

Assembly Bill No. 2618

Passed the Assembly May 29, 2012

Chief Clerk of the Assembly

Passed the Senate August 13, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 6092.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, Ma. Sales and use taxes: auction: vehicles.

The Sales and Use Tax Law presumes that all proceeds from retail sales are subject to tax until the contrary is established. The burden of proving a sale of tangible personal property is not a retail sale subject to tax is on the seller unless the seller takes a resale certificate in good faith from a person engaged in the business of selling tangible personal property who holds a permit under that law. Under that law, a person engaged in the business of making retail sales at auction of tangible personal property owned by others is a retailer. That law generally provides that retail sales of vehicles subject to registration under the Vehicle Code are subject to sales tax when sold by a person licensed or certificated under the Vehicle Code and subject to use tax, collected by the Department of Motor Vehicles, when sold by a person not so licensed or certificated. A vehicle not registered under the Vehicle Code, such as a salvage vehicle, is not subject to the special rules for registered vehicles.

This bill would provide that a licensed dismantler that sells specified vehicles, motorhomes, or commercial coaches subject to registration or qualification under the Health and Safety Code or the Vehicle Code, and salvage certificate vehicles, or a person making those sales at auction, is presumed to be making a sale at retail, subject to tax and not a sale for resale. This bill would provide that the seller may rebut this presumption by taking a resale certificate that includes specified information from a licensed dealer, dismantler, automotive repair dealer, or scrap metal processor. This bill would allow a qualified person that does not timely obtain a resale certificate to use alternative methods, prescribed by the State Board of Equalization, to verify the transaction is a valid sale for resale.

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. Existing law

authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 6092.5 is added to the Revenue and Taxation Code, to read:

6092.5. (a) Every qualified person making any sale of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of any salvage certificate vehicle as defined in Section 11515 of the Vehicle Code, is presumed to be making a sale at retail and not a sale for resale. The presumption may be rebutted by taking a resale certificate from any of the following:

(1) A person that certifies it is licensed, registered, regulated, or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler.

(2) A person that certifies it is licensed, registered, regulated, or certificated under the Business and Professions Code as an automotive repair dealer, or is qualified as a scrap metal processor as described in the Vehicle Code.

(3) A person that certifies it is licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, automotive repairer, or scrap metal processor.

(b) A qualified person shall not accept a resale certificate from any person except as provided in subdivision (a).

(c) (1) In addition to the requirements of Sections 6093 and 6243, the certificate shall include the license or registration number of the dealer, dismantler, or automotive repair dealer, as applicable. If the purchaser is not required to hold a seller's permit because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of the seller's permit number. The certificate issued by a purchaser pursuant to this section shall be substantially in such form as the board may prescribe.

(2) A qualified person that does not timely obtain a resale certificate as provided in this section may use alternative methods as prescribed by the board to rebut the presumption provided in subdivision (a).

(d) For the purposes of this section, a "qualified person" means a person making a sale at auction or a dismantler licensed under the Vehicle Code.

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

Approved _____, 2012

Governor