



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: April 2, 2019
TO: Christine Daniel, City Manager
FROM: Susan Hsieh, Finance Director
SUBJECT: Update on Assembly Bill 147 Use Taxes

RECOMMENDATION

Staff recommends that the City Council review the report. This report is for information only.

BACKGROUND

The purpose of this report is to provide the Council an update on Assembly Bill 147 (AB 147). AB 147 addresses the *Wayfair* Supreme Court case. In the *South Dakota v. Wayfair Inc.* case, the U.S. Supreme Court concluded that remote sellers with no physical presence in South Dakota are required to collect and remit sales tax and follow all procedures of the law, as if they have a presence in the state, if they meet one of two criteria in the previous calendar year or the current calendar year: (1) the remote seller's gross revenue from the sale of tangible personal property, any products transferred electronically, or services delivered into South Dakota exceeds \$100,000; or (2) the remote seller has sold tangible personal property, any products transferred electronically, or services for delivery into South Dakota in 200 or more separate transactions.

Below is information regarding the expected implementation of the *Wayfair* decision in California absent AB 147.

In December 2018, the California Department of Tax and Fee Administration (CDTFA) released its notice for implementing the *Wayfair* decision. **Beginning April 1, 2019**, retailers located outside of California are required to register with the CDTFA, collect the California use tax, and pay the tax to the CDTFA based on the amount of their sales into California, even if they do not have a physical presence in the state. This is applicable to retailers that sell tangible goods for delivery into California through the Internet, mail-order catalogs, telephone, or any other means. The current thresholds for remitting this tax are

- the retailer's sales into California exceed \$100,000, or
- the retailer made sales into California in 200 or more separate transactions.

According to the League of California Cities, "while some considered South Dakota's \$100K/200 transaction threshold too low for California, CDTFA opined that it did not have authority to set a different threshold absent a legislative change. CDTFA also flagged problems with the collection of local transaction and use taxes that required legislative clarification. Should this issue not be addressed, the state, local agencies and retailers

would face nightmarish complexities attempting to track and audit compliance for hundreds of district taxes.”

AB 147 is initiated by Assembly Member Autumn Burke and Senator Mike McGuire. This bill focuses on modernizing California law consistent with the holding of *Wayfair*, which allows this state to impose a use tax collection duty on retailers who have specified levels of economic activity in this state, even though they do not have a physical presence in this state. AB 147 defines the term “retailer” to include marketplace facilitators and require marketplace facilitators that meet the higher economic activity threshold to collect and remit the use tax on behalf of their marketplace sellers. This bill also alleviates the burden of tracking economic activity in each individual district that imposes a district tax.

DISCUSSION

If AB 147 becomes law, several implementation elements will change:

- Threshold. AB 147 defines “doing business in California” for the purposes of collecting sales and use taxes as having \$500,000 in cumulative sales or deliveries into California in the preceding 12 months. AB 147 authorizes the CDTFA to grant relief for interest and penalties imposed on use tax liabilities if specified conditions are met. The threshold for two hundred or more separate transactions no longer applies.
- Third Parties. Beginning October 1, 2019, AB 147 defines “marketplace facilitators” as the seller & retailer for each sale facilitated through its marketplace, thus responsible for collecting and remitting sales & use tax for each transaction. To determine cumulative sales in California, a facilitator must include sales made on its own behalf and those sales facilitated on behalf of marketplace sellers (e.g., Amazon will collect from its affiliates).
- District Taxes. The CDTFA confirmed that the district tax should remain the same and the threshold is based on statewide sales (\$500,000 or more in delivery). Sales would still be subject to the district use tax of the district where it is delivered when it is shipped from a fulfillment center in one district to a customer in a different district.
- Local Authorizing Ordinances. Authorizing ordinances do not need to be updated. The CDTFA confirmed that RTC (Revenue and Taxation Code) section 7262.2 states that all district tax ordinances incorporate all updates to sections 7261 and 7262. So, if the nexus provision in RTC section 7262(a)(1) is changed, it is incorporated into all district ordinances.

AB 147 is expected to smooth the implementation of *Wayfair*. Based on the latest update provided by the City’s Sales Tax Consultant, this bill is not expected to be signed by the governor before April 1, 2019. The governor’s signature is expected in early April. The CDTFA indicated that they will proceed with the implementation as planned and will issue a new notice that supersedes the old one as soon as the bill passes.

FISCAL IMPACT

According to the League of California Cities, the CDTFA estimates that AB 147 will result in the collection of an additional \$309 million in FY 2019–20 and \$476 million in FY 2020–21 in state and local use tax revenue. The effect of switching from South Dakota's \$100K/200 transaction standard to a \$500K standard for California will result in revenue losses of \$12 to \$14 million over that same period.

The impact on local jurisdictions are unknown at this point. The City's Sales Tax Consultant provided an estimate based on the *Wayfair* decision. Based on that, the City is expected to receive about \$200,000 annually starting in FY 2019-20.

STAFF COMMUNICATION WITH THE PUBLIC

None.

PREPARED BY: Susan Hsieh, Finance Director

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Christine Daniel, City Manager

ATTACHMENTS

- Assembly Bill 147 Use Taxes