

AMENDED IN ASSEMBLY MARCH 11, 2019
AMENDED IN ASSEMBLY FEBRUARY 27, 2019
AMENDED IN ASSEMBLY FEBRUARY 14, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 147

Introduced by Assembly Member Burke
(Principal coauthor: Senator McGuire)

December 14, 2018

An act to amend Section 7262 of, to amend, repeal, and add Section 6203 of, to add Section 6203.1 to, and to add Chapter 1.7 (commencing with Section 6040) to Part 1 of Division 2 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as amended, Burke. Use taxes: collection: retailer engaged in business in this state: marketplace facilitators.

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 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.

The Sales and Use Tax Law 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, not otherwise exempt, at the time of making the sales or at the time the storage, use, or other consumption becomes taxable, to collect the tax from the purchaser, file a return, and remit the tax to the California Department of Tax and

Fee Administration. That law defines a retailer engaged in business in this state to mean 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.

This bill would specify that, on and after April 1, 2019, a retailer engaged in business in this state includes any retailer that, in the preceding calendar year or the current calendar year, has a cumulative sales price from the sale of tangible personal property for delivery in this state that exceeds \$500,000. The bill would allow the department to grant relief to certain retailers engaged in business in this state for specified interest or penalties imposed on use tax liabilities due and payable for tax reporting periods beginning April 1, 2019 and ending December 31, 2022.

The Sales and Use Tax Law specifically includes as a retailer engaged in business in this state, among others, (1) 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 and (2) any retailer entering into agreements under which persons in this state, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an internet-based link or an internet website, or otherwise, provided that the retailer meets specified total cumulative sales thresholds including that the retailer has, during the preceding 12 months, total cumulative sales in this state of tangible personal property in excess of \$1,000,000.

This bill would eliminate, on April 1, 2019, the specific inclusion of those retailers as a retailer engaged in business 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 department 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.

This bill, on and after October 1, 2019, would provide 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. The bill would

provide that any marketplace facilitator that is registered or required to register with the department under the Sales and Use Tax law and who 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. The bill, for purposes of determining whether a marketplace facilitator has a cumulative sales price from the sale of tangible personal property for delivery in this state that would make it a retailer engaged in business in this state, would require the marketplace facilitator to include all sales made on its own behalf and sales facilitated on behalf of marketplace sellers. The bill would provide a marketplace facilitator relief from liability for the tax on a retail sale in specified circumstances.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and other existing laws authorize districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law.

In conformity with the Sales and Use Tax Law, existing local use tax ordinances adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law require a retailer engaged in business in this state for purposes of the Sales and Use Tax Law to also collect a use tax adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law. In modified conformity with the Sales and Use Tax Law, existing use district tax ordinances adopted in accordance with the Transactions and Use Tax Law generally require a retailer to collect a use tax adopted pursuant to the Transactions and Use Tax Law only if the retailer is engaged in business in that district.

The changes made to the Sales and Use Tax Law by this bill, by conformity, would be automatically incorporated into local use taxes ordinances adopted pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law. This bill would require districts that impose district use taxes in accordance with the Transactions and Use Tax Law to include a provision, 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 a total cumulative sales price from the sale of tangible personal property for delivery in the state that exceeds \$500,000, thereby requiring those retailers to collect those district use taxes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) On June 21, 2018, in *South Dakota v. Wayfair, Inc.* (2018)
4 585 U.S. ____ (hereafter *Wayfair*), the United States Supreme Court
5 upheld SDCL Chapter 10-64, the South Dakota law that requires
6 remote sellers that do not have a physical presence in that state to
7 collect sales tax on all sales into South Dakota based on the seller's
8 level of economic activity in the state.

9 (b) SDCL Chapter 10-64-2 provides, in part, that remote sellers
10 with no physical presence in South Dakota are required to collect
11 and remit sales tax and follow all procedures of the law, as if they
12 have a presence in the state, if they meet one of two criteria in the
13 previous calendar year or the current calendar year: (1) the remote
14 seller's gross revenue from the sale of tangible personal property,
15 any products transferred electronically, or services delivered into
16 South Dakota exceeds \$100,000; or (2) the remote seller has sold
17 tangible personal property, any products transferred electronically,
18 or services for delivery into South Dakota in 200 or more separate
19 transactions.

