2025

TAX CHANGES

Avalara

A TAX COMPLIANCE GUIDE FOR

RETAIL

Retail

Figuring out how to rise above the competition will be a top priority for retailers in 2025. As always, navigating maddeningly complex sales and use tax requirements will be another. The right tools can help retailers succeed in both areas – and help retailers keep customers happy.

What's ahead:

DISCLAIMER

The retail resurgence

The year ahead looks promising for retail. Inflation was **close to pre-pandemic levels** in October 2024, and though the tendency to hoard essentials dies hard, the **supply chain has largely stabilized**. For the most part, manufacturers have what they need to make products, and consumers have the resources to buy them.

And consumers *are* buying.

U.S. retail sales in September 2024 exceeded expectations, and retailers are generally optimistic. In the U.K., 85% of senior leaders interviewed by **Retail Week** between May 21 and June 28, 2024, predicted higher year-over-year sales in 2025. Opportunity abounds: For the right price, **67% of global buyers surveyed by NielsenIQ would try a new brand**. That brand could be yours.

But 2025 won't be without hurdles. For one, consumers aren't buying willy-nilly. They're spending **intentionally**, "focusing primarily on what gives them a sense of prosperity and well-being." That's a tall order, and competition is fierce. Customers will lean toward retailers with user-friendly websites and convenient return policies.

Generative artificial intelligence (AI) and machine learning technologies can help retailers discover and cater to consumer preferences. Many buyers are game: 40% of consumers would accept a product recommendation from an AI assistant, according to the NielsenIQ survey.

But new technologies bring new dangers from bad actors. Consumers are certainly wary: 56% of the NielsenIQ survey respondents are concerned about data privacy with AI technology. Having solid governance and security policies is key.

So is getting sales and use tax right.

Sales tax compliance is one of the biggest challenges facing U.S. retailers. It may even be harder for businesses selling *into* the U.S. because the sales tax structure is in a class by itself. There's a general sales and use tax in 45 states, plus Puerto Rico and Washington, D.C. – and no two state sales tax systems are alike. The majority of those states have local sales and use taxes, too, as does Alaska (which has no statewide sales tax).

Keeping up with the multitude of rate, rule, and policy changes is a monumental task. Understanding how all those sales and use tax changes impact your business even more so. This report aims to help by alerting you to some of the most significant retail sales tax changes on the horizon.

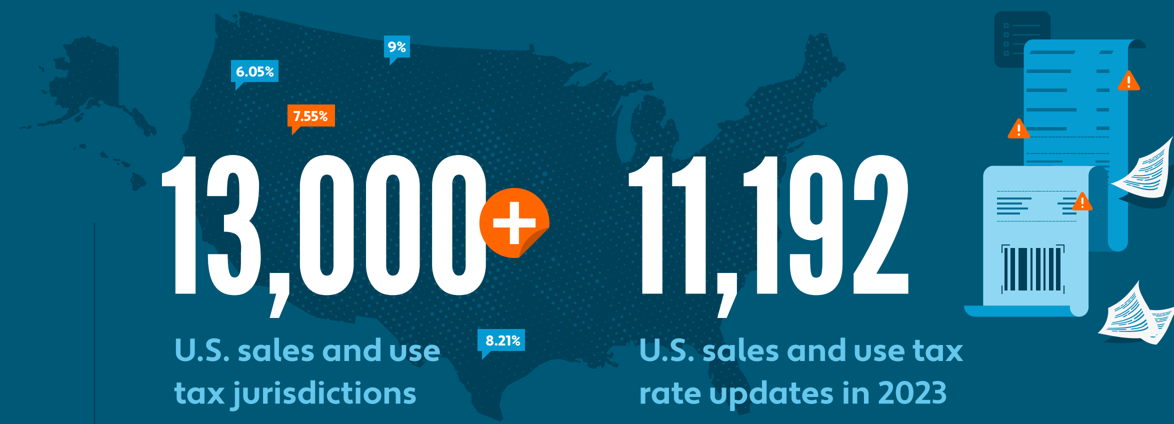
What the numbers tell us about the retail industry in 2025

The retail industry supports 1 in 4 U.S. jobs and contributes more than $5 trillion to U.S. annual GDP

1 in 4

U.S. jobs supported

Source: NRF



13,000+

U.S. sales and use tax jurisdictions

11,192

U.S. sales and use tax rate updates in 2023

Source: Avalara

39 ACROSS **19+**

sales tax holidays

states in 2024

Source: Avalara

98,910

U.S. sales tax holiday rule updates in 2023

Source: Avalara

U.S. online retail sales are likely to reach $1.2 trillion in 2024 and could reach $1.6 trillion by 2028

$1.6T

Source: Industry Dive

Remote sales tax compliance isn't getting any easier

Before the Supreme Court of the United States issued its seminal ruling in South Dakota v. Wayfair, Inc. (June 2018), retailers typically only needed to collect and remit sales tax in the states where their business had a physical presence. That excluded a lot of retailers, especially before the emergence of ecommerce.

