

AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 1396

Introduced by Senator Dutton

(Principal coauthor: Assembly Member Beth Gaines)

February 24, 2012

An act to amend Sections ~~18152 and 18152.5~~ 6011, 6012, 7360, and 60050 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1396, as amended, Dutton. ~~Income taxes: gross income. Sales and use taxes: excise taxes: fuel.~~

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 a tax, measured by the sales price, on the storage, use, or other consumption of tangible personal property in this state." That law defines the terms "gross receipts" and "sales price."

This bill would exclude from the terms "gross receipts" and "sales price" the amount charged at retail for gasoline and diesel fuels in excess of \$3.88 or \$3.52 per gallon, respectively, as provided.

Existing law imposes a sales and use tax and an excise tax on gasoline and diesel fuels and requires the State Board of Equalization to annually modify both the gasoline and diesel excise tax rates on a going-forward basis so that the taxes imposed on gasoline and diesel fuels, as described above, are revenue neutral.

This bill would require the State Board of Equalization to reduce, but not increase, certain excise tax rates on gasoline and diesel fuels to maintain revenue neutrality.

This bill would declare that it is to take effect immediately as an urgency statute.

~~The Personal Income Tax Law in modified conformity with federal income tax laws provides that gross income does not include 50% of any gain from the sale or exchange of qualified small business stock, as defined, held for more than 5 years, as provided.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

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

1 less rehandling and restocking costs are refunded or credited to
2 the customer. The amount withheld for rehandling and restocking
3 costs may be a percentage of the sales price determined by the
4 average cost of rehandling and restocking returned merchandise
5 during the previous accounting cycle.

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

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

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

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

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

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

39 (8) Charges for transporting landfill from an excavation site to
40 a site specified by the purchaser, either if the charge is separately

1 stated and does not exceed a reasonable charge or if the entire
2 consideration consists of payment for transportation.

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

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

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

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

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

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

38 (12) (A) The amount of tax imposed by any Indian tribe within
39 the State of California with respect to a retail sale of tangible
40 personal property measured by a stated percentage of the sales or

1 purchase price, whether the tax is imposed upon the retailer or the
2 consumer.

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

6 (13) (A) *The amount charged at the retail level for gasoline,*
7 *including federally imposed and state-imposed excise taxes, but*
8 *excluding state-imposed sales and use taxes, in excess of three*
9 *dollars and eighty-eight cents (\$3.88) per gallon.*

10 (B) *The amount charged at the retail level for diesel fuel,*
11 *including federally imposed excise taxes, but excluding*
12 *state-imposed excise, sales, and use taxes, in excess of three dollars*
13 *and fifty-two cents (\$3.52) per gallon.*

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

16 6012. (a) “Gross receipts” mean the total amount of the sale
17 or lease or rental price, as the case may be, of the retail sales of
18 retailers, valued in money, whether received in money or otherwise,
19 without any deduction on account of any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (6) The amount of any tax imposed by any city, county, city
38 and county, or rapid transit district within the State of California
39 with respect to the storage, use or other consumption in that city,
40 county, city and county, or rapid transit district of tangible personal

1 property measured by a stated percentage of sales price or purchase
2 price, whether the tax is imposed upon the retailer or the consumer.

3 (7) Separately stated charges for transportation from the
4 retailer's place of business or other point from which shipment is
5 made directly to the purchaser, but the exclusion shall not exceed
6 a reasonable charge for transportation by facilities of the retailer
7 or the cost to the retailer of transportation by other than facilities
8 of the retailer. However, if the transportation is by facilities of the
9 retailer, or the property is sold for a delivered price, this exclusion
10 shall be applicable solely with respect to transportation which
11 occurs after the sale of the property is made to the purchaser.

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

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

21 (10) (A) The amount charged for intangible personal property
22 transferred with tangible personal property in any technology
23 transfer agreement, if the technology transfer agreement separately
24 states a reasonable price for the tangible personal property.

