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Avoid Sales Tax Online Cyber Monday (Or Any Other Day)

If you're scanning Cyber Monday deals you're not alone. The name was coined in 2005, and the day's importance has grown as millions peruse deals and click away. Clicking and saving after Thanksgiving weekend avoids lines and hassles. Many people remain adamant about not paying sales tax online, but is it still possible?

If you're careful where and how you shop, yes. But before you go to the effort, consider if it's worth it. Depending on what state you're in, you'll have to be very careful from which sites you buy. And you're generally not going to avoid use tax no matter what. The use tax is the reciprocal of the sales tax, and although merchants don't collect it, you're still liable.

The chances of being caught may be small, but even that is changing. Remember Leona Helmsley? She said, "only the little people pay taxes," and it was actually sales and use taxes that brought her down. She was caught having merchants (like jeweler Van Cleef & Arpels) ship empty boxes to her out-of-town home to avoid sales and use tax.



If you still have the itch to try to skip sales tax, here are the basics.

- 1. Read the Website.** Many websites make their sales tax policy clear. In some cases, you may have to wait until 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.
- 2. Try Smaller Websites and eBay Merchants.** You might escape sales tax if you buy from smaller merchants who don't collect tax on shipments to your state.

3. Get to Smaller Merchants Directly. Some people still claim they ‘showroom’ Amazon, getting to the merchant directly to bypass sales tax.

If you buy online from a merchant with a store in your state, you pay sales tax even if you buy online, and even if the goods are shipped from out-of-state. In all, 45 states and the District of Columbia have [sales tax](#). The only no-tax states are Alaska, Delaware, Montana, New Hampshire, and Oregon.

The days of no-tax [Amazon](#) are mostly over, since it now collects tax in 23 states: Arizona, California, Connecticut, Georgia, Florida, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Tennessee, Texas, Virginia, Washington, West Virginia and Wisconsin. Commencing in January 2016, you’ll be taxed on Amazon purchases in South Carolina too.

Every state with a sales tax has a use tax too. Property purchased online and brought into your state triggers use tax, whether the purchase was personal or business. If you buy from a small merchant that doesn’t charge you sales tax, you are still liable for use tax. Many states have ramped up their use tax enforcement and require you to report purchases on your state income tax return.

Forget arguing that this is a prohibited Internet tax. The states don’t care whether the purchase was made by mail, phone order or Internet. Most use tax laws were enacted at the same time as state sales tax. California likes to point out that its use tax dates back to 1935!

What about the constitutional implications of forcing merchants to collect tax when they have no stores in a state? Internet retailers don’t have to collect sales tax from customers in states where they have no physical presence. The prevailing law remains 1992’s [Quill Corp. v. North Dakota](#). There, 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 [many states](#) have expanded the nexus that make sales tax apply.

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. As efforts at federal legislation and state collection efforts continue, remember, avoiding sales tax at checkout doesn’t mean you are home free. You are liable for use tax if you bring the goods into your state or have them shipped to you. States historically enforced use tax primarily against businesses, but that’s changing. Many state income tax forms now collect use tax, and remember, you sign tax returns under penalty of perjury.

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.