

Introduced by Senator Correa

February 17, 2011

An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 516, as introduced, Correa. Sales and use taxes: exclusion: trade-in motorcycle.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale of tangible personal property sold at retail in this state, or on the sales price of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in this state. That law defines the terms “gross receipts” and “sales price.”

This bill would provide, for purposes of that law, that the terms “gross receipts” and “sales price” do not include the value of a motorcycle traded in for a new motorcycle, if the value of the trade-in motorcycle is separately stated on the new motorcycle invoice or bill of sale or similar document provided to the purchaser.

The Bradley-Burns Uniform 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, and 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 the Sales and Use Tax Law are incorporated into these laws. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state

shall not reimburse counties and cities for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 6011 of the Revenue and Taxation Code
2 is amended to read:

3 6011. (a) “Sales price” means the total amount for which
4 tangible personal property is sold or leased or rented, as the case
5 may be, valued in money, whether paid in money or otherwise,
6 without any deduction on account of any of the following:

7 (1) The cost of the property sold.
8 (2) The cost of materials used, labor or service cost, interest
9 charged, losses, or any other expenses.
10 (3) The cost of transportation of the property, except as excluded
11 by other provisions of this section.

12 (b) The total amount for which the property is sold or leased or
13 rented includes all of the following:

14 (1) Any services that are a part of the sale.
15 (2) Any amount for which credit is given to the purchaser by
16 the seller.
17 (3) The amount of any tax imposed by the United States upon
18 producers and importers of gasoline and the amount of any tax
19 imposed pursuant to Part 2 (commencing with Section 7301) of
20 this division.

21 (c) “Sales price” does not include any of the following:

22 (1) Cash discounts allowed and taken on sales.
23 (2) The amount charged for property returned by customers
24 when that entire amount is refunded either in cash or credit, but
25 this exclusion shall not apply in any instance when the customer,
26 in order to obtain the refund, is required to purchase other property
27 at a price greater than the amount charged for the property that is
28 returned. For the purpose of this section, refund or credit of the
29 entire amount shall be deemed to be given when the purchase price
30 less rehandling and restocking costs are refunded or credited to
31 the customer. The amount withheld for rehandling and restocking

1 costs may be a percentage of the sales price determined by the
2 average cost of rehandling and restocking returned merchandise
3 during the previous accounting cycle.

4 (3) The amount charged for labor or services rendered in
5 installing or applying the property sold.

6 (4) (A) The amount of any tax (not including, however, any
7 manufacturers' or importers' excise tax, except as provided in
8 subparagraph (B)) imposed by the United States upon or with
9 respect to retail sales whether imposed upon the retailer or the
10 consumer.

11 (B) The amount of manufacturers' or importers' excise tax
12 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
13 Code for which the purchaser certifies that he or she is entitled to
14 either a direct refund or credit against his or her income tax for
15 the federal excise tax paid or for which the purchaser issues a
16 certificate pursuant to Section 6245.5.

17 (5) The amount of any tax imposed by any city, county, city
18 and county, or rapid transit district within the State of California
19 upon or with respect to retail sales of tangible personal property,
20 measured by a stated percentage of sales price or gross receipts,
21 whether imposed upon the retailer or the consumer.

22 (6) The amount of any tax imposed by any city, county, city
23 and county, or rapid transit district within the State of California
24 with respect to the storage, use or other consumption in that city,
25 county, city and county, or rapid transit district of tangible personal
26 property measured by a stated percentage of sales price or purchase
27 price, whether the tax is imposed upon the retailer or the consumer.

28 (7) Separately stated charges for transportation from the
29 retailer's place of business or other point from which shipment is
30 made directly to the purchaser, but the exclusion shall not exceed
31 a reasonable charge for transportation by facilities of the retailer
32 or the cost to the retailer of transportation by other than facilities
33 of the retailer. However, if the transportation is by facilities of the
34 retailer, or the property is sold for a delivered price, this exclusion
35 shall be applicable solely with respect to transportation which
36 occurs after the purchase of the property is made.

37 (8) Charges for transporting landfill from an excavation site to
38 a site specified by the purchaser, either if the charge is separately
39 stated and does not exceed a reasonable charge or if the entire
40 consideration consists of payment for transportation.

1 (9) The amount of any motor vehicle, mobilehome, or
2 commercial coach fee or tax imposed by and paid to the State of
3 California that has been added to or is measured by a stated
4 percentage of the sales or purchase price of a motor vehicle,
5 mobilehome, or commercial coach.

6 (10) (A) The amount charged for intangible personal property
7 transferred with tangible personal property in any technology
8 transfer agreement, if the technology transfer agreement separately
9 states a reasonable price for the tangible personal property.

10 (B) If the technology transfer agreement does not separately
11 state a price for the tangible personal property, and the tangible
12 personal property or like tangible personal property has been
13 previously sold or leased, or offered for sale or lease, to third
14 parties at a separate price, the price at which the tangible personal
15 property was sold, leased, or offered to third parties shall be used
16 to establish the retail fair market value of the tangible personal
17 property subject to tax. The remaining amount charged under the
18 technology transfer agreement is for the intangible personal
19 property transferred.

20 (C) If the technology transfer agreement does not separately
21 state a price for the tangible personal property, and the tangible
22 personal property or like tangible personal property has not been
23 previously sold or leased, or offered for sale or lease, to third
24 parties at a separate price, the retail fair market value shall be equal
25 to 200 percent of the cost of materials and labor used to produce
26 the tangible personal property subject to tax. The remaining amount
27 charged under the technology transfer agreement is for the
28 intangible personal property transferred.

