

17272

05/31/19 11:29 AM  
RN 19 16276 PAGE 1

An act to amend Sections 6041.1, 6041.2, 6041.5, 6203, 6203.1, and 7262 of, and to add Section 6487.07 to, the Revenue and Taxation Code, relating to taxation.



191627617272BILL

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6041.1 of the Revenue and Taxation Code is amended to read:

6041.1. Newspapers, internet websites, and other entities that advertise tangible personal property for sale, ~~that do not transmit or otherwise communicate the offer and acceptance for the sale of tangible personal property between the seller and purchaser, and do not process payments directly or indirectly through third parties for the tangible personal property sold, refer purchasers to the marketplace seller by telephone, internet link, or other similar means to complete the sale, and do not participate further in the sale~~ are not facilitating a sale under this chapter.

SEC. 2. Section 6041.2 of the Revenue and Taxation Code is amended to read:

6041.2. For purposes of this chapter, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of ~~Title 26 of the United States Code~~ the Internal Revenue Code and the regulations thereunder.

SEC. 3. Section 6041.5 of the Revenue and Taxation Code is amended to read:

6041.5. (a) Notwithstanding Section 6041, a person that is a delivery network company is not a marketplace facilitator for purposes of this chapter.

(b) For purposes of this section, all of the following definitions shall apply:

(1) "Delivery network company" means a business entity that maintains an internet website or mobile application used to facilitate delivery services for the sale of local products.

~~(2) "Delivery network courier" means an individual who provides delivery services through a delivery network company internet website or mobile application using a personal means of transportation, such as a passenger vehicle, as defined in Section 465 of the Vehicle Code, bicycle, scooter, or other similar means of transportation, using public transportation, or walking.~~

~~(3)~~

(2) "Delivery services" means the pickup of one or more local products from a local merchant and delivery of the local products to a customer. "Delivery services" do not include any delivery requiring over 75 miles of travel from the local merchant to the customer.

~~(4)~~

(3) "Local merchant" means a third-party merchant, including, but not limited to, a kitchen, restaurant, grocery store, retail store, convenience store, or business of another type, that is not under common ownership or control with the delivery network company.

~~(5)~~

(4) "Local product" means any item, including food, other than freight, mail, or a package to which postage has been affixed.

(c) Notwithstanding subdivision (a), a delivery network company that meets the definition set forth in subdivision (b) of Section 6041 may elect, in a reasonable manner and duration prescribed by the department, to be deemed a marketplace facilitator pursuant to this chapter. Consistent with this section, the department shall adopt regulations that establish the criteria for obtaining and retaining an election to be a marketplace facilitator pursuant to this subdivision.



SEC. 4. Section 6203 of the Revenue and Taxation Code, as amended by Section 3 of Chapter 5 of the Statutes of 2019, 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 department.

(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 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, but is not limited to, 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 that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property for delivery in this state by the retailer and all persons related to the retailer that exceed five hundred thousand dollars (\$500,000).

(B) For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the Internal Revenue Code and the regulations thereunder.

(d) Except as provided in this subdivision, a retailer is not a "retailer engaged in business in this state" under paragraph (2) of subdivision (c) if that retailer's sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of the retailer's representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 15 days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year.

Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a "retailer engaged in business in this state," and is liable for collection of the applicable



use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

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

(f) (1) The amendments made to this section by ~~the act adding this subdivision Chapter 5 of the Statutes of 2019~~ shall become operative on April 1, 2019.

(2) If the amendments made to this section by ~~the act adding this subdivision Chapter 5 of the Statutes of 2019~~ are held in a final decision of a court of competent jurisdiction to violate the substantial nexus standard of the commerce clause of the United States Constitution, this section shall become inoperative and shall be repealed on the date of that final decision.

SEC. 5. Section 6203.1 of the Revenue and Taxation Code is amended to read:

6203.1. (a) The department, in its discretion, may relieve a retailer engaged in business in this state that meets the requirements of subdivision (b) of the following:

- (1) The penalties provided by Sections 6484, 6511, and 6591.
- (2) All or any part of the interest imposed on the person by this part.

(b) This section shall apply to any retailer engaged in business in this state that meets all of the following conditions:

(1) The retailer registered under Article 2 (commencing with Section 6225) on or after April 1, 2019, as a retailer engaged in business pursuant to paragraph (4) of subdivision (c) of Section 6203.

