

July 7, 2011

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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

**VIA PERSONAL DELIVERY**

The Honorable Kamala D. Harris.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor, P.O. Box 944255  
Sacramento, CA 95814

Attention: Dawn McFarland, Initiative Coordinator

Re: Request for Title and Summary for Proposed Referendum

Dear Ms. Harris:

Pursuant to Article II, Section 10(d) of the California Constitution, I hereby submit the attached proposed statewide referendum of Section 1 of ABx1 28 (Stats. 2011, First Ex. Sess., Ch. 7, § 1) to your office and request that you prepare a title and summary of the measure as provided by law. Please note that only Section 1 of the statute is being submitted for referral. Included with this submission is the required proponent affidavit signed by the proponent of this measure pursuant to section 9608 of the California Elections Code. My address as a registered voter is attached to this letter, along with a check for \$200.00.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Chip Nielsen (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,



Charles T. Halnan, Proponent

Enclosure: Proposed Referendum Statute

## REFERENDUM AGAINST A PORTION OF AN ACT PASSED BY THE LEGISLATURE

Section 1 of the law proposed by Chapter 7, Statutes 2011, First Extraordinary Session (ABx1 28), is submitted to the People of the State of California as a referendum in accordance with the provisions of Section 9 of Article II of the California Constitution.

**NOTICE: ONLY SECTION 1 OF CHAPTER 7, STATUTES 2011, FIRST EXTRAORDINARY SESSION (ABX1 28), SET FORTH BELOW IN BOLD, ITALIC, 12-POINT TYPE, IS SUBMITTED FOR APPROVAL OR REJECTION BY THE VOTERS; SECTIONS 2 THROUGH 5 OF THAT CHAPTER, SET FORTH BELOW IN 8-POINT REGULAR TYPE, ARE NOT BEING REFERRED.**

### PROPOSED LAW

#### CHAPTER 7

*An act to amend Section 6203 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.*

***SECTION 1. Section 6203 of the Revenue and Taxation Code is amended to read:***

***6203. (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.***

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*(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 five hundred thousand dollars (\$500,000).*

*(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*

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*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.*

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. The sum of one thousand dollars (\$1,000) is hereby appropriated from the General Fund to the State Board of Equalization for administrative operations.

SEC. 4. This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 5. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.