Economic nexus requirements are changing

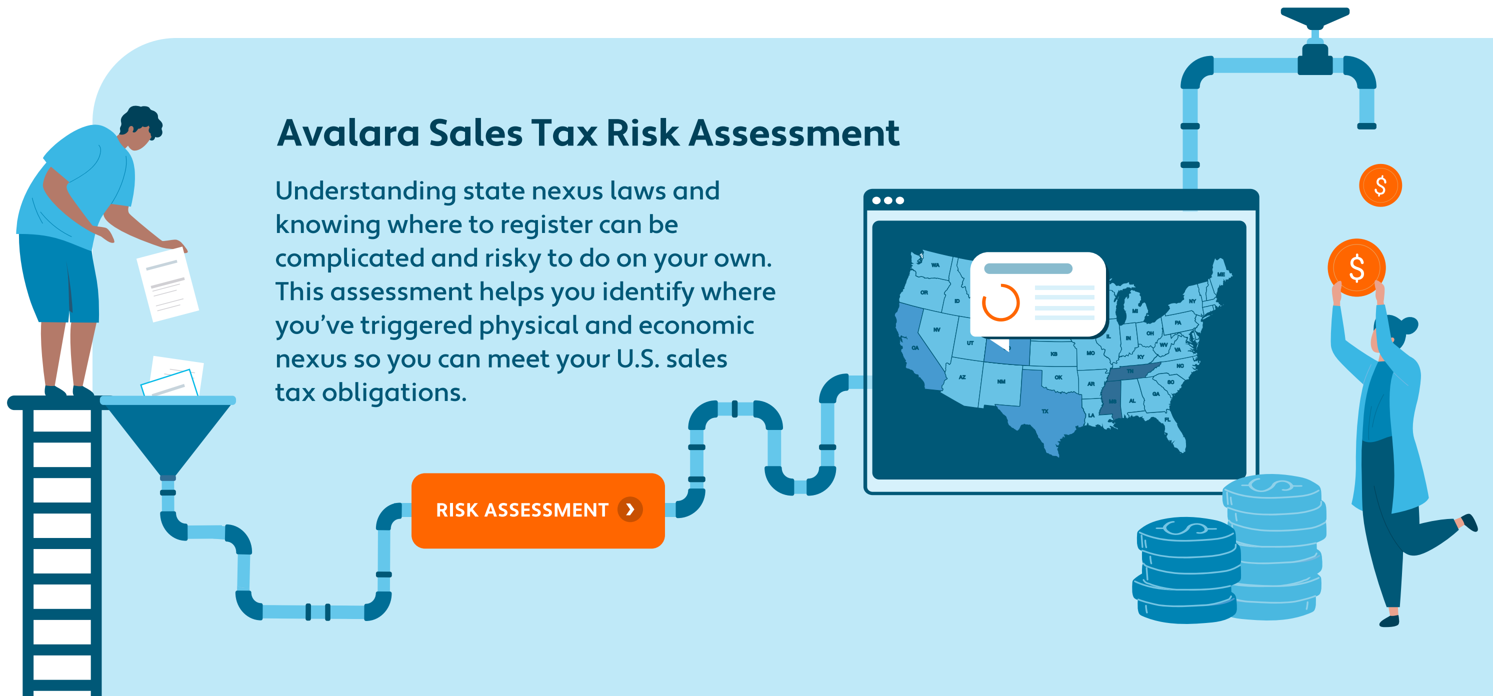
The Wayfair decision didn't eliminate physical presence as a nexus trigger, but it removed the guardrails of physical presence. Today, **every state with a sales tax has an economic nexus law** that bases sales tax obligations on a remote seller's economic activity in the state. Every state with a sales tax also requires certain marketplace facilitators to collect and remit sales tax on behalf of their third-party sellers, but we'll get into that later.

States do provide safe harbor for small businesses. For instance, remote sellers don't need to register for California or Texas sales tax unless they make at least $500,000 in sales in a 12-month period. In New York, the economic nexus threshold is $500,000 *and* 100 transactions, while Alabama and Mississippi both use a $250,000 sales threshold.

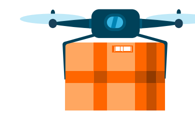
But as of December 2024, in 22 states, having just $100,000 in annual sales is sufficient to give a remote retailer a sales tax obligation. In another 20 states, the economic nexus threshold is $100,000 in sales *or* 200 sales transactions.

The transaction threshold is losing ground: **13 states have already eliminated it**; **Alaska** is ditching it effective January 1, 2025; and **New Jersey** is moving to drop it in 2025. It's a bugbear for small businesses while it persists, especially for those with a high volume of low-value sales. Taking the **Avalara Sales Tax Risk Assessment** can help you determine whether and where you may have economic nexus.

We cover economic nexus and physical presence nexus more thoroughly in the **sales tax section** of this report. On to another issue plaguing ecommerce businesses: retail delivery fees.



Understanding retail delivery fees



One of the biggest sales tax issues affecting retailers and marketplace facilitators these days is actually a retail delivery “fee,” not a sales tax. How about that?

If you haven’t yet encountered one – and the emphasis here is on “yet” – a retail delivery fee (RDF) is a fee on retail sales delivered by motor vehicle. Colorado was the first state to conceive of such a thing and is proving to be a trendsetter.

The **Colorado retail delivery fee** (currently 29 cents) caused a kerfuffle when announced in May 2022, mere weeks before taking effect July 1. For starters, nearly all retailers with a sales tax obligation in the state were told they’d have to collect the fee from their customers and state it separately on invoices. Many businesses weren’t sure how to do that. The fact that the Colorado Department of Revenue initially couldn’t answer some questions, like whether retail deliveries made by the USPS would be subject to the fee, didn’t settle retailers’ nerves.

Colorado eventually smoothed out most of the fee’s kinks. It established an exception for some businesses and waived the requirement for retailers to collect the fee from customers; companies can now pay the fee themselves if that’s easier or less costly. It found the answers to retailers’ questions (the fee *does* apply to retail deliveries of taxable goods delivered by the USPS). But compliance challenges remain; for example, local sales tax applies to Colorado’s RDF in some parts of the state but not in others.

When a **similar-but-different retail delivery fee** took effect in Minnesota on July 1, 2024, retailers and marketplaces were hit with new trials and tribulations.

Minnesota’s 50-cent retail fee is less straightforward than its Colorado counterpart. The Colorado fee applies to *all* taxable tangible personal products delivered by motor vehicle (unless delivered to an exempt purchaser) but *doesn’t apply* to any goods that are tax exempt. Yet more than 100 different taxable items, including a bunch of baby products, are *not* subject to Minnesota’s fee. And clothing, which is generally tax exempt in Minnesota, *is* subject to the RDF – if the transaction equals or exceeds $100.

So that’s fun.

Source: Avalara

Lauren Stinson, Partner at Cherry Bekaert Advisory, explains that while retail delivery fees may have been well-intentioned, execution of fee collection has been problematic for taxpayers. "From an administrative perspective, sellers are finding it difficult to collect on top of the already burdensome and complex sales tax. Often needing internal IT programming to change invoicing and billing systems and/or shopping carts, smaller businesses are disproportionately impacted and are frequently paying the tax out of pocket as opposed to charging their customers."

Stinson adds that RDFs (and other types of fees) often result in higher prices. "In addition to the consumer paying the fees, sellers may need to raise prices to cover the extra cost of compliance – so it can have a double impact. Perhaps the question the states need to ask themselves is not, 'How can we raise revenue?' but, 'How can we do so in a way that is truly reflective of the source of the problem?'" She says fees and taxes that are more aligned with last-mile deliveries could more evenly impact the sellers putting the extra vehicles on the road.

