

ASSEMBLY BILL

No. 1265

Introduced by Assembly Member Ma

February 27, 2009

An act 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 1265, as introduced, Ma. Sales and use taxes: consumers: itinerant vendors.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price. That law, with certain exceptions, defines a retailer as a seller who makes any retail sale of tangible personal property and as a person who makes more than 2 retail sales of tangible personal property during any 12-month period, and defines a retail sale as a sale of tangible personal property for any purpose other than resale in the regular course of business.

This bill would specify that a qualified itinerant vendor, as defined, is a consumer, and not a retailer, of tangible personal property owned by a qualified itinerant vendor, except for alcoholic beverages, so that the retail sale subject to tax is the sale of tangible personal property to the qualified itinerant vendor.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax

Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these 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: no.

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

1 SECTION 1. Section 6018.3 is added to the Revenue and
2 Taxation Code, to read:
3 6018.3. (a) A qualified itinerant vendor is a consumer of, and
4 shall not be considered a retailer of, tangible personal property
5 owned by a qualified itinerant vendor, except alcoholic beverages.
6 (b) For purposes of this section, a person is a “qualified itinerant
7 vendor” when all of the following apply:
8 (1) The person was a member of the United States Armed
9 Forces, who received an honorable discharge or a release from
10 active duty under honorable conditions.
11 (2) The person is unable to obtain a livelihood by manual labor
12 due to a service-connected disability.
13 (3) For the purposes of selling tangible personal property, the
14 person is a sole proprietor with no employees.
15 (4) The person has no permanent place of business in this state.
16 (c) For purposes of this section, “permanent place of business”
17 means any building or other permanently affixed structure,
18 including a residence, that is used in whole or in part for the
19 purpose of making sales of, or taking orders and arranging for
20 shipment of, tangible personal property. For purposes of this
21 section, “permanent place of business” does not include any
22 building or other permanently affixed structure, including a
23 residence, used for any of the following:

1 (1) The storage of tangible personal property.

2 (2) The cleaning or the storage of equipment or other property
3 used in connection with the manufacture or sale of tangible
4 personal property.

5 (d) This section shall not apply to either of the following:

6 (1) A person engaged in the business of serving meals, food, or
7 drinks to a customer at a location owned, rented, or otherwise
8 supplied by the customer.

9 (2) A person operating a vending machine.

10 SEC. 2. This act provides for a tax levy within the meaning of
11 Article IV of the Constitution and shall go into immediate effect.
12 However, the provisions of this act shall become operative on the
13 first day of the first calendar quarter commencing more than 90
14 days after the effective date of this act.