

Frequently Asked Questions (FAQ's)

Use Tax Collection Requirements Due to *Wayfair* Decision

IMPORTANT NOTE – The requirements to register and collect the California use tax prior to the *Wayfair* decision remain in effect. That is, retailers with a physical presence in California are still generally required to be registered with the CDTFA. Examples of a physical presence in this state include, but are not limited to:

- **Maintaining inventory or office locations in California.**
- **Having representatives in California for purposes of taking orders, making sales or deliveries, or installing or assembling tangible personal property.**
- **Leasing equipment, including computer servers, in California.**

For more information on the registration requirements, see our online *Tax Guide for Out-of-State Retailers*.

The questions and answers below pertain mainly to out-of-state retailers that do not have a physical presence in California and were not required to be registered with the state prior to the *Wayfair* decision. The questions and answers below may help you better understand the new use tax collection requirement as a result of the *Wayfair* decision.

- 1) Does the *Wayfair* decision impose a new tax on retailers located outside of California?

No. State, local and district use tax is imposed on consumers and consumers who purchase merchandise from retailers that are not registered with the CDTFA are responsible for paying the use tax directly to the state. The *Wayfair* decision merely shifts the responsibility for remitting the use tax from the consumer to the retailer.

- 2) How do I determine whether I meet the sales threshold requiring me to register with the CDTFA to collect and remit California use tax due to the *Wayfair* decision?

If during the calendar year 2018, you made retail sales into California and the total sales price charged was greater than \$100,000 or you made sales for delivery in California in 200 or more separate transactions, you are required to register with the CDTFA to collect the use tax due on your taxable sales on and after April 1, 2019, and pay that tax to the CDTFA.

In addition, if at any time during the calendar year 2019, your sales for delivery into California meet either of the above thresholds, you are required to register with the CDTFA to collect the use tax from your California customers.

Example 1 – Retailer without a physical presence in California; \$100,000 sales threshold.

You are located outside of California and do not have a physical presence in this state. During calendar year 2018, your sales for delivery into California did not exceed \$100,000 nor did you make 200 or more separate transactions for delivery into California. Therefore, since you did not meet either of these sales thresholds in calendar year 2018, you are not required to register with the CDTFA as of April 1, 2019.

However, during 2019, your sales increased and by September 30, 2019, your sales for delivery into California totaled \$99,000. In October 2019, you make the following sales for delivery into California:

- \$500 on October 4, 2019
- \$300 on October 6, 2019
- \$400 on October 7, 2019

On October 7, 2019, your sales for delivery into California exceed \$100,000 for 2019 ($\$99,000 + \$500 + \$300 + \$400 = \$100,200$). You are required to register with the CDTFA on October 7, 2019, and begin collecting the use tax from your customers on your retail sales for delivery into California. You are not liable for collection of the use tax on sales delivered to California made prior to October 7, 2019, including the \$400 transaction that put you over the \$100,000 threshold. Your customers will remain liable for the payment of the use tax on these transactions.

Example 2 – Retailer without a physical presence in California; 200 separate transactions threshold.

You are located outside of California and do not have a physical presence in this state. During calendar year 2018, your sales for delivery into California did not exceed \$100,000 nor did you make 200 or more separate transactions for delivery into California. Therefore, since you did not meet either of these sales thresholds in calendar year 2018, you are not required to register with the CDTFA as of April 1, 2019.

You do not expect to exceed the \$100,000 sales threshold in 2019. However, during 2019, your sales volume increased and by June 30, 2019, you made 195 separate sales transactions for delivery into California. In July 2019, you make the following number of sales for delivery into California:

- Two separate sales transactions on July 5, 2019
- Three separate sales transactions on July 10, 2019
- Four separate sales transactions on July 15, 2019

On July 10, 2019, your sales for delivery into California equal 200 separate sales transactions ($195 + 2 + 3 = 200$). You are required to register with the CDTFA on July 10, 2019, and begin collecting the use tax from your customers on your retail sales for delivery into California. You are not liable for collection of the use tax on sales made for delivery into California up through July 10, 2019, including the three separate sales made

on July 10, 2019, that brought you up to the 200 separate transactions threshold. Your customers will remain liable for the payment of the use tax on these transactions.

- 3) Am I responsible for any use taxes on my retail sales into California prior to April 1, 2019?

If you were considered engaged in business in California before April 1, 2019, then you may be liable for use taxes that you were required to collect and pay to the CDTFA on your sales made prior to April 1, 2019. The CDTFA has eight years to assess a use tax liability owed by a retailer that did not file a return. This assessment period may be reduced to three years if you qualify under our Voluntary Disclosure program. To find out more about this program and how to apply, visit *Unregistered Out-of-State Businesses with Nexus in California – Voluntary Program* webpage.

You were considered to be engaged in business in California prior to the *Wayfair* decision and you continue to be considered engaged in business in California after the decision if:

- You have a physical presence in California, i.e., maintaining inventory or office locations.
- You have representatives operating in California for purposes of taking orders, making sales or deliveries, installing, or assembling tangible personal property.
- You receive rental payments on leased personal property located in California.

