

AMENDED IN SENATE SEPTEMBER 11, 2003

AMENDED IN ASSEMBLY JUNE 4, 2003

AMENDED IN ASSEMBLY MAY 1, 2003

AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 923

**Introduced by Assembly Members Firebaugh, Chavez, and
Wesson**

**(Coauthors: Assembly Members Bermudez, Calderon, Chu,
Corbett, Diaz, Dymally, Goldberg, Hancock, Jerome Horton,
Koretz, Laird, Leno, Lieber, Longville, Lowenthal, Montanez,
Nunez, Oropeza, Reyes, Ridley-Thomas, Steinberg, and Vargas)
(Coauthors: Senators Alarcon, Romero, and Soto)**

February 20, 2003

An act to amend Section 6353 of, to add Sections 6356.8, 6356.9, ~~7105~~, 7106, 17053.15, and 23608.15 to, to add and repeal Section 6356.7 of, and to repeal Sections 6356.5, 6356.6, 6357.1, and 6358.5 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 923, as amended, Firebaugh. State taxes: health care.

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 exemptions for farm equipment

and machinery, timber harvesting equipment, racehorse breeding stock, diesel fuel used in farming, and liquefied petroleum gas for use in producing and harvesting agricultural products.

This bill would repeal those exemptions.

This bill would provide an exemption from that tax for farm equipment and machinery purchased for use by a ~~small farmer~~ *qualified person*, as defined, to be used primarily in producing and harvesting agricultural products.

This bill would provide an exemption from that tax for a ~~small farmer~~ *qualified person* for diesel fuel used in farming activities, as defined.

This bill would also provide an exemption from that tax for any farm tractors purchased for use by a ~~farmer~~ *qualified person* to be used primarily in producing and harvesting agricultural products.

The Personal Income Tax Law and the Corporation Tax Law ~~authorizes~~ *authorize* various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2004, for qualified taxpayers who provide health care coverage, *as defined*, for their agricultural employees. This bill would require that the aggregate amount of credits allocated to all taxpayers for each taxable year, as specified, equal the sum of the estimated amount of the increase for that same taxable year in sales and use tax revenue due to the repeal by this bill of sales and use tax exemptions and the amount of specified costs to administer the credit. This bill would provide that each qualified taxpayer receive a credit equal to the taxpayer's pro rata share of the aggregate amount, based upon the amount of health care coverage costs paid or incurred by the taxpayer. This bill would authorize the Employment Development Department to charge qualified taxpayers applying for the credit a fee for the department's costs incurred in administering the credit.

The bill would impose various duties on the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department in administering the bill, as provided.

This bill would take effect immediately as a tax levy, but specified provisions would become operative on January 1, 2004.

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. Section 6353 of the Revenue and Taxation Code
2 is amended to read:

3 6353. There are exempted from the taxes imposed by this part
4 the gross receipts derived from the sales, furnishing, or service of
5 and the storage, use, or other consumption in this state of, all of the
6 following:

7 (a) Gas, electricity, and water, including steam and geothermal
8 steam, brines, and heat, when delivered to consumers through
9 mains, lines, or pipes.

10 (b) (1) Liquefied petroleum gas, delivered to a qualified
11 residence by the seller, that is sold for household use in the
12 qualified residence, provided the liquefied petroleum gas is
13 delivered into a tank with a storage capacity for liquefied
14 petroleum gas that is equal to or greater than 30 gallons. This
15 subdivision may not be construed to provide any exemption from
16 any tax levied by a city, county, or city and county pursuant to
17 Section 7284.3, or any successor to that section.

18 (2) For purposes of this subdivision, “qualified residence”
19 means a primary residence, not serviced by gas mains and pipes.

20 (c) Water, when sold to an individual in bulk quantities of 50
21 gallons or more, for general household use in his or her residence
22 if the residence is located in an area not serviced by mains, lines
23 or pipes.

24 (d) Exhaust steam, waste steam, heat, or resultant energy,
25 produced in connection with cogeneration technology, as defined
26 in Section 25134 of the Public Resources Code.

