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A Washington National Tax Services (WNTS)
Publication

September 23, 2011

California Governor Jerry Brown signs sales tax nexus law repeal

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On September 23, 2011, California Governor Jerry Brown signed legislation ([A.B. 155](#)) repealing recently-enacted sales tax nexus expansion provisions, retroactive to June 28. However, if federal legislation that would grant states the authority to require remote sellers to collect and remit sales and use taxes is not enacted on or before July 31, 2012, then these nexus provisions would spring back to life and be effective September 15, 2012.

Background

On June 29, 2011, California Governor Jerry Brown signed a bill ([A.B. X1 28](#)) requiring certain retailers to collect taxes on remote sales.

The legislation includes as a "retailer engaged in business in this state" any retailer that is a member of a commonly controlled group and is a member of a combined reporting group that includes another member that pursuant to an agreement, performs services in the state in connection with the tangible personal property sold by the retailer. These services include, but are not limited to, the 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.

The legislation also provides that a retailer is engaged in business in the state if it enters into agreements with an in-state person who, for a commission or other consideration, refers potential purchasers to the retailer by an internet-based link or



website. This provision only applies where the retailer had total California sales of more than \$10,000 in the preceding 12 months that originated from such referral agreements and, within the same time period, total cumulative California sales of more than \$500,000 (changed to \$1 million by the legislation discussed below). An agreement under which a retailer purchases advertisements from a person in California is not a referral agreement as described above, unless the advertisement revenue paid to the person in California consists of commissions or other consideration that is based upon the sales of tangible personal property. This "click-through" nexus provision does not apply if the retailer can demonstrate that the person in California with whom the retailer has an agreement did not engage in referrals in the state on behalf of the retailer that would satisfy the requirements of the Commerce Clause of the U.S. Constitution.

The legislation was effective immediately.

Nexus law repeal

[A.B. 155](#) repeals the above-described nexus law, retroactive to June 28. However, if federal legislation that would grant states the authority to require remote sellers to collect and remit sales and use taxes is not enacted on or before July 31, 2012, then these nexus provisions would spring back to life and be effective September 15, 2012. Further, even if such federal law is enacted, if California does not elect to implement the federal law by September 14, then these nexus provisions would become effective on January 1, 2013. The intent of this legislation is to provide a one-year grace period in which businesses may lobby Congress for the passage of such federal legislation, providing a uniform collection regime.

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