

COUNCIL COMMUNICATION

TO THE CITY COUNCIL
FROM THE CITY MANAGER'S OFFICE

DATE:

March 24, 1987

NO.

SUBJECT:

Review of AB 229 (Leonard) Which Bill Redefines "retailer engaged in business in this state" to Include Out of State Retailers Who Are Advertising or Soliciting by Mail or Electronic Media to Consumers Located in the State of California.

PREPARED BY: City Attorney

BACKGROUND INFORMATION: A number of months ago, concern was stated by this City Council regarding the loss or leakage of sales tax due to cable television home shopping channels, as well as other mail order advertising being mailed to this State. At that time, you asked the City Manager to determine whether there was any legislation being considered regarding this particular area of concern.

Subsequent to that Council meeting, Assemblyman Phil Isenberg's office was contacted, and it was determined that Assembly Bill 229 had been introduced, and that the bill will be amended to include in the definition of "retailer engaged in business in this state", those who are engaged in mail-order sales or those who utilize electronic media to solicit orders for tangible personal property. Once this bill goes into effect it would require the retailer to collect from the purchaser, the sales tax that the State would set, and refund that amount to the State. The monies then collected in the State fund would then be distributed to the city in proportion to each city's share of the total sales tax revenue.

The bill is presently in the Assembly Revenue and Taxation Committee and scheduled to be heard on April 20, 1987. It has been recommended by the League of California Cities that the cities send a letter in support of AB 229 to the various members of the Assembly Committee.

Respectfully submitted,



Ronald M. Stein
City Attorney

RMS:vc

cccab229

Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 229

Amendment 1

On page 2, line 6, strike out "mail order"
strike out line 9, and insert:

retailers located out of this state who engage in mail
order sales or utilize electronic media collect tax from

Amendment 2

On page 3, strike out lines 19 to 24, inclusive,
and insert:

(d) Any retailer who, pursuant to a contract
with a broadcaster or publisher located in this state,
solicits orders for tangible personal property by means of
advertising which is disseminated primarily to consumers
located in this state and only secondarily to bordering
jurisdictions.

Amendment 3

On page 3, between lines 38 and 39, insert:

(h) Any retailer who, pursuant to a contract
with a cable television operator located in this state,
solicits orders for tangible personal property by means of
advertising which is transmitted or distributed over a
cable television system in this state.

Amendment 4

On page 4, line 39, strike out "The" and insert:

These

ASSEMBLY BILL

No. 229

Introduced by Assembly Member Leonard

January 12, 1987

An act to amend Sections 6203, 6471, 6472, 6474, and 6477 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 229, as introduced, Leonard. Sales and use taxation.

(1) Existing Sales and Use Tax Law requires every retailer engaged in business in this state who makes sales of tangible personal property for storage, use, or other consumption in this state for which use tax is owed to collect the use tax from the purchaser, as specified, and to give to the purchaser a receipt therefor. The phrase "retailer engaged in business in this state" is defined, for purposes of this duty of use tax collection, to include specified retailers.

This bill would expand the definition of a "retailer engaged in business in this state" thereby making additional retailers subject to the duty of use tax collection.

(2) Under the Sales and Use Tax Law, returns generally must be filed and the tax paid quarterly, on or before the last day of the month following the quarterly period. However, if the State Board of Equalization determines that the taxpayer's taxable transactions average \$17,000 or more per month, monthly prepayments of tax must be made in a prescribed manner.

This bill would instead make the prepayment of tax applicable to any person whose estimated measure of tax liability averages \$50,000 or more per month. These prepayment provisions would become operative as specified only after the Department of Finance certifies to the Legislature and the Executive Secretary of the State Board of

Equalization that the provisions described in (1) above are legally unenforceable under the United States Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
 2 California retailers are subject to unfair competition and
 3 are at a competitive disadvantage because interstate mail
 4 order retailers are not presently required to collect use
 5 tax from their California customers. The Legislature
 6 further finds and declares that fair and equitable
 7 administration of the Sales and Use Tax Law and effective
 8 collection of existing tax liability requires that mail order
 9 retailers located outside this state collect tax from
 10 California consumers.