Yet more RDFs are likely in the cards according to David Lingerfelt, Senior Director of Indirect Tax at Avalara. "A retail delivery fee is a great way to raise revenue without raising taxes. It's hard to raise the sales tax rate or expand the sales tax base, but it's relatively easy to implement a retail delivery fee."

LAUREN STINSON
Partner at Cherry Bekaert Advisory

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Which states are adopting retail delivery fees?

And sure enough, at least six states are contemplating retail delivery fees of their own: Maryland, Nebraska (also LB19 and LB48), Nevada, New York, Ohio, and Washington. "They're doing this in other states," Nebraska State Senator Carol Blood told the Revenue Committee when advocating for her retail delivery fee bill. "Right?"

Lingerfelt thinks Washington will be the next state to implement a retail delivery fee, and he's probably correct. A retail delivery fee analysis published in June 2024 by the Washington State Joint Transportation Committee concluded that "a modest fee on the delivery of retail goods in Washington has the potential to generate significant revenue for state and local jurisdictions." Yet it also acknowledged that an online retail delivery fee could negatively impact businesses of all types, so we'll have to wait and see how this plays out.

Retail delivery fees are definitely something to watch for in 2025. One could soon be coming to a state near you, though Stinson is hopeful that other states will tread carefully in this area. If they do pass such legislation, she says "states must learn to give taxpayers more time to get systems in place."

Sales tax holidays are another pain point for retailers, and for now at least, they're much more prevalent than retail delivery fees.

Sales tax holidays aren't relaxing for retailers

There were at least 39 **sales tax holidays** in 2024 across 19 states, plus Puerto Rico and some localities in Alaska. The exact number is hard to pin down because sales tax holidays can change (like just about everything related to sales tax).

In 2024 alone:

- **Florida** established five new sales tax holidays.
- **Mississippi** moved up its tax-free weekend and extended it by one day.
- **New Jersey** repealed its tax-free weekend.
- **Ohio** extended and expanded its 2024 sales tax holiday.
- **Washington, D.C.**, created a new 4/20 medical cannabis sales tax holiday.

And in a surprise move, **Canada** offered a last-minute sales tax holiday in December.

Such changes make it hard for businesses to stay sales tax compliant. In fact, although sales tax holidays were conceived to boost sales, they may actually have an adverse effect on retailers.

The impact of sales tax holidays on retailers

- **32%** of respondents have had sales increase during sales tax holidays
- **60%** struggled to make a profit due to sales tax holiday complexities
- **32%** described sales tax holidays as a "logistical nightmare"
- **58%** spend at least $10,000 annually preparing for sales tax holidays
- **57%** hire temporary staff to handle the increased demand
- **24%** found it difficult to understand the rules and restrictions
- **53%** pay their employees overtime

Source:
Avalara/Censuswide survey

How sales tax holidays impact retailers

To better understand the full impact of sales tax holidays for retailers, Avalara asked Censuswide to survey 500 operations and/or finance professionals at small and midsize U.S. retailers in August 2024.

The responses were fascinating: 26% of retailers surveyed were concerned about complying with varying rules and exclusions; 73% reported difficulties in complying with sudden sales tax holiday changes. See more takeaways from the survey to the left.

In addition to complicating compliance for businesses, sales tax holidays don't come cheap for the states that host them. According to the Institute on Taxation and Economic Policy, 2024 sales tax holidays cost states and localities over $1.3 billion in lost revenue.

What states can do to simplify sales tax holidays for businesses

To reduce the compliance burden on retailers, survey respondents recommended that states:

- Eliminate sales tax holiday price caps.
- Reduce the number of yearly sales tax holiday changes.
- Issue sales tax holiday guidance at least six months before the event.

Ohio and Canada should take note.

In September 2024, the Streamlined Sales Tax Governing Board found Ohio to be out of compliance over its holiday. Why? The 2024 sales tax holiday began on July 30, and the Ohio Department of Taxation notified vendors of the changes on May 31, 2024 – *not* "at least 60 days prior to the first day of the calendar month in which the holiday will begin," as required under the Streamlined Sales and Use Tax Agreement (SSUTA, or simply SST).

Sorry, Ohio.

"SST decided 22 years ago that states should be required to provide notice for tax changes," explains Scott Peterson, VP of Government Relations at Avalara and former Executive Director of the Streamlined Sales Tax Governing Board. "The issue was then as it is today: How much notice is appropriate? Currently, SST requires 60-day notice. Is 59 days too little notice?"

Maybe, maybe not. Ohio's 2024 sales tax holiday exemption applied to almost all tangible personal property priced $500 or less – not just clothing and school supplies subject to price restrictions as in prior years. So, it affected many retailers that haven't had to comply with Ohio sales tax holiday rules in the past.

Perhaps not surprisingly, it seems some retailers continued to charge Ohio sales tax on items that should have been exempt. Some businesses reportedly determined it would be "too difficult to change their systems to accommodate the rules ... for such a short period of time."

Whatever their reasons, businesses that erroneously collected sales tax on qualifying sales tax holiday items may find themselves having uncomfortable conversations with disgruntled customers and fielding requests for sales tax refunds. The Ohio Department of Taxation has encouraged consumers mistakenly charged sales tax to "take their receipt to the retailer for a refund."

SCOTT PETERSON
VP of Government Relations at Avalara

> **Sales tax holidays present ... a unique opportunity for retailers to drive sales, but the complexities involved can turn opportunity into a significant challenge,**
>
> **especially for small and medium-sized businesses.**

It's a pickle, and one that could have been avoided with more advanced notice and preparation.

With less than two days to prepare, retailers in Canada may face similar obstacles during the goods and services tax (GST)/harmonized sales tax (HST) holiday.

"Sales tax holidays present, in concept, a unique opportunity for retailers to drive sales, but the complexities involved can turn that opportunity into a significant challenge, especially for small and medium-sized businesses," says Peterson.

So ...

… how can retailers prepare for new sales tax holidays in 2025?

The retailers surveyed in August said they plan to take proactive measures to better prepare for sales tax holidays in 2025 and beyond.

