

Introduced by Senator Steinberg

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 655, as introduced, Steinberg. Sales and use taxes: 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 of, 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. That law defines a “retailer engaged in business in this state” to include specified entities and provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, that engages in specified activity in this state shall, at the time of sale or at the time the storage, use, or other consumption becomes taxable, collect use tax from the purchaser and remit it to the State Board of Equalization.

This bill would further define a retailer engaged in business in this state as a retailer that has substantial nexus with this state and a retailer upon whom federal law permits the state to impose a use tax collection duty.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6203 of the Revenue and Taxation Code is amended to read:

6203. (a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

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

(c) “Retailer engaged in business in this state” as used in this section and Section 6202 means ~~and includes~~ any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty. “Retailer engaged in business in this state” specifically includes any of the following:

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

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

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

(4) (A) Any retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring 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) Notwithstanding Section 7262, a retailer specified in
8 paragraph (4) above, and not specified in paragraph (1), (2), or (3)
9 above, is a “retailer engaged in business in this state” for the
10 purposes of this part and Part 1.5 (commencing with Section 7200)
11 only.

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

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

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

1 any sale of tangible personal property occurring at the convention
2 and trade show activities and with respect to any sale of tangible
3 personal property made pursuant to an order taken at or during
4 those convention and trade show activities.

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