- 4) I make sales through an online marketplace. My sales into California exceeded \$100,000 during the prior calendar year. Do I still need to register with the CDTFA and collect the use tax on my sales to California customers?

Yes. If you meet either of the sales thresholds pursuant to the *Wayfair* decision on your sales for delivery into California, you are required to register with the CDTFA to collect the use tax from your customers. However, the online marketplace may collect and pay the tax on your behalf. You should contact your marketplace for more information.

- 5) I am located outside of California and make merchandise sales through my own website. Do I need to register with the CDTFA and collect the use tax from my customers?

Yes. If you meet either of the sales thresholds pursuant to the *Wayfair* decision on your sales for delivery into California, you are required to register with the CDTFA to collect the use tax from your customers.

- 6) What if I determine that I do not meet either of the sales thresholds pursuant to the *Wayfair* decision as of April 1, 2019?

If you do not meet either of the sales thresholds pursuant to the *Wayfair* decision and are not otherwise considered to be engaged in business in California, you are not required to register with the CDTFA.

Please keep in mind that if you continue to make sales into California, you may, at a later date, meet the sales thresholds and be required to register with the CDTFA. You should keep records of your sales into California.

- 7) If I am located outside California and currently registered with the CDTFA to collect and report the use tax on my sales to California customers, do I need to re-register?

No. You will remain registered with the CDTFA to collect use tax. However, there may be changes in your obligation to collect district use tax.

- 8) Most of my merchandise sales into California are to distributors (wholesalers) who resell the product to their customers in every state. Do I need to collect the tax on my sales to distributors?

Use tax does not apply to your sales of merchandise to a customer who will resell the merchandise in the regular course of its business. Therefore, you are not required to collect the use tax on your sales to distributors who will resell the merchandise in the regular course of business.

In order to document that your sales into California are nontaxable sales for resale, you should obtain a signed resale certificate from your customer (distributor/wholesaler). A resale certificate may be any document, letter, purchase order, etc., but it must contain the following information:

- The name and address of the purchaser's business.
- The purchaser's seller's permit number or an explanation stating why the purchaser is not required to hold a seller's permit.
- A description of the property to be purchased. A statement that the described property is being purchased for resale. The document must contain the phrase "for resale."
Phrases such as "nontaxable" or "exempt" are not acceptable.
- The date of the document (an otherwise valid resale certificate will not be considered invalid solely because it is undated).
- The signature of the purchaser, purchaser's employee, or authorized representative.

For more information, see publication 103, *Sales for Resale*.

- 9) What is considered a "separate transaction" with respect to the sales thresholds pursuant to the *Wayfair* decision requiring registration with California?

Each sale that you make to a customer is a separate transaction, regardless of how many items the customer purchases. For example, there is only one transaction when your customer purchases three items from you in the same sale and there are three transactions when your customer purchases three items from you in three separate sales.

10) I only make online seasonal sales; do I need to register with the CDTFA and collect the use tax from my California customers?

There is no exception for seasonal retailers. If your sales for delivery into California exceed \$100,000 or you make sales for delivery into California in 200 or more separate transactions during the preceding or current calendar year, you are required to register with the CDTFA and collect the use tax from your customers and report and pay the amount to the state. Seasonal sellers may apply for a temporary permit using our online registration.

11) What items are subject to California tax?

Sales tax applies to retailers' gross receipts from their retail sales of tangible personal property made within California. Sales tax does not apply to charges for services, unless the services are part of the sale of tangible personal property. When sales tax does not apply, use tax generally applies to the sales price of tangible personal property that was purchased from a retailer for storage, use, or other consumption in California and actually stored, used, or otherwise consumed in the state. In general, if California sales tax would apply when tangible personal property is purchased from a retailer in California, then California use tax would apply to a California consumer's purchase of the same merchandise from a retailer located outside California for delivery in California.

In general all tangible merchandise and goods, such as household items, appliances, electronics, clothes, shoes, books, computers, cell phones, personal care items, toys and games, arts and crafts, office supplies, tools, etc. are subject to tax.

However, certain items are specifically exempt by law. Examples of items exempt from tax include, but are not limited to the following:

- Food products for human consumption.
- Animal life, feed for animal life, seeds, and plants the products of which are normally food for human consumption.
- Containers used to collect or store human blood, plasma, blood products, or blood derivatives.
- Prescription medicines sold under specific circumstances. (see Sales and Use Tax Regulation 1591)

In addition, the following charges are not considered charges for tangible personal property, and therefore, are not subject to tax:

- Admission charges to amusement parks, theaters, sports events, golf courses, etc.
- Finance charges.
- Charges for real property.
- Charges for securities, such as stocks, bonds, and memberships in limited liability companies.

- Charges for services unless the services are part of the sale of tangible personal property.
- Charges for transportation, such as bus, airplane, or train tickets.

The CDTFE is currently compiling a Tax Matrix to assist you in understanding California's sales and use tax laws. We will post the Tax Matrix on the webpage - please check back.