20 (c) *Wayfair* overturned longstanding United States Supreme
21 Court precedent, established in *Quill Corp. v. North Dakota*, (1992)
22 504 U.S. 298, which precluded states from imposing an obligation
23 to collect sales or use tax on a seller unless the seller had a physical
24 presence in the state.

25 (d) Current California law has a "long-arm" provision that
26 imposes a duty to collect use tax on any retailer that has substantial
27 nexus with this state for the purposes of the commerce clause of
28 the United States Constitution and any retailer upon whom federal
29 law permits this state to impose a use tax collection duty.

30 (e) In *Wayfair*, the Court found that South Dakota did not violate
31 the commerce clause of the United States Constitution by imposing
32 a sales tax collection duty on sellers whose economic activity in
33 the state satisfies the sales thresholds in SDCL Chapter 10-64-2.

(f) It is the intent of the Legislature by enacting this act to modernize 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. It is also the intent of the Legislature to ensure that small businesses are not unduly burdened by the expansion of the duty to collect use tax.

(g) The provisions of this act are intended to protect small businesses by modifying existing law to: (1) increase the level of economic activity a retailer must have in California for the state to impose a use tax collection obligation on the retailer; (2) define 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; and (3) alleviate the burden of tracking economic activity in each individual district that imposes a district tax.

SEC. 2. Chapter 1.7 (commencing with Section 6040) is added to Part 1 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 1.7. MARKETPLACE FACILITATOR ACT

Article 1. General Provisions and Definitions

6040. This chapter shall be known as and referred to as the Marketplace Facilitator Act.

6041. For purposes of this part, the following definitions shall apply:

(a) “Marketplace” means a physical or electronic place, including, but not limited to, a store, booth, internet website, catalog, television or radio broadcast, or a dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property for delivery in this state regardless of whether the tangible personal property, marketplace seller, or marketplace has a physical presence in this state.

(b) “Marketplace facilitator” means a person who contracts with marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the

1 marketplace seller's products through a marketplace operated by
2 the person, and who engages in both of the following:

3 (1) Directly or indirectly, through one or more related persons,
4 in any of the following:

5 (A) Transmitting or otherwise communicating the offer or
6 acceptance between the buyer and seller.

7 (B) Owning or operating the infrastructure, electronic or
8 physical, or technology that brings buyers and sellers together.

9 (C) Providing a virtual currency that buyers are allowed or
10 required to use to purchase products from the seller.

11 (D) Software development or research and development
12 activities related to any of the activities described in paragraph
13 (2), if such activities are directly related to a marketplace operated
14 by the person or a related person.

15 (2) In any of the following activities with respect to the
16 marketplace seller's products:

17 (A) Payment processing services.

18 (B) Fulfillment or storage services.

19 (C) Listing products for sale.

20 (D) Setting prices.

21 (E) Branding sales as those of the marketplace facilitator.

22 (F) Order taking.

23 (G) Advertising or promotion.

24 (H) Providing customer service or accepting or assisting with
25 returns or exchanges.

26 (c) "Marketplace seller" means a person who has an agreement
27 with a marketplace facilitator and makes retail sales of tangible
28 personal property through a marketplace owned, operated, or
29 controlled by a marketplace facilitator, even if ~~such~~ *that* person
30 would not have been required to hold a seller's permit or permits,
31 or required to collect the tax imposed pursuant to Chapter 3
32 (commencing with Section 6201), had the sale not been made
33 through ~~such~~ *that* marketplace.

34 35 Article 2. Registration and Collection 36

37 6042. A marketplace facilitator shall be considered the seller
38 and retailer for each sale facilitated through its marketplace for
39 purposes of determining whether the marketplace facilitator is
40 required to register with the department under Chapter 2

1 (commencing with Section 6051) or Chapter 3 (commencing with
2 Section 6201), in addition to each sale for which the marketplace
3 facilitator is the seller or retailer or both under Chapter 1
4 (commencing with Section 6001).

