

**Introduced by Senator Harman**

February 22, 2007

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An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 540, as introduced, Harman. Sales and use taxes: exemption: fuel taxes.

The Sales and Use Tax Law imposes a state sales and use tax on the gross receipts from the sale of tangible personal property sold at retail in this state or on the sales price of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in this state by the purchaser.

This bill would provide, for purposes of that law, that the terms "sales price" and "gross receipts" do not include the amount of any state and federal fuel taxes, as specified.

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.

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

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

1 SECTION 1. Section 6011 of the Revenue and Taxation Code  
2 is amended to read:  
3 6011. (a) “Sales price” means the total amount for which  
4 tangible personal property is sold or leased or rented, as the case  
5 may be, valued in money, whether paid in money or otherwise,  
6 without any deduction on account of any of the following:  
7 (1) The cost of the property sold.  
8 (2) The cost of materials used, labor or service cost, interest  
9 charged, losses, or any other expenses.  
10 (3) The cost of transportation of the property, except as excluded  
11 by other provisions of this section.  
12 (b) The total amount for which the property is sold or leased or  
13 rented includes all of the following:  
14 (1) Any services that are a part of the sale.  
15 (2) Any amount for which credit is given to the purchaser by  
16 the seller.  
17 ~~(3) The amount of any tax imposed by the United States upon~~  
18 ~~producers and importers of gasoline and the amount of any tax~~  
19 ~~imposed pursuant to Part 2 (commencing with Section 7301) of~~  
20 ~~this division.~~  
21 (c) “Sales price” does not include any of the following:  
22 (1) Cash discounts allowed and taken on sales.  
23 (2) The amount charged for property returned by customers  
24 when that entire amount is refunded either in cash or credit, but  
25 this exclusion shall not apply in any instance when the customer,  
26 in order to obtain the refund, is required to purchase other property  
27 at a price greater than the amount charged for the property that is  
28 returned. For the purpose of this section, refund or credit of the  
29 entire amount shall be deemed to be given when the purchase price  
30 less rehandling and restocking costs are refunded or credited to  
31 the customer. The amount withheld for rehandling and restocking  
32 costs may be a percentage of the sales price determined by the  
33 average cost of rehandling and restocking returned merchandise  
34 during the previous accounting cycle.

1 (3) The amount charged for labor or services rendered in  
2 installing or applying the property sold.

3 (4) (A) The amount of any tax (not including, however, any  
4 manufacturers' or importers' excise tax, except as provided in  
5 subparagraph (B)) imposed by the United States upon or with  
6 respect to retail sales whether imposed upon the retailer or the  
7 consumer.

8 (B) The amount of manufacturers' or importers' excise tax  
9 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
10 Code for which the purchaser certifies that he or she is entitled to  
11 either a direct refund or credit against his or her income tax for  
12 the federal excise tax paid or for which the purchaser issues a  
13 certificate pursuant to Section 6245.5.

14 (5) The amount of any tax imposed by any city, county, city  
15 and county, or rapid transit district within the State of California  
16 upon or with respect to retail sales of tangible personal property,  
17 measured by a stated percentage of sales price or gross receipts,  
18 whether imposed upon the retailer or the consumer.

19 (6) The amount of any tax imposed by any city, county, city  
20 and county, or rapid transit district within the State of California  
21 with respect to the storage, use or other consumption in that city,  
22 county, city and county, or rapid transit district of tangible personal  
23 property measured by a stated percentage of sales price or purchase  
24 price, whether the tax is imposed upon the retailer or the consumer.

25 (7) Separately stated charges for transportation from the  
26 retailer's place of business or other point from which shipment is  
27 made directly to the purchaser, but the exclusion shall not exceed  
28 a reasonable charge for transportation by facilities of the retailer  
29 or the cost to the retailer of transportation by other than facilities  
30 of the retailer. However, if the transportation is by facilities of the  
31 retailer, or the property is sold for a delivered price, this exclusion  
32 shall be applicable solely with respect to transportation which  
33 occurs after the purchase of the property is made.

34 (8) Charges for transporting landfill from an excavation site to  
35 a site specified by the purchaser, either if the charge is separately  
36 stated and does not exceed a reasonable charge or if the entire  
37 consideration consists of payment for transportation.

38 (9) The amount of any motor vehicle, mobilehome, or  
39 commercial coach fee or tax imposed by and paid the State of  
40 California that has been added to or is measured by a stated

1 percentage of the sales or purchase price of a motor vehicle,  
2 mobilehome, or commercial coach.

3 (10) (A) The amount charged for intangible personal property  
4 transferred with tangible personal property in any technology  
5 transfer agreement, if the technology transfer agreement separately  
6 states a reasonable price for the tangible personal property.

