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DIGITAL CURRENCY

Will New Use Tax Laws Kill Tax Free Shopping?

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Scott Peterson • Nov. 21, 2017



Recently, Scott Peterson, Vice President of U.S. Tax Policy and Government Relations for [Avalara](#), conducted a Facebook Live Chat to discuss use tax laws and shipping. This is a topic CPAs and accountants should know more about – not only to educate their clients, but also to help build a sales tax niche for their own practices. The following are excerpts from the chat.

Q: *What exactly are these new laws, and how many states will this impact?*

Scott Peterson: These laws are attempts by states to gather the data necessary to effectively enforce their use tax laws. A version of this law has been passed by five states and one territory so far: Vermont, Louisiana, Colorado, Washington, Pennsylvania and Puerto Rico. The focus is on whether you make sales in these states; if you do, and exceed that state's minimum threshold, the law is going to apply to you as a seller. It's very possible that more and more states are going to be considering similar laws in the near future. I give a quick overview of these laws in [this Facebook video](#).

Q: *If I have a website and ship items all over the country, but my office and warehouse are in Florida, does anything change for my business?*

SP: How you sell and where you sell it from is irrelevant. The only thing that is relevant is whether you collect the state's sales tax in those five states. If you don't collect their tax, the law applies to you. Retailers, no matter where they are based, you could become subject to these Consumer's Use Tax Reporting laws if they sell into a state that has adopted the practice. If that happens, and if the seller does not collect and remit that state's sales tax, the seller would then be required to adhere to the state's use tax reporting requirement, no matter where the seller is based.

Q: *Does this mean that instead of the final consumer reporting and paying use tax, the seller will have that responsibility? And, will sellers need to collect the use tax?*

SP: No, the non-collecting seller – that is, what these states call those who do not collect sales tax – will not have the responsibility of collecting use tax. The non-collecting seller will report purchase information to the state, and the state will collect the use tax directly from the consumer.

Q: *Does this mean the non-collecting seller will need to register in that state, or just simply report?*

SP: Luckily, none of these reports are due to states before March 1, 2018. While states are still rolling out their specific requirements, no state so far has released language specific to whether sellers need to register in their state. We're always releasing new information on this as it develops, so stay tuned to our [blog](#) and social media platforms for more information. As to whether there will be an easy online option, anyone who's been to a state department of revenue website knows that simplicity is hard to come by.

Q: *What is the effective date of the new use tax laws?*

SP: The three important states in this case – Vermont, Louisiana and Colorado – have laws that went into effect July 1, 2017. Pennsylvania's law was adopted in November 2017 and will become effective in 2018. Washington's law, which is similar to Pennsylvania's, goes into effect on Jan. 1, 2018. The three states where the law is already in effect impose a penalty on non-collecting sellers that don't inform their purchasers that they may owe use tax.

Q: *What are the specific requirements for these use tax laws in each of these states?*

SP: All the states require non-collecting sellers to notify purchasers that they might owe use tax. Some of these states require the non-collecting seller to send an annual report to their purchasers, telling them what they purchased and that they might owe use tax. Colorado and Louisiana require the non-collecting seller to send a report to the state containing a list of all their purchasers in that state, as well as the dollar amount of their purchases. At Avalara, we're putting together a state-by-state chart that will list the reporting requirements for each state. Once that resource is available, we'll be sure to post it in this event, as well as share it on our [Facebook page](#).

Q: *Do these laws apply to wholesalers and manufacturers?*

SP: Not intentionally. These laws are designed to impact businesses that sell directly to consumers. The problem is that the state can't look at your business name and know whom you sell to; therefore, as a manufacturer/wholesaler, you will be forced to respond to state inquiries and prove you are not making sales directly to consumers. In addition, states tax many business-to-business sales, and because the definition of the "consumer" varies by state, businesses are often "consumers."

Q: *With the rapid advance of [#Blockchain](#)-based [#Cryptocurrency](#) and Peer-to-Peer e-commerce, will states resort to monitoring package deliveries to ensure Use Tax compliance?*

SP: States do not have access to package delivery information, so the package delivery company would have to grant access, which I don't think is likely to happen.

Q: *How will these changes affect drop shippers versus Fulfillment by Amazon sellers?*

SP: What makes these laws simple is there are only two types of sellers: those who collect and those who don't. The law does not impact those who collect, regardless how they sell. However, those who don't collect are impacted by the law, regardless how they sell.

Q: *How will these laws impact consumers?*

SP: Historically, states haven't gone after consumers for use tax because they haven't had the data to pull that off. These new laws change that. With the reports sent to them by non-collecting sellers, states will have the data they need to collect use tax directly from consumers.

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