



Robert W. Wood

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Attention Online Shoppers: No Tax In Aisle 3---Supreme Court Turns Down Amazon

Everyone likes a deal, and avoiding taxes can seem like any other discount. And if it's legal, why not? Many tax cases stand for the proposition that there is no duty—not even a patriotic one—to pay more taxes than required. But what's required?

Legions of cases argue what tax planning is legal and what isn't. Amazon famously started life saying “no-taxes ever.” More recently, the [Bezos](#)-driven behemoth added Virginia and Georgia to the growing stable of states in which it collects tax and remits it to the state. Yet Amazon asked the Supreme Court to [hear its challenge](#) to New York's demand that it collect tax from shoppers in New York.

The Supreme Court has just [said no](#). And the hodge-podge continues. There's still a lot of confusion about online taxes but you may manage to avoid sales



Supreme Court turns down case on making internet retailers collect sales taxes.

tax you would pay at the mall. Of course, if you buy online from a merchant that has a store in your state, you pay sales tax.

You pay tax even if you buy online and even if the goods are shipped from out-of-state. These days, even if the online merchant doesn't have a store in your state, you still might pay. In all, 45 states and the District of Columbia have [sales tax](#).

In fact, the only states without statewide sales and use taxes are Alaska, Delaware, Montana, New Hampshire, and Oregon. 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.

Start by reading the website. 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.

[Many states](#) have expanded the nexus that make sales tax apply. [Amazon](#) collects 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

You might escape sales tax if you buy from smaller merchants who don't collect tax on shipments to your state. However, avoiding the tax at checkout doesn't mean you've avoided it forever. You are liable for **use tax** if you bring or have your purchase shipped into your state.

States historically didn't enforce use tax except against businesses, but that's changing. Many state income tax forms now collect use tax, so if you don't pay sales tax at checkout, you pay use tax later. And remember, you sign tax returns under penalty of perjury.

What about the constitutional implications of forcing merchants to collect tax when they have no stores in a state? The Supreme Court turning down the New York case means that New York's Amazon tax was upheld. On the federal scene, 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 much less evidently may 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.

Sadly, the New York State tax challenge won't be heard by the Supreme Court. And the efforts at federal legislation and state collection efforts will continue. Most online sales will soon face either sales or use tax, and the states are getting better at collecting.

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.