7 (B) If the technology transfer agreement does not separately  
8 state a price for the tangible personal property, and the tangible  
9 personal property or like tangible personal property has been  
10 previously sold or leased, or offered for sale or lease, to third  
11 parties at a separate price, the price at which the tangible personal  
12 property was sold, leased, or offered to third parties shall be used  
13 to establish the retail fair market value of the tangible personal  
14 property subject to tax. The remaining amount charged under the  
15 technology transfer agreement is for the intangible personal  
16 property transferred.

17 (C) If the technology transfer agreement does not separately  
18 state a price for the tangible personal property, and the tangible  
19 personal property or like tangible personal property has not been  
20 previously sold or leased, or offered for sale or lease, to third  
21 parties at a separate price, the retail fair market value shall be equal  
22 to 200 percent of the cost of materials and labor used to produce  
23 the tangible personal property subject to tax. The remaining amount  
24 charged under the technology transfer agreement is for the  
25 intangible personal property transferred.

26 (D) For purposes of this paragraph, “technology transfer  
27 agreement” means any agreement under which a person who holds  
28 a patent or copyright interest assigns or licenses to another person  
29 the right to make and sell a product or to use a process that is  
30 subject to the patent or copyright interest.

31 (11) The amount of any tax imposed upon diesel fuel pursuant  
32 to Part 31 (commencing with Section 60001).

33 (12) (A) The amount of tax imposed by any Indian tribe within  
34 the State of California with respect to a retail sale of tangible  
35 personal property measured by a stated percentage of the sales or  
36 purchase price, whether the tax is imposed upon the retailer or the  
37 consumer.

38 (B) The exclusion authorized by subparagraph (A) shall only  
39 apply to those retailers who are in substantial compliance with this  
40 part.

1     (13) *The amount of any tax imposed under Part 2 (commencing*  
2 *with Section 7301) or Part 31 (commencing with Section 60001)*  
3 *and the amount of any tax imposed under Section 4081 of the*  
4 *Internal Revenue Code.*

5     SEC. 2. Section 6012 of the Revenue and Taxation Code is  
6 amended to read:

7     6012. (a) “Gross receipts” mean the total amount of the sale  
8 or lease or rental price, as the case may be, of the retail sales of  
9 retailers, valued in money, whether received in money or otherwise,  
10 without any deduction on account of any of the following:

11     (1) The cost of the property sold. However, in accordance with  
12 any rules and regulations as the board may prescribe, a deduction  
13 may be taken if the retailer has purchased property for some other  
14 purpose than resale, has reimbursed his or her vendor for tax which  
15 the vendor is required to pay to the state or has paid the use tax  
16 with respect to the property, and has resold the property prior to  
17 making any use of the property other than retention, demonstration,  
18 or display while holding it for sale in the regular course of business.  
19 If that deduction is taken by the retailer, no refund or credit will  
20 be allowed to his or her vendor with respect to the sale of the  
21 property.

22     (2) The cost of the materials used, labor or service cost, interest  
23 paid, losses, or any other expense.

24     (3) The cost of transportation of the property, except as excluded  
25 by other provisions of this section.

26     ~~(4) The amount of any tax imposed by the United States upon~~  
27 ~~producers and importers of gasoline and the amount of any tax~~  
28 ~~imposed pursuant to Part 2 (commencing with Section 7301) of~~  
29 ~~this division.~~

30     (b) The total amount of the sale or lease or rental price includes  
31 all of the following:

32     (1) Any services that are a part of the sale.

33     (2) All receipts, cash, credits and property of any kind.

34     (3) Any amount for which credit is allowed by the seller to the  
35 purchaser.

36     (c) “Gross receipts” do not include any of the following:

37     (1) Cash discounts allowed and taken on sales.

38     (2) Sale price of property returned by customers when that entire  
39 amount is refunded either in cash or credit, but this exclusion shall  
40 not apply in any instance when the customer, in order to obtain

1 the refund, is required to purchase other property at a price greater  
2 than the amount charged for the property that is returned. For the  
3 purpose of this section, refund or credit of the entire amount shall  
4 be deemed to be given when the purchase price less rehandling  
5 and restocking costs are refunded or credited to the customer. The  
6 amount withheld for rehandling and restocking costs may be a  
7 percentage of the sales price determined by the average cost of  
8 rehandling and restocking returned merchandise during the  
9 previous accounting cycle.

10 (3) The price received for labor or services used in installing or  
11 applying the property sold.

12 (4) (A) The amount of any tax (not including, however, any  
13 manufacturers' or importers' excise tax, except as provided in  
14 subparagraph (B)) imposed by the United States upon or with  
15 respect to retail sales whether imposed upon the retailer or the  
16 consumer.

