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**Reviews & Resources****Navigating Sales Tax Laws**  
By **Jennifer Schiff**

January 30, 2007

According to the U.S. Census Bureau, 33 percent of state revenues come from sales tax. And each year, state and local governments lose billions of dollars of potential revenue due to uncollected tax on online sales — a figure that the Center for Business and Economic Research says could add up to as much as \$33.8 billion by 2008. No wonder states are cracking down on online businesses that don't collect and submit sales tax — and angling for new federal guidelines that would simplify and standardize sales tax rates and collection.

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your online business needs to be collecting sales tax from customers can be tricky, however, and the information available online can be intimidating and confusing. (For example, those of you saying, "Hey, what about the Internet Tax Freedom Act?" According to the Act, *Internet access charges* cannot be taxed, not merchandise sold online to customers in states where you have a physical presence.)

To sort out the facts from the fiction, Ecommerce-Guide.com scoured the Web and spoke with the experts. What we discovered could not only potentially save you thousands of dollars in back taxes, interest and penalties, but keep you out of jail.

### Does *your* online business need to pay sales tax?

The primary determinant of whether or not you need to collect and pay sales tax is if you have a physical presence in the customer's state. Sounds simple enough, right? Wrong. Determining whether you have a physical presence, or a level of activity that would require you to collect — and remit — sales tax, what taxing bodies refer to as "nexus," can vary from state to state. It may be owning or renting property in that state, having a warehouse or a fulfillment house that maintains inventory for you in that state, having employees in that state or promoting your business in that state through something like a trade show.

For example, let's say Sue Jones, who lives in Massachusetts, has an eBay store. She runs everything out of her house. She maintains all of her own inventory and doesn't go to or sell at trade shows. Sue only needs to collect sales tax from customers in Massachusetts. However, if Sue's business expands and she decides to use a warehouse or fulfillment service in Ohio, now she is obligated to collect and pay Ohio sales tax when selling to customers in Ohio.

To learn more about nexus and what your state's guidelines are for determining it, do an online search with the name of your state and the words *sales tax* and you should be directed to your state's Department of Revenue Services. You can also visit the [Helpful Information](#) page on the Sales Tax Institute's Web site. Under "Sales Tax News and Tips" you can click on the topic called "Nexus."

Webcasts, articles, tips, and more.

#### Tutorial: Building Ajax Portlets for WebSphere Portal

This tutorial shows you how to use WebSphere Portal to create and deploy a portlet that contains AJAX functionality. Get this tutorial and learn how to implement Ajax into a portal-based Web application and discover how to dynamically update a page using DHTML.

#### Download: IBM Rational Data Architect v6.1

Download a free trial version of IBM Rational Data Architect and get to work designing relational and federated databases, understanding data assets and their relationships and streamlining database projects.

#### Download: IBM Rational Web Developer for WebSphere Software

Here is an easy-to-learn IDE, less ambitious than IBM Rational App Developer for WebSphere, but perfect for developers to use to build, test, and deploy Web, Web services, and Java applications. Powered by Eclipse.

#### Tutorial: The Ajax Transport Method

Discover three Ajax data transport mechanisms (XMLHttpRequest, script tags, and frames or iframes) and their relative strengths and weaknesses. This tutorial provides code for both the server side and the client side and explains it in detail to provide the techniques you need to put efficient Ajax controls anywhere you need them.

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Everything you need to know to start your own successful e-business.

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How to make money in the online marketplace.

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What's new in secure payments for your online store.

#### [Shopping Cart Software](#)

Solutions to close, process and track your online sales.

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Once you determine nexus, you need to figure out which items in your inventory are subject to sales tax in those states you have nexus in, explains Richard Stim, a Nolo editor, small business attorney and entrepreneur who writes about Internet sales tax. Again, your state's revenue services/tax-related Web site or the Sales Tax Institute should be able to provide you with this information.

#### Helpful Resources

What was the original purpose of sales tax? Who has to pay it? The following organizations and Web sites answer those questions and provide lots of useful information on Internet sales tax and sales tax in general.

- » [Sales Tax in the United States \(Wikipedia\)](#)
- » [The Sales Tax Institute](#)
- » [The Sales Tax Clearinghouse](#)
- » [The New Rules Project's Internet Sales Tax Fairness page](#)
- » [E-fairness](#)
- » [The Streamlined Sales and Use Tax Agreement](#)

#### A Note About Selling Electronic or Digitized Products

In some states, such as California, if you are selling downloadable software, it's considered intangible, no matter where you ship it and therefore not subject to sales tax. However, if you are a California business and you ship that same software on a CD to a customer who is also in California, it's considered a tangible good and taxable. Illinois, on the other hand, currently makes no such distinction. So if you are selling a downloadable product, like software, you need to determine if in those states you have nexus in, if that good is considered taxable or not.

If the goods you are selling are subject to sales tax, you will need to apply for a sales tax permit or license in those states you have nexus in, which you can most likely obtain online. And if you have a physical presence in more than one state, you will need to check out each state's rules regarding sales tax and get sales tax permits where applicable. (Note: Alaska, Delaware, Montana, New Hampshire and Oregon don't have sales tax.)

#### Warning: Register Before Collecting

You cannot legally collect sales tax without being authorized to do so, which means being registered in those states in which you have a physical presence. "Collecting tax without having a valid license is considered criminal fraud, and you could go to jail," says Diane L. Yetter, the founder of the Sales Tax Institute and the president of Yetter Consulting Services, Inc. So it definitely pays to register.

#### How to Determine Sales Tax

Probably the easiest way to ensure that you are collecting the appropriate sales tax is to work with your shopping cart vendor, if you have one. Most commercial shopping cart vendors can program your cart to calculate sales tax due on applicable items and in applicable states — as long as you provide them with that information.

If you don't have a shopping cart system or a vendor who can help you with the sales tax issue, "there are a couple of providers out there that have fairly inexpensive sales tax rate tools," says Yetter. The two she recommends for small and mid-size businesses come from [Tax Data Systems](#) and [the Sales Tax Clearinghouse](#).

#### Selling through eBay, Amazon or Other Third-Party Sellers

Think of businesses like eBay and Amazon as very sophisticated shopping cart systems. While they may be able to calculate sales tax for you, you are responsible for telling them which items are taxable and which sales tax states you have nexus in, and of course, for paying the sales tax to those states.

#### How to Pay - And Consequences If You Don't

If, for example, you have nexus in Massachusetts and have gotten a sales tax permit or license to collect Massachusetts sales tax, you will need to file a Massachusetts sales tax return and remit all sales tax proceeds with your return. "How often you file depends on your volume," says Yetter. If you are a micro business, you probably only have to file

once a year. However, "if you're somebody like Sears, you do it once a month with pre-payments," she says. Depending on your volume, you can pay monthly, quarterly, semi-annually or annually.

In each case, the state will send you a sales tax return form with instructions, which you will need to fill out and return along with any sales tax due.

What's the worst thing that could happen if you don't register or file a sales tax return? "If you have never filed a sales tax return and have never been registered for sales tax, the state could audit you," says Yetter. "The average sales tax across the country is eight percent. So let's say you did \$100,000 of sales a year in a state where you had nexus, where there was sales tax. And you didn't collect the sales tax. The state could come and get eight percent of that \$100,000 plus interest plus penalties for every year you didn't collect and pay sales tax. That could put you out of business."

*Jennifer Lonoff Schiff is a regular contributor to [ECommerce-Guide.com](http://ECommerce-Guide.com) and writes a [blog](#) for small business owners.*

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