

Assembly Bill No. 646

CHAPTER 706

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

[Approved by Governor October 10, 2001. Filed
with Secretary of State October 11, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 646, Horton. Sales and use taxes: exemptions: medical supplies purchased by surgical clinics.

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 from that tax, including an exemption for specified medical supplies purchased through a doctor's prescription, or furnished by a doctor, dentist, or podiatrist in the treatment of a patient, or furnished by a health facility for treatment prescribed by a doctor, dentist or podiatrist.

This bill would include specified clinics in the definition of a health facility described in this exemption.

This bill would incorporate changes made by AB 249 that would become operative if both bills are enacted and this bill is enacted after AB 249.

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 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, and also includes any “clinic” as defined in Section 1200 of the Health and Safety Code.

(e) Insulin and insulin syringes furnished by 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. 1.5. 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, and also includes any "clinic" as defined in Section 1200 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. 2. Section 1.5 of this bill incorporates amendments to Section 6369 of the Revenue and Taxation Code proposed by both this bill and AB 249. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 6369 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 249, in which case Section 1 of this bill shall not become operative.

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.