5 6043. A marketplace facilitator that is registered with the
6 department or required to register with the department under
7 Chapter 2 (commencing with Section 6051) or Chapter 3
8 (commencing with Section 6201) and that facilitates a retail sale
9 of tangible personal property by a marketplace seller is the retailer
10 selling or making the sale of the tangible personal property sold
11 through its marketplace for purposes of this part.

12 6044. For purposes of determining the cumulative sales price
13 from the sale of tangible personal property for delivery in this state
14 pursuant to Section 6203:

15 (a) A marketplace facilitator shall include all sales of tangible
16 personal property for delivery in this state, including sales made
17 on its own behalf and sales facilitated on behalf of marketplace
18 sellers.

19 (b) A marketplace seller shall include all sales of tangible
20 personal property for delivery in this state, including sales made
21 on its own behalf and sales facilitated through any marketplace
22 facilitator's marketplace.

23 6044.5. (a) If the department determines that a marketplace
24 facilitator was the retailer selling or making a sale of tangible
25 personal property for purposes of this part and that a marketplace
26 seller reported and paid tax to the department with regard to that
27 sale, then the tax shall be credited against the marketplace
28 facilitator's liability with regard to that sale and the remainder may
29 be refunded to the marketplace seller.

30 (b) Section 6204 and Chapter 7 (commencing with Section
31 6901), including Section 6901.5, apply to refunds under this
32 section.

33 6045. A marketplace seller shall register with the department
34 under Chapter 2 (commencing with Section 6051) or Chapter 3
35 (commencing with Section 6201), as required, for retail sales made
36 on its own behalf and not facilitated through a registered
37 marketplace facilitator.

Article 3. Marketplace Facilitator Relief

6046. If the marketplace facilitator demonstrates to the satisfaction of the department that the marketplace facilitator has made a reasonable effort to obtain accurate information from an unrelated marketplace seller about a retail sale and that the failure to remit the correct amount of tax imposed under this part was due to incorrect information provided to the marketplace facilitator by the unrelated marketplace seller, then the marketplace facilitator shall be relieved of liability for the tax for that retail sale. This section does not apply with regard to a retail sale for which the marketplace facilitator is the retailer selling or making the sale of the tangible personal property on its own behalf or if the marketplace facilitator and marketplace seller are related. Where a marketplace facilitator is relieved of liability for the tax on a retail sale under this section, the marketplace seller is the retailer for that retail sale.

6047. (a) A marketplace facilitator shall be relieved of the tax on retail sales facilitated through its marketplace as provided in subdivision (c) if the marketplace facilitator demonstrates to the satisfaction of the department all of the following:

(1) The retail sales were facilitated for a marketplace seller prior to January 1, 2023, through a marketplace of the marketplace facilitator.

(2) The marketplace facilitator is not the marketplace seller.

(3) The marketplace facilitator and the marketplace seller are not related.

(4) The failure to collect sales and use tax was due to a good faith error other than an error in sourcing the sale pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(b) To the extent that a marketplace facilitator is relieved of liability for collection of sales and use tax under this section, the marketplace seller for whom the marketplace facilitator has facilitated the retail sale is also relieved of liability, unless the marketplace seller is the retailer for those retail sales pursuant to Section 6046. The department may determine the manner in which a marketplace facilitator or marketplace seller shall claim the liability relief provided in this section.

1 (c) The liability relief provided under this section shall not
2 exceed the following percentage of the total sales and use tax due
3 on sales facilitated by a marketplace facilitator for marketplace
4 sellers, which sales shall not include sales by the marketplace
5 facilitator or persons related to the marketplace facilitators:

6 (1) For sales facilitated during the fourth quarter of 2019 or
7 during the 2020 calendar year, 7 percent.

8 (2) For sales facilitated during the 2021 calendar year, 5 percent.

9 (3) For sales facilitated during the 2022 calendar year, 3 percent.

10 (d) Nothing in this section shall be construed to relieve any
11 person of liability for collecting but failing to remit to the
12 department sales and use tax.

13
14 Article 4. Operative Date

15
16 6049.5. (a) This chapter shall become operative on October
17 1, 2019.

18 (b) The provisions of this chapter are severable. If any provision
19 of this chapter or its application is held invalid, that invalidity shall
20 not affect other provisions or applications that can be given effect
21 without the invalid provision or application.

