

Memorandum

TO: Joint MTC Legislation Committee and
ABAG Legislation Committee

DATE: March 1, 2019

FR: Deputy Executive Director, Policy

RE: AB 147 (Burke) - Use Taxes: Collection: Retailer Engaged in Business in this State:
Marketplace Facilitators

Background

In June 2018, the Supreme Court ruled 5-4 in *South Dakota v. Wayfair* that internet retailers can be required to collect sales taxes, even in states where they have no physical presence, if a seller's gross revenue exceeds a reasonable threshold of value or quantity. The decision was hailed as a victory for brick-and-mortar businesses and for states that have expressed concern about losing out on tax revenue as internet sales comprise an increasingly larger share of all sales.

AB 147 (Burke) is an urgency statute which would go into effect upon enactment and would implement this court decision in California by specifying that, as of April 1, 2019, a retailer engaged in business in this state, and therefore subject to sales taxes, includes any retailer that has yearly cumulative sales, from the sale of tangible personal property, for delivery into California, that exceed \$500,000. The bill would allow the California Department of Tax and Fee Administration (CDTFA) to grant relief from tax penalties to smaller businesses making a good faith effort to comply with the law for tax reporting periods beginning April 1, 2019 and ending December 31, 2022. The bill extends these provisions to local district taxes. The bill also requires online marketplace facilitators (such as Amazon and eBay) to handle tax collections on behalf of third-party sellers when they arrange sales and collect payments.

In order to reduce the burden on small businesses, the bill actually raises the threshold set in a December 2018 CDTFA notice, which would otherwise go into effect on April 1, 2019, for defining whether or not a retailer is engaged in business in this state from \$100,000 or 200 transactions into the state in the previous 12 months to \$500,000. This threshold was assumed in Governor Newsom's FY 2019-20 State Budget and was forecast to generate \$554 million in new revenue in FY 2019-20 and is based on the threshold used in *South Dakota v. Wayfair*.

Recommendation: Support

Discussion

Thirty three states have already implemented the *Wayfair* decision, with every other state with a sales tax expected to follow. While the CDTFA adopted a rule in December 2018, AB 147 would codify changes related to what type of business is subject to the sales tax while excluding businesses with less than \$500,000 in sales in a given year. The bill passed the Assembly Revenue and Taxation Committee on February 25, 2019 with a 10 to 0 vote.

Out-of-state retailers like eBay, Etsy or Amazon may oppose the bill as it diminishes their competitive advantage over local California businesses who have always had to collect sales tax. The bill is opposed by Consumer Attorneys of California due to the inclusion of a ban on class actions resulting from overpayment of sales taxes collected by January 1, 2013 by marketplace facilitators.

Expanding the state sales tax base holds promise to increase transportation funding from local-option sales taxes and TDA funding across the region, as well as local county and city resources. State Treasurer Fiona Ma states that passage of the bill would bring approximately \$1 billion in revenue to state and local governments. Consistent with our 2019 Joint Advocacy Program, staff recommends a support position on the bill.

Known Positions

Support

State Treasurer Fiona Ma, CPA (Sponsor)
California Retailers Association
California Tax Reform Association
California Teachers Association
League of California Cities
Online Merchant Guild (if amended)
Spidell (if amended)

Opposition

Consumer Attorneys of California



Alex A. Bockelman

AAB:rl/jt

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