27 SEC. 2. Section 6356.5 of the Revenue and Taxation Code is
28 repealed.

29 SEC. 3. Section 6356.6 of the Revenue and Taxation Code is
30 repealed.

31 SEC. 4. Section 6356.7 is added to the Revenue and Taxation
32 Code, to read:

33 6356.7. (a) There are exempted from the taxes imposed by
34 this part the gross receipts from the sale of, and the storage and use
35 of, or other consumption in this state of, any farm tractors
36 purchased for use by a ~~farmer~~ *qualified person* to be used
37 primarily in producing and harvesting agricultural products.



1 (b) (1) Notwithstanding any provision of the Bradley-Burns
2 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
3 with Section 7200)) or the Transactions and Use Tax Law (Part 1.6
4 (commencing with Section 7251)), the exemption established by
5 this section does not apply with respect to any tax levied by a
6 county, city, or district pursuant to, or in accordance with, either
7 of those laws.

8 (2) Notwithstanding subdivision (a), the exemption
9 established by this section does not apply with respect to any tax
10 levied pursuant to Sections 6051.2 and 6201.2, or pursuant to
11 Section 35 of Article XIII of the California Constitution.

12 (c) *For purposes of this section:*

13 (1) *“Qualified person” means any person engaged in a line of*
14 *business described in Codes 0111 to 0291, inclusive, of the*
15 *Standard Industrial Classification Manual published by the*
16 *United States Office of Management and Budget, 1987 Edition,*
17 *and any other person that assists that person in a line of business*
18 *described in this paragraph in producing and harvesting*
19 *agricultural products.*

20 (2) *“Farm tractor” means a motor vehicle designed and used*
21 *primarily in the conduct of agricultural operations as a farm*
22 *implement for drawing plows, moving machines, and other*
23 *implements of husbandry as defined in Section 411. For purposes*
24 *of the preceding sentence, “agricultural operations” means*
25 *clearing, terracing, or otherwise preparing the ground on a farm;*
26 *harvesting crops; raising and feeding livestock and poultry;*
27 *building fences; pumping water for any and all uses on the farm,*
28 *including irrigation; building roads upon any farm by the owner*
29 *or the person farming the same; operating milking machines;*
30 *sawing wood for use on a farm; producing electricity for use on a*
31 *farm; or movement of tractors, farm implements, or nonlicensed*
32 *equipment from one field to another. “Farm tractor” does not*
33 *include a vehicle if its existing design is primarily for the*
34 *transportation of persons or property on a highway.*

35 (d) This section shall remain in effect only until January 1,
36 2005, and as of that date is repealed.

37 SEC. 4.3. Section 6356.8 is added to the Revenue and
38 Taxation Code, to read:

39 6356.8. (a) There are exempted from the taxes imposed by
40 this part the gross receipts from the sale of, and the storage and use



1 of, or other consumption in this state of, farm equipment and
2 machinery, and the parts thereof, purchased for use by a ~~small~~
3 ~~farmer~~ *qualified person* to be used primarily in producing and
4 harvesting agricultural products.

5 (b) For purposes of this section:

6 ~~(1) “Small farmer” means a farmer whose gross receipts from~~
7 ~~the sale of agricultural products are less than two hundred fifty~~
8 ~~thousand dollars (\$250,000) during the calendar year preceding~~
9 ~~the calendar year for which a credit is claimed under this section.~~

10 (1) *“Qualified person” means any person engaged in a line of*
11 *business described in Codes 0111 to 0291, inclusive, of the*
12 *Standard Industrial Classification Manual published by the*
13 *United States Office of Management and Budget, 1987 Edition,*
14 *and any other person that assists that person in a line of business*
15 *described in this paragraph in producing and harvesting*
16 *agricultural products, provided the person’s gross receipts from*
17 *the sale of agricultural products are less than two hundred fifty*
18 *thousand dollars (\$250,000) during the calendar year preceding*
19 *the calendar year for which an exemption is claimed under this*
20 *section.*

21 (2) “Farm equipment and machinery” means implements of
22 husbandry, as defined in Section 411.

