



Robert W. Wood THE TAX LAWYER

Nov. 24 2012

You Can Still Escape Sales Tax Online

If you are paying sales tax on all your internet purchases you're in the minority. Many transactions still escape it legitimately and many others slip through the cracks. Most of us got used to convenient online buying. The bonus of no tax was sweet, but it was always clear it wouldn't last.



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 sales and use taxes are Alaska, Delaware, Montana, New Hampshire, and Oregon. Thus, unless you are in one of those 5 states, you probably should have been paying use tax all along on purchases escaping 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. Here are the basics.

1. Is it Unconstitutional? Not until the Supreme Court says otherwise. In 1992's [Quill Corp. v. North Dakota](#), the 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.

2. Brick-and-Mortar? If you buy at Target.com but there's a Target brick and mortar store in your state, you must pay tax even if you buy online with goods shipped from out-of-state. See [Amazon Tax Attacks](#).

3. Distribution Facility? Even if the site where you buy doesn't have a store in your state, a warehouse or distribution facility may be enough for tax nexus with your state.

4. Amazon Tax. Many states now have expanded the connections—called nexus—that make sales tax apply. Thus, Amazon already collects sales tax in California, Kansas, Kentucky, New York, North Dakota, Texas and Washington. Soon you'll be taxed on Amazon purchases in these states too:

- Virginia, September 2013
- Indiana, January 2014
- Nevada, January 2014
- Tennessee, January 2014
- South Carolina, January 2016

5. Consent Deals. 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.

6. Big Bucks. 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. These dollars count. Sales and use tax is nearly a third (32%) of State government total tax revenues.

You can still escape sales tax if you buy from smaller merchants who don't collect sales tax in your state, and if you don't report your use tax.

However, the days of widespread non-taxed online transactions are clearly ending.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached 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.*