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Avoid Black Friday Lines--And Sales Tax--Online

Buying online on Black Friday, Thanksgiving Day, and throughout the weekend sounds *much* more pleasant than fighting crowds. You'll find useful online shopping tips here: [Black Friday Shopping Online? Data Says These 10 Sites Will Make It Painless](#). You might even manage to avoid sales tax. After all, if you go to the mall, you pay it. Online, maybe not.



(Image credit: allthingsd)

It has long been true that if you buy online from a merchant that has a store in your state, you pay tax. Say you buy at Target.com but there's a Target brick and mortar store in your state? You pay tax even if you buy online and even if the goods are shipped from out-of-state. There's no debate about that.

But increasingly, you may pay tax even if the online merchant *doesn't* have a store in your state. Even so, you're in the minority if you're paying sales tax on *all* your internet purchases. Many transactions escape it legitimately. Many others slip through the cracks.

Online buying is convenient and the bonus of no tax was sweet. Yet it was always clear it wouldn't last. After all, 45 states and the District

of Columbia have [sales tax](#). Each has a use tax too. Property purchased online and brought into your state triggers **use** tax.

The only states without statewide sales and use taxes are Alaska, Delaware, Montana, New Hampshire, and Oregon. So, unless you are in one of those 5 states, you probably **should** have been paying use tax all along on your online purchases that escaped sales tax. Use tax applies whether the purchase was personal or business.

States historically didn't enforce it except against businesses, but that's changing. Many state income tax forms now collect use tax. Think of it as a timing difference. If you don't pay sales tax at checkout, you pay use tax later. The tax collector prefers the money sooner, so that's why there's such pressure on merchants to collect.

However, if you're still not willing to pay tax on checkout, here are some tips that might help you avoid tax in the short run. Note, though, that they do nothing to eliminate your use tax liability. And until the Supreme Court says otherwise, forget about arguing that sales taxes are unconstitutional.

In 1992's [Quill Corp. v. North Dakota](#), the Supreme Court ruled that no state can constitutionally force an out-of-state merchant to collect sales or use tax **unless** it has a nexus—physical presence—in the state. A store is enough, and much less can be too. Even if the site where you buy doesn't have a physical store in your state, a warehouse or distribution facility may be enough for tax nexus with your state.

[Many states](#) have expanded the connection—called nexus—that make sales tax apply. [Amazon](#) already collects sales tax in 16 states: Arizona, California, Connecticut, Georgia, Kansas, Kentucky, Massachusetts, New Jersey, New York, North Dakota, Pennsylvania, Texas, Virginia, Washington, West Virginia and Wisconsin. Soon you'll be taxed on Amazon purchases in these states too:

- Indiana, January 2014
- Nevada, January 2014
- Tennessee, January 2014
- South Carolina, January 2016

With any merchant, start by reading the website. In some cases, you may have to wait almost until the final steps of checkout to know if you'll pay tax. Some

online sellers make deals to remit tax for sales in certain states. The website will tell you or will add the tax when you check out.

Depending on which state you live in and on the size and identity of the online merchant, you may have to pay. If you can't stand paying, try smaller and less established merchants. You may escape sales tax if you buy from smaller merchants who don't collect tax for shipments to your state. Just remember that avoiding the tax on purchase doesn't mean you've avoided it forever. Your state could still pursue you for use tax.

In short, the days of widespread non-taxed online transactions are clearly ending. In [State Taxation of Internet Transactions](#), the Congressional Research Service said lost tax revenue was approximately \$11.4 billion in 2012. California alone was projected to lose \$1.9 billion; Texas, \$870.4 million; and New York, \$865.5 million. Also, general sales and use tax makes up nearly a third (32%) of total tax revenues for the states.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.