

AMENDED IN ASSEMBLY APRIL 27, 2010

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 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. Use tax: retailers engaged in business in this state: *state: notification to purchasers.*

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.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
 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 of the following:~~

1 ~~(1) Any retailer maintaining, occupying, or using, permanently~~
2 ~~or temporarily, directly or indirectly, or through a subsidiary, or~~
3 ~~agent, by whatever name called, an office, place of distribution,~~
4 ~~sales or sample room or place, warehouse or storage place, or other~~
5 ~~place of business.~~

6 ~~(2) Any retailer having any representative, agent, salesperson,~~
7 ~~canvasser, independent contractor, or solicitor operating in this~~
8 ~~state under the authority of the retailer or its subsidiary for the~~
9 ~~purpose of selling, delivering, installing, assembling, or the taking~~
10 ~~of orders for any tangible personal property.~~

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

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

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

22 ~~(5) Notwithstanding Section 7262, a retailer specified in~~
23 ~~paragraph (4) above, and not specified in paragraph (1), (2), or (3)~~
24 ~~above, is a “retailer engaged in business in this state” for the~~
25 ~~purposes of this part and Part 1.5 (commencing with Section 7200)~~
26 ~~only.~~

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

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

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

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

31 ~~(2) For purposes of this subdivision, “controlled group of~~
32 ~~corporations” means “controlled group of corporations” as defined~~
33 ~~in Section 1563(a) of the Internal Revenue Code, and “component~~
34 ~~member” means “component member” as defined in Section~~
35 ~~1563(b) of the Internal Revenue Code.~~

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

1 ~~SEC. 2.~~

2 *SECTION 1.* Section 6208 is added to the Revenue and
3 Taxation Code, to read:

4 6208. Each retailer making sales of tangible personal property,
5 the storage, use, or other consumption of which is subject to tax,
6 that is not required to collect use tax shall provide notification on
7 its retail Internet Web site or retail catalogue that tax is imposed
8 by this part on the storage, use, or other consumption in this state
9 of the tangible personal property purchased from the retailer that
10 is not exempt, and is required to be paid by the purchaser. The
11 notification shall be readily visible.

12 ~~SEC. 3. Section 7055 of the Revenue and Taxation Code is~~
13 ~~amended to read:~~

14 ~~7055. (a) In administration of the use tax the board may require~~
15 ~~the filing of reports by any person or class of persons having in~~
16 ~~his or their possession or custody information relating to sales of~~
17 ~~tangible personal property the storage, use, or other consumption~~
18 ~~of which is subject to the tax. The reports shall be filed when the~~
19 ~~board requires and shall set forth the names and addresses of~~
20 ~~purchasers of the tangible personal property, the sales price of the~~
21 ~~property, the date of sale, and such other information as the board~~
22 ~~may require.~~

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

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

36 ~~SEC. 4. The provisions of this bill are severable. If any~~
37 ~~provision of this bill or its application is held invalid, that invalidity~~

- 1 ~~shall not affect other provisions or applications that can be given~~
- 2 ~~effect without the invalid provision or application.~~

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