- 40% will start planning for tax-free events earlier.
- 35% will hire people dedicated to tax compliance.
- 35% will switch to more advanced sales tax software.
- 25% will invest in sales tax software for the first time (26% said they currently manually manage sales tax holidays themselves, without software).

Getting in front of sales tax holidays is a good idea: Most states that had tax-free events in 2024 will have similar sales tax holidays for retailers in 2025, and there's sure to be at least one state with one or more new sales tax holidays (we're looking at you, Florida).

California, **Colorado**, **Hawaii**, **Illinois**, **Michigan**, and **North Carolina** are among the states that **considered new sales tax holidays in 2024**. And in September 2024, lawmakers introduced a bill to **reinstate New Jersey's annual sales tax holiday**.

Whatever else can be said about sales tax holidays, they are by definition temporary. More permanent sales and use tax changes are happening as well: new sales tax exemptions, new tax rates, and new taxes.

Taxability trends to watch in 2025

States continually refine sales tax requirements for retailers, by enacting new laws or by explaining existing ones. Recent and upcoming changes and clarifications center on credit card swipe fees and taxes on groceries.

Credit card swipe fees

Starting July 1, 2025, **Illinois is prohibiting card networks from charging or receiving interchange fees** (aka, swipe fees) on excise tax, gratuities, or sales and use taxes that are included in a transaction. This represents a significant change: Swipe fees currently apply to the total value of the transaction, including gratuities and taxes. Be on the lookout for guidance from the Illinois Department of Revenue.

Credit card fees are top of mind in Texas too. In July 2024, the Tax Policy Division of the Texas Comptroller confirmed that **credit card processing fees are subject to sales tax** when a retailer passes the fees on to customers, even if separately stated.

The Wyoming Department of Revenue also addressed the taxability of credit card fees recently. Per its **September 2024 Taxing Issues** newsletter, a credit card fee or convenience fee *is* subject to tax when the product or service it's associated with is taxable but *is not* subject to tax when the associated product or service is exempt. "This is a reminder by the state that credit card fees are part of the gross receipts from the sale," says Peterson. "There's a movement by retailers to charge consumers a fee to reimburse themselves for the fee they pay to the credit card company."

Expect more states to weigh in on this issue in the coming months and years.

SCOTT PETERSON
VP of Government Relations at Avalara

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There's a movement by retailers to charge consumers a fee to reimburse themselves for the fee they pay to the credit card company."

Cutting back on grocery taxes ...

With food prices up a whopping 28% since 2019, grocery tax exemptions have been a hot topic in the states where food for home consumption isn't already exempt from sales tax.

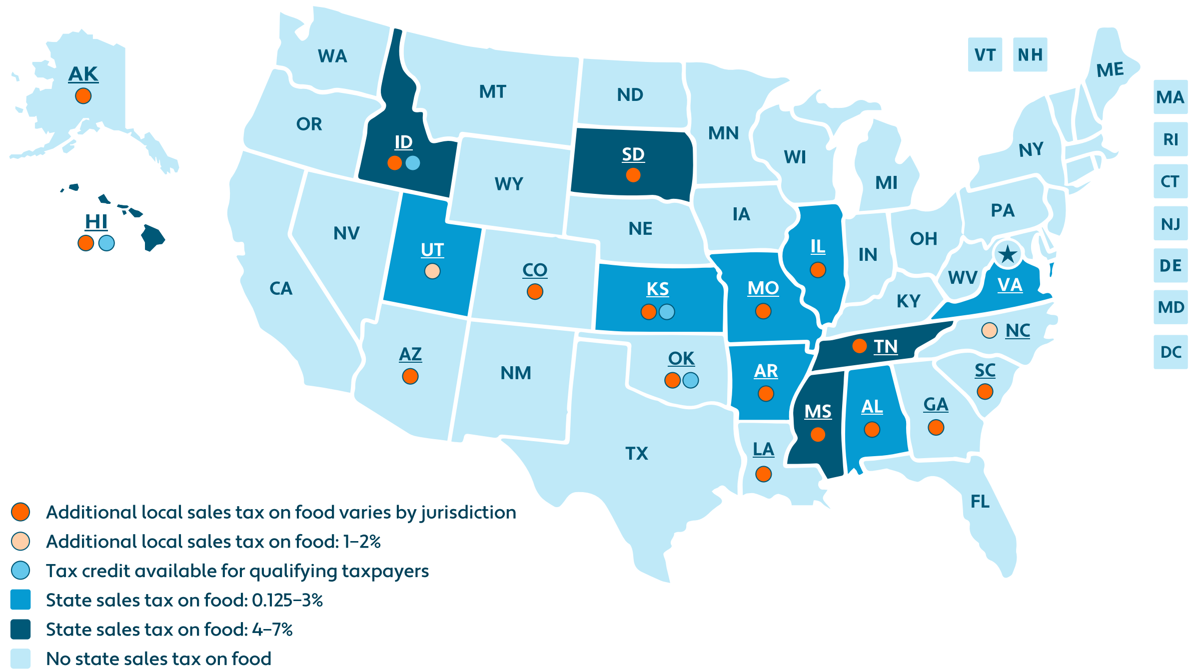
As of December 2024, Alabama, Arkansas, Hawaii, Idaho, Illinois, Kansas, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Utah, and Virginia all tax groceries at either the full sales tax rate or a reduced rate. Food is subject to local sales tax but not the state sales tax in several other states, including parts of Colorado and Alaska.

But change is afoot.

- Oklahoma exempted food from the state sales tax effective August 29, 2024.
- Kansas is exempting unprepared food from the state sales tax effective January 1, 2025.
- Illinois will exempt food from the state sales tax starting January 1, 2026.
- Alabama may further cut the state sales tax on food for home consumption; it would have dropped the rate to 2% on September 1, 2024, had the state's Education Trust Fund reached a certain benchmark.

Sales tax on food by state

For sources, click state abbreviations for each state that taxes food



Local sales and use taxes in Alabama, Illinois, Kansas, and Oklahoma still apply.

Arizona, Arkansas, Louisiana, Missouri, Tennessee, and Virginia are among the states that have tried to further reduce or eliminate grocery taxes in recent years, without success. The legislatures in one or more of these states will likely try again in 2025.