11 SEC. 2. The Legislature also finds and declares that
 12 the prepayment threshold for the collection of tax under
 13 the Sales and Use Tax law has not been increased since
 14 1966, thereby causing a hardship to California's small
 15 businesses, and that the threshold for this tax prepayment
 16 should be adjusted to reflect the increase in the
 17 Consumer Price Index since 1966.

18 SEC. 3. Section 6203 of the Revenue and Taxation
 19 Code is amended to read:

20 6203. Except as provided by Sections 6292 and 6293,
 21 every retailer engaged in business in this state and
 22 making sales of tangible personal property for storage,
 23 use, or other consumption in this state, not exempted
 24 under Chapter 3.5 (commencing with Section 6271) or
 25 Chapter 4 (commencing with Section 6351), shall, at the
 26 time of making the sales or, if the storage, use, or other
 27 consumption of the tangible personal property is not then
 28 taxable hereunder, at the time the storage, use, or other
 29 consumption becomes taxable, collect the tax from the
 30 purchaser and give to the purchaser a receipt therefor in
 31 the manner and form prescribed by the board.

32 As respects leases constituting sales of tangible personal
 33 property, the tax shall be collected from the lessee at the

1 time amounts are paid by the lessee under the lease.

2 "Retailer engaged in business in this state" as used in
3 this and the preceding section means and includes any of
4 the following:

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

11 (b) Any retailer having any representative, agent,
12 salesman, canvasser, or solicitor operating in this state
13 under the authority of the retailer or its subsidiary for the
14 purpose of selling, delivering, or the taking of orders for
15 any tangible personal property.

16 (c) As respects a lease, any retailer deriving rentals
17 from a lease of tangible personal property situated in this
18 state.

19 (d) *Any retailer soliciting orders for tangible personal*
20 *property by means of advertising which is broadcast*
21 *from, printed at, or distributed from, a location in this*
22 *state if the advertising is intended to be disseminated to*
23 *consumers located in this state and is only secondarily*
24 *disseminated to bordering jurisdictions.*

25 (e) *Any retailer soliciting orders for tangible personal*
26 *property by mail if the solicitations are substantial and*
27 *recurring and if the retailer benefits from any banking,*
28 *financing, debt collection, telecommunication, or*
29 *marketing activities occurring in this state or benefits*
30 *from the location in this state of authorized installation,*
31 *servicing, or repair facilities.*

32 (f) *Any retailer owned or controlled by the same*
33 *interests which own or control any retailer engaged in*
34 *business in the same or a similar line of business in this*
35 *state.*

36 (g) *Any retailer having a franchisee or licensee*
37 *operating under its trade name if the franchisee or*
38 *licensee is required to collect the tax under this section.*

39 SEC. 4. Section 6471 of the Revenue and Taxation
40 Code is amended to read:

1 6471. (a) Upon written notification by the board, any
2 person whose estimated measure of tax liability under
3 this part averages ~~seventeen~~ *fifty* thousand dollars
4 ~~(\$17,000)~~ *(\$50,000)* or more per month, as determined by
5 the board, shall, without regard to the measure of tax in
6 any one month make prepayments as prescribed in this
7 section.

8 (1) In the first, third, and fourth calendar quarters, the
9 person shall prepay not less than 90 percent of the
10 amount of state and local tax liability for each of the first
11 two monthly periods of each quarterly period.

12 (2) In the second calendar quarter, the person shall
13 prepay a first prepayment of 95 percent of the amount of
14 state and local tax liability for the first monthly period of
15 each quarterly period and a second prepayment of either
16 of the following:

17 (A) Ninety-five percent of the amount of state and
18 local tax liability for the second monthly period of the
19 quarterly period, plus 95 percent of the amount of state
20 and local tax liability for the first 15 days of the third
21 monthly period of the quarterly period.

