

ASSEMBLY BILL

No. 575

Introduced by Assembly Member V. Manuel Pérez

February 20, 2013

An act to amend Section 6007 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 575, as introduced, V. Manuel Pérez. Sales and use tax: retail sale: counterfeit mark: pirated intellectual property.

The Sales and Use Tax Law imposes a sales tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state under the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. For purposes of that law, a “retail sale” or “sale at retail” means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

This bill would provide that “retail sale” or “sale at retail” and “storage” or “use” also includes any sale of tangible personal property with a counterfeit mark on, or in connection with, that sale or any sale of tangible personal property that is pirated intellectual property, regardless of whether the sale is for resale in the regular course of business, as provided.

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.

Vote: 2/3. 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 6007 of the Revenue and Taxation Code
2 is amended to read:

3 6007. (a) A “retail sale” or “sale at retail” means a sale for
4 any purpose other than resale in the regular course of business in
5 the form of tangible personal property.

6 When tangible personal property is delivered by an owner or
7 former owner thereof, or by a factor or agent of that owner, former
8 owner, or factor to a consumer or to a person for redelivery to a
9 consumer, pursuant to a retail sale made by a retailer not engaged
10 in business in this state, the person making the delivery shall be
11 deemed the retailer of that property. He or she shall include the
12 retail selling price of the property in his or her gross receipts or
13 sales price.

14 (b) (1) *Notwithstanding subdivision (a), a “retail sale” or “sale*
15 *at retail” shall include any sale of tangible personal property with*
16 *a counterfeit mark on, or in connection with, that sale or any sale*
17 *of tangible personal property that is pirated intellectual property,*
18 *regardless of whether the sale is for resale in the regular course*
19 *of business.*

20 (2) *“Counterfeit mark” has the same meaning as that term is*
21 *defined in Section 2320 of Title 18 of the United States Code.*

22 (3) *“Pirated intellectual property” includes literary works, such*
23 *as novels, poems, and plays, television and films, music and sound,*
24 *artistic works, such as drawings and photographs, software, and*
25 *any other intellectual property that has been distributed without*
26 *permission from, and compensation to, the copyright owner or*
27 *that otherwise violates any of the rights of the copyright owner*
28 *specified in law. “Copyright owner,” with respect to any one of*
29 *the rights comprised in a copyright, refers to the owner of that*
30 *particular right.*

31 SEC. 2. Section 6009.2 is added to the Revenue and Taxation
32 Code, to read:

33 6009.2. Notwithstanding Sections 6008, 6009, and 6009.1,
34 “storage” and “use” each shall include any sale of tangible personal
35 property with a counterfeit mark on, or in connection with, that

1 sale or any sale of tangible personal property that is pirated
2 intellectual property, regardless of whether the sale is for resale
3 in the regular course of business.

4 (2) “Counterfeit mark” has the same meaning as that term is
5 defined in Section 2320 of Title 18 of the United States Code.

6 (3) “Pirated intellectual property” includes literary works, such
7 as novels, poems, and plays, television and films, music and sound,
8 artistic works, such as drawings and photographs, software, and
9 any other intellectual property that has been distributed without
10 permission from, and compensation to, the copyright owner or that
11 otherwise violates any of the rights of the copyright owner specified
12 in law. “Copyright owner,” with respect to any one of the rights
13 comprised in a copyright, refers to the owner of that particular
14 right.

15 SEC. 3. This act provides for a tax levy within the meaning of
16 Article IV of the Constitution and shall go into immediate effect.

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