Voters got the final say in South Dakota on November 5, 2024, and rejected a measure seeking to prohibit the state tax on food and groceries. In Utah, a proposed constitutional amendment to repeal the state sales tax on food was voided on October 9, 2024, due to procedural issues, so voters had no chance to weigh in.

"Talking about tax policy can become emotional, especially when talking about the taxation of groceries," notes Scott Peterson. "Recently, Utah enacted a very significant change to its tax structure that had to be repealed because it relied on increasing the sales tax rate on groceries up to the normal state sales tax rate. Likewise, in South Dakota the Legislature and the governor have been in a multiyear battle over taxing groceries."

... and taxes on other essentials

Groceries aren't the only products states are interested in exempting. Several states have established or are considering sales and use tax exemptions that benefit certain populations or businesses, such as families or nonprofits. Recent and upcoming changes include:

- New sales tax exemptions for certain nonprofits in Maine and Washington
- New sales tax exemptions for the health care industry in Georgia and Maine
- New sales tax exemptions for families in Nebraska, Nevada, New York, and South Carolina

Clothing sold for less than $110 per item became exempt from local sales tax in Putnam County, New York, on March 1, 2024. South Carolina established a sales tax exemption for feminine hygiene products on May 13, 2024. Nebraska will exempt diapers starting July 1, 2027, and child and adult diapers will be exempt from Nevada sales tax from January 1, 2025, through December 31, 2050.

Though unsuccessful, Kentucky, Missouri, and several other states introduced legislation in 2024 to end pink taxes (in an attempt to exempt diapers, menstrual care products, and/or a variety of baby care products). Many of these states will likely try again in 2025.

Taxability changes don't merely impact direct sellers. They also affect the marketplace facilitators that account for a growing amount of global retail sales.

How marketplace facilitator laws are evolving in 2025

More than **150 online marketplaces** facilitate sales for millions of sellers – close to **10 million sellers on Amazon** alone. By 2025, marketplaces are expected to be the "**dominant online distribution channel** in retail, travel, and food delivery," as well as for a variety of B2C, C2C, B2B, and C2B services. You can find just about anything through an online marketplace, including attorneys, dog walkers, and tutors.

Given the breadth of marketplace transactions and the differences in state laws, it's not always clear when and where the seller or marketplace is responsible for the applicable taxes and fees. Plus, states are still tinkering with marketplace laws. It's hard to keep up.

What follows are just some of the most interesting recent developments affecting marketplace facilitators.

Source: Helium 10

South Carolina Supreme Court will review Amazon sales tax case

Amazon and South Carolina have been battling for years over whether Amazon is liable for approximately **$12.5 million in unpaid sales tax on third-party sales** made January 1, 2016, through March 31, 2019. This was before South Carolina's **marketplace facilitator law** took effect on April 26, 2019, but after Amazon had established a physical presence in the state.

South Carolina had agreed to waive Amazon's obligation to collect and remit sales tax for a time on the promise that Amazon would invest at least $125 million and create 2,000 jobs in the state. The agreement called for Amazon to collect South Carolina sales tax starting January 1, 2016, and it did – but only on its own sales, not on those of its third-party sellers.

Agreeing with previous court decisions, on January 24, 2024, the Court of Appeals of South Carolina **found Amazon liable for the tax**. Amazon appealed, and on October 3, 2024, the Supreme Court of South Carolina **agreed to review** the case.

"The fact that the South Carolina Supreme Court agreed to take the case leads me to wonder if it will disagree with the state, at least on some point," says Peterson. "It's a shame the wheels of justice move so slowly. This could have a severe impact on marketplaces and their sellers."

All eyes will be on this case as we wait for the court's decision.

SCOTT PETERSON
VP of Government Relations at Avalara

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Texas says marketplace fees are taxable

The Texas Comptroller has published a **proposed rule** clarifying that the fees online marketplaces charge to third-party sellers are **taxable data processing fees**.

Per **Comptroller Glenn Hegar**, marketplace sales involve "two purchasers, two sales contracts and two taxable transactions. The purchaser of goods or services through a marketplace pays sales tax on the goods or services purchased. And the marketplace seller, who is purchasing data processing services from the marketplace provider, pays sales tax on those services."

California makes marketplaces do more to stop organized retail crime

Organized retail crime (ORC) has become a serious problem for marketplace facilitators because many stolen goods are eventually sold to unsuspecting customers through online marketplaces.

After Congress set **new compliance standards** for online marketplaces to help prevent online ORC in 2023, California and a number of other states passed their own versions of the law. Starting July 1, 2025, California will require more online marketplaces to implement more **stringent anti-fraud policies**. These include:

- Establishing and maintaining a policy prohibiting the sale of stolen goods on the platform (including but not limited to suspending or terminating the seller's account)
- Providing a mechanism for individuals to notify the online marketplace that a seller is or may be selling stolen goods
- Providing a mechanism that allows the marketplace and law enforcement to communicate in a timely and confidential manner
- Maintaining internal written policies, systems, and staff to monitor listings in order to affirmatively prevent and detect organized retail crime

"For decades, marketplace trust and safety teams have been fighting against nefarious actors, fraudsters, and organized retail criminals without government resources or much support," explains Jeremy Gottschalk, Founder and CEO of Marketplace Risk. "While it's good to see various states and the federal government finally addressing the problem with well-intentioned steps in the right direction, I fear the impact on smaller, earlier-stage marketplaces could stifle competition and new entrants. With the exponential increase in internet-based criminal activity globally, there is an urgent, corresponding need to increase law enforcement resources to support marketplaces in their efforts to identify and pursue these criminals."

Whether other states will also adopt stricter requirements remains to be seen. It's certainly something to keep an eye on in 2025.

JEREMY GOTTSCHALK
Founder and CEO of Marketplace Risk

> **With the exponential increase in internet-based criminal activity globally,**
>
> **there is an urgent, corresponding need to increase law enforcement resources to support marketplaces in their efforts to identify and pursue these criminals.**

California lets rideshare and delivery apps hire independent contractors

The **California Supreme Court unanimously upheld Proposition 22** on July 25, 2024, freeing rideshare and delivery companies like Amazon, DoorDash, Lyft, and Uber to classify workers as independent contractors rather than employees. Prop 22 also entitles app-based rideshare and delivery gig workers to benefits like guaranteed minimum earnings and a health care subsidy.

