

AMENDED IN ASSEMBLY APRIL 25, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

AMENDED IN ASSEMBLY MARCH 7, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2540

Introduced by Assembly Member Gatto

February 24, 2012

An act to amend Section 1656.1 of the Civil Code, and to add Section 17137 to, and to add Chapter 3.8 (commencing with Section 6301) to Part 1 of Division 2 of, the Revenue and Taxation Code, relating to ~~taxation~~, add Sections 972.3 and 1016 to the Military and Veterans Code, relating to veterans, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2540, as amended, Gatto. ~~Sales and use taxes: services: income taxes: exclusion: Veterans' Home of California. California: county veterans service officers.~~

Existing law authorizes the board of supervisors of each county to appoint, prescribe the qualifications of, and fix the compensation of an officer to be titled "county veterans service officer," whose duty is to administer specified aid provided veterans, to investigate all claims, applications, or requests for aid made, and to perform any other veteran-related services as requested by the county board of supervisors. Existing law provides for the establishment and operation of the Veterans' Home of California at various sites for aged and disabled veterans who meet certain eligibility requirements.

~~(1) 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. The State Board of Equalization administers that law, the violation of which is a crime.~~

~~This bill would, on and after January 1, 2013, expand the Sales and Use Tax Law to impose a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, specified services, as defined. This bill would require all taxes, interest, and penalties imposed and all other amounts required to be paid to the state to be remitted and deposited in the same manner as required by the Sales and Use Tax Law. This bill would *continuously* appropriate, on a fiscal year basis, from these revenues that are deposited into the General Fund, \$90 million annually to the Department of Veterans Affairs for the purpose of operating specified veterans' homes in California; and \$15 million annually to the Department of Veterans Affairs for the purposes of funding county veterans service officers, \$85 million annually to the Department of Food and Agriculture for ongoing pest eradication and invasive species eradication programs, as specified, and \$20 million annually to the Department of Fish and Game for ongoing pest eradication and invasive species eradication programs, as specified; thereby making an appropriation.~~

~~By expanding the application of the Sales and Use Tax Law, the violation of which is a crime, this bill imposes a state-mandated local program.~~

~~(2) Under existing law, it is presumed that parties to a contract for the sale of tangible personal property agree to the addition of sales tax reimbursement to the sales price of goods sold at retail under specified conditions. Existing law requires the State Board of Equalization to prepare and make available a sales tax reimbursement schedule, which specifies the amount of tax to be charged as to specific sales prices.~~

~~This bill would extend that provision to a contract for the sale of specified services.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes-no.

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

1 SECTION 1. Section 972.3 is added to the Military and
2 Veterans Code, to read:

3 972.3. Notwithstanding Section 13340 of the Government Code,
4 there is hereby continuously appropriated, on a fiscal year basis,
5 fifteen million dollars (\$15,000,000) from the General Fund to the
6 Department of Veterans Affairs for the purposes of funding county
7 veterans service officers.

8 SEC. 2. Section 1016 is added to the Military and Veterans
9 Code, to read:

10 1016. Notwithstanding Section 13340 of the Government Code,
11 there is hereby continuously appropriated, on a fiscal year basis,
12 ninety million dollars (\$90,000,000) from the General Fund to the
13 Department of Veterans Affairs for the purpose of operating the
14 Veterans' Home of California, Redding; the Veterans' Home of
15 California, Fresno; the Veterans' Home of California, West Los
16 Angeles; the Veterans' Home of California, Lancaster; and the
17 Veterans' Home of California, Ventura.

18 SECTION 1. ~~Section 1656.1 of the Civil Code is amended to~~
19 ~~read:~~

20 ~~1656.1. (a) Whether a retailer may add sales tax reimbursement~~
21 ~~to the sales price of the tangible personal property or specified~~
22 ~~service sold at retail to a purchaser depends solely upon the terms~~
23 ~~of the agreement of sale. It shall be presumed that the parties agreed~~
24 ~~to the addition of sales tax reimbursement to the sales price of~~
25 ~~tangible personal property or specified service sold at retail to a~~
26 ~~purchaser if:~~

27 ~~(1) The agreement of sale expressly provides for such addition~~
28 ~~of sales tax reimbursement;~~

29 ~~(2) Sales tax reimbursement is shown on the sales check or other~~
30 ~~proof of sale; or~~