22 (B) Ninety-five percent of the amount of state and
23 local tax liability for the second monthly period of the
24 quarterly period, plus 50 percent of 95 percent of the
25 amount of the liability for the second monthly period of
26 the quarterly period.

27 (b) Persons engaged in their present business during
28 all of the corresponding quarterly period of the
29 preceding year, or persons who are successors to a
30 business which was in operation during all of that
31 quarterly period, may satisfy the above monthly
32 prepayment requirements for the first, third, and fourth
33 calendar quarters by payment of an amount equal to
34 one-third of the measure of tax liability reported on the
35 return or returns filed for that quarterly period of the
36 preceding year multiplied by the state and local tax rate
37 in effect during the month for which the prepayment is
38 made.

39 The persons may satisfy their prepayment
40 requirements for the second calendar quarter by making

1 a first prepayment of an amount equal to one-third of the
2 measure of tax liability reported, and a second
3 prepayment of an amount equal to one-half of the
4 measure of tax liability reported, on the return or returns
5 filed for that quarterly period of the preceding year
6 multiplied by the state and local tax rate in effect during
7 the month for which the prepayment is made.

8 Prepayments shall be made during the quarterly
9 periods designated by the board and during each
10 succeeding quarterly periods until further notified in
11 writing by the board.

12 SEC. 5. Section 6472 of the Revenue and Taxation
13 Code is amended to read:

14 6472. For purposes of Section ~~6471.5~~ 6471,
15 prepayment shall be accompanied by a report of the
16 amount of the prepayment in a form prescribed by the
17 board and shall be made to the board as follows:

18 (a) In the first, third, and fourth calendar quarters, on
19 or before the 24th day next following the end of each of
20 the first two monthly periods of each quarterly period.

21 (b) In the second calendar quarter as follows:

22 (1) The first prepayment on or before the 24th day
23 next following the end of the first monthly period of each
24 quarterly period.

25 (2) The second prepayment on or before the 23rd day
26 of the third monthly period of each quarterly period for
27 the second monthly period and the first 15 days of the
28 third monthly period of each quarterly period.

29 SEC. 6. Section 6474 of the Revenue and Taxation
30 Code is amended to read:

31 6474. In determining whether a person's estimated
32 measure of tax liability averages ~~seven~~ ~~teen~~ ~~fifty~~ thousand
33 dollars ~~(\$17,000)~~ (\$50,000) or more per month for
34 purposes of Section ~~6471.5~~ 6471, the board may consider
35 tax returns filed pursuant to this part as well as any
36 information in the board's possession or which may come
37 into its possession.

38 SEC. 7. Section 6477 of the Revenue and Taxation
39 Code is amended to read:

40 6477. Any person required to make a prepayment

1 pursuant to Section 6471 or Section 6471.5 who fails to
2 make a prepayment before the last day of the monthly
3 period following the quarterly period in which the
4 prepayment became due and who files a timely return
5 and payment for the quarterly period in which the
6 prepayment became due shall also pay a penalty of 6
7 percent of the amount equal to 90 percent or 95 percent
8 of the tax liability, as prescribed in those sections by that
9 section, for each of the periods during that quarterly
10 period for which a required prepayment was not made.

11 SEC. 8. Sections 4 to 7, inclusive, of this act shall
12 become operative only if the Department of Finance
13 certifies to the Legislature and to the Executive
14 Secretary of the State Board of Equalization that
15 subdivisions (d), (e), (f), and (g) of Section 6203 of the
16 Revenue and Taxation Code, as added by this act, are
17 legally enforceable under the United States Constitution,
18 in which case those sections of this act shall become
19 operative on the first day of the second calendar quarter
20 commencing after the date of that certification.

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12 the prepayment threshold for the collection of tax under
13 the Sales and Use Tax law has not been increased since
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15 businesses, and that the threshold for this tax prepayment
16 should be adjusted to reflect the increase in the
17 Consumer Price Index since 1966.

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26 time of making the sales or, if the storage, use, or other
27 consumption of the tangible personal property is not then
28 taxable hereunder, at the time the storage, use, or other
29 consumption becomes taxable, collect the tax from the
30 purchaser and give to the purchaser a receipt therefor in
31 the manner and form prescribed by the board.

