

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**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 amended, 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 *or persons* in this state, for a commission or other consideration, directly or indirectly ~~refers~~ *refer* 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~~ \$500,000 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.

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

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

10 (5) (A) Any retailer entering into an agreement or agreements  
11 under which a person or persons in this state, for a commission or  
12 other consideration, directly or indirectly refer potential purchasers  
13 of tangible personal property to the retailer, whether by an  
14 Internet-based link or an Internet Web site, or otherwise, provided  
15 that the total cumulative sales price from all of the retailer's sales,  
16 within the preceding 12 months, of tangible personal property to  
17 purchasers in this state that are referred pursuant to all of those  
18 agreements with a person or persons in this state, is in excess of  
19 ~~ten thousand dollars (\$10,000)~~ *five hundred thousand dollars*  
20 *(\$500,000)*.

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

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

33 (D) *Notwithstanding subparagraph (C), an agreement under*  
34 *which a retailer engages a person in this state to place an*  
35 *advertisement on an Internet Web site operated by that person, or*  
36 *operated by another person in this state, is not an agreement*  
37 *described in subparagraph (A), unless the person entering the*  
38 *agreement with the retailer also directly or indirectly solicits*  
39 *potential customers in this state through use of flyers, newsletters,*  
40 *telephone calls, electronic mail, blogs, microblogs, social*

1 *networking sites, or other means of direct or indirect solicitation*  
2 *specifically targeted at potential customers in this state.*

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

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

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

21 (e) Except as provided in this subdivision, a retailer is not a  
22 “retailer engaged in business in this state” under paragraph (2) of  
23 subdivision (c) if that retailer’s sole physical presence in this state  
24 is to engage in convention and trade show activities as described  
25 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the  
26 retailer, including any of his or her representatives, agents,  
27 salespersons, canvassers, independent contractors, or solicitors,  
28 does not engage in those convention and trade show activities for  
29 more than 15 days, in whole or in part, in this state during any  
30 12-month period and did not derive more than one hundred  
31 thousand dollars (\$100,000) of net income from those activities  
32 in this state during the prior calendar year. Notwithstanding the  
33 preceding sentence, a retailer engaging in convention and trade  
34 show activities, as described in Section 513(d)(3)(A) of the Internal  
35 Revenue Code, is a “retailer engaged in business in this state,” and  
36 is liable for collection of the applicable use tax, with respect to  
37 any sale of tangible personal property occurring at the convention  
38 and trade show activities and with respect to any sale of tangible  
39 personal property made pursuant to an order taken at or during  
40 those convention and trade show activities.

1 (f) 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.

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