Please use company letterhead if you have it.

Company name

Street address

City, State Zip

Month Day, Year

The Honorable Gavin Newsom

Governor

State Capitol

Sacramento, CA 95814

**RE: California Department of Tax and Fee Administration Unlawful and Unconstitutional Actions Against Taxpayers Who Utilize Online Platforms**

Dear Governor Newsom:

I am writing to bring to your attention actions by the California Department of Tax and Fee Administration (CDTFA) that are both unlawful and unconstitutional against me and other taxpayers that utilize online platforms and respectfully request you direct CDTFA to immediately cease this activity. I write this letter to you in an effort to protect small businesses like, both within California and worldwide, from the costs and compliance burden related to taxes that we are neither well-positioned to collect nor legally responsible for under California law[[1]](#footnote-1).

As a matter of sound policy and consistency, I urge you to ensure that third-party sellers whose goods are sold via online marketplace platforms are not subject to sales tax, either prospectively or retroactively. It makes no sense to expose small businesses like me to the risk of unreasonable actions by CDTFA, as we are not the ones responsible for uncollected sales tax under state law.

**Background on My Business**

Describe your business what you sell, etc….

**Background on the Issue**

There are millions of third-party sellers like me who use online platforms, such as Fulfillment by Amazon (FBA), allowing our goods to be sold online. However, online platform providers typically do not allow third-party sellers like me to retain customer information, engage in direct marketing, resolving customer service disputes or dictate return policies. These online marketplace platforms dictated these terms. These online platforms typically also handle the storage, packaging, all payment processing, logistics, and delivery of the products. By doing so, they step into the shoes of third-party sellers like me in every meaningful respect, including the exclusive ability to collect and remit sales tax. Yet, despite this level of involvement, these online platforms do not collect sales tax on such transactions.

Despite the online platform’s level of control over third-party seller transactions, CDTFA claims that third-party sellers like me, not the online platforms, are retailers under state law, and that they have nexus because goods were stored in warehouses in this state. However, the inventory was directed to California by the online platform, not third-party sellers like me. We were often never even told that our goods would end up in California, and even if we were told, the shifting of goods to various warehouses was solely at the online platform’s discretion, not ours. The fact that the online platform’s terms and conditions dictated that legal title was retained by the third-party seller is form over substance. We should not be held liable to collect taxes.

For example, when a consignee sells a good that has been consigned to it for sale, the consignee is obligated to collect the sales tax, not the consignor. Online marketplace platforms should operate in the same way. This is supported by Board of Equalization Rule 1569. Adopted in 1933 and amended in 1969, it states:

“A person who has possession of property owned by another, and also the power to cause title to that property to be transferred to a third person without any further action on the part of its owner, and who exercises such power, is a retailer when the party to whom title is transferred is a consumer. Tax applies to his gross receipts from such a sale.” [Emphasis added]

With the enactment of AB 102 [Ch. 16, Stat. 2017] all lawful rules and regulations established by the BOE were continued in force to CDTFA.

Further, the fact that third-party sellers that utilize an online platform’s fulfilment program like me did not direct their warehousing activity to the state, should limit the state’s ability to hold us accountable for taxes, since the online platform directed our goods to California. We did not direct where the goods would be stored.

**Action by CDTFA Against Taxpayers**

CDTFA has ignored the plain reading of California law. Instead, they are going after small businesses like me with threats of audit, claiming we owe eight years of back taxes, and even going so far as threatening felony prosecution in what appears to be an attempt of coercing us into paying retroactive taxes which we do not owe. CDTFA’s approach is wholly inefficient and ineffective, evidenced by the fact that thirty-eight percent of FBA third-party sellers are located in China, demonstrating the impracticalities of individual seller enforcement. CDTFA’s actions will result in a competitive advantage to off-shore sellers at the expense of domestic sellers like me.

In October of 2018, the CDTFA demanded that Amazon turn over the names, addresses and other key information of approximately 40,000 U.S. sellers. Through their enforcement efforts CDTFA has engaged in a bombardment of threatening letters, emails and phone calls.

Many of these third-party sellers are beyond the reach of the State of California. But those that are not would in many cases go bankrupt if forced to pay back sales taxes.

Putting an unbearable tax burden on the small kitchen-table enterprises like mine simply does not make sense.

**Request That You Take Action**

I urge your action to spare me, and the millions of other small businesses like me, who will lose everything if we have to comply with CDTFA’s unreasonable demand. You can do this by directing CDTFA to make clear that no third-party seller can be held accountable for sales tax, going forward or back, as a result of selling goods on an online platform.

Thank you for your attention to this important matter.

Sincerely,

SIGN DOCUMENT AND SEND AS PDF – YOU CAN USE SIGNATURE FILE IF THAT’s EASIER

YOUR NAME

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

cc: Members, California State Assembly

Members, California State Senate

Ana Matosantos, Cabinet Secretary, Office of the Governor

Anthony Williams, Legislative Affairs Secretary, Office of the Governor

Che Salinas, Chief Deputy Legislative Secretary for Operations

1. Cal. Code Regs., tit. 18, § 1569 provides: “A person who has possession of property owned by another, and also the power to cause title to that property to be transferred to a third person without any further action on the part of its owner, and who exercises such power, is a retailer when the party to whom title is transferred is a consumer. Tax applies to his gross receipts from such a sale.” [↑](#footnote-ref-1)