
AFFILIATE NEXUS INFORMATION

A “retailer engaged in business in this state” as defined in Revenue and Taxation Code (RTC) section 6203 is required to register with the Board of Equalization (BOE) to collect and remit use tax on sales of tangible personal property to California customers.

RTC section 6203, subdivision (c)(5) includes an “affiliate nexus provision.” Under the provision, a retailer is engaged in business in this state and is required to register to collect California use tax if the retailer enters into “an agreement or agreements under which a person or persons in this state, for a commission or other consideration, directly or indirectly refers potential purchasers of tangible personal property to the retailer, whether by an Internet-based link or an Internet website, or otherwise, provided that” the retailer’s sales exceed two specific sales thresholds.

Sales and Use Tax Regulation 1684, *Collection of Use Tax by Retailers*, explains that the affiliate nexus provision does not apply if a retailer can demonstrate that all of the persons with whom the retailer has agreements described in the affiliate nexus provision did not directly or indirectly solicit potential customers for the retailer in California. In addition, Regulation 1684 provides that a retailer can demonstrate that an agreement is not an agreement subject to the affiliate nexus provision if:

1. The retailer’s agreement prohibits persons operating under the agreement from engaging in any solicitation activities in California that refer potential customers to the retailer including, but not limited to, distributing flyers, coupons, newsletters and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails;
2. The person or persons operating under the agreement in California certify annually, under penalty of perjury, that they have not engaged in any prohibited solicitation activities in California at any time during the previous year; and
3. The retailer accepts the certification or certifications in good faith, and the retailer does not know or have reason to know that the certification or certifications are false or fraudulent.

Regulation 1684 further provides that a retailer can demonstrate that an agreement with an organization, such as a club or non-profit group, is not subject to the affiliate nexus provision if, in addition to the above requirements, 1) the agreement provides that the organization will maintain information on its website alerting its members to the prohibition against each of the solicitation activities described above, and 2) the retailer obtains an annual certification from the organization under penalty of perjury that includes a statement certifying that its website includes information directed at its members alerting them to the prohibition against the solicitation activities described above.

Instructions for Annual Certification

A person may complete the *Annual Certification of No Solicitation* section on the next page, or any document that satisfies the requirements of Regulation 1684, to annually certify under penalty of perjury that the person has not engaged in any prohibited solicitation activities in California at any time during the previous year.

An organization may complete the *Additional Statement from Organization* section on the next page, or any document that satisfies the requirements of Regulation 1684, to annually certify under penalty of perjury that its website includes information directed at its members alerting them to the prohibition against the solicitation activities described above. The BOE recommends you retain this form or any other document that satisfies the annual certification requirements of Regulation 1684 for a minimum of eight years.

ANNUAL CERTIFICATION OF NO SOLICITATION

(to be completed by persons operating in California)

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY:

That the person named below is operating under an agreement with _____
OUT-OF-STATE RETAILER'S NAME

and the person named below has not engaged in prohibited solicitation activities in California that refers potential customers to _____ at any time during the previous year _____.
OUT-OF-STATE RETAILER'S NAME XX-XX-XX TO XX-XX-XX

The prohibited solicitation activities include, but are not limited to, distributing flyers, coupons, newsletters, and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails.

PERSON'S NAME

SIGNATURE OF PERSON OR PERSON'S AUTHORIZED REPRESENTATIVE DATE

PRINTED NAME OF PERSON SIGNING TITLE TELEPHONE NUMBER

ADDRESS OF PERSON SIGNING (street, city, state, zip code) ()

ADDRESS OF PERSON'S AUTHORIZED REPRESENTATIVE WHEN APPLICABLE (street, city, state, zip code)

ADDITIONAL STATEMENT FROM ORGANIZATION

(to be completed by organizations)

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY:

That the website of the organization named below includes information that alerts its members that anyone operating under the organization's agreement with _____
ORGANIZATION'S NAME

is prohibited from engaging in any solicitation activities in California that refers potential customers to _____, including, but not limited to, distributing flyers,
OUT-OF-STATE RETAILER

coupons, newsletters, and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails.

ORGANIZATION'S NAME

SIGNATURE OF ORGANIZATION'S AUTHORIZED REPRESENTATIVE DATE

PRINTED NAME OF AUTHORIZED REPRESENTATIVE TITLE TELEPHONE NUMBER

ADDRESS OF AUTHORIZED REPRESENTATIVE (street, city, state, zip code) ()

ADDRESS OF ORGANIZATION (street, city, state, zip code) ORGANIZATION'S WEBSITE