

7-18-2011

Referendum to Overturn Law Requiring Internet Retailers to Collect Same Sales or Use Taxes as Other Retailers.

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_inits

Recommended Citation

Referendum to Overturn Law Requiring Internet Retailers to Collect Same Sales or Use Taxes as Other Retailers. California Initiative 1489 (2011).

http://repository.uchastings.edu/ca_ballot_inits/1692

This Initiative is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Initiatives by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcus@uchastings.edu.



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

October 11, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum #11086

TO: All County Clerks/Registrars of Voters and Proponent

FROM:


Katherine Montgomery
Initiative Program Manager

RE: Referendum: Failure of #1489, Related to Taxation

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures for the hereinafter named referendum filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: REFERENDUM TO OVERTURN LAW REQUIRING INTERNET
RETAILERS TO COLLECT SAME SALES OR USE TAXES AS
OTHER RETAILERS.

SUMMARY DATE: July 18, 2011

PROPONENT: Charles T. Halnan



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

July 18, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum #11049

TO: All County Clerks/Registrars of Voters and Proponent

FROM:


Katherine Montgomery
Initiative Program Manager

RE: Referendum: 1489, Related to Taxation

Pursuant to Elections Code section 9006 (c), we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed referendum measure entitled:

**REFERENDUM TO OVERTURN LAW
REQUIRING INTERNET RETAILERS TO COLLECT
SAME SALES OR USE TAXES AS OTHER RETAILERS.**

The proponent of the above-named measure is:

Charles T. Halnan
c/o Chip Nielsen
Nielsen, Merksamer, Parrinello, Gross, & Leoni, LLP
1415 L Street, Suite 1200
Sacramento, CA 95814
(415) 389-6800

#1489

**REFERENDUM TO OVERTURN LAW
REQUIRING INTERNET RETAILERS TO COLLECT
SAME SALES OR USE TAXES AS OTHER RETAILERS.**

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 504,760
Cal. Const., art. II, § 9(b)

2. Enactment Date:.....Wednesday, June 29, 2011
AB 28x1 (Chapter 7, Statutes of 2011)

3. Official Summary Date:.....Monday, July 18, 2011
(Elections Code § 336)

4. Petition Sections:
 - a. First day Proponent can circulate Sections for
signatures (Elections Code § 9014).....Monday, July 18, 2011

 - b. Last day Proponent can circulate and file with the county.
All sections are to be filed at the same time
within each county within 90 days of the
enactment date (Elections Code § 9014). Tuesday, September 27, 2011

 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (Elections Code § 9030(b)).....Friday, 10/07/11

(If the Proponent files the petition with the county on a date prior to
09/27/11, the county has eight working days from the filing of the petition
to determine the total number of signatures affixed to the petition and to
transmit the total to the Secretary of State) (Elections Code § 9030(b).)

 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures
and notifies the counties (Elections Code § 9030(c))..... Sunday, 10/16/11*

 - e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(Elections Code §§ 9030(d) & (e)).....Wednesday, 11/30/11

* Date varies based on the date of county receipt.

REFERENDUM #1489
Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 10/16/11, the last day is no later than the thirtieth working day after the county's receipt of notification). (Elections Code §§ 9030(d) & (e).)

- f. If the signature count is more than 555,236 or less than 479,522 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 479,522 and 555,236 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures (EC §9030(f) & (g); 9031(a)).....Saturday, 12/10/11*
- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (Elections Code §§ 9031(b) & (c)).....Wednesday, 01/25/12

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 12/10/11, the last day is no later than the thirtieth working day after the county's receipt of notification.) (Elections Code §§ 9031(b) & (c).)

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (Elections Code §§ 9031(d), 9033)..... Sunday, 01/29/12*

*Date varies based on the date of county receipt.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative, referendum or recall petitions for any purpose other than to qualify the measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code § 18650; *Bilofsky v. Deukmejian* (1981) 124 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).
- Please refer to Elections Code §§ 100, 101, 104, 9008, 9009, 9010, 9011, 9013, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Please refer to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative or referendum which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



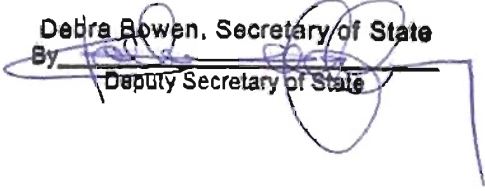
1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
Public: (916) 445-9555
Telephone: (916) 324-5464
Facsimile: (916) 324-8835
E-Mail: Dawn.McFarland@doj.ca.gov

July 18, 2011

FILED
In the office of the Secretary of State
of the State of California

JUL 18 2011

The Honorable Debra Bowen
Secretary of State
Office of the Secretary of State
1500 11th Street, 6th Floor
Sacramento, CA 95814

Debra Bowen, Secretary of State
By 
Deputy Secretary of State

Attention: Ms. Katherine Montgomery
Elections Analyst

Dear Secretary Bowen:

Pursuant to Elections Code section 9004, you are hereby notified that on this day we sent our title and summary for the following proposed initiative to the proponent:

- 11-0019, Referendum of Section 1 of ABx1 28

A copy of that title and summary and text of the proposed initiative is enclosed. Please contact me if you have questions. Thank you.

Sincerely,

Handwritten signature of Dawn L. McFarland in blue ink.

DAWN L. MCFARLAND
Acting Initiative Coordinator

For KAMALA D. HARRIS
Attorney General

DLM:

July 18, 2011
Initiative 11-0019

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

REFERENDUM TO OVERTURN LAW REQUIRING INTERNET RETAILERS TO COLLECT SAME SALES OR USE TAXES AS OTHER RETAILERS. If signed by the required number of registered voters and filed with the Secretary of State, this petition will place on the statewide ballot a challenge to an existing state law. The law must be approved by voters at the next statewide election to remain in effect. The law expands the definition of retailers considered “engaged in business” in California to include certain Internet retailers selling to California consumers, so that out-of-state Internet retailers also collect existing sales or use taxes. (11-0019)

July 7, 2011

RECEIVED

JUL 0 8 2011

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA PERSONAL DELIVERY

The Honorable Kamala D. Harris.
Attorney General
1300 I Street, 17th 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.

REFERENDUM AGAINST A PORTION OF AN ACT PASSED BY THE LEGISLATURE

(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

REFERENDUM AGAINST A PORTION OF AN ACT PASSED BY THE LEGISLATURE

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 (c) 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.