

Assembly Bill No. 249

Passed the Assembly September 14, 2001

Chief Clerk of the Assembly

Passed the Senate September 13, 2001

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Section 6369 of, and to add Section 6018.3 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 249, Matthews. Sales and use taxes: exemptions.

(1) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions and partial exemptions from that tax, including a partial exemption for vitamins, minerals, dietary supplements, and orthotic devices used or furnished by a licensed chiropractor in the performance of his or her professional services.

This bill would additionally provide a partial exemption with respect to any herb, herbal formula or preparation, vitamin, mineral, dietary supplement, orthotic device, or other naturally occurring substance included in the Encyclopedia of Chinese Materia Medica that is used or furnished by an acupuncturist in the performance of his or her professional services.

(2) The Sales and Use Tax Law also provides an exemption for specified products used in the treatment of diabetes that are furnished by a registered pharmacist as directed by a physician.

This bill would expand this exemption to also include lancets and blood glucose strips, for the treatment of diabetes, and would require that the exempt products be furnished either by a registered pharmacist or at the direction of a registered pharmacist.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.



This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

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

SECTION 1. Section 6018.3 is added to the Revenue and Taxation Code, to read:

6018.3. A licensed acupuncturist is a consumer of, and shall not be considered a retailer with respect to, any herb, herbal formula or preparation, vitamin, mineral, dietary supplement, orthotic device, or other naturally occurring substance included in the Encyclopedia of Chinese Materia Medica that is used or furnished by him or her in the performance of his or her professional services.

SEC. 2. Section 6369 of the Revenue and Taxation Code is amended to read:

6369. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law.

(2) Furnished by a licensed physician and surgeon, dentist, or podiatrist to his or her own patient for treatment of the patient.

(3) Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician and surgeon, dentist, or podiatrist.

(4) Sold to a licensed physician and surgeon, podiatrist, dentist, or health facility for the treatment of a human being.

(5) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(6) Furnished without charge by a pharmaceutical manufacturer or distributor to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or furnished by a pharmaceutical manufacturer or distributor without charge to an institution of higher education for



instruction or research, provided that the exemption provided in this paragraph is limited to medicines of a type that can be dispensed only (A) for the treatment of a human being and (B) pursuant to prescriptions issued by persons authorized to prescribe medicines. The exemption provided in this paragraph shall include the materials used to package, and the constituent elements and ingredients used to produce, the medicines described in this paragraph and is intended to preclude any imposition of tax pursuant to Section 6094 or 6095 with respect to those materials, elements, and ingredients.

(b) “Medicines” as used in this section, means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and commonly recognized as a substance or preparation intended for that use. However, “medicines” does not include any of the following:

(1) Any auditory, prosthetic, ophthalmic, or ocular device or appliance.

(2) Articles that are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical, or physical equipment or article or the component parts and accessories thereof.

(3) Any alcoholic beverage the manufacture, sale, purchase, possession, or transportation of which is licensed and regulated by the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code).

(c) Notwithstanding subdivision (b), “medicines” as used in this section means and includes any of the following:

(1) Sutures, whether or not permanently implanted.

(2) Bone screws, bone pins, pacemakers, and other articles, other than dentures, permanently implanted in the human body to assist the functioning of any natural organ, artery, vein, or limb and which remain or dissolve in the body.

(3) (A) Orthotic devices, other than orthodontic devices, designed to be worn on the person of the user as a brace, support, or correction for the body structure, and replacement parts for these devices. However, orthopedic shoes and supportive devices for the foot are not exempt unless they are custom-made



biomechanical foot orthoses or are an integral part of a leg brace or artificial leg.

(B) For purposes of this paragraph, “custom-made biomechanical foot orthoses” means an individually prescribed foot orthosis which is custom fabricated over a neutral or near neutral subtalar joint with a pronated midtarsal joint position positive plaster model of the patient’s foot, which model, when the cast is modified to support the osseous position of the forefoot in relationship to the rearfoot, embodies the angular osseous relationships of the anterior and posterior portions of the foot.

(4) Prosthetic devices, and replacement parts for those devices, designed to be worn on or in the person of the user to replace or assist the functioning of a natural part of the human body, other than auditory, ophthalmic, and ocular devices or appliances, and other than dentures, removable or fixed bridges, crowns, caps, inlays, artificial teeth, and other dental prosthetic materials and devices.

(5) Artificial limbs and eyes, or their replacement parts, for human beings.

(6) Programmable drug infusion devices to be worn on or implanted in the human body.

(d) “Health facility” as used in this section has the meaning ascribed to it in Section 1250 of the Health and Safety Code.

(e) Insulin, lancets, blood glucose strips, and insulin syringes furnished by a registered pharmacist, or at the direction of a registered pharmacist, to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this section.

(f) Orthotic and prosthetic devices, and replacement parts for these devices, furnished pursuant to the written order of a physician or podiatrist, shall be deemed to be dispensed on prescription within the meaning of paragraph (1) of subdivision (a), whether or not the devices are furnished by a registered pharmacist.

(g) Mammary prostheses, and any appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste, shall be deemed to be dispensed on prescription within the meaning of this section.



SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.



Approved _____, 2001

Governor