(2) The total combined sales from the retailer and all persons related to the retailer, within the preceding 12 months, of tangible personal property in this state or for delivery in this state does not exceed one million dollars (\$1,000,000).

(3) The retailer was not previously registered, or required to be registered, with the department under Chapter 2 (commencing with Section 6051) or Chapter 3 (commencing with Section 6201).

(4) The retailer's failure to collect and remit use tax was due to a good faith error and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

(5) The retailer is not a marketplace facilitator as defined in Section 6041.

(6) Any other factors as deemed necessary by the department.

(c) For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of ~~Title 26 of the United States~~ the Internal Revenue Code and the regulations thereunder.

(d) The department may grant relief only for interest or penalties imposed on use tax liabilities due and payable for tax reporting periods beginning April 1, 2019, and ending December 31, 2022.

SEC. 6. Section 6487.07 is added to the Revenue and Taxation Code, to read:

6487.07. (a) Notwithstanding Section 6487, a deficiency determination may be issued to a qualifying retailer only for those liabilities arising under this part for sales made on and after April 1, 2016.

(b) For purposes of this section, a "qualifying retailer" is a retailer that meets all of the following conditions:



(1) The retailer is not registered or has not registered with the department under this part prior to December 1, 2018.

(2) The retailer had not filed sales or use tax returns or made sales or use tax payments prior to being contacted by the department.

(3) The retailer voluntarily registers under Chapter 2 (commencing with Section 6051) or Chapter 3 (commencing with Section 6201), as applicable, files completed tax returns for all tax reporting periods for which a determination may be issued under this section, within 90 days after the effective date of this act, and pays in full the taxes due or applies for an installment agreement, but only if final payment under the terms of that installment payment agreement is paid no later than December 31, 2021.

(4) The retailer is or was engaged in business in this state solely because the retailer used a marketplace facilitator, as defined in Section 6041, to facilitate sales for delivery in this state and the marketplace facilitator stored the retailer's inventory in this state.

(c) A qualifying retailer shall be relieved of the penalties imposed pursuant to this part with respect to sales made from April 1, 2016, to March 31, 2019, inclusive.

SEC. 7. Section 7262 of the Revenue and Taxation Code is amended to read:

7262. The use tax portion of any transactions and use tax ordinance adopted under this part shall impose a complementary tax upon the storage, use, or other consumption in the district of tangible personal property purchased from any retailer for storage, use, or other consumption in the district. The tax shall be at a rate of one-eighth of 1 percent, or a multiple thereof, of the sales price of the property whose storage, use, or other consumption is subject to the tax, and the ordinance shall include provisions in substance as follows:

(a) Provisions identical to those contained in Part 1 (commencing with Section 6001), insofar as they relate to use taxes and are not inconsistent with this part, except that the name of the district as the taxing agency shall be substituted for that of the state. The name of the district shall be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 and in the definition of that phrase.

The following additional provisions shall be included:

(1) "A retailer engaged in business in the district" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the state by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of ~~Title 26 of the United States~~ the Internal Revenue Code and the regulations thereunder.

(2) Except as provided in paragraph (3), a retailer engaged in business in the district shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the district or participates within the district in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary, or person in the district under the authority of the retailer.

(3) "A retailer engaged in business in the district" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1



(commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the district.

(b) A provision that all amendments to the provisions of Part 1 (commencing with Section 6001) relating to the use tax and not inconsistent with this part shall automatically become a part of the ordinance. However, no amendment shall operate so as to affect the rate of tax imposed by the district's board.

(c) A provision that the amount subject to tax shall not include the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the amount of any state-administered transactions or use tax.

(d) A provision that any person subject to a use tax under an ordinance adopted pursuant to this part shall be entitled to credit against that tax or any transactions tax, or to reimbursement for a transactions tax, paid to a district or retailer in a district imposing a transactions and use tax pursuant to this part.

(e) A provision that, in addition to the exemptions provided in Sections 6366 and 6366.1, the storage, use, or other consumption of tangible personal property, other than fuel or petroleum products, purchased by operators of aircraft, and used or consumed by the operators directly and exclusively in the use of the aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government, is exempt from the use tax.