Rideshare and delivery companies supported Prop 22. Had it been overturned, they could have had to register with every city and county in the state where their drivers operate – and there are 58 counties and 482 municipalities in California. So, phew, for them.

Though Prop 22 only affects companies operating in California (and California workers), other states may follow California's lead. They often do, and at least one other state – Massachusetts – is examining how rideshare companies classify their drivers. Efforts to put the issue on the November 2024 ballot in Massachusetts failed, but the issue could resurface in Massachusetts or other states in 2025.

States may work to prevent double taxation on third-party deliveries

The risk of double taxing marketplace transactions has been around ever since states first started requiring marketplaces to collect and remit taxes on behalf of third-party sellers. It's particularly high for restaurants and other businesses that contract with third-party marketplace delivery platforms (aka, delivery network companies) like DoorDash, Grubhub, and Uber Eats.

Here's an example of what happens. Food delivery marketplaces are often responsible for collecting and remitting taxes on the sales they facilitate, though specific requirements vary by state. Restaurants are required to collect and remit taxes on food sold directly to consumers. If a restaurant's sales system isn't set up to distinguish between the different types of transactions, both the restaurant and marketplace may end up taxing sales made for third-party delivery.

"When restaurants use a point-of-sale (POS) system that integrates Uber Eats or Grubhub orders with their in-house transactions, they may not realize that marketplace facilitators are responsible for the sales tax on those orders," says Amanda Denniston, Government Relations Manager at Avalara. "Unfortunately, we've encountered many businesses that unknowingly file and pay sales tax on these transactions, unaware that the marketplace facilitator has already remitted the tax. This results in a costly double payment – something especially detrimental for restaurants operating on tight margins."

"Double payment becomes more complex depending on location, the platforms the seller uses in their business (there are often more than one), and how the data comes from each different provider," explains George Trantas, Senior Director of Global Marketplaces at Avalara.

AMANDA DENNISTON
Government Relations Manager at Avalara

> **"Unfortunately, we've encountered many businesses ... unaware that the marketplace facilitator has already remitted the tax.**
>
> **This results in a costly double payment ..."**

The fact that different states have different laws further complicates the matter. For instance, California *doesn't require* third-party delivery service providers to collect and remit taxes on meals sold through their platforms, but it allows them to elect to do so. The **California Department of Tax and Fee Administration** cautions restaurants that they "may still be responsible to report tax on sales of meals." Restaurants and marketplaces therefore need to do legwork to determine their tax obligations.

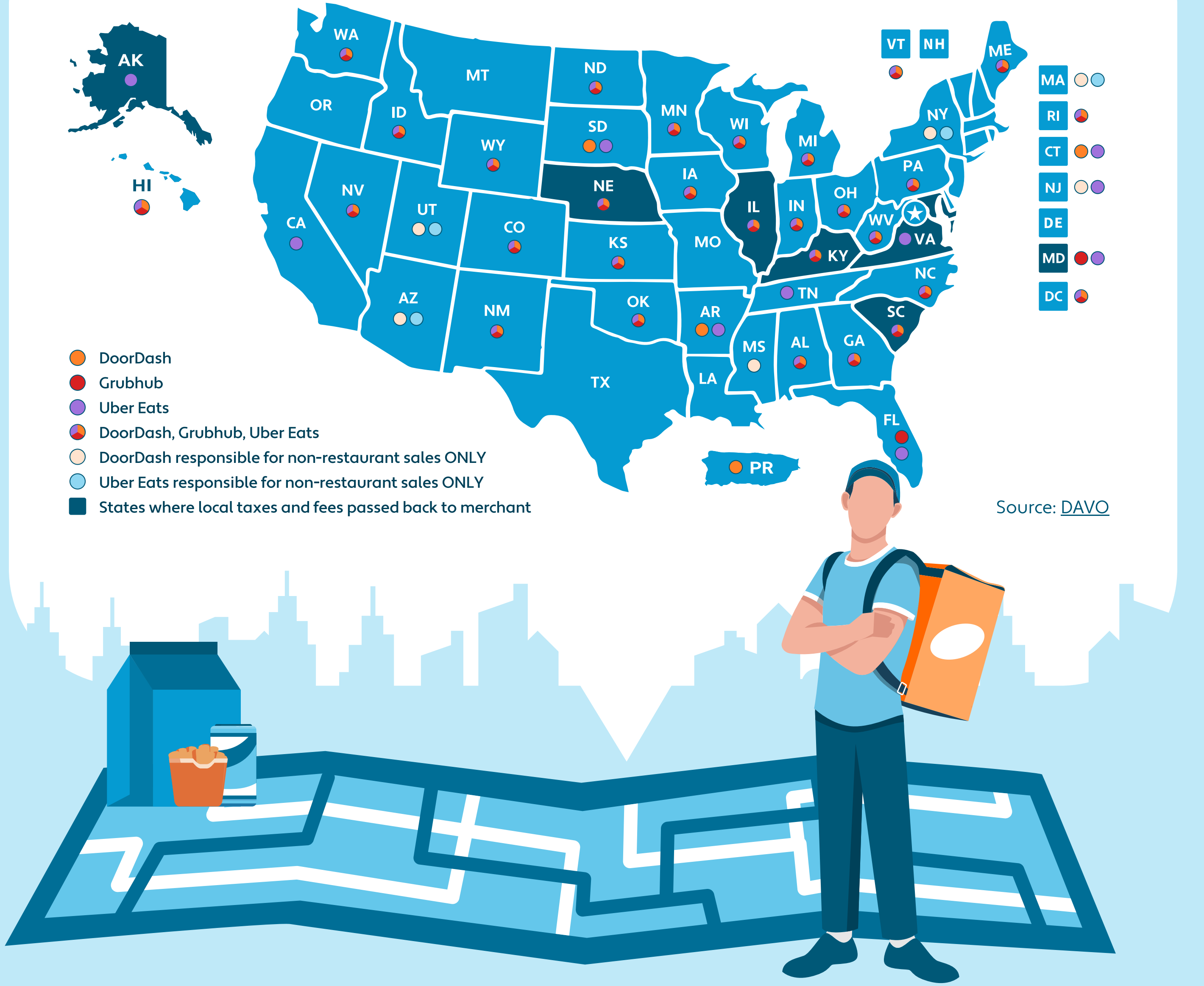
NCSL weighs in

The **National Conference of State Legislatures** (NCSL) recognizes that in some instances, marketplace facilitator laws have resulted in "double taxation and unfair tax administration." It knows local tax obligations can further complicate the matter, as marketplaces may collect state taxes but not local taxes, or local taxes but not state taxes. The same goes for meals tax, which is different from sales tax, and for fees like bag fees.