23 (c) (1) Notwithstanding any provision of the Bradley-Burns
24 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
25 with Section 7200)) or the Transactions and Use Tax Law (Part 1.6
26 (commencing with Section 7251)), the exemption established by
27 this section does not apply with respect to any tax levied by a
28 county, city, or district pursuant to, or in accordance with, either
29 of those laws.

30 (2) Notwithstanding subdivision (a), the exemption
31 established by this section does not apply with respect to any tax
32 levied pursuant to Sections 6051.2 and 6201.2, or pursuant to
33 Section 35 of Article XIII of the California Constitution.

34 SEC. 4.5. Section 6356.9 is added to the Revenue and
35 Taxation Code, to read:

36 6356.9. (a) There are exempted from the taxes imposed by
37 this part, the gross receipts from the sale in this state to a small
38 farmer of, and the storage, use, or other consumption in this state
39 by a ~~small farmer~~ *qualified person* of, diesel fuel used in farming
40 activities.



1 (b) For purposes of this section:

2 ~~(1) “Small farmer” means a farmer whose gross receipts from~~
 3 ~~the sale of agricultural products are less than two hundred fifty~~
 4 ~~thousand dollars (\$250,000) during the calendar year preceding~~
 5 ~~the calendar year for which a credit is claimed under this section.~~

6 (1) *“Qualified person” means any person engaged in a line of*
 7 *business described in Codes 0111 to 0291, inclusive, of the*
 8 *Standard Industrial Classification Manual published by the*
 9 *United States Office of Management and Budget, 1987 Edition,*
 10 *and any other person that assists that person in a line of business*
 11 *described in this paragraph in producing and harvesting*
 12 *agricultural products, provided the person’s gross receipts from*
 13 *the sale of agricultural products are less than two hundred fifty*
 14 *thousand dollars (\$250,000) during the calendar year preceding*
 15 *the calendar year for which an exemption is claimed under this*
 16 *section.*

17 (2) “Farming activities” has the same meaning as “farming
 18 business” as set forth in Section 263A of the Internal Revenue
 19 Code. “Farming activities” also includes the transportation and
 20 delivery of farm products to the marketplace.

21 (c) (1) Notwithstanding any provision of the Bradley-Burns
 22 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
 23 with Section 7200)) or the Transactions and Use Tax Law (Part 1.6
 24 (commencing with Section 7251)), the exemption established by
 25 this section does not apply with respect to any tax levied by a
 26 county, city, or district pursuant to, or in accordance with, either
 27 of those laws.

28 (2) Notwithstanding subdivision (a), the exemption
 29 established by this section does not apply with respect to any tax
 30 levied pursuant to Sections 6051.2 and 6201.2, or pursuant to
 31 Section 35 of Article XIII of the California Constitution.

32 SEC. 4.7. Section 6357.1 of the Revenue and Taxation Code
 33 is repealed.

34 SEC. 5. Section 6358.5 of the Revenue and Taxation Code is
 35 repealed.

36 SEC. 6. Section ~~7105~~ 7106 is added to the Revenue and
 37 Taxation Code, to read:

38 ~~7105.—~~

39 7106. The State Board of Equalization, in consultation with
 40 the Department of Finance, shall estimate the annual increase in



1 the amount of sales and use tax revenue that is attributable in 2004
2 and each year thereafter to the repeal of the sales and use tax
3 exemptions by the act adding this section. The board shall provide
4 the estimate to the Employment Development Department on or
5 before January 15 of the year next following the year for which the
6 estimate is made.

7 SEC. 7. Section 17053.15 is added to the Revenue and
8 Taxation Code, to read:

9 17053.15. (a) For each taxable year beginning on or after
10 January 1, 2004, there shall be allowed as a credit against the “net
11 tax,” as defined in Section 17039, to a qualified taxpayer who
12 provides qualified health care coverage to his or her agricultural
13 employees.

14 (b) The amount of the credit allowed to a qualified taxpayer
15 under subdivision (a) for a taxable year shall be an amount
16 allocated to that taxpayer by the Employment Development
17 Department pursuant to subdivision (d) for the calendar year in
18 which the taxable year begins.

