

Hi. This is Chris Micheli, a principal with the governmental relations firm of Aprea & Micheli in Sacramento and an adjunct professor at McGeorge School of Law. Today's podcast is on new bills that were enacted during the 2019 legislative session. This podcast is on AB 147.

Assembly Bill 147 was authored by Assemblywoman Autumn Burke, the Chairwoman of the Assembly Committee on Revenue and Taxation. It was signed on April 25 as Chapter 5. Because this bill contained an urgency clause, the measure took effect upon the Governor's signature, again which was April 25, 2019.

AB 147 is California's effort at dealing with the US Supreme Court's decision in Wayfair. Essentially, what the bill provides is that on and after October 1, 2019, a marketplace facilitator is considered the seller and retailer for each sale that was facilitated through its marketplace for determining whether that marketplace facilitator is required to register with California's Department of Tax and Fee Administration, otherwise known as CDTFA, pursuant to California's sales and use tax law.

AB 147 also provides that any marketplace facilitator that's registered, or required to register, with CDTFA under the sales and use tax law and who facilitates a retail sale of tangible personal property, TPP, by a marketplace seller is in fact a retailer selling or making the sale of the TPP sold through its marketplace for purposes of paying any sales tax and for collecting any use tax.

Now, for purposes of determining whether a marketplace facilitator has total combined sales of TPP for delivering California that would make it a retailer engaged in business in this state, the bill requires the marketplace facilitator to include all sales made on its own behalf and by all related persons and sales facilitated on behalf of marketplace sellers. The bill provides a marketplace facilitator with relief from liability from the tax on a retail sale in certain specified circumstances and the bill contains a number of findings and declarations setting forth the intent of the California Legislature.

The bill adds a brand-new chapter, beginning with Section 6040, to the California Revenue and Taxation Code. AB 147 enacts what they call "The Marketplace Facilitator Act." Note that the bill defines marketplace, marketplace facilitator, and marketplace seller. The bill also excludes a delivery network company as a marketplace facilitator for purposes of this new chapter of the Rev and Tax Code. It then goes on to define terms such as delivery network company, delivery network courier, delivery services, local merchant, and local product.

Again, it says that a marketplace facilitator is the seller and retailer and its required to register with CDTFA. And again, there's marketplace facilitator relief.

Existing law has also been amended to redefine "retailer engaged in business in this state" to essentially include 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 the state of California to impose a use tax collection duty. It also further specifies retailers who are included in this definition, which, the law notes, is not meant to be exhaustive.

Again, the bill adds two new sections to the Rev and Tax Code. The first new statute applies to every retailer engaged in business in this state who makes sales of tangible personal property, is required to collect the tax from the purchaser and give to the purchaser a receipt. Note this provision applies if the retailer sales during the prior twelve months are in excess of \$1 million. In addition, the new law allows CDTFA in its discretion to relieve a retailer engaged in business in California from penalties and interest, so long as the specified requirements have been met. This relief from penalty is granted for the period April 1, 2019 through December 31, 2022. And these new provisions that are added to the Revenue and Taxation Code are specified to not have any retroactive effect.

Note that the provisions of California's APA, its Administrative Procedure Act, do not apply to any rules or guidelines issued by CDTFA before 1/1/21. And finally, this bill is an urgency clause statute. So, it took effect immediately upon signature by Governor Newsom.

Thanks for joining this short podcast on California's statute to implement the Wayfair decision.