32 As respects leases constituting sales of tangible personal
33 property, the tax shall be collected from the lessee at the

1 time amounts are paid by the lessee under the lease.

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3 this and the preceding section means and includes any of
4 the following:

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6 permanently or temporarily, directly or indirectly, or
7 through a subsidiary, or agent, by whatever name called,
8 an office, place of distribution, sales or sample room or
9 place, warehouse or storage place, or other place of
10 business.

11 (b) Any retailer having any representative, agent,
12 salesman, canvasser, or solicitor operating in this state
13 under the authority of the retailer or its subsidiary for the
14 purpose of selling, delivering, or the taking of orders for
15 any tangible personal property.

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7 section.

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9 person shall prepay not less than 90 percent of the
10 amount of state and local tax liability for each of the first
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22 (B) Ninety-five percent of the amount of state and
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25 amount of the liability for the second monthly period of
26 the quarterly period.

27 (b) Persons engaged in their present business during
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29 preceding year, or persons who are successors to a
30 business which was in operation during all of that
31 quarterly period, may satisfy the above monthly
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7 percent of the amount equal to 90 percent or 95 percent
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9 *section*, for each of the periods during that quarterly
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11 SEC. 8. Sections 4 to 7, inclusive, of this act shall
12 become operative only if the Department of Finance
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36 preceding year multiplied by the state and local tax rate
37 in effect during the month for which the prepayment is
38 made.

39 The persons may satisfy their prepayment
40 requirements for the second calendar quarter by making

1 a first prepayment of an amount equal to one-third of the
2 measure of tax liability reported, and a second
3 prepayment of an amount equal to one-half of the
4 measure of tax liability reported, on the return or returns
5 filed for that quarterly period of the preceding year
6 multiplied by the state and local tax rate in effect during
7 the month for which the prepayment is made.

8 Prepayments shall be made during the quarterly
9 periods designated by the board and during each
10 succeeding quarterly periods until further notified in
11 writing by the board.

12 SEC. 5. Section 6472 of the Revenue and Taxation
13 Code is amended to read:

14 6472. For purposes of Section ~~6471.5~~ 6471,
15 prepayment shall be accompanied by a report of the
16 amount of the prepayment in a form prescribed by the
17 board and shall be made to the board as follows:

18 (a) In the first, third, and fourth calendar quarters, on
19 or before the 24th day next following the end of each of
20 the first two monthly periods of each quarterly period.

21 (b) In the second calendar quarter as follows:

22 (1) The first prepayment on or before the 24th day
23 next following the end of the first monthly period of each
24 quarterly period.

25 (2) The second prepayment on or before the 23rd day
26 of the third monthly period of each quarterly period for
27 the second monthly period and the first 15 days of the
28 third monthly period of each quarterly period.

29 SEC. 6. Section 6474 of the Revenue and Taxation
30 Code is amended to read:

31 6474. In determining whether a person's estimated
32 measure of tax liability averages ~~seventeen~~ fifty thousand
33 dollars ~~(\$17,000)~~ (\$50,000) or more per month for
34 purposes of Section ~~6471.5~~ 6471, the board may consider
35 tax returns filed pursuant to this part as well as any
36 information in the board's possession or which may come
37 into its possession.

38 SEC. 7. Section 6477 of the Revenue and Taxation
39 Code is amended to read:

40 6477. Any person required to make a prepayment

1 pursuant to Section 6471 ~~or Section 6471.5~~ who fails to
2 make a prepayment before the last day of the monthly
3 period following the quarterly period in which the
4 prepayment became due and who files a timely return
5 and payment for the quarterly period in which the
6 prepayment became due shall *also* pay a penalty of 6
7 percent of the amount equal to 90 percent or 95 percent
8 of the tax liability, as prescribed ~~in those sections~~ *by that*
9 *section*, for each of the periods during that quarterly
10 period for which a required prepayment was not made.
11 SEC. 8. Sections 4 to 7, inclusive, of this act shall
12 become operative only if the Department of Finance
13 certifies to the Legislature and to the Executive
14 Secretary of the State Board of Equalization that
15 subdivisions (d), (e), (f), and (g) of Section 6203 of the
16 Revenue and Taxation Code, as added by this act, are
17 legally enforceable under the United States Constitution,
18 in which case those sections of this act shall become
19 operative on the first day of the second calendar quarter
20 commencing after the date of that certification.