(f) A provision that the storage, use, or other consumption in the district of tangible personal property is exempt from the tax if the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance. The possession of, or the exercise of any right or power over, tangible personal property under a lease which is a continuing purchase of the property is exempt from tax for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to the operative date of the ordinance. For purposes of this subdivision, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

(g) Any provision in an ordinance that is required to be included pursuant to paragraph (1) of subdivision (a) shall become operative on April 1, 25, 2019.

SEC. 8. The Legislature hereby finds and declares that limiting the time period for which a deficiency determination may be issued to a qualified retailer and eliminating related penalties, by adding Section 6487.07 of the Revenue and Taxation Code, promotes compliance and accelerates revenue from businesses that may not have been aware of their tax collection duties and thus serves a public purpose and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.



## LEGISLATIVE COUNSEL'S DIGEST

Bill No. \_\_\_\_\_  
as introduced, \_\_\_\_\_.  
General Subject: Sales and use taxes.

Existing state sales and use tax laws impose 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. The Sales and Use Tax Law requires every person desiring to engage in or conduct business as a seller within this state to file with the California Department of Tax and Fee Administration an application for a permit for each place of business and requires every retailer selling tangible personal property for storage, use, or other consumption in this state to register with the department.

(1) Within the Sales and Use Tax Law, the Marketplace Facilitator Act, on and after October 1, 2019, provides that a marketplace facilitator, as defined, is considered the seller and retailer for each sale facilitated through its marketplace, as defined, for purposes of determining whether that marketplace facilitator is required to register with the department under the Sales and Use Tax Law. Existing law provides that any marketplace facilitator that is registered or required to register with the department under the Sales and Use Tax law and that facilitates a retail sale of tangible personal property by a marketplace seller, as defined, is the retailer selling or making the sale of the tangible personal property sold through its marketplace for purposes of paying any sales taxes and collecting any use taxes. Existing law exempts a person that is a delivery network company, as defined, from the definition of a marketplace facilitator and excludes certain actions taken by newspapers, internet websites, and other entities from the act of facilitating a sale as a marketplace facilitator.

This bill would allow a delivery network company to elect to be deemed a marketplace facilitator, as specified. The bill would revise those actions taken by newspapers, internet websites, and other entities that are excluded from the act of facilitating a sale as a marketplace facilitator.

(2) The Sales and Use Tax Law requires, for purposes of the sales tax, a tax return to be filed by every seller and, for purposes of the use tax, a tax return to be filed by every retailer engaged in business in this state. Under that law, if any person fails to make a return, the California Department of Tax and Fee Administration is required to make a deficiency determination based on an estimate of the amount of the gross



receipts of the person, or, as the case may be, of the amount of the total sales price of tangible personal property sold by the person, the storage, use, or other consumption of which in this state is subject to the use tax. Under that law, if a retailer fails to file a return, the department is authorized to issue a notice of deficiency determination for a period of 8 years, as specified. The Sales and Use Tax Law also imposes various penalties, including a penalty for failure to make a return and pay taxes when that failure results in the department's issuance of a deficiency determination.

This bill would limit the issuance of a deficiency determination to a "qualifying retailer" to only those liabilities arising under the Sales and Use Tax Law for sales made on and after April 1, 2016. The bill would define a "qualifying retailer" to mean, among other things, a retailer that is or was engaged in business in this state solely because the retailer used a marketplace facilitator to facilitate sales for delivery in this state and for which the marketplace facilitator stored the retailer's inventory in this state. The bill would relieve a qualifying retailer of the penalties imposed pursuant to the Sales and Use Tax Law with respect to sales made from April 1, 2016, to March 31, 2019, inclusive. The bill would make a legislative finding and declaration that the bill serves a public purpose and does not constitute a prohibited gift of public funds.

(3) Existing laws authorize districts, as specified, to impose transactions and use taxes by adopting district transactions and use ordinances in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law. Existing law requires districts that impose district use taxes in accordance with the Transactions and Use Tax Law to include a provision in the district's use tax ordinance, to be operative on April 1, 2019, that provides that a retailer engaged in business in the district includes any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in the state or for delivery in the state by the retailer and all persons related to the retailer that exceeds \$500,000, thereby requiring those retailers to collect those district use taxes.

This bill would instead specify that those added district use tax ordinance provisions are operative on April 25, 2019.

(4) This bill would make other nonsubstantive changes.

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