19 (c) For purposes of this section:

20 (1) “Agricultural employee” means an employee as defined in
21 subdivision (b) of Section 1140.4 of the Labor Code.

22 (2) ~~“Qualified health care coverage” means health care~~
23 ~~coverage equivalent to a health care service plan under the~~
24 ~~Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2~~
25 ~~(commencing with Section 1340) of Division 2 of the Health and~~
26 ~~Safety Code), or to a plan that would qualify under the Employee~~
27 ~~Retirement Income Security Act of 1974 (P.L. 93-406), as~~
28 ~~amended, and provides substantially the same minimum benefits~~
29 ~~as required under the Knox-Keene Health Care Service Plan Act~~
30 ~~of 1975. means any of the following:~~

31 (A) *Any health care coverage that meets the minimum*
32 *requirements set forth in Chapter 2.2 (commencing with Section*
33 *1340) of Division 2 of the Health and Safety Code.*

34 (B) *A group health insurance policy, as defined in subdivision*
35 *(b) of Section 106 of the Insurance Code, that covers hospital,*
36 *surgical, and medical care expenses, provided the maximum*
37 *out-of-pocket costs for insureds do not exceed the maximum*
38 *out-of-pocket costs for enrollees of health care service plans*
39 *providing benefits under a preferred provider organization policy.*
40 *For purposes of this section, a group health insurance policy shall*



1 *not include Medicare supplement, vision-only, dental-only, and*
2 *Champus-supplement insurance. For purposes of this section, a*
3 *group health insurance policy shall not include hospital indemnity,*
4 *accident-only, and specified disease insurance that pays benefits*
5 *on a fixed benefit, cash-payment-only basis.*

6 (C) *Any Taft-Hartley health and welfare fund or any other*
7 *lawful collective bargaining agreement which provides for health*
8 *and welfare coverage for collective bargaining unit or other*
9 *employees thereby covered.*

10 (D) *Any employer sponsored group health plan meeting the*
11 *requirements of the federal Employee Retirement Income Security*
12 *Act of 1974, provided it meets the benefits required under*
13 *subparagraph (A) or (B) of this paragraph.*

14 (3) “Qualified taxpayer” means a taxpayer who either
15 employs agricultural employees directly or is a labor contractor
16 that employs agricultural employees for use by farmers, who does
17 both of the following:

18 (A) Pays or incurs at least 80 percent of the cost of qualified
19 health care coverage for those employees.

20 (B) Applies to the Employment Development Department, in
21 the form and manner prescribed by that department, pursuant to
22 subdivision (d) for the credit allowed pursuant to this section. A
23 qualified taxpayer will be eligible for the credit for a taxable year
24 only if a completed application for the calendar year is filed with
25 the Employment Development Department on or before the
26 January 31 following the end of the calendar year for which the
27 credit is allocated.

28 (d) The Employment Development Department shall do all of
29 the following:

30 (1) Allocate an aggregate amount of tax credits to all qualified
31 taxpayers under this section and Section 23608.15 for each
32 calendar year beginning on or after January 1, 2004, in an amount
33 equal to the sum of the estimated amount of the increase of sales
34 and use tax revenue provided to the Employment Development
35 Department pursuant to Section 7105 for the calendar year and the
36 amount of that department’s costs to administer this section.

37 (2) For each calendar year, allocate to each qualified taxpayer
38 a credit amount computed as follows:

39 (A) Divide the total amount paid or incurred during the
40 calendar year by a qualified taxpayer for qualified health care



1 coverage for the agricultural employee and the employee's
2 dependents by the sum of all the amounts so paid or incurred by
3 all qualified taxpayers during the calendar year for qualified health
4 care coverage.

5 (B) Multiply the total amount to be allocated for the calendar
6 year pursuant to paragraph (1) by the number calculated under
7 subparagraph (A) and round the result to the nearest dollar.

8 (C) Allocate to the taxpayer a credit in an amount equal to the
9 amount calculated under subparagraph (B).

