

**ASSEMBLY BILL**

**No. 153**

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**Introduced by Assembly Member Skinner**

January 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 153, as introduced, Skinner. State Board of Equalization: administration: retailer 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, or 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, measured by sales price. That law defines a “retailer engaged in business in this state” to include retailers that engage in specified activities in this state and requires every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state to register with the State Board of Equalization and to collect the tax from the purchaser and remit it to the board.

This bill would include in the definition of a retailer engaged in business in this state any retailer entering into agreements under which a person in this state, for a commission or other consideration, directly or indirectly refers potential purchasers, whether by an Internet-based link or an Internet Web site, or otherwise, to the retailer, provided the total cumulative sales price from all sales by the retailer to purchasers in this state that are referred pursuant to these agreements is in excess of \$10,000 within the preceding 12 months, except as specified. This

bill would further provide that a retailer entering specified agreements to purchase advertising is not a retailer engaged in business in this state.

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 of the following:
- 19 (1) Any retailer maintaining, occupying, or using, permanently  
20 or temporarily, directly or indirectly, or through a subsidiary, or  
21 agent, by whatever name called, an office, place of distribution,  
22 sales or sample room or place, warehouse or storage place, or other  
23 place of business.
- 24 (2) Any retailer having any representative, agent, salesperson,  
25 canvasser, independent contractor, or solicitor operating in this  
26 state under the authority of the retailer or its subsidiary for the  
27 purpose of selling, delivering, installing, assembling, or the taking  
28 of orders for any tangible personal property.
- 29 (3) As respects a lease, any retailer deriving rentals from a lease  
30 of tangible personal property situated in this state.
- 31 (4) (A) Any retailer soliciting orders for tangible personal  
32 property by mail if the solicitations are substantial and recurring  
33 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) (A) *Any retailer entering into an agreement or agreements*  
8 *under which a person or persons in this state, for a commission*  
9 *or other consideration, directly or indirectly refer potential*  
10 *purchasers of tangible personal property to the retailer, whether*  
11 *by an Internet-based link or an Internet Web site, or otherwise,*  
12 *provided that the total cumulative sales price from all of the*  
13 *retailer's sales, within the preceding 12 months, of tangible*  
14 *personal property to purchasers in this state that are referred*  
15 *pursuant to all of those agreements with a person or persons in*  
16 *this state, is in excess of ten thousand dollars (\$10,000).*

17 (B) *This paragraph shall not apply if the retailer can*  
18 *demonstrate that the person in this state with whom the retailer*  
19 *has an agreement did not engage in referrals in the state on behalf*  
20 *of the retailer that would satisfy the requirements of the commerce*  
21 *clause of the United States Constitution.*

22 (C) *An agreement under which a retailer purchases*  
23 *advertisements from a person or persons in this state, to be*  
24 *delivered on television, radio, in print, on the Internet, or by any*  
25 *other medium, is not an agreement described in subparagraph*  
26 *(A), unless the advertisement revenue paid to the person or persons*  
27 *in this state consists of commissions or other consideration that*  
28 *is based upon sales of tangible personal property.*

29 ~~(5)~~

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

35 (d) (1) For purposes of this section, “engaged in business in  
36 this state” does not include the taking of orders from customers in  
37 this state through a computer telecommunications network located  
38 in this state which is not directly or indirectly owned by the retailer  
39 when the orders result from the electronic display of products on  
40 that same network. The exclusion provided by this subdivision

1 shall apply only to a computer telecommunications network that  
2 consists substantially of online communications services other  
3 than the displaying and taking of orders for products.

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

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

28 (f) Any limitations created by this section upon the definition  
29 of “retailer engaged in business in this state” shall only apply for  
30 purposes of tax liability under this code. Nothing in this section is  
31 intended to affect or limit, in any way, civil liability or jurisdiction  
32 under Section 410.10 of the Code of Civil Procedure.

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