# E-Commerce is Rewriting Retail's Playbook – and Sales Tax Rules

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## ABOUT THE AUTHOR

**Pete Olanday has 20 years of experience in system integration, with 14 of those in the Retail space. He has helped national and international clients implement automated solutions for indirect tax in their Point-of-Sales (POS) and ecommerce channels. Prior to joining Vertex Consulting, Pete worked for an international retailer, managing their POS platform.**

E-commerce continues to transform the retail industry. This ongoing upheaval has tax and accounting functions scrambling to address new rules and risks. Tax automation plays a crucial role in retailers' ongoing effort to satisfy with new rules while mitigating related compliance risks.

"In true modern-industry fashion, e-commerce hasn't just grown exponentially," notes Forbes columnist Steve Olenski. "It has evolved and transformed over time to meet the ever changing whims and needs of the modern day consumer." The column lays out how e-commerce revolutionized the retail industry – graduating from a "non-existent business model to becoming a potential threat to the traditional mall as we know it."[1]

Since that column appeared in 2015, e-commerce along with the rapid rise of mobile commerce and marketplace selling have walloped with additional waves of transformation. U.S. e-commerce sales increased by 15.6 percent from 2015 to 2016; during that same stretch, total retail sales increased only 2.9 percent, according to the U.S. Department of Commerce[2]. Mobile commerce's share of e-commerce continues to grow at a torrid pace: in 2010, mobile commerce represented 3.6 percent of e-commerce; by the end of 2016, mobile commerce represented 20.6 percent of all e-commerce transactions.[3] What was briefly referred to as "multichannel" a few years quickly graduated to "omnichannel" and now appears to be giving way to something akin to "any-channel-including-selling-on-Amazon-and-other-online-marketplaces."

There is likely a more elegant way to describe the current, hyper-omnichannel environment. There are also retailers whose tax automation solution equips them with a more elegant, accurate, risk-savvy and efficient approach to managing the complex web of tax challenges e-commerce poses to retailers. By understanding the nature of these challenges, retail tax leaders and their colleagues in the accounting function and the C-suite are better positioned to recognize the type of tax automation the organization should use in order to thrive in the face of disruption.

### THE LAW(S) OF THE AMAZON

In 2008, New York enacted a click-through-nexus law, which established "that a seller is presumed to be a vendor if it entered into an agreement with a resident of New York and the resident refers customers to the vendor's website. The referrals may be made through a link, a website, or other digital means."[4]

Because New York's law targeted online retailers, it became known as the "Amazon Law." Since 2008, a number of states have followed suit by enacting their own Amazon Laws, many of which have "click-through nexus" provisions. As tax professionals know, nexus means that a retailer has established a presence with the state or jurisdiction and is the basis for the sales tax collection obligations of out-of-state businesses. Nexus gives the state or jurisdiction the right to require the retailer to collect and remit sales tax on their sales to its in-state customers.

Click-through-nexus laws require a remote/online seller to collect sales tax from customers located in a state if the seller has an association with any of its in-state marketing affiliates with links or ads through which customers buy from the seller's online store or marketplace. Nexus is established because the in-state marketing affiliates refer customers to the remote seller's online store. Other, similar types of Amazon laws exist; some of these feature different rules for establishing nexus while others have sales-transaction reporting requirements in lieu of nexus.[5]

These laws add to the significant complexity that retailer tax functions continually endure while keeping up with the hectic pace of sales and use tax changes across numerous different jurisdictions.

## MORE WORK, COMPLICATIONS AND EXPENSE

Earlier this year, Amazon began collecting sales tax in all states that have such a tax. "Collecting sales tax on online purchases has been a controversial subject for years," writes Kelly Phillips Erb, who notes that retailers do not like the Supreme Court's ruling on physical presence "because it's more work for them. Figuring sales tax in multiple states and localities can be complicated and expensive."[6]

Complexity and expense are increasing as states continue to investigate new ways to collect sales tax despite the well-established precedents of physical presence required for tax collection that Erb refers to (the 1992 Quill decision) as well as to National Bellas Hess v. Department of Revenue of Illinois, the 1967 Supreme Court case. As states and other jurisdictions intensify their sales-tax collection efforts in an era of rapidly increasing mobile and e-commerce purchasing, retail tax functions take several key steps to ensure compliance (even as regulations remain a moving target). These actions include:

- **Keeping current on tax rules and compliance requirements.** Monitoring and responding to changing sales tax rules is time-consuming and difficult. Tax functions frequently consult with third-party experts for guidance on these changes, especially concerning nexus implications.

- **Registering in states where online orders are taken.** Tax functions must perform the appropriate steps outlined by relevant jurisdictions to complete registration processes. This work also tends to involve guidance (concerning registration plans) from tax advisors.

- **Tax-sensitizing merchandise for multi-state selling.** Tax departments invest the time needed to fully understand situs – the important 'tax where's' for any given retail transaction – and then create a product and merchandizing tree that tax-sensitizes their merchandise to accurately collect sales tax across all states.

- **Identifying tax issues concerning services.** The taxability of services provided to customers depends on different factors within different jurisdictions. These factors may include where the service was performed or received; or whether the service (or payment for the service) was provided online. Services that are bundled with a product (e.g., the tailoring of a new suit) are also subject to specific rules in many jurisdictions.

## CHOOSING THE RIGHT SALES TAX SOFTWARE

Tax automation plays a crucial role – ensuring accuracy, reducing compliance risks, increasing efficiency and more – within most retail tax functions. Given the fluid nature of retail tax rules, however, it is imperative that tax functions select the most effective form of sales tax software. The tool's ability to scale is extremely important, but there are a number of other factors that tax executives should consider, including:

- **Accuracy:** through its tax-sensitized merchandizing and product hierarchy, the automation should mitigate the risk of sales tax errors.
- **Exemptions:** the software should recognize when a customer is tax exempt and automatically validate the exemption before the transaction is completed.
- **Rule changes:** the automation must remain up-to-date on all of the many and constant changes to tax rules (including sales tax holidays) across all of the jurisdictions in which the retailer operates.
- **Transparency:** in addition to conducting tax calculations seamless in the background, the tool should provide convenient transparency, and access, to all tax data for auditing purposes.
- **Efficiency and convenience:** the automation should help free tax professionals to invest their time in higher-value activities in part, by providing them with easy access to that data they need for planning purposes.

When evaluating tax automation software it is important to recognize that the organization can grow quickly and unexpectedly. This type of sudden growth has been demonstrated frequently in recent months. This summer, for example, omnichannel retail giants QVC announced it would acquire rival HSN – a consolidation that prompted a leading retail analyst to note that "there are some clear advantages to scale."[7]

The same point holds true for the sales and use tax software that retailers use to help them succeed in the face of ongoing industry transformation.

## ABOUT VERTEX

**Vertex Inc., has been a leading provider of tax technology and services, enabling companies of all sizes to realize the full strategic potential of the tax function by automating and integrating tax processes, while leveraging advanced and predictive analytics of tax data. Vertex provides cloud-based, on-premise, and hosted solutions that can be tailored to specific industries for every major line of tax, including income, sales and consumer use, value added and payroll. Headquartered in Pennsylvania, Vertex is a privately held company that employs over 900 professionals and serves companies across the globe.**

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## END NOTES


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