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# Commentary

The Public Affairs Research Council of Louisiana

## Naughty, Not Nice

### Your holiday shopping guide to the byzantine world of Louisiana's online sales tax

The cyber shopping season is upon us. But what about all those state and local sales taxes that are supposed to be collected from the "online" purchases shipped directly to us? Well, this is Louisiana. So, of course, it's way too complicated.

First, Louisiana shoppers should know that they are responsible for paying sales and use taxes on purchases of most products and some services. If you shop at local retailers, they will collect the tax from you and remit it to the state and local governments. Simple!

If you purchase something online for shipment to your house, chances are the online retailer will apply a sales tax to the cost of your purchase and remit it to the proper tax collectors. And Voila! You have paid the tax. Congratulations.

But what if you order something online and no sales tax is applied? In fact, a good portion of online sales this holiday season will *not* add a sales tax to your transaction. But you still owe a tax, by law.

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Just because a vendor isn't collecting a sales tax doesn't mean the purchaser is off the hook. You are supposed to report any unpaid sales tax for this year on the 2019 state income tax form, which you'll be submitting a few months from now. Seriously.

In case you missed it, the 2018 Louisiana Income Tax Form (IT-540) required you to divulge your "consumer use tax" on lines 24A, 24B and 25 and add it to your income tax liability. We're guessing many of you skipped this part. That's where you (were supposed to) report any unpaid sales or use taxes for online purchases that were sent somewhere in Louisiana.

### Slippery tax scene

But why are taxes collected on some online purchases and not on others?

Several reasons. Whereas most of the giant mainstream retailers already are collecting taxes for online purchases in Louisiana, compliance is *voluntary* for a fair number of online vendors, most of which are medium- to small-volume sellers. Starting July 1, 2020, tax collection will become *mandatory* for them.

Also, cottage industry retailers with very low volumes of sales shipped into Louisiana are not required to collect the tax, in keeping with U.S. Supreme Court guidance on "safe harbors" that avoid burdensome interstate commerce, based on the *South Dakota vs. Wayfair* ruling last year. Oh, and yeah, you still owe tax on that sale.

Another wrinkle is the tricky matter of third-party vendors. If you buy from a vendor that facilitates purchases with a third party, that third party might be too small to handle taxation or might currently be on voluntary compliance status in Louisiana.

This third-party taxation can get a little weird, because you might buy one product from Amazon that's taxed and another that's untaxed. Amazon agreed (they were shrewdly coerced, actually) about three years ago to collect and remit sales taxes for Louisiana purchases. For Amazon-sold products, that *should* be the case when you order.

But if Amazon is using its omniscient website to facilitate a sale to you from a third party – let's say a fictional craft shop in Alabama that sells *Roll Clyde* T-shirts – then the sales tax collection might not happen because the vendor is too small or is taking advantage of voluntary compliance.

Still, we get a little skeptical of the current system when the third-party sends us a product without tax from someplace in China or from a famous brand retailer, which means some public revenue probably is going uncollected. Presumably much of this will be ironed out by mid-year 2020, but we shall see.

## Fight for control

In the meantime, state and local officials are wrestling over who's responsible for which collections. In Louisiana, the state Department of Revenue collects state sales taxes, currently at 4.45%, and local authorities collect local sales taxes, which average 5%.

Only in Colorado and partly in Alabama do we see a de-centralized, locally controlled sales tax collection and auditing system as rampant as ours in Louisiana. It's entirely unfriendly, confounding and burdensome to business. Adding to the inconsistency, the local collection authority could be the school board, parish government or the sheriff, depending on which parish.

But hold on – it gets even more complex. In Louisiana we have about 200 exemptions to the sales tax, and a hundred of those are suspended until 2025. Plus, some of the tax exemptions apply to the state sales tax but not to the local sales tax.

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However, it's possible you might buy something this season that's shipped to Louisiana and taxed at a rate of 8.45%. (We warned you this was complicated.)

That's because some online vendors use the state's old catalogue sales method, a system still in law that provides a single state collection point and distributes almost half the revenue to local governments based on population. This apparatus is expected to be modernized at a more consistent tax rate.

## A new system, maybe?

So how are the tax collectors and online retailers supposed to navigate this?

Our state has many systems established in law to administer sales taxes, including the state revenue department and 63 local collectors representing almost every parish. Also, a collaboration of state and

local appointees embodied in two commissions are trying to set up sales tax collection mechanisms that act somewhat like the centralized and uniform systems that exist in almost every other state except Louisiana. For businesses, good luck figuring out which system has jurisdiction over which sales tax issue.

Meanwhile, some local governments are striking out on their own by having Internet vendors register directly with them for tax collection and remittance. Local officials will need sophisticated software and meticulous administration to pursue this fully. Some online retailers might balk at such a burdensome and fragmented system, which would be like no other in the nation.

Any of these new tax collection structures could come crashing down if Louisiana is deemed non-compliant with the U.S. Constitution or the guidelines set out in Supreme Court decisions, including *Wayfair*.

## Keep following the money

So, once you've paid the tax, where does the local portion of the revenue go?

In normal brick-and-mortar retail shopping, the tax collected by the retailer is attributed to the local jurisdiction of the store where the transaction is actually completed. For Louisiana vehicle purchases, the sales tax is applied to the jurisdiction of the purchaser's home, not to the jurisdiction of the car dealer.

But what happens with an online sale? That could be a mixed bag. If an online purchase is made from a company with a physical retail presence in the state, such as Best Buy for example, then the tax revenue might go to the jurisdiction of the nearest in-state store operated by that company. But for remote sellers without an in-state store presence, local governments might assign the revenue to the jurisdiction of the home where the product is shipped.

This is where it gets really interesting to see what the future might hold. And the outcome might not be favorable.

Subdivisions of homes could become a source of sales tax revenue, previously the role of retail corridors. Those communities rich in housing stock could also become the targeted recipients of their own online sales tax revenue, such as through special taxing districts, tax incremental financing or new school districts and municipalities.

This trend would be more meaningful for Louisiana than for most other states because our local tax rates are so high, comparatively. At 5%, Louisiana's average local sales tax rate is the second highest in the nation, close behind Alabama, according to the Tax Foundation. In Baton Rouge the local rate is 5.5%.

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Wealthier neighborhoods in particular would have an incentive to corral their online sales tax payments into targeted self-rewarding revenue streams. This could present opportunities for developers but also could heighten social equity issues in communities already dealing with class divisions.

These new trends could lead to some disruptive impacts – and key policy choices – about who gets the local tax revenue.

## Don't wait for Santa Claus

Louisiana lacks many of the positive features associated with an efficiently run sales tax operation as desired by the Supreme Court's *Wayfair* decision. The state system is plagued with administrative and compliance burdens, lacks standardization and uniform definitions of products and services, presents a complex rate structure, and fails to provide uniform rules or a simplified, centralized combined audit process.

As might be expected, Louisiana's messy system is rated very poorly by legal and industry analysts. For example, the Tax Foundation just released new rankings for how states are handling sales tax administration and compliance with the latest legal standards for remote sellers. Louisiana is at No. 48, a low score that drags down our overall performance in the Foundation's nationally recognized ratings survey, the State Business Tax Climate Index.

As the holidays march into the new year, let's hope our newly elected and re-elected state legislators keep themselves informed about these evolving circumstances and take the steps necessary to improve and simplify our sales tax system, starting with better and more modern methods of collecting the tax.

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