

**ASSEMBLY BILL**

**No. 2060**

---

---

**Introduced by Assembly Member Charles Calderon**

February 18, 2010

---

---

An act to add Section 6376.3 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2060, as introduced, Charles Calderon. Sales and use taxes: exemption: fixed price contract.

Existing law imposes a state sales and use tax on retailers and on the storage, use, or other consumption of tangible personal property in this state at the combined rate of 8  $\frac{1}{4}$ % of the gross receipts from the retail sale of tangible personal property in this state and of the sales price of tangible personal property purchased from any retailer for storage, use, or other consumption in this state that is stored, used, or otherwise consumed in this state.

This bill would, for any increase in the state sales and use tax rate on and after the operative date of this bill, exclude from that increased rate of tax, the sale of, and the storage, use or other consumption in this state of, tangible personal property that is subject to a fixed price contract entered into prior to the operative date of the state sales and use tax rate increase, as provided.

This bill would take effect immediately as a tax levy.

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 6376.3 is added to the Revenue and  
2 Taxation Code, to read:  
3 6376.3. On and after the operative date of an increase in the  
4 sales and use tax rate, to the date on which that increase in tax rate  
5 ceases to be operative, there is exempted from the taxes imposed  
6 by this part an amount equal to an amount that is attributable to  
7 the increased rate of tax imposed with respect to the following:  
8 (a) (1) The gross receipts from the sale of, and the storage, use,  
9 or other consumption in this state of, the following:  
10 (A) Tangible personal property, if the seller is obligated to  
11 furnish or the purchaser is obligated to purchase the property for  
12 a fixed price pursuant to a contract entered into prior to the  
13 operative date of the increase in the sales and use tax rate.  
14 (B) Materials and fixtures obligated pursuant to a construction  
15 contract entered into for a fixed price prior to the operative date  
16 of the increase in the sales and use tax rate. For purposes of this  
17 subparagraph, "fixed price" means the prices or price specified in  
18 the construction contract is a lump sum price or a stated unit price  
19 or a guaranteed maximum price, and the construction contract does  
20 not authorize an increase in price due to an increase in the rate of  
21 sales and use taxes. For purposes of this subparagraph, "guaranteed  
22 maximum price" means that the price specified in the construction  
23 contract is for actual costs plus a fixed fee, but subject to a  
24 maximum price.  
25 (2) For purposes of this subdivision, tangible personal property  
26 shall not be deemed obligated pursuant to a contract for any period  
27 of time for which any party to the contract has the right to terminate  
28 the contract upon notice, whether or not the right is exercised.  
29 (b) A lease of tangible personal property that is a continuing  
30 sale of the property for any period of time for which the lessor is  
31 obligated to lease the property for an amount fixed by the lease  
32 prior to the operative date of the increase in the sales and use tax  
33 rate. For purposes of this subdivision, the sale or lease of tangible  
34 personal property shall be deemed not to be obligated pursuant to  
35 a contract or lease for any period of time for which any party to  
36 the contract or lease has the unconditional right to terminate the  
37 contract or lease upon notice, whether or not that right is exercised.

1 (c) The possession of, or the exercise of, any right or power  
2 over tangible personal property pursuant to a lease that is a  
3 continuing purchase of the property for any period of time for  
4 which the lessee is obligated to lease the property for an amount  
5 fixed by a lease entered into prior to the operative date of the  
6 increase in the sales and use tax rate. For purposes of this  
7 subdivision, the storage, use, or other consumption of, or  
8 possession of, or exercise of any right or power over, tangible  
9 personal property shall be deemed not to be obligated pursuant to  
10 a contract or lease for any period of time for which any party to  
11 the contract or lease has the unconditional right to terminate the  
12 contract or lease upon notice, whether or not the right is exercised.

13 SEC. 2. This act provides for a tax levy within the meaning of  
14 Article IV of the Constitution and shall go into immediate effect.