29 (D) For purposes of this paragraph, “technology transfer
30 agreement” means any agreement under which a person who holds
31 a patent or copyright interest assigns or licenses to another person
32 the right to make and sell a product or to use a process that is
33 subject to the patent or copyright interest.

34 (11) The amount of any tax imposed upon diesel fuel pursuant
35 to Part 31 (commencing with Section 60001).

36 (12) (A) The amount of tax imposed by any Indian tribe within
37 the State of California with respect to a retail sale of tangible
38 personal property measured by a stated percentage of the sales or
39 purchase price, whether the tax is imposed upon the retailer or the
40 consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

(13) (A) *The value of a motorcycle traded in for a new motorcycle if the value of the trade-in motorcycle is separately stated on the new motorcycle invoice or bill of sale or similar document provided to the purchaser.*

(B) *“Motorcycle,” for the purposes of this paragraph, means a motorcycle as defined in Section 400 of the Vehicle Code.*

SEC. 2. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) “Gross receipts” mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

1 (c) “Gross receipts” do not include any of the following:

2 (1) Cash discounts allowed and taken on sales.

3 (2) Sale price of property returned by customers when that entire
4 amount is refunded either in cash or credit, but this exclusion shall
5 not apply in any instance when the customer, in order to obtain
6 the refund, is required to purchase other property at a price greater
7 than the amount charged for the property that is returned. For the
8 purpose of this section, refund or credit of the entire amount shall
9 be deemed to be given when the purchase price less rehandling
10 and restocking costs are refunded or credited to the customer. The
11 amount withheld for rehandling and restocking costs may be a
12 percentage of the sales price determined by the average cost of
13 rehandling and restocking returned merchandise during the
14 previous accounting cycle.

15 (3) The price received for labor or services used in installing or
16 applying the property sold.

17 (4) (A) The amount of any tax (not including, however, any
18 manufacturers’ or importers’ excise tax, except as provided in
19 subparagraph (B)) imposed by the United States upon or with
20 respect to retail sales whether imposed upon the retailer or the
21 consumer.

22 (B) The amount of manufacturers’ or importers’ excise tax
23 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
24 Code for which the purchaser certifies that he or she is entitled to
25 either a direct refund or credit against his or her income tax for
26 the federal excise tax paid or for which the purchaser issues a
27 certificate pursuant to Section 6245.5.

28 (5) The amount of any tax imposed by any city, county, city
29 and county, or rapid transit district within the State of California
30 upon or with respect to retail sales of tangible personal property
31 measured by a stated percentage of sales price or gross receipts
32 whether imposed upon the retailer or the consumer.

33 (6) The amount of any tax imposed by any city, county, city
34 and county, or rapid transit district within the State of California
35 with respect to the storage, use or other consumption in that city,
36 county, city and county, or rapid transit district of tangible personal
37 property measured by a stated percentage of sales price or purchase
38 price, whether the tax is imposed upon the retailer or the consumer.

39 (7) Separately stated charges for transportation from the
40 retailer’s place of business or other point from which shipment is

1 made directly to the purchaser, but the exclusion shall not exceed
2 a reasonable charge for transportation by facilities of the retailer
3 or the cost to the retailer of transportation by other than facilities
4 of the retailer. However, if the transportation is by facilities of the
5 retailer, or the property is sold for a delivered price, this exclusion
6 shall be applicable solely with respect to transportation which
7 occurs after the sale of the property is made to the purchaser.

8 (8) Charges for transporting landfill from an excavation site to
9 a site specified by the purchaser, either if the charge is separately
10 stated and does not exceed a reasonable charge or if the entire
11 consideration consists of payment for transportation.

12 (9) The amount of any motor vehicle, mobilehome, or
13 commercial coach fee or tax imposed by and paid to the State of
14 California that has been added to or is measured by a stated
15 percentage of the sales or purchase price of a motor vehicle,
16 mobilehome, or commercial coach.

17 (10) (A) The amount charged for intangible personal property
18 transferred with tangible personal property in any technology
19 transfer agreement, if the technology transfer agreement separately
20 states a reasonable price for the tangible personal property.

21 (B) If the technology transfer agreement does not separately
22 state a price for the tangible personal property, and the tangible
23 personal property or like tangible personal property has been
24 previously sold or leased, or offered for sale or lease, to third
25 parties at a separate price, the price at which the tangible personal
26 property was sold, leased, or offered to third parties shall be used
27 to establish the retail fair market value of the tangible personal
28 property subject to tax. The remaining amount charged under the
29 technology transfer agreement is for the intangible personal
30 property transferred.

31 (C) If the technology transfer agreement does not separately
32 state a price for the tangible personal property, and the tangible
33 personal property or like tangible personal property has not been
34 previously sold or leased, or offered for sale or lease, to third
35 parties at a separate price, the retail fair market value shall be equal
36 to 200 percent of the cost of materials and labor used to produce
37 the tangible personal property subject to tax. The remaining amount
38 charged under the technology transfer agreement is for the
39 intangible personal property transferred.

(D) For purposes of this paragraph, “technology transfer agreement” means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

(13) (A) *The value of a motorcycle traded in for a new motorcycle if the value of the trade-in motorcycle is separately stated on the new motorcycle invoice or bill of sale or similar document provided to the purchaser.*

(B) *“Motorcycle,” for the purposes of this paragraph, means a motorcycle as defined in Section 400 of the Vehicle Code.*

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.