

Add Section 22175 to the Public Contract Code to require local governments to contract for the purchase of tangible personal property with vendors or contractors that have a valid seller's permit or certificate of registration – use tax.

Source: Sales and Use Tax Department

Existing Law. The California Public Contract Code provides definitions and requirements for state and local governments in procuring goods and services. Public Contract Code Section 10295.1 provides that any state department or agency must verify that a vendor has a valid seller's permit or is registered to collect California use tax when contracting for the purchase of tangible personal property. This section also provides that if a state department or agency makes a written finding that the contract is necessary to meet a compelling state need, the state department or agency may purchase tangible personal property from a vendor that does not have a seller's permit or is registered to collect the California use tax.

This Proposal. This proposal would require a local government that is purchasing tangible personal property from a vendor to verify the vendor has a valid California seller's permit or is registered to collect the California use tax. Similar to the provisions applying to purchases of tangible personal property by a state agency, a local government would be permitted to purchase from a vendor that is not registered to collect California sales or use tax in the event the local government finds the purchase is necessary to meet a compelling local government interest. For the purposes of this proposal, the term local government would include a city, county, city and county, community college district, school district, county superintendent of schools, or special district located in California.

Background. Under Revenue and Taxation Code Section 6203, "retailers engaged in business" in California are required to register with the state and collect the California use tax. To encourage out of state vendors to voluntarily register to collect the California use tax, the Legislature added section 10295.1 to the Public Contract Code in 2003 (SB 1009, Ch. 718, Alpert). This statute requires state agencies to verify the vendor has a valid seller's permit or is registered to collect the California use tax. If the vendor lacks a valid seller's permit or certificate of registration, the state agency is precluded from purchasing tangible personal property from the vendor unless the state agency makes a finding that the purchase is necessary to meet a compelling state need or the purchases are otherwise non-qualifying purchases as noted by statute.

SB 1009 was a use tax compliance measure intended to prevent a state agency or department from contracting for the purchase of tangible personal property with any vendor or contractor that does not have a valid seller's permit or has not registered with the BOE. It was intended to send a signal that the state of California does not wish to do business with entities that do not collect sales and use tax on behalf of the state. By restricting a state agency from purchasing goods from out of state unregistered vendors, it compelled these vendors to register with the BOE and begin collecting the use tax. The California State Association of Counties (among others) supported this measure for reasons that it increases use tax payment compliance.

By requiring the state, as a purchaser, to verify that vendors are permitized or registered to collect the California use tax, out of state vendors wishing to contract with the state

for the sale of tangible personal property are essentially required to register to collect the California use tax. This requirement has resulted in vendors that otherwise were not required to register to collect the California use tax to voluntarily register.

Assuming local governments purchase tangible personal property from out of state vendors that are not currently registered to collect California use tax, extending the same provisions applicable to the state as a purchaser to local governments should result in more out of state vendors voluntarily registering to collect the California use tax.

For purchases from out of state vendors that would normally be reported as a purchase subject to use tax by the local government, having the out of state vendor collect and report the use tax will result in local tax being allocated to the pools instead of directly to the local jurisdiction. However, the local government will generally have a use tax direct payment permit. This proposal would require the local government purchaser to verify the vendor has a permit to collect the tax. The local government would still be permitted to issue a use tax direct payment permit to the vendor when applicable to ensure the local tax is allocated directly to the local jurisdiction.

Presumably, local governments already self-assess and pay the use tax due on their purchases of tangible personal property from unregistered out of state vendors. Thus, the revenue gain anticipated from this proposal is not the result of additional use tax collected from local governments, but instead is the result of sales made by out of state vendors to other California consumers. Out of state vendors who register with the BOE to collect the use tax would be required to collect the use tax on all sales of tangible personal property to California consumers. Many of these consumers most likely would not have reported and paid the use tax due to the state.

This proposal will improve use tax collection and provide needed revenue for both the state and local governments.

Section 22175 of the Public Contract Code is added to read as follows:

22175. (a) A local government entity shall not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller's permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code.

(b) Beginning on and after January 1, 2013, each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract to do business with a local government entity shall submit to that local government entity a copy, as applicable, of that retailer's seller's permit or certificate of registration, and a copy of each of the retailer's applicable affiliate's seller's permit or certificate of registration, as described in subdivision (a). This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars (\$2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars (\$7,500) per year for each company from which a local government entity is purchasing goods by credit card. It shall be the

responsibility of each local government entity to monitor the use of this exemption and adhere to these restrictions on these purchases.

(c) A local government entity is exempted from the provisions of subdivision (a) if the governing body of the local government entity, or a person delegated authority by the governing body of the local government entity, makes a written finding that the contract is necessary to meet a compelling local government interest.

(d) For the purposes of this section:

(1) "Affiliate of the vendor or contractor" means any person or entity that is controlled by, or is under common control of, a vendor or contractor through stock ownership or any other affiliation.

(2) "Compelling local government interest" includes, but is not necessarily limited to, the following:

(A) Ensuring the provision of essential services.

(B) Ensuring the public health, safety, and welfare.

(C) Responding to an emergency, as defined in Section 1102.

(3) "Local government entity" means a city, county, city and county, community college district, school district, county superintendent of schools, or special district located in California. For purposes of this section, "special district" means a legally constituted governmental entity established for the purpose of carrying on specific activities with definitely defined boundaries.