

**ASSEMBLY BILL**

**No. 780**

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**Introduced by Assembly Member Charles Calderon**

February 17, 2011

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An act to add Section 6376.4 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 780, 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 7¼% 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.

This bill would, for any increase or extension of counties and cities also impose a sales and use tax at a combined rate of 1% the sales and use tax rate on and after July 1, 2011, exclude from that increased rate of tax, the gross receipts from certain sales and uses of tangible personal property that are subject to a fixed price pursuant to a contract entered into prior to the operative date of the sales and use tax rate increase.

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 6376.4 is added to the Revenue and
- 2 Taxation Code, to read:

1 6376.4. On and after July 1, 2011, from the operative date of  
2 an act that increases or extends a sales and use tax rate, to the date  
3 on which the taxes imposed by that act cease to be operative, there  
4 is exempted from the taxes imposed by this part an amount equal  
5 to an amount that is attributable to the rate of tax imposed with  
6 respect to the following:

7 (a) (1) The gross receipts from the sale of, and the storage, use,  
8 or other consumption in this state of, the following:

9 (A) Tangible personal property, if the seller is obligated to  
10 furnish or the purchaser is obligated to purchase the property for  
11 a fixed price pursuant to a contract entered into prior to the  
12 operative date of the act that increased the sales and use tax rate.

13 (B) Materials and fixtures obligated pursuant to an engineering  
14 construction contract or a building construction contract entered  
15 into for a fixed price prior to the operative date of the act that  
16 increased the sales and use tax rate.

17 (2) For purposes of this subdivision, tangible personal property  
18 shall not be deemed obligated pursuant to a contract for any period  
19 of time for which any party to the contract has the unconditional  
20 right to terminate the contract upon notice, whether or not the right  
21 is exercised.

22 (b) A lease of tangible personal property that is a continuing  
23 sale of the property for any period of time for which the lessor is  
24 obligated to lease the property for an amount fixed by the lease  
25 prior to the operative date of the act that increased the sales and  
26 use tax rate. For purposes of this subdivision, the sale or lease of  
27 tangible personal property shall be deemed not to be obligated  
28 pursuant to a contract or lease for any period of time for which  
29 any party to the contract or lease has the unconditional right to  
30 terminate the contract or lease upon notice, whether or not that  
31 right is exercised.

32 (c) The possession of, or the exercise of, any right or power  
33 over tangible personal property pursuant to a lease that is a  
34 continuing purchase of the property for any period of time for  
35 which the lessee is obligated to lease the property for an amount  
36 fixed by a lease entered into prior to the operative date of the act  
37 that increased the sales and use tax rate. For purposes of this  
38 subdivision, the storage, use, or other consumption of, or  
39 possession of, or exercise of any right or power over, tangible  
40 personal property shall be deemed not to be obligated pursuant to

- 1 a contract or lease for any period of time for which any party to
- 2 the contract or lease has the unconditional right to terminate the
- 3 contract or lease upon notice, whether or not the right is exercised.

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