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The down low on use taxes

by Contributing Columnist

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Internet purchases often escape sales taxes. Following the 1992 decision of the [United States Supreme Court](#) in *Quill Corporation v. North Dakota*, it is settled law that if a retailer does not have a physical presence in a state, it has no duty to collect a sales tax on items shipped to a purchaser in that state.

By contrast, retailers with a store or other physical presence located in Mississippi — such as a distribution warehouse or a showroom — are obligated to collect the sales tax and send it

to the Mississippi Department of Revenue on all sales it makes to Mississippi purchasers, whether the purchase was made at the store or through the Internet. Thus, if you order a product from Wal-Mart's Internet store, you will pay a sales tax because Wal-Mart has a presence in Mississippi (and in most other states). As a result, an Internet retailer with no presence in Mississippi enjoys a 7 percent price advantage over a retailer with a store in Mississippi.

Local retailers across the country have asked Congress to eliminate this price advantageWal by passing a federal law requiring all Internet retailers to collect sales taxes and send the tax money to the states. National retailers who have a presence in multiple states support this effort. State tax officials have also voiced their support in order to collect sales taxes that they are not currently receiving.

The legislation is known as the "Marketplace Fairness Act" and has caused controversy. The legislation would require states to simplify and conform their sales tax scheme in order to be able to participate. There has been an outcry of opposition from citizens who enjoy the "tax-free" transactions and who see this initiative as government meddling. Large Internet retailers who currently are not required to collect sales taxes as well as on-line sales organizations like eBay also oppose this legislation.

However, many Mississippians are not aware that an Internet or out-of-state purchase on which sales tax is not paid is currently subject to a use tax if the property is brought into Mississippi. The use tax rate is the same as the sales tax. The purpose of the use tax is to ensure that transactions do not escape tax.

The administrative problem with the Mississippi use tax is one of collection. Local retailers and Internet retailers with a presence in Mississippi are responsible for collecting the sales tax at the time of the purchase and sending the tax money to the [Mississippi Department of Revenue](#). There is a mechanism for collecting the Mississippi use tax on vehicles and boats purchased outside the state through the registration process. However, there is no apparent mechanism for collecting the use tax on an individual Internet or out-of-state purchase aside from having purchasers pay at their county tax collector's office or at a Department of Revenue District Office.

While the use taxes due from individual purchases might seem small or insignificant in amount, Internet purchases continue to expand and form an ever-increasing percentage of all sales. The

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use taxes due on large purchases of furniture, equipment, jewelry or clothing are not insignificant.

Many states have put in place a mechanism for individuals to report such purchases and pay the use tax. Very often this mechanism is an entry on the state tax return that requires the taxpayer to report purchases on which a sales tax was not paid and then to pay the resulting use tax. Companies that provide tax preparation software have incorporated this item into their product.

The Mississippi Department of Revenue is in the process of examining how to increase public awareness of the use tax and how to construct a mechanism to collect it. Mississippi needs to be efficient in collecting all taxes legitimately due to the state. However, there is one twist — sales taxes are shared with local governments while use taxes go entirely to the state.

In the near future, Mississippi taxpayers may be asked in a formal way to report all Internet or out-of-state purchases on which a sales tax has not been paid and to pay the use tax due on these purchases.

Jim Rosenblatt is a retired Judge Advocate General attorney and dean of the Mississippi College School of Law in Jackson.



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