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

35 (C) If the technology transfer agreement does not separately
36 state a price for the tangible personal property, and the tangible
37 personal property or like tangible personal property has not been
38 previously sold or leased, or offered for sale or lease, to third
39 parties at a separate price, the retail fair market value shall be equal
40 to 200 percent of the cost of materials and labor used to produce

1 the tangible personal property subject to tax. The remaining amount
2 charged under the technology transfer agreement is for the
3 intangible personal property transferred.

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

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

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

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

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

26 (13) (A) *The amount charged at the retail level for gasoline,*
27 *including federally imposed and state-imposed excise taxes, but*
28 *excluding state-imposed sales and use taxes, in excess of three*
29 *dollars and eighty-eight cents (\$3.88) per gallon.*

30 (B) *The amount charged at the retail level for diesel fuel,*
31 *including federally imposed excise taxes, but excluding*
32 *state-imposed excise, sales, and use taxes, in excess of three dollars*
33 *and fifty-two cents (\$3.52) per gallon.*

34 *SEC. 3. Section 7360 of the Revenue and Taxation Code is*
35 *amended to read:*

36 7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed
37 upon each gallon of fuel subject to the tax in Sections 7362, 7363,
38 and 7364.

39 (2) If the federal fuel tax is reduced below the rate of nine cents
40 (\$0.09) per gallon and federal financial allocations to this state for

1 highway and exclusive public mass transit guideway purposes are
2 reduced or eliminated correspondingly, the tax rate imposed by
3 paragraph (1), on and after the date of the reduction, shall be
4 recalculated by an amount so that the combined state rate under
5 paragraph (1) and the federal tax rate per gallon equal twenty-seven
6 cents (\$0.27).

7 (3) If any person or entity is exempt or partially exempt from
8 the federal fuel tax at the time of a reduction, the person or entity
9 shall continue to be so exempt under this section.

10 (b) (1) (A) On and after July 1, 2010, *and before July 1, 2012*,
11 in addition to the tax imposed by subdivision (a), a tax is hereby
12 imposed upon each gallon of motor vehicle fuel, other than aviation
13 gasoline, subject to the tax in Sections 7362, 7363, and 7364 in an
14 amount equal to seventeen and three-tenths cents (\$0.173) per
15 gallon.

16 (B) *On and after July 1, 2012, in addition to the tax imposed*
17 *by subdivision (a), a tax is hereby imposed upon each gallon of*
18 *motor vehicle fuel, other than aviation gasoline, subject to tax in*
19 *Sections 7362, 7363, and 7364 in an amount equal to seventeen*
20 *and seven-tenths cents (\$0.177) per gallon.*

21 (2) For the ~~2011-12~~ 2013-14 fiscal year and each fiscal year
22 thereafter, the board shall, on or before March 1 of the fiscal year
23 immediately preceding the applicable fiscal year, ~~adjust the rate~~
24 ~~in paragraph (1) in that manner as to generate an amount of revenue~~
25 ~~that will equal the amount of revenue loss attributable to the~~
26 ~~exemption provided by Section 6357.7, based on estimates made~~
27 ~~by the board~~ *estimate the amount of revenue loss attributable to*
28 *the exemption provided by Section 6357.7 and the revenue*
29 *attributable to the tax imposed by subparagraph (B) of paragraph*
30 *(1). If the estimated revenue attributable to the tax imposed by*
31 *subparagraph (B) of paragraph (1) exceeds the revenue loss*
32 *attributable to the exemption provided by Section 6357.7, the rate*
33 *imposed by subparagraph (B) of paragraph (1) shall be adjusted*
34 *to generate the amount of revenue that will be equal to the revenue*
35 *loss during the state's next fiscal year, and that rate shall be*
36 *effective during the state's next fiscal year.*

37 (3) ~~In order to maintain revenue neutrality for each year,~~
38 ~~beginning~~ *Beginning* with the rate adjustment on or before March
39 1, ~~2012~~ 2014, the adjustment under paragraph (2) shall also take
40 into account the extent to which the actual amount of revenues

1 derived pursuant to this subdivision ~~and, as applicable, Section~~
2 ~~7361.1, and~~ the revenue loss attributable to the exemption provided
3 by Section 6357.7 resulted in a net revenue gain or loss for the
4 fiscal year ending prior to the rate adjustment date on or before
5 March 1.

