

From: [Maybank, Burnet R. III <BMaybank@nexsenpruet.com>](mailto:BMaybank@nexsenpruet.com)
To: [Maybank, Burnet R. III <IIIMaybank@nexsenpruet.com>](mailto:IIIMaybank@nexsenpruet.com)
Date: 3/27/2014 10:50:09 AM
Subject: SALT LS: Scoppe on Amazon amendment

Scoppe: Are you now, or have you ever been, a tax cheat?

By Cindi Ross Scoppe
Associate Editor
March 25, 2014

Did you order this? If so, you'll need to report it and calculate and pay a use tax, since the Legislature exempted Amazon from collecting the sales tax that other S.C. businesses must. GERRY MELENDEZ — gmelendez@thestate.com | [Buy Photo](#)

Columbia, SC —

A SIMPLE quiz: 1. Are you a law-abiding citizen? 2. Did you buy products online last year from businesses that aren't located in South Carolina, or from Amazon? 3. Are you reporting those purchases, and paying the use tax you owe on them, on your state income tax form this year? 4. Would you like to reconsider your answer to Question 1, in light of your answer to Question 3?

The biggest advantage of sales taxes is that they are simple for consumers and government. No forms to fill out, no records to keep track of. There's not even any math for the taxpayer. You purchase your products, the seller adds the tax to your bill, you pay that, and the seller sends the money to the state.

Unless you purchase the product from a merchant that does not have a "physical nexus" in our state — or that, like Amazon for two more years, has a special exemption in state law to pretend it doesn't have a physical nexus here. Then it's your responsibility to keep track of those purchases, calculate the state and local sales tax you owe and include that on your annual income tax form.

I don't know about you, but I have a hard time remembering what I bought last month — let alone 14 months ago. But that's no excuse for being a tax cheat, which is what you are if you don't pay South Carolina's use tax, a sort of substitute sales tax that we're required by law to pay on purchases that are taxable in South Carolina but for which we did not pay at least a 6 percent sales tax.

A new report from the state Board of Economic Advisors projects that South Carolinians will pay only about 3 percent of the required use taxes next year. Which is to say that we will not pay nearly 97 percent of the use taxes that we owe. That means the tiny minority of us who try to keep track of this tax will pay about \$3 million; our tax-cheating neighbors will keep \$92 million in taxes that they owe the state and their local governments.

While the tax cheats are acting immorally, they're not acting irrationally. Not only is paying the use tax inconvenient, but there's practically no reason to think you'll get caught if you don't pay it. After all, \$92 million isn't a lot of money in the context of a \$7 billion state budget. And there's practically no way for revenue officials to catch cheats unless they happen upon them in a routine audit; even that is unlikely, since that's not the sort of thing they have documents to cross check.

The point of the BEA report wasn't to finger tax cheats. Indeed, that \$3 million figure is mentioned only in a footnote. The point was to provide the first detailed look at South Carolina-specific e-commerce numbers, taking into account the peculiarities of our tax code rather than simply extrapolating from national estimates.

The report estimates that 34 percent of e-commerce retail sales and 46 percent of wholesale sales are exempt from the sales tax. That shouldn't be a surprise, given the obscene number of tax exemptions our state has. It projects that

South Carolinians will pay \$275 million of the \$367 million they will owe next year on taxable internet sales. That number is high because about two-thirds of our taxable online purchases already are being taxed, because we're buying from WalMart and Barnes & Noble and Home Depot and other businesses that make us pay the sales tax as part of our purchase, just like their brick-and-mortar stores do. The good news from this report is that our state isn't losing a lot of tax revenue (relatively speaking) to the internet. The bad news is that the amount is increasing every year. The worst news, not in the report but in the minds of every merchant in South Carolina, is that exempting out-of-state online companies from collecting the sales tax gives them a competitive advantage over the companies that locate in our state, hire our neighbors and pay our taxes. Which seems backwards. If anybody ought to get a tax advantage from the state, it's the businesses that actually contribute to our economy. Rather than taking away from it.

Businesses, including my own, are working overtime to adapt to a society that lives increasingly online. Government, not so much.

The federal government has refused for more than a decade now to pass a law allowing states to require the same of out-of-state companies that they do of in-state companies. That is why more and more of us have to either spend a ridiculous amount of time and effort keeping track of and paying what's supposed to be an effortless tax, or else cheat on our taxes. And it's why more and more of us are cheating.

Our Legislature has made the problem worse, by allowing Amazon to act as though it's an out-of-state company — although it did require Amazon to send us reminders each year of our previous year's purchases.

Worse still is what our Legislature has not done. It has not joined North Carolina and Georgia and 22 other states that have signed on to the Streamlined Sales Tax Agreement, in hopes of convincing either the Congress or the courts to let them stop putting local merchants at a competitive disadvantage. The agreement doesn't dictate tax rates. It merely makes it easier for merchants to keep up with all the different state tax codes, by setting common definitions, such as which junk foods get a food tax exemption and which don't, and eliminating some of the most bizarre quirks in sales tax laws. Failure to join in this cooperative state effort means that if the Congress ever does decide to lift the ban on state tax enforcement, South Carolina won't be able to act on it.

Failure to join the effort also means we continue to cling to some of the most ridiculous parts of our sales tax law — like the \$300 cap on the sales tax charged on cars old and new and trucks and boats and planes. Or maybe I'm confusing effect with cause.

Ms. Scoppe can be reached at cscoppe@thestate.com or at (803) 771-8571. Follow her on Twitter @CindiScoppe.

Read more here: <http://www.thestate.com/2014/03/25/3348171/scoppe-are-you-now-or-have-you.html?sp=/99/168/#storylink=cpy>

Burnet R. Maybank, III
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P.O. Drawer 2426
Columbia, SC 29202
T: 803.540.2048, F: 803.253.8277
Cell: 803.960.3024
bmaybank@nexsenpruet.com
www.nexsenpruet.com

NEXSEN | PRUET

Bio

vCard

Home

Practice Areas

Attorneys

Offices

*** CONFIDENTIAL COMMUNICATION *** The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

*** IRS CIRCULAR 230 NOTICE *** Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.