

AMENDED IN ASSEMBLY MAY 18, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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 *that occurs on and or after the operative effective* 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 *under specified circumstances* 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. (a) On and after the operative date of an increase in
4 the sales and use tax rate, to the date on which that increase in tax
5 rate ceases to be operative, there is exempted from the taxes
6 imposed by this part an amount equal to an amount that is
7 attributable to the increased rate of tax imposed with respect to
8 the following:

9 ~~(a)(1)~~
10 (1) (A) The gross receipts from the sale of, and the storage, use,
11 ~~or other consumption in this state of, the following:~~

12 (A) ~~Tangible personal property, if the seller is obligated to or~~
13 ~~other consumption in this state of, tangible personal property if~~
14 ~~the seller is obligated to furnish a government entity with the~~
15 ~~property or the purchaser government entity is obligated to~~
16 ~~purchase the property for a fixed price pursuant to a contract~~
17 ~~entered into prior to the operative date of the increase in the sales~~
18 ~~and use tax rate.~~

19 (B) *For purposes of this paragraph, tangible personal property*
20 *shall not be deemed obligated pursuant to a contract for any period*
21 *of time for which any party to the contract has the right to*
22 *terminate the contract upon notice, whether or not the right is*
23 *exercised.*

24 ~~(B) Materials~~
25 (2) (A) *The gross receipts from the sale of, and the storage,*
26 *use, or other consumption in this state of, materials and fixtures*
27 *obligated pursuant to a construction contract entered into for a*
28 *fixed price prior to the operative date of the increase in the sales*
29 *and use tax rate. For purposes of this subparagraph, “fixed price”*
30 *means the prices or price specified in the construction contract is*
31 *a lump sum price or a stated unit price or a guaranteed maximum*
32 *price, and the construction contract does not authorize an increase*
33 *in price due to an increase in the rate of sales and use taxes. For*
34 *purposes of this subparagraph, “guaranteed maximum price” means*
35 *that the price specified in the construction contract is for actual*
36 *costs plus a fixed fee, but subject to a maximum price.*
37 *and fixtures obligated pursuant to a construction contract entered*
38 *into for a fixed price prior to the operative date of the increase in*

1 the sales and use tax rate. For purposes of this subparagraph, “fixed
 2 price” means the prices or price specified in the construction
 3 contract is a lump sum price or a stated unit price or a guaranteed
 4 maximum price, and the construction contract does not authorize
 5 an increase in price due to an increase in the rate of sales and use
 6 taxes. For purposes of this subparagraph, “guaranteed maximum
 7 price” means that the price specified in the construction contract
 8 is for actual costs plus a fixed fee, but subject to a maximum price.

9 (2) For purposes of this subdivision, tangible personal property
 10 shall not be deemed obligated pursuant to a contract for any period
 11 of time for which any party to the contract has the right to terminate
 12 the contract upon notice, whether or not the right is exercised.

13 (B) *This paragraph shall apply only to construction contracts*
 14 *in which a government entity is a party to the construction contract*
 15 *or where a qualified contractor is obligated to sell or furnish the*
 16 *materials and fixtures.*

17 (C) *For purposes of this paragraph:*

18 (i) *“Fixed price” means the prices or price specified in the*
 19 *construction contract is a lump sum price or a stated unit price or*
 20 *a guaranteed maximum price, and the construction contract does*
 21 *not authorize an increase in price due to an increase in the rate*
 22 *of sales and use taxes.*

23 (ii) *“Guaranteed maximum price” means that the price specified*
 24 *in the construction contract is for actual costs plus a fixed fee, but*
 25 *subject to a maximum price.*

26 (iii) *“Qualified contractor” means a construction contractor*
 27 *with no more than one million dollars (\$1,000,000) in gross*
 28 *receipts from business operations and no more than two hundred*
 29 *fifty thousand dollars (\$250,000) in taxable income in the prior*
 30 *taxable year.*

31 (iv) *Tangible personal property shall not be deemed obligated*
 32 *pursuant to a contract for any period of time for which any party*
 33 *to the contract has the right to terminate the contract upon notice,*
 34 *whether or not the right is exercised.*

35 (b)

36 (3) (A) *A lease of tangible personal property that is a continuing*
 37 *sale of the property for any period of time for which the lessor is*
 38 *obligated to lease the property for an amount fixed by the lease*
 39 *prior to the operative date of the increase in the sales and use tax*
 40 *rate. For purposes of this subdivision, the sale or lease of tangible*

1 ~~personal property shall be deemed not to be obligated pursuant to~~
 2 ~~a contract or lease for any period of time for which any party to~~
 3 ~~the contract or lease has the unconditional right to terminate the~~
 4 ~~contract or lease upon notice, whether or not that right is exercised.~~
 5 ~~rate.~~

6 *(B) This paragraph shall apply only to leases of tangible*
 7 *personal property to a government entity.*

8 *(C) For purposes of this paragraph, the sale or lease of tangible*
 9 *personal property shall be deemed not to be obligated pursuant*
 10 *to a contract or lease for any period of time for which any party*
 11 *to the contract or lease has the unconditional right to terminate*
 12 *the contract or lease upon notice, whether or not that right is*
 13 *exercised.*

14 (e)

15 (4) (A) The possession of, or the exercise of, any right or power
 16 over tangible personal property pursuant to a lease that is a
 17 continuing purchase of the property for any period of time for
 18 which the lessee is obligated to lease the property for an amount
 19 fixed by a lease entered into prior to the operative date of the
 20 increase in the sales and use tax rate. For purposes of this
 21 subdivision, the storage, use, or other consumption of, or
 22 possession of, or exercise of any right or power over, tangible
 23 personal property shall be deemed not to be obligated pursuant to
 24 a contract or lease for any period of time for which any party to
 25 the contract or lease has the unconditional right to terminate the
 26 contract or lease upon notice, whether or not the right is exercised.

27 *(B) This paragraph shall apply only to leases of tangible*
 28 *personal property to a government entity.*

29 *(b) For purposes of this section, “government entity” means*
 30 *the United States, the State of California, or any city, county, or*
 31 *city and county, community college district, school district, county*
 32 *superintendent of schools, or special district in this state.*

33 *(c) This section shall apply only to increases in the sales and*
 34 *use tax rate that occur on or after the effective date of the act*
 35 *adding this section.*

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