

APPLICATION FOR OUT-OF-STATE VOLUNTARY DISCLOSURE

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Although your retail business is located outside of California, you may be required to collect and report California use tax when you make sales of tangible personal property that is used, stored, or otherwise consumed in this state. You are required to collect and pay the use tax if you are "engaged in business" in California as defined in California Revenue and Taxation Code section 6203 (see reverse).

The California Department of Tax and Fee Administration (CDTFA) has established a voluntary disclosure use tax liability program for out-of-state retailers who wish to acknowledge their liability for California use tax. By voluntarily registering with the CDTFA under this program, you may be able to limit your liability for tax, penalties, and interest due for prior periods. Ordinarily, if you did not file a return, the CDTFA can send you a bill ("deficiency determination") for the amounts owed as late as eight years after the quarterly period in which the sales were made. Pursuant to Revenue and Taxation Code section 6487.05, if you qualify for the voluntary disclosure program, the billing period may be limited to three years. In addition, you may be relieved of applicable penalties (see below).

Please complete this form if you wish to apply for the voluntary disclosure program. By completing and signing this form, you are representing that:

- The retailer is located outside this state, and has not previously registered with the CDTFA or the Board of Equalization (BOE).
- The retailer is engaged in business in this state, as defined in Revenue and Taxation Code section 6203 (see reverse).
- The retailer voluntarily registers with the CDTFA.
- The retailer has not been previously contacted by the CDTFA, the BOE, or their agents regarding the provisions of Revenue and Taxation Code section 6203.
- Failure by the retailer to register with the CDTFA or the BOE, file returns and pay tax to the CDTFA or the BOE was not due to negligence, intentional disregard of the law, fraud, or intent to evade the provisions of the California Revenue and Taxation Code.

CERTIFICATION

I certify (or declare), under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

BUSINESS NAME	SSN OR FEIN	ACCOUNT NUMBER <i>(see note)</i>
YOUR NAME	TYPE OF BUSINESS	
ADDRESS <i>(street, city, state, zip code)</i>		

TELEPHONE NUMBER	PERIOD OPERATED IN CALIFORNIA	
	From <i>(month, day, year)</i>	To <i>(month, day, year)</i>

YOUR BUSINESS ACTIVITY IN CALIFORNIA

Salesperson
 Solicitor
 Manufacturer's Agent
 Independent Contractor or Representative
 Installer
 Trainer
 Affiliate
 Commonly-Controlled Group
 In-State Location
 Warehouse, Fulfillment, or Distribution Center
 Inventory
 Installation of Tangible Personal Property
 Rent or Lease Property
 Deliver Merchandise by Non-Common Carrier
 Other

DESCRIBE HOW YOU ARE ENGAGED IN BUSINESS IN CALIFORNIA *(if more space is needed, please attach a separate sheet)*

Request for Relief of Penalty: *(if more space is needed, please attach a separate sheet)*

The CDTFA may grant relief from penalty charges, but not interest charges with this statement if it is determined that a person's failure to file a timely return or payment was due to reasonable cause and circumstances beyond the person's control. If you are relieved of the penalty charges, you must still pay the interest due on late return payments and prepayments. Your request for relief from penalty may not be processed until the tax has been paid in full.

Under penalty of perjury, I request relief from penalty charges for the period(s) _____ because

I can attest to the fact that the person above meets the qualifications of Revenue and Taxation Code section 6487.05. I further attest that the person's previous failure to register with the CDTFA or the BOE, file returns, and pay tax to the CDTFA or the BOE was not due to negligence, intentional disregard of the law, fraud, or intent to evade the provisions of the California Revenue and Taxation Code.

SIGNATURE	TITLE	DATE
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In addition to this application, please visit our website at www.cdtfa.ca.gov to complete the electronic registration and obtain your California Certificate of Registration-Use Tax Account. **(Note:** Please enter the account number on this form in the "Account Number" field.) This application should be mailed within thirty (30) days of registration to: California Department of Tax and Fee Administration, Out-of-State Office, 3321 Power Inn Road, Suite 130, Sacramento, CA 95826-3893, Telephone 1-916-227-6600, Fax 1-916-227-6641. You may not qualify for this program if your application is not submitted within the thirty (30) days. For more information, please see publication 178, *Voluntary Disclosure Program*, which can be accessed through the CDTFA website listed above.

California Revenue and Taxation Code:**6203. Collection by retailer:**

(a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(c) "Retailer engaged in business in this state" as used in this section and Section 6202 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. "Retailer engaged in business in this state" specifically includes, but is not limited to, any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(3) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(4) Any retailer that is a member of a commonly controlled group, as defined in Section 25105, and is a member of a combined reporting group, as defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, 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 this state in connection with tangible personal property to be sold by the retailer, including, but not limited to, 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.

(5) (A) Any retailer entering into an agreement or agreements under which a person or persons in this state, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an Internet-based link or an Internet Web site, or otherwise, provided that both of the following conditions are met:

(i) The total cumulative sales price from all of the retailer's sales, within the preceding 12 months, of tangible personal property to purchasers in this state that are referred pursuant to all of those agreements with a person or persons in this state, is in excess of ten thousand dollars (\$10,000).

(ii) The retailer, within the preceding 12 months, has total cumulative sales of tangible personal property to purchasers in this state in excess of one million dollars (\$1,000,000).

(B) An agreement under which a retailer purchases advertisements from a person or persons in this state, to be delivered on television, radio, in print, on the Internet, or by any other medium, is not an agreement described in subparagraph (A), unless the advertisement revenue paid to the person or persons in this state consists of commissions or other consideration that is based upon sales of tangible personal property.

(C) Notwithstanding subparagraph (B), an agreement under which a retailer engages a person in this state to place an advertisement on an Internet Web site operated by that person, or operated by another person in this state, is not an agreement described in subparagraph (A), unless the person entering the agreement with the retailer also directly or indirectly solicits potential customers in this state through use of flyers, newsletters, telephone calls, electronic mail, blogs, microblogs, social networking sites, or other means of direct or indirect solicitation specifically targeted at potential customers in this state.

(D) For purposes of this paragraph, "retailer" includes an entity affiliated with a retailer within the meaning of Section 1504 of the Internal Revenue Code.

(E) This paragraph shall not apply if the retailer can demonstrate that the person in this state 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 United States Constitution.

(d) Except as provided in this subdivision, a retailer is not a "retailer engaged in business in this state" under paragraph (2) of subdivision (c) if that retailer's sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 15 days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a "retailer engaged in business in this state," and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(e) Any limitations created by this section upon the definition of "retailer engaged in business in this state" shall only apply for purposes of tax liability under this code. Nothing in this section is intended to affect or limit, in any way, civil liability or jurisdiction under Section 410.10 of the Code of Civil Procedure.

History.—Added by Stats. 2011, Ch. 313 (AB 155), in effect September 23, 2011, but operative September 15, 2012.