31 ~~(3) The retailer posts in his or her premises in a location visible~~
32 ~~to purchasers, or includes on a price tag or in an advertisement or~~
33 ~~other printed material directed to purchasers, a notice to the effect~~
34 ~~that reimbursement for sales tax will be added to the sales price~~
35 ~~of all items or certain items, whichever is applicable.~~

1 (b) It shall be presumed that the property or specified service,
 2 the gross receipts from the sale of which is subject to the sales tax,
 3 is sold at a price which includes tax reimbursement if the retailer
 4 posts in his or her premises, or includes on a price tag or in an
 5 advertisement (whichever is applicable) one of the following
 6 notices:

7 (1) ~~“All prices of taxable items include sales tax reimbursement~~
 8 ~~computed to the nearest mill.”~~

9 (2) ~~“The price of this item includes sales tax reimbursement~~
 10 ~~computed to the nearest mill.”~~

11 (e) (1) ~~The State Board of Equalization shall prepare and make~~
 12 ~~available for inspection and duplication or reproduction a sales~~
 13 ~~tax reimbursement schedule which shall be identical with the~~
 14 ~~following tables up to the amounts specified therein:~~

15

16 $4\frac{3}{4}$ percent

| 17 Price | 18 Tax |
|--------------------|--------|
| 18 .01— .10 | .00 |
| 19 .11— .31 | .01 |
| 20 .32— .52 | .02 |
| 21 .53— .73 | .03 |
| 22 .74— .94 | .04 |
| 23 .95— 1.15 | .05 |

24

25 5 percent

| 26 Price | 27 Tax |
|--------------------|--------|
| 27 .01— .09 | .00 |
| 28 .10— .29 | .01 |
| 29 .30— .49 | .02 |
| 30 .50— .69 | .03 |
| 31 .70— .89 | .04 |
| 32 .90— 1.09 | .05 |

33

34 $5\frac{1}{4}$ percent

| 35 Price | 36 Tax |
|-------------------|--------|
| 36 .01— .09 | .00 |
| 37 .10— .28 | .01 |
| 38 .29— .47 | .02 |
| 39 .48— .66 | .03 |
| 40 .67— .85 | .04 |

| | | |
|---|--------------------------------------|----------------|
| 1 | .35 .48 | .03 |
| 2 | .49 .62 | .04 |
| 3 | .63 .75 | .05 |
| 4 | .76 .89 | .06 |
| 5 | .90 1.03 | .07 |

7 7½ percent

| | | |
|----|---------------------------------------|----------------|
| 8 | Price | Tax |
| 9 | .01 .06 | .00 |
| 10 | .07 .19 | .01 |
| 11 | .20 .33 | .02 |
| 12 | .34 .46 | .03 |
| 13 | .47 .59 | .04 |
| 14 | .60 .73 | .05 |
| 15 | .74 .86 | .06 |
| 16 | .87 .99 | .07 |
| 17 | 1.00 1.13 | .08 |

18
19 ~~(2) Reimbursement on sales prices in excess of those shown in~~
20 ~~the schedules may be computed by applying the applicable tax~~
21 ~~rate to the sales price, rounded off to the nearest cent by eliminating~~
22 ~~any fraction less than one-half cent and increasing any fraction of~~
23 ~~one-half cent or over to the next higher cent.~~

24 ~~(3) If sales tax reimbursement is added to the sales price of~~
25 ~~tangible personal property or specified service sold at retail, the~~
26 ~~retailer shall use a schedule provided by the board, or a schedule~~
27 ~~approved by the board.~~

28 ~~(d) The presumptions created by this section are rebuttable~~
29 ~~presumptions.~~

30 ~~(e) "Specified service" means a specified service as defined in~~
31 ~~subdivision (b) of Section 6301 of the Revenue and Taxation Code.~~

32 ~~SEC. 2. Chapter 3.8 (commencing with Section 6301) is added~~
33 ~~to Part 1 of Division 2 of the Revenue and Taxation Code, to read:~~

34
35 CHAPTER 3.8. SERVICES

36
37 Article 1. General Provisions and Definitions

38
39 ~~6301. (a) Except where the context otherwise requires, the~~
40 ~~definitions given in Chapter 1 (commencing with Section 6001)~~

1 govern this chapter. For purposes of this chapter, the references
2 to tangible personal property in Chapter 1 (commencing with
3 Section 6001) shall include a specified service.