22 SEC. 3. Section 6203 of the Revenue and Taxation Code, as
23 added by Section 3 of Chapter 313 of the Statutes of 2011, is
24 amended to read:

25 6203. (a) Except as provided by Sections 6292 and 6293, every
26 retailer engaged in business in this state and making sales of
27 tangible personal property for storage, use, or other consumption
28 in this state, not exempted under Chapter 3.5 (commencing with
29 Section 6271) or Chapter 4 (commencing with Section 6351),
30 shall, at the time of making the sales or, if the storage, use, or other
31 consumption of the tangible personal property is not then taxable
32 hereunder, at the time the storage, use, or other consumption
33 becomes taxable, collect the tax from the purchaser and give to
34 the purchaser a receipt therefor in the manner and form prescribed
35 by the department.

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

39 (c) "Retailer engaged in business in this state" as used in this
40 section and Section 6202 means any retailer that has substantial

1 nexus with this state for purposes of the commerce clause of the
2 United States Constitution and any retailer upon whom federal
3 law permits this state to impose a use tax collection duty. “Retailer
4 engaged in business in this state” specifically includes, but is not
5 limited to, any of the following:

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

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

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

18 (4) Any retailer that, in the preceding calendar year or the current
19 calendar year, has a cumulative sales price from the sale of tangible
20 personal property for delivery in this state that exceeds five hundred
21 thousand dollars (\$500,000).

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

1 personal property made pursuant to an order taken at or during
2 those convention and trade show activities.

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

8 (f) (1) The amendments made to this section by the act adding
9 this subdivision shall become operative on April 1, 2019.

10 (2) If Chapter 1.7 (commencing with Section 6040) or the
11 amendments made to this section by the act adding this subdivision
12 is held in a final decision of a court of competent jurisdiction to
13 violate the substantial nexus standard of the commerce clause of
14 the United States Constitution, this section shall become
15 inoperative and shall be repealed on the date of that final decision.

16 SEC. 4. Section 6203 is added to the Revenue and Taxation
17 Code, to read:

18 6203. (a) Except as provided by Sections 6292 and 6293, every
19 retailer engaged in business in this state and making sales of
20 tangible personal property for storage, use, or other consumption
21 in this state, not exempted under Chapter 3.5 (commencing with
22 Section 6271) or Chapter 4 (commencing with Section 6351),
23 shall, at the time of making the sales or, if the storage, use, or other
24 consumption of the tangible personal property is not then taxable
25 hereunder, at the time the storage, use, or other consumption
26 becomes taxable, collect the tax from the purchaser and give to
27 the purchaser a receipt therefor in the manner and form prescribed
28 by the department.

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

32 (c) “Retailer engaged in business in this state” as used in this
33 section and Section 6202 means any retailer that has substantial
34 nexus with this state for purposes of the commerce clause of the
35 United States Constitution and any retailer upon whom federal
36 law permits this state to impose a use tax collection duty. “Retailer
37 engaged in business in this state” specifically includes, but is not
38 limited to, any of the following:

39 (1) Any retailer maintaining, occupying, or using, permanently
40 or temporarily, directly or indirectly, or through a subsidiary, or

1 agent, by whatever name called, an office, place of distribution,
2 sales or sample room or place, warehouse or storage place, or other
3 place of business.

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

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

11 (4) Any retailer that is a member of a commonly controlled
12 group, as defined in Section 25105, and is a member of a combined
13 reporting group, as defined in paragraph (3) of subdivision (b) of
14 Section 25106.5 of Title 18 of the California Code of Regulations,
15 that includes another member of the retailer's commonly controlled
16 group that, pursuant to an agreement with or in cooperation with
17 the retailer, performs services in this state in connection with
18 tangible personal property to be sold by the retailer, including, but
19 not limited to, design and development of tangible personal
20 property sold by the retailer, or the solicitation of sales of tangible
21 personal property on behalf of the retailer.

