



Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
February 8, 2011

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Support of Assembly Bill 153, Authored by Assemblymember Nancy Skinner

RECOMMENDATION:

Adopt a Resolution in support of Assembly Bill (AB) 153, authored by Assemblymember Nancy Skinner, which requires out-of-state online only retailers to collect the same sales tax California businesses are required to collect.

BACKGROUND:

Current state law requires that businesses located in California collect and remit sales tax to the state. However, the law does not require out-of-state internet retailers to collect and remit sales tax for online transactions. The current tax structure also encourages companies with internet sales to move out-of-state so that they are not subject to our sales tax laws. This loophole places California businesses at an unfair disadvantage allowing out-of-state businesses to generate millions of dollars in sales from California residents, while putting California stores out of business.

AB 153 would close this loophole by amending state law to require that these out-of-town online retailers collect and remit sales tax on all transactions to the state. Given the state's ongoing budget shortfall, California need to be proactive in collecting taxes which should be due and payable. The State Board of Equalization estimates that California would collect over 150 million if AB 153 were enacted.

During this recession, it is important that the state support local businesses to ensure a diversity of goods and services for residents and to generate needed sales tax revenue. This loss of sales tax revenue to the state also means that local communities who depend on this revenue source also suffer. With proposed cuts in health, social services and other programs, which will have a direct and negative impact on the City of Berkeley, it is important that we level the playing field so that all businesses have to collect and remit needed sales tax revenue.

FINANCIAL IMPLICATIONS:

NONE.

CONTACT PERSON:

Jesse Arreguín, Councilmember, District 4

981-7140

Attachments:

1. Resolution
2. Copy of Assembly Bill 153

RESOLUTION NO. XXXXX

SUPPORTING ASSEMBLY BILL (AB) 153 REQUIRING OUT-OF-STATE ONLINE
RETAILERS TO COLLECT AND REMIT STATE SALES TAX

WHEREAS, the State of California has faced successive, multi-billion dollar budget deficits and currently faces a 25 billion dollar deficit for FY 2011-2012; and

WHEREAS, the State Legislative Analysts Office projects anticipated deficits of 20 billion dollars each fiscal year through 2015-2016; and

WHEREAS, billions of dollars have been cut and are proposed to be further cut from education, health, social services, local governments, and many other critical programs in order to balance the state budget; and

WHEREAS, California law requires that all businesses located in the state collect and remit sales tax revenue to the state. However, out-of-state internet retailers who have over the years generated millions of dollars in sales, are not required to collect state sales tax on transactions; and

WHEREAS, this has resulted in millions of dollars in sales tax revenue being lost to out-of-state online retailers doing business in California; and

WHEREAS, this loophole has created an unfair disadvantage for California businesses, resulting in a 8.25% advantage for out-of-state online retailers who are competing with California businesses for customers; and

WHEREAS, the state Board of Equalization estimates that California would collect over \$150 million if online retailers were required to collect and remit sales tax on customer transactions occurring in California; and

WHEREAS, Assembly Bill (AB) 153, authored by Assemblymember Nancy Skinner, would require that out-of-state online retailers collect and remit sales tax to the state; and

WHEREAS, AB 153 would generate needed revenue for state and local governments, helping to close budget deficits and supporting health, social services, higher education and many other programs.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports Assembly Bill (AB) 153 and that copies of this resolution be sent to the Assembly Committee on Revenue and Taxation, Assemblymember Nancy Skinner, Assembly Speaker John Perez, Senator Loni Hancock and Senate President Pro Tem Darrell Steinberg.

ASSEMBLY BILL**No. 153**

Introduced by Assembly Member SkinnerJanuary 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 153, as introduced, 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 in this state, for a commission or other consideration, directly or indirectly refers 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 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.

31 (4) (A) Any retailer soliciting orders for tangible personal
32 property by mail if the solicitations are substantial and recurring
33 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) (A) *Any retailer entering into an agreement or agreements*
8 *under which a person or persons in this state, for a commission*
9 *or other consideration, directly or indirectly refer potential*
10 *purchasers of tangible personal property to the retailer, whether*
11 *by an Internet-based link or an Internet Web site, or otherwise,*
12 *provided that the total cumulative sales price from all of the*
13 *retailer's sales, within the preceding 12 months, of tangible*
14 *personal property to purchasers in this state that are referred*
15 *pursuant to all of those agreements with a person or persons in*
16 *this state, is in excess of ten thousand dollars (\$10,000).*

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

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

29 ~~(5)~~

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

35 (d) (1) For purposes of this section, “engaged in business in
36 this state” does not include the taking of orders from customers in
37 this state through a computer telecommunications network located
38 in this state which is not directly or indirectly owned by the retailer
39 when the orders result from the electronic display of products on
40 that same network. The exclusion provided by this subdivision

1 shall apply only to a computer telecommunications network that
2 consists substantially of online communications services other
3 than the displaying and taking of orders for products.

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

8 (e) Except as provided in this subdivision, a retailer is not a
9 “retailer engaged in business in this state” under paragraph (2) of
10 subdivision (c) if that retailer’s sole physical presence in this state
11 is to engage in convention and trade show activities as described
12 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
13 retailer, including any of his or her representatives, agents,
14 salespersons, canvassers, independent contractors, or solicitors,
15 does not engage in those convention and trade show activities for
16 more than 15 days, in whole or in part, in this state during any
17 12-month period and did not derive more than one hundred
18 thousand dollars (\$100,000) of net income from those activities
19 in this state during the prior calendar year. Notwithstanding the
20 preceding sentence, a retailer engaging in convention and trade
21 show activities, as described in Section 513(d)(3)(A) of the Internal
22 Revenue Code, is a “retailer engaged in business in this state,” and
23 is liable for collection of the applicable use tax, with respect to
24 any sale of tangible personal property occurring at the convention
25 and trade show activities and with respect to any sale of tangible
26 personal property made pursuant to an order taken at or during
27 those convention and trade show activities.

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