NCSL recommends states exclude certain delivery network companies and similar platforms from the definition of "marketplace facilitator" and the obligation to collect tax, as California has done. Though as California itself admits, that doesn't always solve the problem.

Who pays the sales tax?

Third-party delivery apps tax remittance policies



Source: DAVO

NCSL also suggests states allow marketplace facilitators to take a "tax paid on purchases resold" deduction on their sales tax returns "for sales tax paid to the marketplace seller due to the marketplace seller's point of sale system not being able to suppress sales tax on facilitated transactions." North Carolina currently allows marketplaces to **recover sales or use tax paid** to a seller in certain instances.

While the most sophisticated delivery app companies usually have the resources to ensure they're collecting and remitting the taxes and fees they're required to collect, tax compliance can be much harder for the businesses they work with. An added complication for businesses is that **third-party delivery apps don't all handle taxes and fees the same way in every state**.

Clear guidance from the states helps, and some states – including **Pennsylvania** and **Texas** – provide it. But it's often distressingly difficult to obtain clear information from tax authorities, and it shouldn't be.

The Streamlined Sales and Use Tax Governing Board (SST) is working on a solution.

SST weighs in

"We are in the early stages of better understanding how these transactions work, what the state's expectations are from the restaurants and the food delivery companies, if double taxation is happening, and what can be done to eliminate it," says Craig Johnson, Executive Director of the SST Governing Board. "At this point, I anticipate that the SST will develop some disclosed practices related to this issue."

That should be a big help for the 24 states that are members of SST and companies doing business in those states. Unfortunately, states that don't participate in SST don't need to adhere to SST best practices, and double taxation can arise in any and all states.

"The determination of the correct tax to collect from customers shouldn't be a guessing game for the seller," Diane Yetter told a **United States Senate Finance Subcommittee** on September 25, 2024, at a hearing on providing small business relief from remote sales tax collection. The president and founder of the Sales Tax Institute and Yetter Tax added that "states need to make the taxability rules, as well as rates and boundaries, clear, accessible, understandable, and fair."

CRAIG JOHNSON
Executive Director of the SST Governing Board

> **"We are in the early stages of better understanding how these transactions work,**
>
> **what the state's expectations are from the restaurants and the food delivery companies, if double taxation is happening, and what can be done to eliminate it."**

Some SST states are moving in that direction. In May 2024, the Nevada Tax Commission drafted a proposed regulation to clarify a host of **sales and use tax requirements for marketplace facilitators**, marketplace sellers, and remote sellers. Among other topics, it addresses requirements for delivery network companies. If the **proposed regulation is adopted**, it will have the effect of law once filed with the Secretary of State.

DIANE YETTER
Founder of the
Sales Tax Institute

"The determination of the correct tax to collect from customers shouldn't be a guessing game for the seller.

States need to make the taxability rules, as well as rates and boundaries, clear, accessible, understandable, and fair."

Michigan and Ohio introduced bills to address this issue in 2024. We look forward to seeing which other states, if any, will do the same in 2025. Scott Peterson expects most states to take some action, legislative or regulatory. "No state ever intended to tax transactions twice." he says. "Delivering someone else's food should never have become as complicated as it is in some states."

There's good reason for states to get on top of this: The food delivery market size is projected to grow to $213 billion by 2030.

As food delivery marketplaces strive to sort out their sales and use tax obligations, marketplaces that ship goods from overseas are dealing with an altogether different matter: additional attention at customs.

Customs and Border Protection will scrutinize marketplace shipments

Here's the quick and dirty summary. Under customs Entry Type 86, goods meeting the de minimis threshold of $800 can be imported into the United States duty free. The U.S. Customs and Border Protection (CBP) now processes more than 1 billion de minimis packages a year. With a growing body of evidence that Entry Type 86 is being exploited, CBP is upping efforts to ensure compliance. As of May 31, 2024, CBP had suspended multiple customs brokers from participating in the Entry Type 86 test and was looking to restrict and screen Entry Type 86 imports.

Approximately 50% of marketplace shipments into the United States originate in China and need to pass through CBP. Most of the shipments qualify for Entry Type 86, so most are now facing heightened security. This could be a massive disrupter. If nothing else, it will likely slow cross-border marketplace shipments.

George Trantas says ensuring your data and import documentation are complete, accurate, and timely can help avoid Entry Type 86 delays. He recommends providing detailed information, including the bill of lading or air waybill number, entry number, planned port of entry, shipper and consignee names and addresses, country of origin, quantity, fair retail value, 10-digit HTSUS number (the U.S. tariff code), and IOR (importer of record) number. Implementing automation for your international tax compliance can help.

A change to the 1099-K reporting thresholds is another issue marketplaces will need to monitor in 2025.

We're finally getting new Form 1099-K reporting thresholds

In 2021, Congress passed a law lowering the [1099-K reporting threshold] from $20,000 *and* 200 transactions to simply $600. This will have an enormous impact on gig workers; people who sell goods through Venmo, PayPal, or similar platforms; and the marketplaces themselves.