22 (5) (A) Any retailer entering into an agreement or agreements
23 under which a person or persons in this state, for a commission or
24 other consideration, directly or indirectly refer potential purchasers
25 of tangible personal property to the retailer, whether by an
26 internet-based link or an internet website, or otherwise, provided
27 that both of the following conditions are met:

28 (i) The total cumulative sales price from all of the retailer's
29 sales, within the preceding 12 months, of tangible personal property
30 to purchasers in this state that are referred pursuant to all of those
31 agreements with a person or persons in this state, is in excess of
32 ten thousand dollars (\$10,000).

33 (ii) The retailer, within the preceding 12 months, has total
34 cumulative sales of tangible personal property to purchasers in
35 this state in excess of one million dollars (\$1,000,000).

36 (B) An agreement under which a retailer purchases
37 advertisements from a person or persons in this state, to be
38 delivered on television, radio, in print, on the internet, or by any
39 other medium, is not an agreement described in subparagraph (A),
40 unless the advertisement revenue paid to the person or persons in

1 this state consists of commissions or other consideration that is
2 based upon sales of tangible personal property.

3 (C) Notwithstanding subparagraph (B), an agreement under
4 which a retailer engages a person in this state to place an
5 advertisement on an internet website operated by that person, or
6 operated by another person in this state, is not an agreement
7 described in subparagraph (A), unless the person entering the
8 agreement with the retailer also directly or indirectly solicits
9 potential customers in this state through use of flyers, newsletters,
10 telephone calls, electronic mail, blogs, microblogs, social
11 networking sites, or other means of direct or indirect solicitation
12 specifically targeted at potential customers in this state.

13 (D) For purposes of this paragraph, “retailer” includes an entity
14 affiliated with a retailer within the meaning of Section 1504 of the
15 Internal Revenue Code.

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

21 (d) Except as provided in this subdivision, a retailer is not a
22 “retailer engaged in business in this state” under paragraph (2) of
23 subdivision (c) if that retailer’s sole physical presence in this state
24 is to engage in convention and trade show activities as described
25 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
26 retailer, including any of the retailer’s representatives, agents,
27 salespersons, canvassers, independent contractors, or solicitors,
28 does not engage in those convention and trade show activities for
29 more than 15 days, in whole or in part, in this state during any
30 12-month period and did not derive more than one hundred
31 thousand dollars (\$100,000) of net income from those activities
32 in this state during the prior calendar year. Notwithstanding the
33 preceding sentence, a retailer engaging in convention and trade
34 show activities, as described in Section 513(d)(3)(A) of the Internal
35 Revenue Code, is a “retailer engaged in business in this state,” and
36 is liable for collection of the applicable use tax, with respect to
37 any sale of tangible personal property occurring at the convention
38 and trade show activities and with respect to any sale of tangible
39 personal property made pursuant to an order taken at or during
40 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) If Chapter 1.7 (commencing with Section 6040) or the amendments to Section 6203, as added by Section 3 of Chapter 313 of the Statutes of 2011, made by the act adding this section is 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 operative on the date of that final decision.

SEC. 5. Section 6203.1 is added to the Revenue and Taxation Code, 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 cumulative sales price from the retailer’s sales, within the preceding 12 months, of tangible personal property 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.

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

4 SEC. 6. Section 7262 of the Revenue and Taxation Code is
5 amended to read:

6 7262. The use tax portion of any transactions and use tax
7 ordinance adopted under this part shall impose a complementary
8 tax upon the storage, use, or other consumption in the district of
9 tangible personal property purchased from any retailer for storage,
10 use, or other consumption in the district. The tax shall be at a rate
11 of one-eighth of 1 percent, or a multiple thereof, of the sales price
12 of the property whose storage, use, or other consumption is subject
13 to the tax, and the ordinance shall include provisions in substance
14 as follows:

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

22 The following additional provisions shall be included:

23 (1) “A retailer engaged in business in the district” shall also
24 include any retailer that, in the preceding calendar year or the
25 current calendar year, has a total cumulative sales price from the
26 sale of tangible personal property for delivery in the state that
27 exceeds five hundred thousand dollars (\$500,000).

