

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2078

Introduced by Assembly Member Charles Calderon

February 18, 2010

~~An act to amend Section 23040 of the Revenue and Taxation Code, relating to taxation.~~ *An act to amend Sections 6203 and 7055 of, and to add Section 6208 to, the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2078, as amended, Charles Calderon. ~~Corporation taxes.~~ *Use tax: retailers engaged in business in this state.*

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state of, or, and on the storage, use, or other consumption in this state of, tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law requires every retailer engaged in business in this state, as specified, and making sales of tangible personal property for storage, use, or other consumption in this state to, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser.

This bill would provide a rebuttable presumption that any retailer that is part of a controlled group of corporations, and that controlled group of corporations has a component member that is a retailer engaged in business in this state, as described, is presumed to be a retailer engaged in business in this state.

This bill would also require each retailer that is not required to collect use tax to provide notification on its retail Internet Web site or catalogue that tax is imposed on the storage, use, or other consumption in this state of the tangible personal property purchased from the retailer that is not exempt, and is required to be paid by the purchaser, as provided.

The Sales and Use Tax Law also authorizes, in administration of the use tax, the State Board of Equalization to require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use, or other consumption of which is subject to the tax.

This bill would require every person not required to register with the board who sells tangible personal property the storage, use, or other consumption of which is subject to use tax to file a report with the board regarding those sales, as specified. This requirement would not apply to persons whose receipts from those sales do not exceed a specified amount.

This bill would provide that its provisions are severable.

~~The Corporation Tax Law provides that income derived from or attributable to sources within this state includes income from specified types of property:~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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.

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

4 (c) “Retailer engaged in business in this state” as used in this
5 section and Section 6202 means and includes any of the following:

6 (1) Any retailer maintaining, occupying, or using, permanently
7 or temporarily, directly or indirectly, or through a subsidiary, or
8 agent, by whatever name called, an office, place of distribution,
9 sales or sample room or place, warehouse or storage place, or other
10 place of business.

11 (2) Any retailer having any representative, agent, salesperson,
12 canvasser, independent contractor, or solicitor operating in this
13 state under the authority of the retailer or its subsidiary for the
14 purpose of selling, delivering, installing, assembling, or the taking
15 of orders for any tangible personal property.

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

18 (4) (A) Any retailer soliciting orders for tangible personal
19 property by mail if the solicitations are substantial and recurring
20 and if the retailer benefits from any banking, financing, debt
21 collection, telecommunication, or marketing activities occurring
22 in this state or benefits from the location in this state of authorized
23 installation, servicing, or repair facilities.

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

27 (5) Notwithstanding Section 7262, a retailer specified in
28 paragraph (4) above, and not specified in paragraph (1), (2), or (3)
29 above, is a “retailer engaged in business in this state” for the
30 purposes of this part and Part 1.5 (commencing with Section 7200)
31 only.

32 (d) (1) For purposes of this section, “engaged in business in
33 this state” does not include the taking of orders from customers in
34 this state through a computer telecommunications network located
35 in this state which is not directly or indirectly owned by the retailer
36 when the orders result from the electronic display of products on
37 that same network. The exclusion provided by this subdivision
38 shall apply only to a computer telecommunications network that
39 consists substantially of online communications services other
40 than the displaying and taking of orders for products.

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

5 (e) Except as provided in this subdivision, a retailer is not a
6 “retailer engaged in business in this state” under paragraph (2) of
7 subdivision (c) if that retailer’s sole physical presence in this state
8 is to engage in convention and trade show activities as described
9 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
10 retailer, including any of his or her representatives, agents,
11 salespersons, canvassers, independent contractors, or solicitors,
12 does not engage in those convention and trade show activities for
13 more than 15 days, in whole or in part, in this state during any
14 12-month period and did not derive more than one hundred
15 thousand dollars (\$100,000) of net income from those activities
16 in this state during the prior calendar year. Notwithstanding the
17 preceding sentence, a retailer engaging in convention and trade
18 show activities, as described in Section 513(d)(3)(A) of the Internal
19 Revenue Code, is a “retailer engaged in business in this state,” and
20 is liable for collection of the applicable use tax, with respect to
21 any sale of tangible personal property occurring at the convention
22 and trade show activities and with respect to any sale of tangible
23 personal property made pursuant to an order taken at or during
24 those convention and trade show activities.