4 (b) For purposes of this chapter, “specified service” means:

5 (1) ~~Yacht and boat repair.~~

6 (2) ~~Private aircraft pilot or private jet services.~~

7 (3) ~~Astrology, tarot, and palm reading.~~

8 (4) ~~Personal shopping.~~

9 (5) ~~Party planning services not provided by the facility where
10 the party occurs.~~

11 (6) ~~Spa services provided to pets.~~

12 (7) (A) ~~Elective cosmetic surgery means the surgical reshaping
13 of normal structures on the body to improve the body image,
14 self-esteem, or appearance of an individual, or any medical
15 procedure performed on an individual which is directed at
16 improving the procedure subject’s appearance and which does not
17 meaningfully promote the proper function of the body or prevent
18 or treat illness or disease.~~

19 (B) ~~“Elective cosmetic surgery” includes, but is not limited to,
20 the following:~~

21 (i) ~~Hair transplants.~~

22 (ii) ~~Cosmetic injections.~~

23 (iii) ~~Cosmetic soft tissue fillers.~~

24 (iv) ~~Dermabrasion and chemical peel.~~

25 (v) ~~Laser hair removal.~~

26 (vi) ~~Laser skin resurfacing.~~

27 (vii) ~~Laser treatment of leg veins.~~

28 (viii) ~~Clerotherapy.~~

29 (ix) ~~Cosmetic dentistry.~~

30 (C) ~~“Elective cosmetic surgery” does not include reconstructive
31 surgery or dentistry.~~

32 (8) ~~Membership fees to private country clubs.~~

33 (9) ~~Marina services.~~

34 (10) ~~Limousine rental.~~

35 (11) ~~Nonmedical massage.~~

36 (12) ~~Pet grooming where the buyer is charged fifty dollars (\$50)
37 or more for the grooming.~~

38 (13) ~~Nonmedical personal fitness training.~~

39 (14) ~~Access to the facilities of a ski resort through the imposition
40 of a charge.~~

1 ~~(15) Access to storage facilities, not including storage facilities~~
2 ~~used for the storage of food or self-service storage facilities,~~
3 ~~through the imposition of a charge of one thousand dollars (\$1,000)~~
4 ~~a month or more.~~

5 ~~(16) Furniture repair.~~

6 ~~(17) Watch repair.~~

7 ~~(18) Support activities for metal mining.~~

8 ~~(19) Passenger charter-party carriers as defined in Chapter 8~~
9 ~~(commencing with Section 5351) of Division 2 of the Public~~
10 ~~Utilities Code.~~

11 ~~(20) Access to live theater productions through the purchase of~~
12 ~~a ticket or membership fees or dues.~~

13 ~~(21) Access to the facilities of a billiard parlor through the~~
14 ~~imposition of a charge.~~

15 ~~(22) Access to private, telephonic chat lines through the~~
16 ~~imposition of a charge to callers.~~

17 ~~6302. (a) For purposes of this part, the place of the sale or~~
18 ~~purchase of a specified service is the place where the act~~
19 ~~constituting the sale or purchase of the specified service occurs.~~

20 ~~(b) If the seller delivers the specified service at the seller's place~~
21 ~~of business, the place where the act constituting the sale or purchase~~
22 ~~of the service occurs shall be deemed to be at the seller's place of~~
23 ~~business.~~

24 ~~(c) If paragraph (b) does not apply, the place where the act~~
25 ~~constituting the sale or purchase occurs shall be deemed to be the~~
26 ~~address of the purchaser as indicated by the seller's business~~
27 ~~records, if the records are maintained in the ordinary course of the~~
28 ~~seller's business and if the seller uses that address in good faith.~~

29 ~~(d) If paragraphs (b) and (c) do not apply, the place where the~~
30 ~~act constituting the sale or purchase occurs shall be deemed to be~~
31 ~~the address indicated on the purchaser's payment instrument, if~~
32 ~~the seller uses that address in good faith.~~

33
34 ~~Article 2. Imposition and Collection of Tax~~

35
36 ~~6305. In addition to the taxes imposed by this part, for the~~
37 ~~privilege of selling specified services at retail a tax is hereby~~
38 ~~imposed upon all retailers at a rate of 7.5 percent of the gross~~
39 ~~receipts of any retailer from the sale of all specified services sold~~
40 ~~at retail in this state on or after January 1, 2013.~~

