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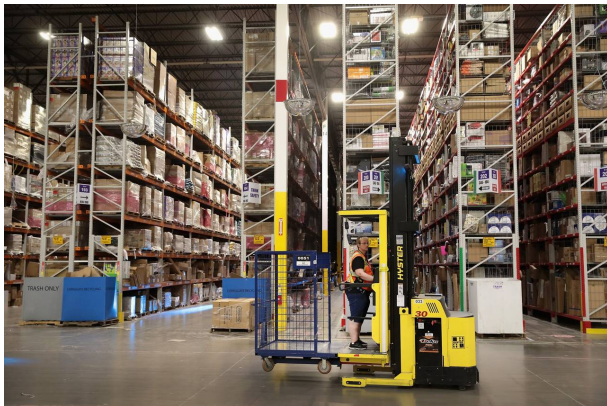
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THE NUMBERS | THE NUMBERS

If You Shop Online, You Probably Evade This Tax

The use tax applies to purchases made outside a shopper's state of residence, but most states agree it is virtually impossible to enforce



The issue of taxes paid on online purchases is set to come before the U.S. Supreme Court. Above, an Amazon fulfillment center in Romeoville, Ill. PHOTO: SCOTT OLSON/GETTY IMAGES



By

Jo Craven McGinty

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Are you a tax cheat?

If you shop online, there's a good chance you have evaded taxes that perhaps you didn't even know were due.

Thanks to a U.S. Supreme Court decision that predates the boom in e-commerce, retailers with no physical presence in a state aren't required to collect its sales tax.

Last week, the court agreed to hear South Dakota's argument to overturn that rule. But, for now, another tax is due, and consumers are supposed to pay it.

It's called a use tax, and it's applied to purchases made outside a shopper's state of residence on taxable merchandise that will be used, stored or consumed in the state of residence and on which no tax was collected at the point of sale.

For example, a New York City resident who goes online to order a premium set of golf clubs for \$2,000 from another state would owe approximately \$177 in New York state and local use taxes.

"What states did was say we can't impose a sales tax on interstate transactions, but we can impose a use tax on the use of that item in our state," said John Swain, a law professor at the

A Tax Often Not Paid

STATE ^	% OF STATE INCOME TAX RETURNS REPORTING USE TAX
Alabama	2.07
California	0.48
Connecticut	0.68
Idaho	1.47
Illinois	3.78
Indiana	0.69
Kansas	1.34
Kentucky	0.78
Maine	8.57
Massachusetts	1.98

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Note: Twenty-seven states provide for use tax reporting on their income tax returns. Data were not available for Louisiana, Oklahoma, South Carolina and West Virginia. Data for Ohio and New York are for tax year 2013; the rest are for tax year 2014.

Source: Research Department of the Minnesota House of Representatives

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The 45 states that charge sales and use taxes would prefer to require online retailers and catalog companies to collect the taxes when a sale is made. But because of the complexity of administering different state sales tax laws, the Supreme Court—most recently in *Quill Corp. v. Heitkamp* in 1992—has opted not to require remote sellers to collect the taxes, deeming it an undue burden on interstate commerce.

Since the *Quill* ruling, 24 states have banded together to simplify tax collections with the goal of convincing Congress to compel remote vendors to collect the taxes.

They may be getting closer to their goal.

University of Arizona.

Use taxes, applied at the same rate as sales tax, are due on both business-to-business transactions, which account for roughly 85% of e-commerce sales, and business-to-consumer sales, which account for the remaining 15%.

Businesses, whose books are audited, tend to pay the tax. But individuals generally don't, leaving states increasingly short of money as e-commerce grows.

In 2012, an estimated \$11.4 billion in e-commerce use taxes went uncollected, according to William F. Fox, director of the Boyd Center for Business and Economic Research at the University of Tennessee, Knoxville. In 2015, the estimate increased to \$17.4 billion.

The mechanism for collecting use taxes varies, but 27 states, including New York, North Carolina, Kansas and California, include a line on their income-tax forms to report it.

Most states agree that enforcing a use tax on individuals is virtually impossible, and the states that attempt to collect the money through income-tax forms have found the response disappointing.

About 1.9 % of taxpayers on average reported use tax on state income-tax returns in 2012, according to research by the Minnesota House of Representatives. New York had the largest collection with \$33.5 million, and it also had a relatively high participation rate among

individuals, with 4.3% of all income tax returns reporting use-tax liability.

In 2015, Supreme Court Justice Anthony Kennedy invited states to craft legal challenges that would allow the high court to re-examine the Quill decision. South Dakota was the first to oblige.

States worry about revenue lost to unpaid use taxes because it means they have less to spend on services and infrastructure and, they argue, waiving the tax for remote sellers gives them an unfair advantage over bricks-and-mortar stores.

“E-tailers love it,” said LeAnn Luna, an accounting professor at the University of Tennessee. “It makes their product cheaper.”

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Over the past two years, Amazon began collecting sales and use taxes in the 45 states with a statewide sales tax, but only for sales made by Amazon, not those by third-party sellers on Amazon. (Amazon's

warehouses, bricks-and-mortar stores and its recent purchase of Whole Foods would have given it a physical presence in states, which would have compelled it to collect taxes in those locales, anyway.)

Amazon's shift provided an opportunity for researchers to examine the difference on consumer behavior before and after the website began collecting the taxes.

Researchers at the University of Nebraska and Ohio State University analyzed transactions in 19 states that implemented the Amazon tax from 2012 through May 2015. They found that Amazon purchases declined by 9.4% after the website began taxing online purchases. The effect was greater for purchases of at least \$250, with an estimated reduction of 29.1%.

If the Supreme Court rules in favor of South Dakota, many more of us will be paying use taxes on our remote purchases—but without being asked to do it on our own.

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