Tax Guide for New Tax Collection Requirements for Retailers Making Sales for Delivery into California

Due to the recent U.S. Supreme Court decision in *South Dakota v. Wayfair, Inc.* (Wayfair) (Dock. No. 17-494), certain retailers are required to register with the California Department of Tax and Fee Administration (CDTFA) and collect California use tax from their customers on their sales of tangible personal property into California. Beginning August 1, 2018, the new collection requirement applies to a retailer if during the preceding or current calendar year either:

1. The cumulative sales price from the retailer's sales of tangible personal property for delivery in California exceeds $100,000, or
2. The retailer sold tangible personal property for delivery in California in two hundred (200) or more separate transactions.

Retailers reaching either of the above sales thresholds are now required to register with the CDTFA to collect the California use tax even if they were not previously required to register. These retailers include retailers that sell tangible goods for delivery into California through the internet, catalogs, by phone, etc.

For more information about how the *Wayfair* decision affects tax collection requirements, see the topic below entitled, *U.S. Supreme Court Wayfair Decision Changes Standard for Imposing Sales and Use Tax Collection Obligations.*

California Sales and Use Tax

Sales tax generally applies to retail sales of tangible personal property made within California. When sales tax does not apply, use tax generally applies to the storage, use or other consumption of tangible personal property in California that was purchased from a retailer for storage, use, or other consumption in California. In general, if the sales tax would apply when merchandise is purchased from a retailer in California, the use tax would apply to a California consumer's purchase of the same merchandise from a retailer located outside California for delivery in California.

U.S. Supreme Court *Wayfair* Decision Changes Standard for Imposing Sales and Use Tax Collection Obligations

The U.S. Supreme Court's decision in *Quill Corp. v. North Dakota* (1992) 504 U.S. 298 (Quill) held that federal law, specifically the U.S. Constitution's Commerce Clause, prohibits a state from requiring a retailer to collect its sales or use tax unless the retailer has a substantial nexus with the state. It also held that a retailer does not have a substantial nexus with a state unless it has a physical presence in the state.
On June 21, 2018, in the Wayfair decision, the U.S. Supreme Court overruled Quill's physical presence requirement. This decision also upheld a South Dakota law that requires a seller that does not have a physical presence in South Dakota to collect South Dakota sales tax on all its sales into South Dakota "provided the seller meets either of the following criteria in the previous calendar year or the current calendar year:

1. The seller's gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into South Dakota exceeds one hundred thousand dollars; or
2. The seller sold tangible personal property, any product transferred electronically, or services for delivery into South Dakota in two hundred or more separate transactions."

Under current law, Revenue and Taxation Code section 6203 (https://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sult/6203.html), subdivision (c), provides that a "Retailer engaged in business in this state" means "...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."

As a result of the Wayfair decision, a retailer may now have a substantial nexus with California without having a physical presence in this state. Also, federal law now permits California to begin requiring retailers to collect use tax if the retailers have similar levels of sales activity in this state as those in the South Dakota law, regardless of whether they have a physical presence in California, and, as provided above, the CDTFA will require such retailers to collect California use tax, beginning August 1, 2018.

Published U.S. Supreme Court Decision (https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf)

No Change for Retailers That Were Required to Collect California Use Tax Prior to Wayfair

There will be no change in the registration or collection obligations of retailers that were already required to collect California use tax prior to the Wayfair decision. Prior to Wayfair, the meaning of "retailer engaged in business in this state as defined in Revenue and Taxation Code section 6203 (https://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sult/6203.html) was limited by the U.S. Supreme Court's decision in Quill. That is, a retailer could only be engaged in business in this state if the retailer had a physical presence in California. Therefore, circumstances in which a retailer was considered "engaged in business in this state" included, but were not limited to, the following:

1. A retailer that entered into an agreement under which a person or persons in this state refer potential customers to the retailer, for a consideration, based upon completed sales, by an internet-based link, internet website, or otherwise, under specified circumstances,
2. A retailer that maintains, occupies, or uses any type of office, sales room, warehouse or other place of business in California, regardless of whether the use is temporary or permanent, direct or indirect, or through an agent,
3. A retailer that has any kind of representative, agent, salesperson, canvasser, operating in the state for the purpose of taking orders, making sales or deliveries, installing, or assembling tangible personal property,
4. A retailer that derives rentals from a lease of tangible personal property located in California, and
5. A retailer that is a member of a commonly-controlled group and combined reporting group if a member of the retailer's commonly-controlled group performs services under an agreement with the retailer or in cooperation with the retailer in California that help the retailer establish or maintain a California market for sales of tangible personal property.

After Wayfair, the circumstances in which a retailer is considered "engaged in business in this state" still include, but are not limited to, the circumstances described above because Wayfair did not limit California's authority to require retailers with a physical presence in California to register with the CDTFA and collect use tax. In addition, due to Wayfair, California can now require retailers that do not have a physical presence in this state, but reach certain levels of sales for delivery (economic
activity) in California to register with the CDTFA and collect use tax.

Voluntary Disclosure Program

If you were considered a retailer engaged in business in this state prior to the *Wayfair* decision but have not yet registered with the CDTFA, you may qualify for our Voluntary Disclosure Program. Under this program, retailers that voluntarily come forward and register may be relieved of penalties and/or have the period that they are liable for unreported use tax reduced from eight years to three. To find out more about this program and how to apply, visit our Unregistered Out-of-State Businesses with Nexus in California – Voluntary Program (www.cdtfa.ca.gov/taxes-and-fees/out-of-state.htm) webpage.

Tax Rates

The current statewide California sales and use tax rate is 7.25 percent. However, the sales and use tax rate is not the same throughout California. Total sales and use tax rates are higher in areas where there are voter-approved district taxes.

For more information about California city and county sales and use taxes rates and to verify current tax rates, visit our California City & County Sales & Use Tax Rates (www.cdtfa.ca.gov/taxes-and-fees/sales-use-tax-rates.htm) webpage. You can also look up the tax rate by address using the Find a Sales and Use Tax Rate by Address (https://gis.cdtfa.ca.gov/public/maps/taxrates/) tool.

Registration

If you are not currently registered with the CDTFA, you may register online from our Taxpayer Online Services Portal (https://onlineservices.cdtfa.ca.gov/Directory/); scroll down to Registration, select Register a New Business Activity or Location, and follow the prompts.

Even if you are not required to register, you may voluntarily register for a Certificate of Registration – Use Tax to collect and pay use tax as a convenience to your California customers.

Filing Tax Return and Payment


File a Tax Return Online (www.cdtfa.ca.gov/services/#File-a-Return) – File your return quickly and easily online.

Online Payment Options (www.cdtfa.ca.gov/services/#Make-a-Payment) – Make online payments toward your current and past due tax liabilities.

For More Information

If you have additional questions or need assistance in determining if you are required to register with the CDTFA, please contact our Out-of-State Office:

California Department of Tax and Fee Administration
Out-of-State Office
3321 Power Inn Rd., Ste. 130
Sacramento, CA 95825-3893
1-916-227-6600