25 (f) (1) *Any retailer that is part of a controlled group of*
26 *corporations, and that controlled group of corporations has a*
27 *component member that is a retailer engaged in business in this*
28 *state as described in paragraphs (1), (2), (3), or (4) of subdivision*
29 *(c), shall be presumed to be a retailer engaged in business in this*
30 *state. This presumption may be rebutted by evidence that during*
31 *the calendar year at issue the component member that is a retailer*
32 *engaged in business in this state did not engage in any of the*
33 *activities described in paragraphs (1), (2), (3), or (4) of subdivision*
34 *(c) on behalf of the retailer.*

35 (2) *For purposes of this subdivision, “controlled group of*
36 *corporations” means “controlled group of corporations” as*
37 *defined in Section 1563(a) of the Internal Revenue Code, and*
38 *“component member” means “component member” as defined in*
39 *Section 1563(b) of the Internal Revenue Code.*

40 (f)

1 (g) Any limitations created by this section upon the definition
2 of “retailer engaged in business in this state” shall only apply for
3 purposes of tax liability under this code. Nothing in this section is
4 intended to affect or limit, in any way, civil liability or jurisdiction
5 under Section 410.10 of the Code of Civil Procedure.

6 *SEC. 2. Section 6208 is added to the Revenue and Taxation
7 Code, to read:*

8 *6208. Each retailer making sales of tangible personal property,
9 the storage, use, or other consumption of which is subject to tax,
10 that is not required to collect use tax shall provide notification on
11 its retail Internet Web site or retail catalogue that tax is imposed
12 by this part on the storage, use, or other consumption in this state
13 of the tangible personal property purchased from the retailer that
14 is not exempt, and is required to be paid by the purchaser. The
15 notification shall be readily visible.*

16 *SEC. 3. Section 7055 of the Revenue and Taxation Code is
17 amended to read:*

18 *7055. (a) In administration of the use tax the board may require
19 the filing of reports by any person or class of persons having in
20 his or their possession or custody information relating to sales of
21 tangible personal property the storage, use, or other consumption
22 of which is subject to the tax. The reports shall be filed when the
23 board requires and shall set forth the names and addresses of
24 purchasers of the tangible personal property, the sales price of the
25 property, the date of sale, and such other information as the board
26 may require.*

27 *(b) (1) Every person who sells tangible personal property the
28 storage, use, or other consumption of which is subject to use tax,
29 who is not registered with the board, shall file with the board, on
30 or before the last day of the calendar month following each
31 quarterly period of three months, a report that sets forth the names
32 and addresses of purchasers of the tangible personal property, the
33 sales price of the property, the date of sale, and such other
34 information as the board may require.*

35 *(2) Paragraph (1) shall not apply to a person whose receipts
36 from sales described in paragraph (1) are less than one hundred
37 thousand dollars (\$100,000) in the prior year, and are reasonably
38 expected to be less than one hundred thousand dollars (\$100,000)
39 in the current year.*

1 *SEC. 4. The provisions of this bill are severable. If any*
2 *provision of this bill or its application is held invalid, that invalidity*
3 *shall not affect other provisions or applications that can be given*
4 *effect without the invalid provision or application.*

5 ~~SECTION 1. Section 23040 of the Revenue and Taxation Code~~
6 ~~is amended to read:~~

7 ~~23040. Income derived from or attributable to sources within~~
8 ~~this state includes income from tangible or intangible property~~
9 ~~located or having a situs in this state and income from any activities~~
10 ~~carried on in this state, regardless of whether carried on in~~
11 ~~intrastate, interstate, or foreign commerce.~~