1 ~~6306. In addition to the taxes imposed by this part, an excise~~
 2 ~~tax is hereby imposed on the storage, use, or other consumption~~
 3 ~~in this state of specified services purchased from any retailer on~~
 4 ~~or after January 1, 2013, for storage, use, or other consumption in~~
 5 ~~this state at a rate of 7.5 percent of the sales price of the specified~~
 6 ~~services.~~

7 ~~6307. (a) Section 6055, regarding worthless and charged off~~
 8 ~~accounts, shall apply to this chapter. Except where the context~~
 9 ~~otherwise requires, for purposes of this chapter, the references in~~
 10 ~~that section to tangible personal property shall include a specified~~
 11 ~~service.~~

12 ~~(b) Section 6203.5, regarding worthless and charged off~~
 13 ~~accounts, shall apply to this chapter. Except where the context~~
 14 ~~otherwise requires, for purposes of this chapter, the references in~~
 15 ~~that section to tangible personal property shall include a specified~~
 16 ~~service.~~

17 ~~6308. (a) Section 6204, regarding retailer debt, shall apply to~~
 18 ~~this chapter. Except where the context otherwise requires, for~~
 19 ~~purposes of this chapter, the references in that section to tangible~~
 20 ~~personal property shall include a specified service.~~

21 ~~(b) Section 6205, regarding advertising that tax will be assumed,~~
 22 ~~shall apply to this chapter. Except where the context otherwise~~
 23 ~~requires, for purposes of this chapter, the references in that section~~
 24 ~~to tangible personal property shall include a specified service.~~

25 ~~(c) Section 6206, regarding separate statement of price and tax,~~
 26 ~~shall apply to this chapter. Except where the context otherwise~~
 27 ~~requires, for purposes of this chapter, the references in that section~~
 28 ~~to tangible personal property shall include a specified service.~~

29
 30 ~~Article 3. Permits and Registration, Prescriptions, and Resale~~
 31 ~~Certificates~~

32
 33 ~~6310. (a) Except where the context otherwise requires, Article~~
 34 ~~2 (commencing with Section 6066) of Chapter 2, regarding permits,~~
 35 ~~shall apply to this chapter. For purposes of this chapter, the~~
 36 ~~references to tangible personal property in Article 2 (commencing~~
 37 ~~with Section 6066) of Chapter 2 shall include a specified service.~~

38 ~~(b) Except where the context otherwise requires, Article 2~~
 39 ~~(commencing with Section 6225) of Chapter 3, regarding~~
 40 ~~registration, shall apply to this chapter. For purposes of this chapter,~~

1 the references to tangible personal property in Article 2
2 (commencing with Section 6225) of Chapter 3 shall include a
3 specified service.

4 6311. (a) Except where the context otherwise requires, Article
5 3 (commencing with Section 6091) of Chapter 2, regarding
6 presumptions and resale certificates, shall apply to this chapter.
7 For purposes of this chapter, the references to tangible personal
8 property in Article 3 (commencing with Section 6091) of Chapter
9 2 shall include a specified service.

10 (b) Except where the context otherwise requires, Article 3
11 (commencing with Section 6241) of Chapter 3, regarding
12 presumptions and resale certificates, shall apply to this chapter.
13 For purposes of this chapter, the references to tangible personal
14 property in Article 3 (commencing with Section 6241) of Chapter
15 3 shall include a specified service.

16
17 Article 4. Exemptions

18
19 6315. Except where the context otherwise requires, Chapter 4
20 (commencing with Section 6351), regarding exemptions, shall
21 apply to this chapter. For purposes of this chapter, any references
22 to tangible personal property in Chapter 4 (commencing with
23 Section 6351) shall include a specified service.

24
25 Article 5. Determinations

26
27 6320. Except where the context otherwise requires, Chapter 5
28 (commencing with Section 6451), regarding determinations, shall
29 apply to this chapter. For purposes of this chapter, any references
30 to tangible personal property in Chapter 5 (commencing with
31 Section 6451) shall include a specified service.

32
33 Article 6. Collection of Tax

34
35 6325. Except where the context otherwise requires, Chapter 6
36 (commencing with Section 6701), regarding collection of tax, shall
37 apply to this chapter. For purposes of this chapter, any references
38 to tangible personal property in Chapter 6 (commencing with
39 Section 6701) shall include a specified service.