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

37 (3) “A retailer engaged in business in the district” shall also
38 include any retailer of any of the following: vehicles subject to
39 registration pursuant to Chapter 1 (commencing with Section 4000)
40 of Division 3 of the Vehicle Code, aircraft licensed in compliance

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

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

11 (c) A provision that the amount subject to tax shall not include
12 the amount of any sales tax or use tax imposed by the State of
13 California or by any city, city and county, or county pursuant to
14 the Bradley-Burns Uniform Local Sales and Use Tax Law (Part
15 1.5 (commencing with Section 7200)) or the amount of any
16 state-administered transactions or use tax.

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

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

31 (f) A provision that the storage, use, or other consumption in
32 the district of tangible personal property is exempt from the tax if
33 the purchaser is obligated to purchase the property for a fixed price
34 pursuant to a contract entered into prior to the operative date of
35 the ordinance. The possession of, or the exercise of any right or
36 power over, tangible personal property under a lease which is a
37 continuing purchase of the property is exempt from tax for any
38 period of time for which the lessee is obligated to lease the property
39 for an amount fixed by a lease entered into prior to the operative
40 date of the ordinance. For purposes of this subdivision, the storage,

1 use, or other consumption of, or possession of, or exercise of any
2 right or power over, tangible personal property shall be deemed
3 not to be obligated pursuant to a contract or lease for any period
4 of time for which any party to the contract or lease has the
5 unconditional right to terminate the contract or lease upon notice,
6 whether or not the right is exercised.

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

10 SEC. 7. (a) The Administrative Procedure Act (Chapter 3.5
11 (commencing with Section 11340) of Part 1 of Division 3 of Title
12 2 of the Government Code) shall not apply to any guidelines,
13 criterion, bulletin, manual, instruction, order, standard of general
14 application, or other rule, which is a regulation as defined in
15 Section 11342.600 of the Government Code, established or issued
16 by the California Department of Tax and Fee Administration to
17 implement, interpret, or make specific the amendments made to
18 Sections 6203 and 7262 of the Revenue and Taxation Code by this
19 act.

20 (b) Implementation of Chapter 1.7 (commencing with Section
21 6040) of Part 1 of Division 2 of the Revenue and Taxation Code
22 and Section 6203.1 of the Revenue and Taxation Code, as both
23 proposed to be added by this act, for the 2018–19 and 2019–20
24 fiscal years, is deemed an emergency and necessary for the
25 immediate preservation of the public peace, health, and safety, or
26 general welfare and, therefore, the California Department of Tax
27 and Fee Administration is hereby authorized to adopt emergency
28 regulations to implement those provisions during the 2018–19 and
29 2019–20 fiscal years, in accordance with the rulemaking provisions
30 of the Administrative Procedure Act (Chapter 3.5 (commencing
31 with Section 11340) of Part 1 of Division 3 of Title 2 of the
32 Government Code).

33 SEC. 8. The amendments made to Sections 6203 and 7262 of
34 the Revenue and Taxation Code by this act shall not have any
35 retroactive effect.

36 ~~SEC. 9. It is the intent of the Legislature that any additional~~
37 ~~General Fund revenues derived from state use taxes collected as~~
38 ~~a result of the amendments made to Section 6203 of the Revenue~~
39 ~~and Taxation Code by this act, after reservation of appropriate~~
40 ~~amounts for purposes of Section 8 of Article XVI of the California~~

1 ~~Constitution (Proposition 98) and any other constitutional~~
2 ~~provisions, be allocated for wildfire disaster relief, including relief~~
3 ~~to those communities affected by the Paradise Fire and other recent~~
4 ~~wildfires, and be used to combat childhood poverty and establish~~
5 ~~safe and clean shelters for all children.~~

6 ~~SEC. 10.~~

7 *SEC. 9.* This act is an urgency statute necessary for the
8 immediate preservation of the public peace, health, or safety within
9 the meaning of Article IV of the California Constitution and shall
10 go into immediate effect. The facts constituting the necessity are:

11 In order to ensure that small businesses are not unduly burdened
12 by the default expansion of the duty to collect use tax under state
13 law due to the application of the holding in *South Dakota v.*
14 *Wayfair, Inc.*, (2018) 585 U.S. ____ and to ensure that the state and
15 local governments timely receive tax revenues that have been
16 previously undercollected to enable them to fund crucial programs
17 and services, it is necessary for this act to take effect immediately.