

ASSEMBLY BILL

No. 2681

Introduced by Assembly Member Dababneh

February 21, 2014

An act to amend Section 6007 of, and to add Section 6009.2 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2681, as introduced, Dababneh. Sales and use tax: retail sale: storage use: counterfeit mark.

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 any retailer for storage, use, or other consumption in this state. Use tax does not apply if the gross receipts from the sale of tangible personal property are subject to sales tax.

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. For purposes of that law, “storage” includes any keeping or retention of tangible personal property in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state, and “use” includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

This bill would provide that “retail sale” or “sale at retail” also includes any sale by a convicted seller, as defined, of tangible personal

property with a counterfeit mark on, or in connection with, that sale, regardless of whether the sale is for resale in the regular course of business, as provided.

The bill would provide that “storage” or “use” also includes any purchase by a convicted purchaser, as defined, of tangible personal property with a counterfeit mark on, or in connection with, that purchase, regardless of whether the purchase is for resale in the regular course of business, as provided.

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

The amendments made by this bill would be 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.

Vote: $\frac{2}{3}$. 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) (1) A “retail sale” or “sale at retail” means a sale
 4 for any purpose other than resale in the regular course of business
 5 in the form of tangible personal property.
 6 ~~When~~
 7 (2) *When* tangible personal property is delivered by an owner
 8 or former owner thereof, or by a factor or agent of that owner,
 9 former owner, or factor to a consumer or to a person for redelivery
 10 to a consumer, pursuant to a retail sale made by a retailer not
 11 engaged in business in this state, the person making the delivery
 12 shall be deemed the retailer of that property. He or she shall include

1 the retail selling price of the property in his or her gross receipts
2 or sales price.

3 (b) (1) *Notwithstanding subdivision (a), a “retail sale” or “sale*
4 *at retail” shall include any sale by a convicted seller of tangible*
5 *personal property with a counterfeit mark on, or in connection*
6 *with, that sale, regardless of whether the sale is for resale in the*
7 *regular course of business.*

8 (2) *For purposes of this subdivision, all of the following shall*
9 *apply:*

10 (A) *A “convicted seller” means a person convicted of a violation*
11 *under Section 350 or 653w of the Penal Code or Section 2320 of*
12 *Title 18 of the United States Code on or after the date of sale.*

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

15 (C) *Chapter 5 (commencing with Section 17200) of Part 2 of*
16 *Division 7 of, and Article 1 (commencing with Section 17500) of*
17 *Chapter 1 of Part 3 of Division 7 of, the Business and Professions*
18 *Code, and Title 1.5 (commencing with Section 1750) of Part 4 of*
19 *Division 3 of the Civil Code shall not apply to any person other*
20 *than a convicted seller.*

21 (D) *Notwithstanding Article 2 (commencing with Section 6481)*
22 *of Chapter 5, any notice of deficiency determination to a convicted*
23 *seller shall be mailed within one year after the last day of the*
24 *calendar month following the date of conviction.*

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

27 6009.2. (a) *Notwithstanding Sections 6008, 6009, and 6009.1,*
28 *“storage” and “use” each shall include a purchase by a convicted*
29 *purchaser of tangible personal property with a counterfeit mark*
30 *on, or in connection with, that purchase, regardless of whether the*
31 *purchase is for resale in the regular course of business.*

32 (b) *“Convicted purchaser” means a person convicted of a*
33 *violation under Section 350 or 653w of the Penal Code or Section*
34 *2320 of Title 18 of the United States Code on or after the date of*
35 *purchase.*

36 (c) *For purposes of this section, Chapter 5 (commencing with*
37 *Section 17200) of Part 2 of Division 7 of, and Article 1*
38 *(commencing with Section 17500) of Chapter 1 of Part 3 of*
39 *Division 7 of, the Business and Professions Code, and Title 1.5*
40 *(commencing with Section 1750) of Part 4 of Division 3 of the*

1 Civil Code shall not apply to any person other than a convicted
2 seller.

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

5 (e) Notwithstanding Article 2 (commencing with Section 6481)
6 of Chapter 5, any notice of deficiency determination to a convicted
7 purchaser shall be mailed within one year after the last day of the
8 calendar month following the date of conviction.

9 SEC. 3. It is the intent of the Legislature that any fine imposed
10 or restitution awarded pursuant to Section 350, 653w, or 1202.4
11 of the Penal Code or Section 2320 of Title 18 of the United States
12 Code be satisfied prior to the collection of tax from convicted
13 sellers or convicted purchasers as defined in Sections 1 and 2 of
14 this act.

15 SEC. 4. 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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