10 (3) Provide written notification to each qualified taxpayer of
11 his or her credit amount by February 28 following the end of the
12 calendar year for which the credit is allocated.

13 (4) Provide an annual list to the Franchise Tax Board,
14 preferably on computer readable form, and in the form and manner
15 agreed upon by the Franchise Tax Board and the Employment
16 Development Department, of qualified taxpayers and amount of
17 credit allocated to each.

18 (5) Notify all known employers of agricultural employees
19 regarding the availability of the credit.

20 (6) Send each known employer of agricultural employees an
21 application to participate in the credit allocation for each taxable
22 year to which this section applies.

23 (7) Promulgate rules or regulations as deemed necessary to
24 implement its duties under this section.

25 (e) In the case where the credit allowed by this section exceeds
26 the "net tax," the excess may be carried over to reduce the "net
27 tax" in the following year, and the succeeding five years if
28 necessary, until the credit is exhausted.

29 (f) Any taxpayer that willfully fails to supply any information
30 under this section with the intent to evade any tax imposed by this
31 part, or who, willfully and with like intent, makes, renders, signs,
32 or verifies any false statement or application under this section or
33 supplies any false or fraudulent information under this section, is
34 punishable as provided by Section 19706, except that the fine
35 imposed may be up to treble the amount specified by Section
36 19706.

37 (g) The Employment Development Department may charge
38 each qualified taxpayer applying for the credit a fee toward that
39 department's costs of administering the credit.



1 (h) The Franchise Tax Board, with the cooperation of the
2 Employment Development Department, shall report annually to
3 the Legislature regarding the utilization of the tax credits under
4 this section.

5 SEC. 8. Section 23608.15 is added to the Revenue and
6 Taxation Code, to read:

7 23608.15. (a) For each taxable year beginning on or after
8 January 1, 2004, there shall be allowed as a credit against the
9 “tax,” as defined in Section 23036, to a qualified taxpayer who
10 provides qualified health care coverage to its agricultural
11 employees.

12 (b) The amount of the credit allowed to a qualified taxpayer
13 under subdivision (a) for a taxable year shall be an amount
14 allocated to that taxpayer by the Employment Development
15 Department pursuant to subdivision (d) for the calendar year in
16 which the taxable year begins.

17 (c) For purposes of this section:

18 (1) “Agricultural employee” means an employee as defined in
19 subdivision (b) of Section 1140.4 of the Labor Code.

20 (2) “Qualified health care coverage” ~~means health care~~
21 ~~coverage equivalent to a health care service plan under the~~
22 ~~Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2~~
23 ~~(commencing with Section 1340) of Division 2 of the Health and~~
24 ~~Safety Code), or to a plan that would qualify under the Employee~~
25 ~~Retirement Income Security Act of 1974 (P.L. 93-406), as~~
26 ~~amended, and provides substantially the same minimum benefits~~
27 ~~as required under the Knox-Keene Health Care Service Plan Act~~
28 ~~of 1975; means any of the following:~~

29 (A) *Any health care coverage that meets the minimum*
30 *requirements set forth in Chapter 2.2 (commencing with Section*
31 *1340) of Division 2 of the Health and Safety Code.*

32 (B) *A group health insurance policy, as defined in subdivision*
33 *(b) of Section 106 of the Insurance Code, that covers hospital,*
34 *surgical, and medical care expenses, provided the maximum*
35 *out-of-pocket costs for insureds do not exceed the maximum*
36 *out-of-pocket costs for enrollees of health care service plans*
37 *providing benefits under a preferred provider organization policy.*
38 *For purposes of this section, a group health insurance policy shall*
39 *not include Medicare supplement, vision-only, dental-only, and*
40 *Champus-supplement insurance. For purposes of this section, a*



1 *group health insurance policy shall not include hospital indemnity,*
2 *accident-only, and specified disease insurance that pays benefits*
3 *on a fixed benefit, cash-payment-only basis.*

