabama taxpayers declare the consumer use tax, which is collected on online transactions.

Year	Total tax returns	Returns declaring use tax	Use tax revenue
2000	1,699,531	6,320	\$203,344
2001	1,690,337	6,540	\$219,276
2002	1,712,690	6,157	\$242,783
2003	1,703,307	6,447	\$271,348
2004	1,571,341	6,349	\$295,083
2005	1,620,587	6,132	\$282,142
2006	1,670,846	7,102	\$312,771
2007	1,755,023	7,457	\$348,872
2008	NA	7,824	\$373,728

Source: Alabama Dept. of Revenue Statistics of Income.  
(All statistics based on numbers from Alabama form 40 and 40A.)

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(The Birmingham News)

States throughout the country are using several techniques to find out who owes unpaid use taxes. One method is through an integrated computer system used to keep track of the major tax returns. Alabama's revenue department began using computer software this year to cross-reference income tax returns with sales tax returns, Snellgrove said.

Colorado-based Fast Enterprises created the software, known as GenTax. Alabama paid \$22 million for the new integrated tax system, and will pay another \$2 million annually for maintenance, the agency said in 2005, when it announced plans for GenTax.

GenTax provides state revenue departments with tools to more efficiently maintain records and handle other tasks, said Fast Enterprises partner James Harrison, and that it allows them to align a department's systems with its priorities. Fifteen states use the company's software so far, he said. Some states use similar products from competitors.

And while the software is flexible and can work with a multitude of data, Harrison said the only way to pinpoint individual items would be to audit a company for its sales records, or to audit a person for their purchases. To audit every person who marked zero on the use tax line isn't feasible, he said.

Exhibit 3, pg. 21

States just don't have the time and money to conduct that many audits.

"You don't spend valuable taxpayer money chasing dimes," he said.

Auditing someone for a small amount wouldn't be worthwhile, said Scott Peterson, executive director of Streamlined Sales Tax Governing Board. The Nashville-based organization works to have all state sales tax law uniform so retailers are more likely to collect on purchases. He said states audit only when the benefits of an investigation outweigh the heavy costs. That's usually would only be in the case of a company or individual that might owe a large sum.

"Mom and pop don't get audited," he said. "JCPenney gets audited. GE Electric gets audited."

Cowen said the revenue department plans to continue sending letters to taxpayers.

*Join the conversation by commenting below or e-mailing Swant at [mswant@bhamnews.com](mailto:mswant@bhamnews.com).*

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