



Tax Law

California Enacts New Registration Requirements For Out-Of-State Retailers

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Authors: [Donald J. Fitzgerald](#) | [Eric S. Jones](#)

On March 24, 2011, we sent out a newsletter detailing the “economic nexus” rules that had recently come into effect in California (a copy of which can be found [here](#)). As discussed therein, the “nexus” rules are put into place by states to establish the minimum contacts, or conduct, necessary to establish a sufficient connection (i.e., “nexus”) between the business and the state to give the state the legal power to tax the business. The nexus rules discussed in our prior newsletter pertain to California franchise and income taxes and are designed to primarily affect out-of-state corporations and pass-through entities and their equity holders that have property, payroll or sales in California.

California has now set its sights on boosting use tax revenue to help cover the recurring budget shortfalls. On June 28, 2011, Governor Edmund G. Brown, Jr., signed into law ABx1 28 (the “Legislation”) which expands the use tax registration requirements for out-of-state retailers. By way of background, California’s sales tax generally applies to the sale of merchandise in the state. California’s use tax, on the other hand, is generally imposed on the storage, use, or other consumption of merchandise within the state (in instances where sales tax is not applicable). With certain exceptions, any “retailer engaged in business in [the] state” that makes a sale subject to California use tax is required to register with

the California State Board of Equalization and collect and remit any use taxes due.

In the SBE's own words, the Legislation generally expands use tax registration requirements to large out-of-state retailers that were previously not required to collect use tax on sales to California customers. Such transactions are generally conducted either through mail order, telephone orders, or via the Internet.

As disclosed in California State Board of Equalization Special Tax Notice No. L-284, the Legislation specifically provides, among other things, that a "retailer engaged in business in this state" includes:

- Any retailer that is a member of a commonly-controlled group and is a member of a combined reporting group 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, including, but not limited to, design and development of tangible personal property sold by the retailer, or the solicitation of sales of tangible personal property on behalf of the retailer.
- Any retailer entering into an agreement under which a person in this state, for a commission or other consideration, refers potential purchasers of tangible personal property to the retailer, whether by an Internet-based link or an Internet website, or otherwise provided that both of the following conditions are met:
 1. The retailer's total sales of tangible personal property to California consumers that are referred pursuant to all of those agreements with a person(s) in California in the preceding 12 months must be in excess of \$10,000.

2. The retailer's total sales of tangible personal property to California consumers in the preceding 12 months must be in excess of \$500,000.

Amazon reportedly has voiced its disapproval with the Legislation, and attempted to avoid having to register and collect the use tax, by terminating its relationships with California businesses whose websites provided links to its products. Recent news reports indicate that Amazon may be supporting a ballot initiative to overturn the Legislation. Additionally, it is possible that the constitutionality of the Legislation will be challenged in court at some point. In fact, New York has similar legislation on its books which is currently the subject of litigation. The out-of-state retailer in that case has been unsuccessful, so far, at the trial and appellate court levels.

This newsletter is a general summary of the Legislation and related special notice, the specific application of which is beyond the scope of this newsletter. Manatt, Phelps & Phillips, LLP's tax attorneys stand ready to assist you with any questions you may have.