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H.639

Introduced by Representatives Wilson of Manchester, Cheney of Norwich,

Hooper of Montpelier and Masland of Thetford

Referred to Committee on

Date:

Subject: Taxation; sales and use tax; out-of-state retailers

Statement of purpose: This bill proposes to adopt language similar to
California's recent bill regarding the taxation of online retailers.

An act relating to the taxation of online retailers

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 32 V.S.A. § 9701(9)(I)–(M) is added to read:

(I) Any person 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.

(J) Any person 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.

1 (K) With respect to a lease, any person deriving rentals from a lease
2 of tangible personal property situated in this state.

3 (L)(i) Any person soliciting orders for tangible personal property by
4 mail if the solicitations are substantial and recurring and if the retailer benefits
5 from any banking, financing, debt collection, telecommunication, or marketing
6 activities occurring in this state or benefits from the location in this state of
7 authorized installation, servicing, or repair facilities.

8 (ii) This subdivision (L) shall become operative upon the
9 enactment of any congressional act that authorizes states to compel the
10 collection of state sales and use taxes by out-of-state retailers.

11 (M)(i) For purposes of this section, vendor does not include the
12 taking of orders from customers in this state through a computer
13 telecommunications network located in this state which is not directly or
14 indirectly owned by the retailer if the orders result from the electronic display
15 of products on that same network. The exclusion provided by this subdivision
16 shall apply only to a computer telecommunications network that consists
17 substantially of online communications services other than the displaying and
18 taking of orders for products.

19 (ii) This subdivision (M) shall become inoperative upon the
20 operative date of provisions of a congressional act that authorize states to
21 compel the collection of state sales and use taxes by out-of-state retailers.

1 Sec. 2. 32 V.S.A. § 9701(9)(I) is added to read:

2 (I) Any person that has substantial nexus with this state for purposes
3 of the commerce clause of the United States Constitution and any retailer upon
4 whom federal law permits this state to impose a use tax collection duty. This
5 subdivision specifically includes any of the following:

6 (i) Any person maintaining, occupying, or using, permanently or
7 temporarily, directly or indirectly, or through a subsidiary or agent, by
8 whatever name called, an office, place of distribution, sales or sample room or
9 place, warehouse or storage place, or other place of business.

10 (ii) Any person having any representative, agent, salesperson,
11 canvasser, independent contractor, or solicitor operating in this state under the
12 authority of the retailer or its subsidiary for the purpose of selling, delivering,
13 installing, assembling, or the taking of orders for any tangible personal
14 property.

15 (iii) With respect to a lease, any person deriving rentals from a
16 lease of tangible personal property situated in this state.

17 (iv) Any person that is a member of a commonly controlled group,
18 that includes another member of the retailer's commonly controlled group that,
19 pursuant to an agreement with or in cooperation with the retailer, performs
20 services in this state in connection with tangible personal property to be sold
21 by the retailer, including design and development of tangible personal property

1 sold by the retailer, or the solicitation of sales of tangible personal property on
2 behalf of the retailer.

3 (v)(I) Any person entering into an agreement or agreements under
4 which another person or persons in this state, for a commission or other
5 consideration, directly or indirectly refer potential purchasers of tangible
6 personal property to the retailer, whether by an Internet-based link or an
7 Internet website, or otherwise, provided that both of the following conditions
8 are met:

9 (aa) The total cumulative sales price from all of the vendor's
10 sales, within the preceding 12 months, of tangible personal property to
11 purchasers in this state that are referred pursuant to all of those agreements
12 with a person or persons in this state, is in excess of ten thousand dollars
13 (\$10,000.00).

14 (bb) The vendor, within the preceding 12 months, has total
15 cumulative sales of tangible personal property to purchasers in this state in
16 excess of one million dollars (\$1,000,000.00).

17 (II) An agreement under which a vendor purchases
18 advertisements from a person or persons in this state, to be delivered on
19 television, on radio, in print, on the Internet, or by any other medium, is not an
20 agreement described in subdivision (I) of this subdivision (I)(v), unless the
21 advertisement revenue paid to the person or persons in this state consists of

1 commissions or other consideration that is based upon sales of tangible
2 personal property.

3 (III) Notwithstanding subdivision (II) of this subdivision (I)(v),
4 an agreement under which a vendor engages a person in this state to place an
5 advertisement on an Internet website operated by that person, or operated by
6 another person in this state, is not an agreement described in subdivision (I) of
7 this subdivision (I)(v), unless the person entering the agreement with the
8 vendor also directly or indirectly solicits potential customers in this state
9 through use of flyers, newsletters, telephone calls, electronic mail, blogs,
10 microblogs, social networking sites, or other means of direct or indirect
11 solicitation specifically targeted at potential
12 customers in this state.

13 (IV) For purposes of this subdivision (I), “person” includes an
14 entity affiliated with a retailer within the meaning of Section 1504 of the
15 Internal Revenue Code.

16 (V) This subdivision (I)(v) shall not apply if the vendor can
17 demonstrate that the person in this state with whom the vendor has an
18 agreement did not engage in referrals in the state on behalf of the retailer that
19 would satisfy the requirements of the commerce clause of the United States
20 Constitution.

1 Sec. 3. REPEAL

2 Secs. 36a and 36b of No. 45 of the Acts of 2011 are repealed.

3 Sec. 4. EFFECTIVE DATES

4 (a) Secs. 1 (definition of vendor) and 3 (repeal) of this act, and this section
5 (effective dates and transition) shall take effect on July 1, 2012.

6 (b)(1) Sec. 2 of this act shall become operative on either of the following
7 dates:

8 (A) If federal law is enacted on or before July 31, 2012, authorizing
9 the states to require a seller to collect taxes on sales of goods to in-state
10 purchasers without regard to the location of the seller, Sec. 2 of this act shall
11 become operative on September 1, 2013, and Sec. 1 of this act shall be
12 repealed on that same date.

13 (B) If federal law is not enacted on or before July 31, 2012,
14 authorizing the states to require a seller to collect taxes on sales of goods to
15 in-state purchasers without regard to the location of the seller, Sec. 2 of this act
16 shall become operative on January 1, 2013, and Sec. 1 of this act shall be
17 repealed on that same date.

18 (2) The attorney general shall, on or before September 1, 2012, certify in
19 writing to the governor and the joint fiscal committee whether or not federal
20 law has been enacted on or before July 31, 2012, authorizing the states to

- 1 require a seller to collect taxes on sales of goods or services to in-state
- 2 purchasers without regard to the location of the seller.