



California—Sales and Use Tax: Click-Through Nexus Enacted

Click-through nexus is enacted, for sales and use tax purposes, and the definition of "retailer engaged in business in this state" is expanded to include any retailer who enters into an agreement under which a person in California, for a commission or other consideration, directly or indirectly refers potential purchasers of tangible personal property to the retailer, whether by an Internet-based link, a website, or otherwise, provided two conditions are met.

Those conditions are (1) that the total cumulative sales price from all of the retailer's sales within the preceding 12 months of tangible personal property to purchasers in California that are referred pursuant to such an agreement is in excess of \$10,000; and (2) the retailer has total cumulative sales of tangible personal property to California purchasers in excess of \$500,000 within the preceding 12 months.

An "agreement," for purposes of this provision, does not include any agreement under which a retailer:

- purchases advertisements from a person in California, to be delivered on television, radio, in print, on the Internet, or by any other medium, unless the advertisement revenue paid consists of commissions or other consideration that is based upon sales of tangible personal property; or
- engages a person in California to place an advertisement on a website operated by that person, or operated by another person in the state, unless the person entering the agreement with the retailer also directly or indirectly solicits potential customers in California through the use of flyers, newsletters, telephone calls, electronic mail, blogs, micro blogs, social networking sites, or other means of direct and indirect solicitation specifically targeted at potential customers in the state.

In addition, the term "retailer" includes an entity affiliated with a retailer within the meaning of IRC §1504.

These provisions are inapplicable 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 term "retailer engaged in business in this state" also includes any retailer that is a member of a commonly controlled group and a combined reporting group, both as defined, 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 California in connection with tangible personal property to be sold by the retailer, including but 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.

Finally, the definition of a "retailer engaged in business" in California is amended to include a retailer that has substantial nexus with California for purposes of the Commerce Clause of the U.S. Constitution and any retailer upon whom federal law permits the state to impose a use tax collection duty.

This law is effective June 29, 2011.

California—Sales and Use Tax: BOE Reminds Taxpayers of Statewide Tax Rate Decrease

The California State Board of Equalization reminds taxpayers of the statewide sales and use tax rate decrease from 8.25% to 7.25% effective July 1, 2011. The 1% decrease applies generally to all taxable transactions in California. In areas where voters have approved additional sales taxes, the total tax rate applied to purchases is the statewide base tax rate of 7.25% plus any applicable local sales tax. As part of a 2008-09 budget agreement, the General Fund portion of the sales and use tax rate was temporarily increased by 1% in April 2009, and that will sunset on June 30, 2011. Beginning July 1, 2011, the sales and use tax rate in California ranges from 7.25% to 9.75% depending on whether additional regional voter-approved sales taxes apply.