



State Board of Equalization

News Release

Chairman Jerome E. Horton

4th District – Los Angeles

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Jerome Horton Announces Next Steps in Enforcement of the Out-of-State Retailer Tax Collection Bill

Jerome E. Horton, Chairman of the California Board of Equalization, today announced the next steps in enforcing ABx1 28, the measure passed by the Legislature and signed into law by the Governor on June 28, 2011. The law establishes use tax collection obligations on out-of-state retailers.

Under ABx1 28, out-of-state online retailers who meet the criteria must register with the BOE and collect and remit the use tax. If the out-of-state retailers refuse to comply with the law, the BOE, in accordance with Article 3, Section 3.5 of the California Constitution, is obligated to enforce the law.

Passage of the law, which the California legislature projects will help California collect an additional \$200 million annually, adds California to a growing list of states that have turned to such measures in hopes of bringing in more revenue, and leveling the playing field for business. The BOE has estimated that purchases from out-of-state retailers results in approximately \$1.1 billion in unreported use tax.

Under Article 3, Section 3.5 of the California Constitution, agencies like the BOE do not have the power to declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional, unless an appellate court or a referendum by the people has made a determination that such is the case.

“We are actively providing retailers information so that they have a clear direction regarding their new responsibilities,” Horton said. “We will engage in the necessary steps to ensure that the affected retailers collect and remit the use taxes owed to the State of California.”

The entire Board will receive an update on the staff's implementation and enforcement plans and proposed future regulatory changes at the Board Meeting on July 26th which is open to the public for comment.

The BOE will have its first indication of non-compliance on October 31, 2011 when the third quarter of 2011 returns are due and payable. At that time, the BOE may begin issuing estimated billings to retailers who are required under the law to report and remit the use tax collected, but fail to comply.

Amazon has argued that the law is unconstitutional and wants California voters to decide whether to overturn the new law. “This will likely set the stage for a potentially high-dollar ballot fight next year that would pit business against business,” said Horton.

A petition for a referendum was filed Friday with the state Attorney General's Office, which could eventually require voters to decide on the new law. Amazon also has an option of challenging the law in court.

“Once the public learns that non-California companies who currently fail to comply with the law and play by the rules are costing California approximately \$12.5 billion in sales and \$1.1 billion in use taxes which translates into 37,000 jobs, \$52 million in property taxes, and \$48 million in income taxes, Californians will potentially reject the referendum,” said Horton. Chairman Horton believes that the court of public opinion and the law of free trade will ultimately make the final determination of the winners and losers under ABx1 28 and Amazon will lose in the court of law.

“Amazon has also canceled all of its California based affiliates,” Horton pointed out. “This has caused some confusion and questions about customer loyalty. Will the California consumers wait until these legal and political differences are resolved? If not, market share and free trade will govern the day.” Chairman Horton believes that California retailers have a window of opportunity to convince California consumers to buy from them online or in their local California base stores due to this action by Amazon. In addition, he believes that the affiliates may decide to associate with out-of-state or California based retailers willing to comply with the new law.

“Ultimately, until the public via a referendum, or the courts tell us otherwise, the Board of Equalization will enforce ABx1 28,” said Horton.

California and Non-California retailers with questions regarding California nexus or registration are encouraged to call 916-227-6600.

Elected in 2010, Chairman Jerome E. Horton is the Fourth District Member of the California State Board of Equalization, representing more than 8.5 million residents in Los Angeles County. He is also the Board of Equalization Legislative Committee chairman. He is the first to serve on the Board of Equalization with over 21 years of experience at the BOE. Horton previously served as an Assembly Member of the California State Assembly from 2000-2006.

The five-member California State Board of Equalization is a publicly elected tax board. The Board of Equalization collects more than \$48 billion annually in taxes and fees supporting state and local government services. It hears business tax appeals, acts as the appellate body for franchise and personal income tax appeals, and serves a significant role in the assessment and administration of property taxes. For more information on other taxes and fees in California, visit www.taxes.ca.gov.

July 2011 Special Notice: <http://www.boe.ca.gov/news/pdf/1284.pdf>

Regulation 1684: <http://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/1684.html>

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