6 (4) The intent of paragraphs (2) and (3) is to ensure that the ~~act~~
7 ~~adding this subdivision and Section 6357.7 does not produce a net~~
8 ~~revenue gain in state taxes rate imposed pursuant to this~~
9 ~~subdivision does not exceed the rate specified in subparagraph~~
10 ~~(B) of paragraph (1).~~

11 *SEC. 4. Section 60050 of the Revenue and Taxation Code is*
12 *amended to read:*

13 60050. (a) (1) A tax of eighteen cents (\$0.18) is hereby
14 imposed upon each gallon of diesel fuel subject to the tax in
15 Sections 60051, 60052, and 60058.

16 (2) If the federal fuel tax is reduced below the rate of fifteen
17 cents (\$0.15) per gallon and federal financial allocations to this
18 state for highway and exclusive public mass transit guideway
19 purposes are reduced or eliminated correspondingly, the tax rate
20 imposed by paragraph (1), including any reduction or adjustment
21 pursuant to subdivision (b), on and after the date of the reduction,
22 shall be increased by an amount so that the combined state rate
23 under paragraph (1) and the federal tax rate per gallon equal what
24 it would have been in the absence of the federal reduction.

25 (3) If any person or entity is exempt or partially exempt from
26 the federal fuel tax at the time of a reduction, the person or entity
27 shall continue to be exempt under this section.

28 (b) (1) On July 1, 2011, the tax rate specified in paragraph (1)
29 of subdivision (a) shall be reduced to thirteen cents (\$0.13) and
30 every July 1 thereafter shall be adjusted pursuant to paragraphs
31 (2) and (3).

32 (2) For the 2012–13 fiscal year and each fiscal year thereafter,
33 the board shall, on or before March 1 of the fiscal year immediately
34 preceding the applicable fiscal year, *estimate the revenue loss*
35 *attributable to the rate reduction in paragraph (1) and the revenue*
36 *gain attributable to Sections 6051.8 and 6201.8. If the revenue*
37 *gain attributable to Sections 6051.8 and 6201.8 exceeds the*
38 *revenue loss attributable to the rate reduction attributable to*
39 *paragraph (1), the board shall adjust the rate reduction in*
40 *paragraph (1) in that manner as to result in a revenue loss*

1 attributable to paragraph (1) that will equal the amount of revenue
2 gain attributable to Sections 6051.8 and 6201.8, based on estimates
3 made by the board, and that rate shall be effective during the state's
4 next fiscal year.

5 (3) ~~In order to maintain revenue neutrality for~~ *For* each year,
6 beginning with the rate adjustment on or before March 1, 2013,
7 the adjustment under paragraph (2) shall take into account the
8 extent to which the actual amount of revenues derived pursuant to
9 Sections 6051.8 and 6201.8 and the revenue loss attributable to
10 this subdivision resulted in a net revenue gain or loss for the fiscal
11 year ending prior to the rate adjustment date on or before March
12 1.

13 (4) The intent of paragraphs (2) and (3) is to ensure that the ~~act~~
14 ~~adding this subdivision and Sections 6051.8 and 6201.8 does not~~
15 ~~produce a net revenue gain in state taxes~~ *rate imposed beginning*
16 *with the 2012–13 fiscal year shall not exceed the rate specified in*
17 *paragraph (1).*

18 *SEC. 5. This act is an urgency statute necessary for the*
19 *immediate preservation of the public peace, health, or safety within*
20 *the meaning of Article IV of the Constitution and shall go into*
21 *immediate effect. The facts constituting the necessity are:*

22 *In order to provide tax relief related to the price of gasoline and*
23 *diesel fuel at the earliest possible date, it is necessary that this act*
24 *take effect immediately.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 24, 2012. (JR11)**