4 (C) *Any Taft-Hartley health and welfare fund or any other*
5 *lawful collective bargaining agreement which provides for health*
6 *and welfare coverage for collective bargaining unit or other*
7 *employees thereby covered.*

8 (D) *Any employer sponsored group health plan meeting the*
9 *requirements of the federal Employee Retirement Income Security*
10 *Act of 1974, provided it meets the benefits required under*
11 *subparagraph (A) or (B) of this paragraph.*

12 (3) “Qualified taxpayer” means a taxpayer who either
13 employs agricultural employees directly or is a labor contractor
14 that employs agricultural employees for use by farmers, who does
15 both of the following:

16 (A) Pays or incurs at least 80 percent of the cost of qualified
17 health care coverage for those employees.

18 (B) Applies to the Employment Development Department, in
19 the form and manner prescribed by that department, pursuant to
20 subdivision (d) for the credit allowed pursuant to this section. A
21 qualified taxpayer will be eligible for the credit for a taxable year
22 only if a completed application for the calendar year is filed with
23 the Employment Development Department on or before the
24 January 31 following the end of the calendar year for which the
25 credit is allocated.

26 (d) The Employment Development Department shall do all of
27 the following:

28 (1) Allocate an aggregate amount of tax credits to all qualified
29 taxpayers under this section and Section 17053.15 for each
30 calendar year beginning on or after January 1, 2004, in an amount
31 equal to the sum of the estimated amount of the increase of sales
32 and use tax revenue provided to the Employment Development
33 Department pursuant to Section 7105 for the calendar year and the
34 amount of that department’s costs to administer this section.

35 (2) For each calendar year, allocate to each qualified taxpayer
36 a credit amount computed as follows:

37 (A) Divide the total amount paid or incurred during the
38 calendar year by a qualified taxpayer for qualified health care
39 coverage for the agricultural employee and the employee’s
40 dependents by the sum of all the amounts so paid or incurred by



1 all qualified taxpayers during the calendar year for qualified health
2 care coverage.

3 (B) Multiply the total amount to be allocated for the calendar
4 year pursuant to paragraph (1) by the number calculated under
5 subparagraph (A) and round the result to the nearest dollar.

6 (C) Allocate to the taxpayer a credit in an amount equal to the
7 amount calculated under subparagraph (B).

8 (3) Provide written notification to each qualified taxpayer of
9 his or her credit amount by February 28 following the end of the
10 calendar year for which the credit is allocated.

11 (4) Provide an annual list to the Franchise Tax Board,
12 preferably on computer readable form, and in the form and manner
13 agreed upon by the Franchise Tax Board and the Employment
14 Development Department, of qualified taxpayers and amount of
15 credit allocated to each.

16 (5) Notify all known employers of agricultural employees
17 regarding the availability of the credit.

18 (6) Send each known employer of agricultural employees an
19 application to participate in the credit allocation for each taxable
20 year to which this section applies.

21 (7) Promulgate rules or regulations as deemed necessary to
22 implement its duties under this section.

23 (e) In the case where the credit allowed by this section exceeds
24 the “tax,” the excess may be carried over to reduce the “tax” in
25 the following year, and the succeeding five years if necessary, until
26 the credit is exhausted.

27 (f) Any taxpayer that willfully fails to supply any information
28 under this section with the intent to evade any tax imposed by this
29 part, or who, willfully and with like intent, makes, renders, signs,
30 or verifies any false statement or application under this section or
31 supplies any false or fraudulent information under this section, is
32 punishable as provided by Section 19706, except that the fine
33 imposed may be up to treble the amount specified by Section
34 19706.

35 (g) The Employment Development Department may charge
36 each qualified taxpayer applying for the credit a fee toward that
37 department’s costs of administering the credit.

38 (h) The Franchise Tax Board, with the cooperation of the
39 Employment Development Department, shall report annually to



1 the Legislature regarding the utilization of the tax credits under
2 this section.

3 SEC. 9. This act provides for a tax levy within the meaning of
4 Article IV of the Constitution and shall go into immediate effect.
5 However, Sections 1 to 5, inclusive, of this act shall become
6 operative on January 1, 2004.

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