Article 7. ~~Overpayments and Refunds~~

6330. ~~Except where the context otherwise requires, Chapter 7 (commencing with Section 6901), regarding determinations, shall apply to this chapter. For purposes of this chapter, any references to tangible personal property in Chapter 7 (commencing with Section 6901) shall include a specified service.~~

Article 8. ~~Administration~~

6335. ~~Except where the context otherwise requires, Chapter 8 (commencing with Section 7051), regarding administration, shall apply to this chapter. For purposes of this chapter, any references to tangible personal property in Chapter 8 (commencing with Section 7051) shall include a specified service.~~

Article 9. ~~Disposition of Proceeds~~

6340. ~~(a) All fees, taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state under this chapter shall be remitted and deposited in the same manner as required by Section 7101.~~

~~(b) Notwithstanding Section 13340 of the Government Code, there is hereby annually appropriated, on a fiscal year basis, ninety million dollars (\$90,000,000) from the General Fund, from the revenues deposited pursuant to subdivision (a) that are transferred to the General Fund, pursuant to subdivision (b) of Section 7102, to the Department of Veterans Affairs for the purpose of operating the Veterans' Home of California, Redding; the Veterans' Home of California, Fresno; the Veterans' Home of California, West Los Angeles; the Veterans' Home of California, Lancaster; and the Veterans' Home of California, Ventura.~~

~~(c) Notwithstanding Section 13340 of the Government Code, there is hereby annually appropriated, on a fiscal year basis, fifteen million dollars (\$15,000,000) from the General Fund, from the revenues deposited pursuant to subdivision (a) that are transferred to the General Fund, pursuant to subdivision (b) of Section 7102, to the Department of Veterans Affairs for the purposes of funding county veterans service officers.~~

1 ~~(d) Notwithstanding Section 13340 of the Government Code,~~
 2 ~~there is hereby annually appropriated, on a fiscal year basis,~~
 3 ~~eighty-five million dollars (\$85,000,000) from the General Fund,~~
 4 ~~from the revenues deposited pursuant to subdivision (a) that are~~
 5 ~~transferred to the General Fund, pursuant to subdivision (b) of~~
 6 ~~Section 7102, to the Department of Food and Agriculture for~~
 7 ~~ongoing pest eradication and invasive species eradication programs,~~
 8 ~~including, but not limited to, ongoing asian citrus psyllid~~
 9 ~~(ACP)/huanglongbing (HLB) eradication efforts.~~

10 ~~(e) Notwithstanding Section 13340 of the Government Code,~~
 11 ~~there is hereby annually appropriated, on a fiscal year basis, twenty~~
 12 ~~million dollars (\$20,000,000) from the General Fund, from the~~
 13 ~~revenues deposited pursuant to subdivision (a) that are transferred~~
 14 ~~to the General Fund, pursuant to subdivision (b) of Section 7102,~~
 15 ~~to the Department of Fish and Game for ongoing pest eradication~~
 16 ~~and invasive species eradication programs, including, but not~~
 17 ~~limited to, ongoing asian citrus psyllid (ACP)/huanglongbing~~
 18 ~~(HLB) eradication efforts.~~

19
 20 **Article 10. Violations**

21
 22 ~~6345. Chapter 10 (commencing with Section 7152), regarding~~
 23 ~~violations, shall apply to this chapter. For purposes of this chapter,~~
 24 ~~any references to tangible personal property in Chapter 10~~
 25 ~~(commencing with Section 7152) shall include a specified service.~~

26
 27 **Article 11. Res Judicata**

28
 29 ~~6348. Chapter 11 (commencing with Section 7176), regarding~~
 30 ~~res judicata, shall apply to this chapter. For purposes of this chapter,~~
 31 ~~any references to tangible personal property in Chapter 11~~
 32 ~~(commencing with Section 7176) shall include a specified service.~~

33 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
 34 ~~Section 6 of Article XIII B of the California Constitution because~~
 35 ~~the only costs that may be incurred by a local agency or school~~
 36 ~~district will be incurred because this act creates a new crime or~~
 37 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
 38 ~~for a crime or infraction, within the meaning of Section 17556 of~~
 39 ~~the Government Code, or changes the definition of a crime within~~

- 1 ~~the meaning of Section 6 of Article XIII B of the California~~
- 2 ~~Constitution.~~

O