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THE TAX LAWYER

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### Amazon Tax Attacks

If you buy something from Amazon, Overstock or another online retailer, will you be stung with sales tax? It's often hard to tell until you've nearly finished checking out and see your total. And it looks like it's about to get harder.

One watershed was last week's enactment of Illinois' Amazon tax, but it clearly won't be the last. See [Illinois Governor Signs Amazon Internet Sales Tax Law](#). Illinois' new law requires online merchants to collect Illinois' 6.25% sales tax if the merchant has affiliate sellers in Illinois. [Illinois' Mainstreet Fairness Bill](#) was signed March 10th.

**Outer Bounds of Nexus.** When people talk of sales tax, they often mean use tax and vice versa. They are two sides of a coin with the same rates. The distinction seems unimportant if you hope to pay neither. But as we'll see, that's getting more and more difficult.

Sales and use tax are almost always paid by the buyer, but the only effective collection mechanism is getting the seller to collect it. The states have been aggressive for decades, but the U.S. Constitution prevents states from taxing "interstate commerce." That means no state can force an out-of-state merchant to collect or pay sales/use tax unless it has a "nexus" in the state.

In the past, most battles have been about catalog companies and how much nexus is enough. In 1992, in [Quill Corp. v. North Dakota](#), the U.S. Supreme Court ruled that a business had to be ***physically present*** in a

state before it was required to collect use tax. Merely shipping into a state wasn't enough.

A company gets sales tax nexus by having a location in the state, such as a warehouse, showroom or office. A representative or agent in the state making sales, taking orders, assembling merchandise, or making deliveries can also be enough. But the facts are key.

**Brick-and-Mortar?** If you buy from a site that has a brick-and-mortar store in your state, you must pay, even if you buy online with goods shipped from outside. A warehouse or distribution facility may also be enough even though warehouses aren't on websites and don't welcome customers. One obvious point: if you live in Washington State, you already pay Washington sales tax on Amazon purchases, since that's where Amazon is based.

**Consent Deals.** Some online sellers make deals with particular states to remit tax for sales made to customers in their state. The website may tell you or may just add the tax when you check out.

**State Hit List.** Like Illinois, New York also has an Amazon tax. Amazon is fighting it in court but in the meantime collects New York tax on shipments to New York. Other Amazon taxes are imposed in Rhode Island, North Carolina, North Dakota, Kansas, Kentucky and Colorado. Many more states are considering adopting one, including California, Arizona, Connecticut, Hawaii, Minnesota, Mississippi and Vermont. See [Amazon at war over sales taxes](#).

**Sleeping Giant.** The elephant in the room is ***use tax***. The loud debate over Amazon taxes would be a whisper if people paid their use tax. You are subject to your state's use tax when you order out of state and have the item shipped ***into*** your state. There's no constitutional prohibition.

In effect, your state can tax you as if you bought the item at your local store. For decades, you "should" have been reporting your catalog, phone and now online purchases. While states historically didn't enforce use tax except against businesses, that's changing. Many state ***income tax*** forms now attempt to collect use tax.

Expect more on this soon, and don't be surprised if you end up paying sales or use tax on all purchases.

For more, see:

[California Legislation Would Tighten Rules On Internet Sales Tax](#)

[Amazon Takes Action in Illinois as War on Sales Taxes Continues](#)

[Amazon Pressured on Sales Tax](#)

[States Try To Collect Online Retail Sales Tax](#)

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