



Robert W. Wood

THE TAX LAWYER

Sep. 8 2012 — 11:09 pm

Californians Rush To Buy Online Before Amazon Tax Hits

What are Californians doing right now? Buying online like crazy, getting in their last tax-free clicks before September 15. Sorry to be a killjoy, but they **already** should be paying tax. Sure, there's a difference between having tax collected by the merchant as part of your purchase price and **separately** sending the money in to a hungry state later.

But is it **that big** a difference?

Apparently so. Such purchases are

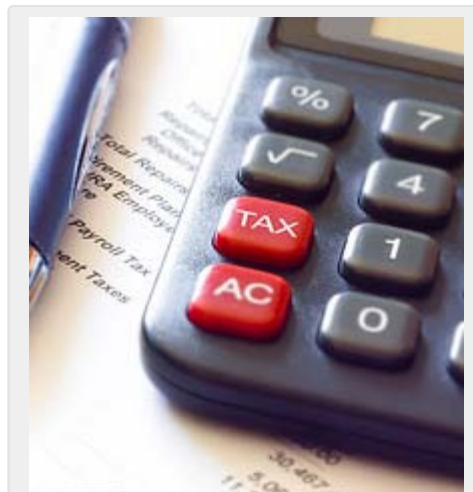
already subject to California's use tax,

but enforcement has been lax. But September 15, 2012, California's

Amazon tax ([Stats. 2011, ch. 313 \(AB 155\)](#)) ramps up out-of-state

retailers who must register and remit California use tax to the California State Board of Equalization (BOE).

It's not just Amazon and other online giants that will begin collecting tax on shipments to California. Out-of-state retailers are covered if they have sold more than \$1 million to California consumers in the past year and have had more than \$10,000 in sales referred by an affiliate in California. This is California's new definition of [nexus](#).



(Photo credit: Dave Dugdale)

Do businesses across America have to pay California's tax? Yes and no. They can collect the tax from their California customers and hand it over to the BOE. But if they fail to collect it, they have to pay it themselves. That can make the decision whether to collect and remit the tax a tough one for non-California sellers who think they have arguments to avoid the law.

Although California has had a use tax since 1935, the new type of nexus could be challenged. No state can force an out-of-state merchant to collect or pay sales/use tax unless it has a "nexus" in the state, but what's that mean? In [*Quill Corp. v. North Dakota*](#), the Supreme Court ruled that a business had to be **physically present** in a state before it was required to collect use tax.

In 1992 when [*Quill*](#) was decided, merely shipping into a state wasn't enough, but a showroom or office was. See [Amazon Tax Attacks](#). But a number of states have passed legislation to make on-line retailers charge tax based on ties unheard of in 1992. As an Illinois court's ruling striking down that state's online tax makes clear, some courts may side against the tax. See [Tax Alamo? Amazon Strikes Texas Tax Deal While Illinois Tax Goes Down](#).

Amazon already collects sales tax in Kansas, Kentucky, New York, North Dakota, Texas and Washington. Soon you'll be taxed on Amazon purchases in:

- California, September 2012
- Virginia, September 2013
- Indiana, January 2014
- Nevada, January 2014
- Tennessee, January 2014
- South Carolina, January 2016

*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.