

ASSEMBLY BILL

No. 1840

Introduced by Assembly Member Charles Calderon

January 24, 2008

An act to amend Section 6203 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1840, as introduced, Charles Calderon. Sales and use taxes: retailers.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law imposes the sales tax upon “retailers,” and defines a “retailer engaged in business in this state” to include specified entities. Existing law provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, that engages in specified activity in this state shall, at the time of sale or at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser.

This bill would revise those provisions relating to the definition of a “retailer engaged in business in this state” and would clarify existing law by providing that a retailer is deemed to be engaged in business in this state if a retailer has substantial nexus with this state, as provided by applicable federal and state law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6203 of the Revenue and Taxation Code
2 is amended to read:

3 6203. (a) Except as provided by Sections 6292 and 6293, every
4 retailer engaged in business in this state and making sales of
5 tangible personal property for storage, use, or other consumption
6 in this state, not exempted under Chapter 3.5 (commencing with
7 Section 6271) or Chapter 4 (commencing with Section 6351),
8 shall, at the time of making the sales or, if the storage, use, or other
9 consumption of the tangible personal property is not then taxable
10 hereunder, at the time the storage, use, or other consumption
11 becomes taxable, collect the tax from the purchaser and give to
12 the purchaser a receipt therefor in the manner and form prescribed
13 by the board.

14 (b) As respects leases constituting sales of tangible personal
15 property, the tax shall be collected from the lessee at the time
16 amounts are paid by the lessee under the lease.

17 (c) “Retailer engaged in business in this state” as used in this
18 section and Section 6202 means ~~and includes~~ any *retailer that has*
19 *substantial nexus with this state for purposes of the commerce*
20 *clause of the United States Constitution and any retailer upon*
21 *whom federal law permits this state to impose a use tax collection*
22 *duty. “Retailer engaged in business in this state” specifically*
23 *includes any of the following:*

24 (1) Any retailer maintaining, occupying, or using, permanently
25 or temporarily, directly or indirectly, or through a subsidiary, or
26 agent, by whatever name called, an office, place of distribution,
27 sales or sample room or place, warehouse or storage place, or other
28 place of business.

29 (2) Any retailer having any representative, agent, salesperson,
30 canvasser, independent contractor, or solicitor operating in this
31 state under the authority of the retailer or its subsidiary for the
32 purpose of selling, delivering, installing, assembling, or the taking
33 of orders for any tangible personal property.

34 (3) As respects a lease, any retailer deriving rentals from a lease
35 of tangible personal property situated in this state.

36 (4) ~~(A) Any retailer soliciting orders for tangible personal~~
37 ~~property by mail if the solicitations are substantial and recurring~~
38 ~~and if the retailer benefits from any banking, financing, debt~~

1 collection, telecommunication, or marketing activities occurring
2 in this state or benefits from the location in this state of authorized
3 installation, servicing, or repair facilities.

4 (B) This paragraph shall become operative upon the enactment
5 of any congressional act that authorizes states to compel the
6 collection of state sales and use taxes by out-of-state retailers.

7 (5) Notwithstanding Section 7262, a retailer specified in
8 paragraph (4) above, and not specified in paragraph (1), (2), or (3)
9 above, is a “retailer engaged in business in this state” for the
10 purposes of this part and Part 1.5 (commencing with Section 7200)
11 only.

12 (d) (1) For purposes of this section, “engaged in business in
13 this state” does not include the taking of orders from customers in
14 this state through a computer telecommunications network located
15 in this state which is not directly or indirectly owned by the retailer
16 when the orders result from the electronic display of products on
17 that same network. The exclusion provided by this subdivision
18 shall apply only to a computer telecommunications network that
19 consists substantially of online communications services other
20 than the displaying and taking of orders for products.

21 (2) This subdivision shall become inoperative upon the operative
22 date of provisions of a congressional act that authorize states to
23 compel the collection of state sales and use taxes by out-of-state
24 retailers.

25 (e)

26 (d) Except as provided in this subdivision, a retailer is not a
27 “retailer engaged in business in this state” under paragraph (2) of
28 subdivision (c) if that retailer’s sole physical presence in this state
29 *the only basis for such finding is to engage that the retailer engages*
30 in convention and trade show activities as described in Section
31 513(d)(3)(A) of the Internal Revenue Code, *and if provided that*
32 the retailer, including any of his or her representatives, agents,
33 salespersons, canvassers, independent contractors, or solicitors,
34 does not engage in those convention and trade show activities for
35 more than 15 days, in whole or in part, in this state during any
36 12-month period and did not derive more than one hundred
37 thousand dollars (\$100,000) of net income from those activities
38 in this state during the prior calendar year. Notwithstanding the
39 preceding sentence, a retailer engaging in convention and trade
40 show activities, as described in Section 513(d)(3)(A) of the Internal

1 Revenue Code, is a “retailer engaged in business in this state,” and
2 is liable for collection of the applicable use tax, with respect to
3 any sale of tangible personal property occurring at the convention
4 and trade show activities and with respect to any sale of tangible
5 personal property made pursuant to an order taken at or during
6 those convention and trade show activities.

7 ~~(f)~~

8 (e) Any limitations created by this section upon the definition
9 of “retailer engaged in business in this state” shall only apply for
10 purposes of tax liability under this code. Nothing in this section is
11 intended to affect or limit, in any way, civil liability or jurisdiction
12 under Section 410.10 of the Code of Civil Procedure.

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