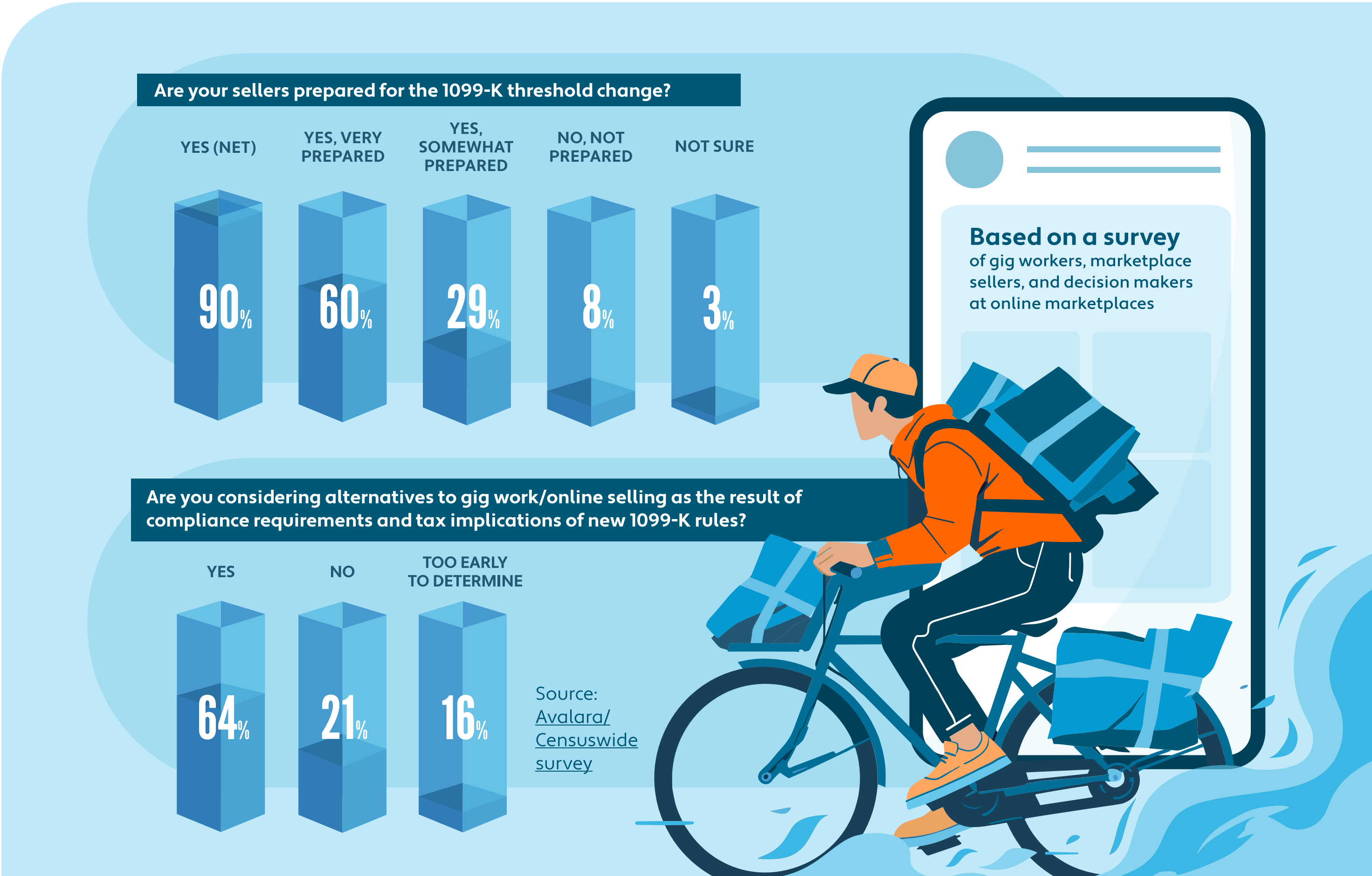
The threshold change was supposed to take effect with the 2022 tax year, but due to the scale of the change and the number of businesses it would affect, the IRS pushed it back a year. In late 2023, the IRS delayed the effective date a second time. It said then that it would phase in the implementation of the $600 reporting threshold, starting with a $5,000 threshold for tax year 2024.

Then, crickets.

On November 26, 2024, the IRS announced it will phase in the lower reporting threshold for third-party settlement organizations (TPSOs), also known as payment apps and online marketplaces (think Airbnb, eBay, Etsy, PayPal, Venmo). TPSOs will be required to report transactions when the amount of total payments for those transactions is:

- More than $5,000 in 2024
- More than $2,500 in 2025
- More than $600 in calendar year 2026 and after

Congress may still push to bring the threshold back to $20,000/200 transactions. But for now, marketplaces, payment apps, and others affected by the Form 1099 threshold change should comply with the $5,000 threshold … and be nimble.



Sales and use tax changes affect procure-to-pay too

Agility can also help businesses handle [procure-to-pay processes](), which can challenge any company.

When buying taxable goods and services, retailers either need to pay the vendor the tax due or ensure the vendor has an up-to-date exemption certificate. Vendors are required to collect certificates at the time of sale, and tax authorities can be sticklers on this point. In 2023, a hospital that failed to give its vendors resale certificates when purchasing meals for resale ended up paying roughly $1 million in sales tax on the transactions. Had the hospital furnished the proper documentation at the time of sale, it would not have been liable for the tax.

It's a cautionary tale that can affect businesses in any industry, including retailers and marketplaces.

Retail businesses also need to self-assess and pay any consumer use tax due. Several different scenarios can trigger use tax liability. For example:

- The vendor may lack nexus and not collect sales tax.
- The vendor may undercollect sales tax.
- The buyer may consume inventory purchased tax free.
- The buyer may move inventory to a different jurisdiction.

"Gotcha!" triggers abound with use tax, making it a focal point for auditors and a common source of negative audit findings. Fortunately, tax automation software can help.

Avalara AvaTax for Accounts Payable identifies the overpayment and underpayment of sales tax on purchases and applies tax based on jurisdiction, taxability, and special rules. It also reconciles transactions and applies the use tax owed on returns automatically, reducing the likelihood of costly errors.

This report highlights just some of the sales and use tax changes coming to the retail industry in 2025. There will be more; there always are.

It's difficult for retailers to meet the demands of sales tax compliance without relying on automation and other technology. There are too many nuances, too frequent changes. And frankly, wouldn't you rather be spending your time focusing on something else?

How Avalara can help

Avalara can help you account for sales and use tax changes and improve tax compliance for your business. Learn more about our automated solutions for calculating tax rates, preparing returns, and managing documents.

EXPLORE SOLUTIONS

Download the full Avalara Tax Changes 2025 report to read about what's happening in other industries and with tax compliance in general.

READ ON

Looking ahead

It's impossible to cover every sales tax change in one report, so we aimed to spotlight the biggest headlines impacting the tax landscape and your business. Leading tax experts take a deeper dive into some of the most pressing issues affecting tax compliance in our 2025 tax changes webinar.

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