

AB 147, California's New On-Line Sales Tax Collection Law: What Cities and Counties Need to Know

State and local agencies will begin to see a revenue boost following the signature by Governor Newsom on April 25, 2019, of AB 147 (Burke), which will expand the collection of sales and use taxes from out-of-state sales via the implementation of the landmark U.S. Supreme Court decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018).

The *Wayfair* decision addressed a longstanding problem associated with the rapid growth of online sales, resulting in the under-collection of billions in local sales and use tax revenues across the country. Previous Court decisions, led by *Quill Corp. v. North Dakota* (1992) 504 U.S. 298, were based on antiquated catalogue sales' disputes that pre-dated the Internet and required retailers to have a physical nexus with each state prior to imposing an obligation on an out-of-state retailer to collect and remit applicable sales and use taxes from customers for remote sales. In *Wayfair* the Court reversed those decisions by upholding a South Dakota statute that imposed a collection requirement on out-of-state vendors selling more than \$100,000 or 200 separate transactions into the state.

AB 147 (Burke) Signed; Makes Essential Changes to Implement *Wayfair*

AB 147 (Burke) provides important direction in the law for the implementation of *Wayfair* in California. Acting on the authority "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," the bill:

- 1) Adds "economic nexus" provisions stipulating that 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 California that exceeds \$500,000;¹ and,
- 2) Makes conforming changes to Transactions and Use Tax law, ensuring that retailers collect those taxes too if they meet the \$500,000 statewide threshold.²
- 3) Defines a "marketplace facilitator" as the retailer responsible for the collection and remittance of sales and use taxes effective October 1, 2019. Marketplace facilitators contract with sellers to sell goods and services on their on-line platforms. Facilitators generally list products, process payments, collect receipts, and in some cases, take possession of a seller's inventory, hold it in warehouses, and ship it to customers.

Transactions and Use Taxes Included for both In-State and Remote Transactions

Under AB 147, the obligation to collect applicable transactions and use tax³ on all sales made for delivery in any city or county that imposes a transactions and use tax applies to a retailer ***whether inside or outside of California*** if, during the preceding or current calendar year, the total combined sales of tangible personal

¹ Revenue and Taxation Code § 6203. AB147 establishes a larger threshold than initially imposed by CDTFA. In Special Notice L-565, published in December 2018, CDTFA adopted a threshold of \$100,000 in sales or 200 separate transactions, identical to South Dakota.

² Revenue and Taxation Code § 7262

³ Transactions and use taxes are often referred to by the CDTFA as "district taxes."

property in California or for delivery in California by the retailer and all persons related to the retailer exceed \$500,000. This new collection requirement supersedes prior California Department of Tax and Fee Administration (CDTFA) direction regarding transactions and use tax collection requirements⁴ and will increase transactions and use tax collections from in-state as well as out of state sales.

Modest, But Positive Fiscal Effect

Digital commerce has been growing at over ten percent annually in recent years, more than four times the pace of overall economic growth. California’s large size means that - compared to other states - it is more likely that on-line businesses already have physical presence and therefore have already been collecting and remitting California sales and use tax. Nevertheless, estimates are that between \$1.0 and \$1.7 billion of California sales and use taxes went unpaid in 2017.⁵

Out-of-state small businesses, those with less than \$500,000 total annual taxable sales transactions in California, are not obligated to collect and remit tax.⁶ Based on US Census data, CDTFA estimates that this affects less than five percent of these taxable sales from out of state sellers. Sellers are still liable for the sales tax due on such transactions but the compliance rate, other than for businesses that are audited, is expected to be low.

California’s sales and use tax is composed of a number of state and local rates and allocations. Of the \$1 billion to \$2 billion in annual uncollected sales and use tax revenue, about \$125 million to \$250 million would go to cities and counties for the one percent Bradley-Burns local rate. A similar amount would go to local transactions and use tax rates (local add-on sales taxes). This would be a boost in sales and use tax revenues of about 1.8 to 3.5 percent. Under current CDTFA rules, this out-of-state use tax is distributed through state and countywide “pools” in proportion to the rest of taxable sales within the county.

California Sales and Use Tax Revenues				
	<i>millions</i>		Estimated Annual	
	rate	2018 Collected	Uncollected	Out-of-State
			low	high
State General Fund	3.9375%	\$26,243	\$480	\$959
County Realignment	1.5625%	10,414	190	381
Proposition 172	0.5000%	3,332	61	122
County TDA	0.2500%	1,766	30	61
City* Bradley-Burns	1.0000%	7,047	122	244
Add-On Local Trans. & Use	varies	6,765	117	234
Total		\$ 55,568	\$ 1,000	\$ 2,000

Source: Michael Coleman based on GAO analysis and CDTFA data. 4/2019

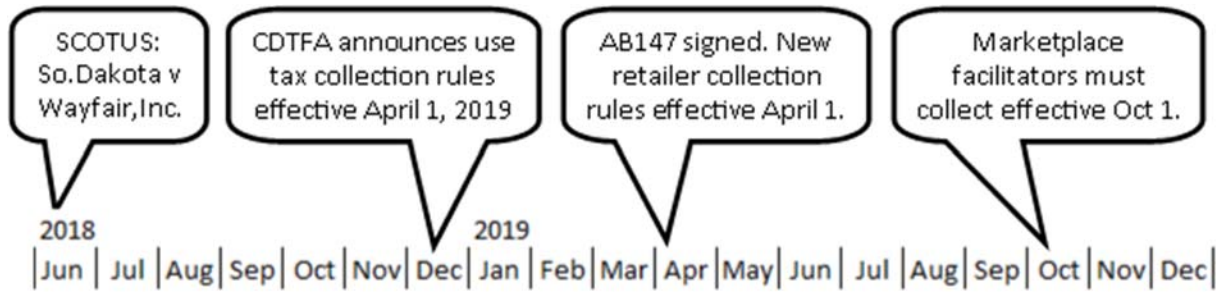
Effective April 1 ... but Marketplace Rules Effective October 1

The provisions of AB 147 requiring collection and remittance of sales and use tax by out of state retailers are effective April 1, 2109. However, the marketplace facilitator requirements are effective October 1, 2019. Moreover, there are substantial hold-harmless provisions for marketplace facilitators for compliance errors until January 1, 2023.

⁴ See CDTFA Special Notice L-591.

⁵ US Government Accountability Office, “Sales Taxes: States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs.” GAO-18-114: November 16, 2017.

⁶ Unless the transaction is via a “marketplace facilitator” as defined.



Further Information

CDTFA Special Notice April 2019: New Use Tax Collection Requirements for Remote Sellers and New District Use Tax Collection Requirements for All Retailers—Operative April 1, 2019.

<https://www.cdtfa.ca.gov/formspubs/l632.pdf>

Bill Text: AB-147 Use taxes: collection: retailer engaged in business in this state: marketplace facilitators. (2019-2020) https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB147

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