ASSEMBLY BILL

No. 229

Introduced by Assembly Member Leonard

January 12, 1987

An act to amend Sections 6203, 6471, 6472, 6474, and 6477 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 229, as introduced, Leonard. Sales and use taxation.

(1) Existing Sales and Use Tax Law requires every retailer engaged in business in this state who makes sales of tangible personal property for storage, use, or other consumption in this state for which use tax is owed to collect the use tax from the purchaser, as specified, and to give to the purchaser a receipt therefor. The phrase "retailer engaged in business in this state" is defined, for purposes of this duty of use tax collection, to include specified retailers.

This bill would expand the definition of a "retailer engaged in business in this state" thereby making additional retailers subject to the duty of use tax collection.

(2) Under the Sales and Use Tax Law, returns generally must be filed and the tax paid quarterly, on or before the last day of the month following the quarterly period. However, if the State Board of Equalization determines that the taxpayer's taxable transactions average \$17,000 or more per month, monthly prepayments of tax must be made in a prescribed manner.

This bill would instead make the prepayment of tax applicable to any person whose estimated measure of tax liability averages \$50,000 or more per month. These prepayment provisions would become operative as specified only after the Department of Finance certifies to the Legislature and the Executive Secretary of the State Board of

Equalization that the provisions described in (1) above are legally enforceable under the United States Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
2 California retailers are subject to unfair competition and
3 are at a competitive disadvantage because interstate mail
4 order retailers are not presently required to collect use
5 tax from their California customers. The Legislature
6 further finds and declares that fair and equitable
7 administration of the Sales and Use Tax Law and effective
8 collection of existing tax liability requires that mail order
9 retailers located outside this state collect tax from
10 California consumers.

11 SEC. 2. The Legislature also finds and declares that
12 the prepayment threshold for the collection of tax under
13 the Sales and Use Tax law has not been increased since
14 1966, thereby causing a hardship to California's small
15 businesses, and that the threshold for this tax prepayment
16 should be adjusted to reflect the increase in the
17 Consumer Price Index since 1966.

18 SEC. 3. Section 6203 of the Revenue and Taxation
19 Code is amended to read:

20 6203. Except as provided by Sections 6292 and 6293,
21 every retailer engaged in business in this state and
22 making sales of tangible personal property for storage,
23 use, or other consumption in this state, not exempted
24 under Chapter 3.5 (commencing with Section 6271) or
25 Chapter 4 (commencing with Section 6351), shall, at the
26 time of making the sales or, if the storage, use, or other
27 consumption of the tangible personal property is not then
28 taxable hereunder, at the time the storage, use, or other
29 consumption becomes taxable, collect the tax from the
30 purchaser and give to the purchaser a receipt therefor in
31 the manner and form prescribed by the board.

32 As respects leases constituting sales of tangible personal
33 property, the tax shall be collected from the lessee at the