17 (B) The amount of manufacturers' or importers' excise tax  
18 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
19 Code for which the purchaser certifies that he or she is entitled to  
20 either a direct refund or credit against his or her income tax for  
21 the federal excise tax paid or for which the purchaser issues a  
22 certificate pursuant to Section 6245.5.

23 (5) The amount of any tax imposed by any city, county, city  
24 and county, or rapid transit district within the State of California  
25 upon or with respect to retail sales of tangible personal property  
26 measured by a stated percentage of sales price or gross receipts  
27 whether imposed upon the retailer or the consumer.

28 (6) The amount of any tax imposed by any city, county, city  
29 and county, or rapid transit district within the State of California  
30 with respect to the storage, use or other consumption in that city,  
31 county, city and county, or rapid transit district of tangible personal  
32 property measured by a stated percentage of sales price or purchase  
33 price, whether the tax is imposed upon the retailer or the consumer.

34 (7) Separately stated charges for transportation from the  
35 retailer's place of business or other point from which shipment is  
36 made directly to the purchaser, but the exclusion shall not exceed  
37 a reasonable charge for transportation by facilities of the retailer  
38 or the cost to the retailer of transportation by other than facilities  
39 of the retailer. However, if the transportation is by facilities of the  
40 retailer, or the property is sold for a delivered price, this exclusion

1 shall be applicable solely with respect to transportation which  
2 occurs after the sale of the property is made to the purchaser.

3 (8) Charges for transporting landfill from an excavation site to  
4 a site specified by the purchaser, either if the charge is separately  
5 stated and does not exceed a reasonable charge or if the entire  
6 consideration consists of payment for transportation.

7 (9) The amount of any motor vehicle, mobilehome, or  
8 commercial coach fee or tax imposed by and paid to the State of  
9 California that has been added to or is measured by a stated  
10 percentage of the sales or purchase price of a motor vehicle,  
11 mobilehome, or commercial coach.

12 (10) (A) The amount charged for intangible personal property  
13 transferred with tangible personal property in any technology  
14 transfer agreement, if the technology transfer agreement separately  
15 states a reasonable price for the tangible personal property.

16 (B) If the technology transfer agreement does not separately  
17 state a price for the tangible personal property, and the tangible  
18 personal property or like tangible personal property has been  
19 previously sold or leased, or offered for sale or lease, to third  
20 parties at a separate price, the price at which the tangible personal  
21 property was sold, leased, or offered to third parties shall be used  
22 to establish the retail fair market value of the tangible personal  
23 property subject to tax. The remaining amount charged under the  
24 technology transfer agreement is for the intangible personal  
25 property transferred.

26 (C) If the technology transfer agreement does not separately  
27 state a price for the tangible personal property, and the tangible  
28 personal property or like tangible personal property has not been  
29 previously sold or leased, or offered for sale or lease, to third  
30 parties at a separate price, the retail fair market value shall be equal  
31 to 200 percent of the cost of materials and labor used to produce  
32 the tangible personal property subject to tax. The remaining amount  
33 charged under the technology transfer agreement is for the  
34 intangible personal property transferred.

35 (D) For purposes of this paragraph, “technology transfer  
36 agreement” means any agreement under which a person who holds  
37 a patent or copyright interest assigns or licenses to another person  
38 the right to make and sell a product or to use a process that is  
39 subject to the patent or copyright interest.

1 (11) The amount of any tax imposed upon diesel fuel pursuant  
2 to Part 31 (commencing with Section 60001).

3 (12) (A) The amount of tax imposed by any Indian tribe within  
4 the State of California with respect to a retail sale of tangible  
5 personal property measured by a stated percentage of the sales or  
6 purchase price, whether the tax is imposed upon the retailer or the  
7 consumer.

8 (B) The exclusion authorized by subparagraph (A) shall only  
9 apply to those retailers who are in substantial compliance with this  
10 part.

11 For purposes of the sales tax, if the retailers establish to the  
12 satisfaction of the board that the sales tax has been added to the  
13 total amount of the sale price and has not been absorbed by them,  
14 the total amount of the sale price shall be deemed to be the amount  
15 received exclusive of the tax imposed. Section 1656.1 of the Civil  
16 Code shall apply in determining whether or not the retailers have  
17 absorbed the sales tax.

18 *(13) The amount of any tax imposed under Part 2 (commencing*  
19 *with Section 7301) or Part 31 (commencing with Section 60001)*  
20 *and the amount of any tax imposed under Section 4081 of the*  
21 *Internal Revenue Code.*

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

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