

AMENDED IN ASSEMBLY MAY 2, 2011

AMENDED IN ASSEMBLY MARCH 3, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 155

Introduced by Assembly Member Charles Calderon

January 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Charles Calderon. Use tax: retailer engaged in business.

Existing law imposes a sales tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, and a use tax 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 requires every retailer engaged in business in this state, as defined, and making sales of tangible personal property for storage, use, or other consumption in this state to collect the tax from the purchaser. The commerce clause of the United States Constitution allows a state to compel a retailer to collect use tax if the retailer has a substantial nexus with the state.

This bill would define a retailer engaged in business in this state as a retailer that is a member of a commonly controlled group, as defined under the Corporation Tax Law, and a member of a combined reporting group, as defined, that includes another member of the retailer's commonly controlled group that, pursuant to an agreement with or in

cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer. ~~This bill would also eliminate an exclusion.~~

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) Any retailer that is a member of a commonly controlled
30 group, as defined in Section 25105, and is a member of a combined
31 reporting group, as defined in paragraph (3) of subdivision (b) of
32 Section 25106.5 of Title 18 of the California Code of Regulations,

1 that includes another member of the retailer’s commonly controlled
2 group that, pursuant to an agreement with or in cooperation with
3 the retailer, performs services in this state in connection with
4 tangible personal property to be sold by the retailer, including, but
5 not limited to, design and development of tangible personal
6 property sold by the retailer, or the solicitation of sales of tangible
7 personal property on behalf of the retailer.

8 (4) As respects a lease, any retailer deriving rentals from a lease
9 of tangible personal property situated in this state.

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

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

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

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

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

36 (e) Except as provided in this subdivision, a retailer is not a
37 “retailer engaged in business in this state” under paragraph (2) of
38 subdivision (c) if that retailer’s sole physical presence in this state
39 is to engage in convention and trade show activities as described
40 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the

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

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

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