- 1 time amounts are paid by the lessee under the lease.
2 "Retailer engaged in business in this state" as used in
3 this and the preceding section means and includes any of
4 the following:
- 5 (a) Any retailer maintaining, occupying, or using,
6 permanently or temporarily, directly or indirectly, or
7 through a subsidiary or agent, by whatever name called,
8 an office, place of distribution, sales or sample room or
9 place, warehouse or storage place, or other place of
10 business.
- 11 (b) Any retailer having any representative, agent,
12 salesman, canvasser, or solicitor operating in this state
13 under the authority of the retailer or its subsidiary for the
14 purpose of selling, delivering, or the taking of orders for
15 any tangible personal property.
- 16 (c) As respects a lease, any retailer deriving rentals
17 from a lease of tangible personal property situated in this
18 state.
- 19 (d) *Any retailer soliciting orders for tangible personal*
20 *property by means of advertising which is broadcast*
21 *from, printed at, or distributed from, a location in this*
22 *state if the advertising is intended to be disseminated to*
23 *consumers located in this state and is only secondarily*
24 *disseminated to bordering jurisdictions.*
- 25 (e) *Any retailer soliciting orders for tangible personal*
26 *property by mail if the solicitations are substantial and*
27 *recurring and if the retailer benefits from any banking,*
28 *financing, debt collection, telecommunication, or*
29 *marketing activities occurring in this state or benefits*
30 *from the location in this state of authorized installation,*
31 *servicing, or repair facilities.*
- 32 (f) *Any retailer owned or controlled by the same*
33 *interests which own or control any retailer engaged in*
34 *business in the same or a similar line of business in this*
35 *state.*
- 36 (g) *Any retailer having a franchisee or licensee*
37 *operating under its trade name if the franchisee or*
38 *licensee is required to collect the tax under this section.*
- 39 SEC. 4. Section 6471 of the Revenue and Taxation
40 Code is amended to read:

1 6471. (a) Upon written notification by the board, any
2 person whose estimated measure of tax liability under
3 this part averages ~~seventeen~~ fifty thousand dollars
4 ~~(\$17,000)~~ (\$50,000) or more per month, as determined by
5 the board, shall, without regard to the measure of tax in
6 any one month make prepayments as prescribed in this
7 section.

8 (1) In the first, third, and fourth calendar quarters, the
9 person shall prepay not less than 90 percent of the
10 amount of state and local tax liability for each of the first
11 two monthly periods of each quarterly period.

12 (2) In the second calendar quarter, the person shall
13 prepay a first prepayment of 95 percent of the amount of
14 state and local tax liability for the first monthly period of
15 each quarterly period and a second prepayment of either
16 of the following:

17 (A) Ninety-five percent of the amount of state and
18 local tax liability for the second monthly period of the
19 quarterly period, plus 95 percent of the amount of state
20 and local tax liability for the first 15 days of the third
21 monthly period of the quarterly period.

22 (B) Ninety-five percent of the amount of state and
23 local tax liability for the second monthly period of the
24 quarterly period, plus 50 percent of 95 percent of the
25 amount of the liability for the second monthly period of
26 the quarterly period.

27 (b) Persons engaged in their present business during
28 all of the corresponding quarterly period of the
29 preceding year, or persons who are successors to a
30 business which was in operation during all of that
31 quarterly period, may satisfy the above monthly
32 prepayment requirements for the first, third, and fourth
33 calendar quarters by payment of an amount equal to
34 one-third of the measure of tax liability reported on the
35 return or returns filed for that quarterly period of the
36 preceding year multiplied by the state and local tax rate
37 in effect during the month for which the prepayment is
38 made.

39 The persons may satisfy their prepayment
40 requirements for the second calendar quarter by making

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2 measure of tax liability reported, and a second
3 prepayment of an amount equal to one-half of the
4 measure of tax liability reported, on the return or returns
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6 multiplied by the state and local tax rate in effect during
7 the month for which the prepayment is made.

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5 and payment for the quarterly period in which the
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7 percent of the amount equal to 90 percent or 95 percent
8 of the tax liability, as prescribed in those sections by that
9 section, for each of the periods during that quarterly
10 period for which a required prepayment was not made.
11 SEC. 8. Sections 4 to 7, inclusive, of this act shall
12 become operative only if the Department of Finance
13 certifies to the Legislature and to the Executive
14 Secretary of the State Board of Equalization that
15 subdivisions (d), (e), (f), and (g) of Section 6203 of the
16 Revenue and Taxation Code, as added by this act, are
17 legally enforceable under the United States Constitution,
18 in which case those sections of this act shall become
19 operative on the first day of the second calendar quarter
20 commencing after the date of that certification.

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