



Robert W. Wood

THE TAX LAWYER

Nov. 27 2011 – 11:06 pm

No Sales Tax Cyber Monday (But Beware Use Tax)!



Happy Cyber Monday! If you're hunched over your computer scanning Cyber Monday deals you're not alone. Millions will click to rack up a billion dollars of sales in one day. Nice end to the Black Friday binge and Thanksgiving weekend.

Forget lines and hassles. Now back in the saddle you can peruse the deals and click away. About 100 million Americans will

buy online today, but will we pay sales tax? With states stampeding to pass [Amazon taxes](#) and three federal online tax bills pending (see [Marketplace Fairness Tax Pits Amazon v. eBay](#)), [Janet Novack](#) may be right: this could be [The Last Tax Free Cyber Monday?](#)

My answer to [Kelly Phillips Erb's Cyber Monday Sales Tax Free for Many – But For How Long?](#) **Not long.** States desperately need the revenue and more and more sales are going online. But you may not know that most states **already** can and do tax you on internet sales provided you do what they want: report on yourself.

If you buy online will you be stung with sales tax? It's often hard to tell until you're nearly finished checking out and see your total. But do you owe **use tax**? Usually yes, whether you buy for personal use or business.

The internet didn't change that but it upped the ante. For decades, you "should" have been reporting your catalog, phone and now online purchases. States historically didn't enforce use tax except against businesses, but that's changing. Many state income tax forms now attempt to collect use tax.

Use tax is the flip side of the sales tax. Sales tax applies when you buy tangible personal property at retail in your state. It also applies if you buy over the phone, through the mail or internet from a merchant having "nexus" with your state.

There's no constitutional prohibition on this. Sales and use tax are almost always paid by the buyer, but the only effective collection mechanism is getting the **seller** to collect it. The states have been aggressive for decades, but the U.S. Constitution prevents states from taxing "interstate commerce."

In 1992, the U.S. Supreme Court in [*Quill v. North Dakota*](#) said retailers must collect sales tax from out-of-state customers only if they have a physical presence (such as a store, warehouse or office) in the customer's state. Amazon tax laws impute nexus for much less. See [Amazon Tax: Good, Bad and Ugly](#). But as the Amazon tax debate goes viral over the next year, can you be stuck in the meantime?

You bet. See [How Amazon's California Tax Romp Will Impact Us All](#). Most states with a sales tax can come after you if you fail to pay your use tax. Get the details how to pay from your state.

Businesses are especially vulnerable, since they are filing other tax returns. Sales tax returns for their **own** sales will capture use tax and so will income tax returns. Property bought out-of-state—including over the internet—and **brought into** your own state triggers use tax. Many state income tax returns now ask penetrating use tax questions.

You can enjoy skipping sales tax for now, but my prediction? It won't last. As for paying use tax, I'm probably over-reacting. Perhaps consumers face little risk by not paying. But many tax returns now ask. Plus, state tax authorities are getting savvy and more aggressive. And if you're in business, be careful.

For more, see:

[Paying Sales Tax On Internet Purchases?](#)

[Doing Business In California Means You Owe Taxes](#)

[The Amazonian Response To Sales Tax](#)

[Will California Super-Amazon Tax Bill Thwart Voters?](#)

[California Taxes In Heart Of Amazon Country](#)

[Should You Register For California's Amazon Tax?](#)

*[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, [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.*