

Introduced by Senator BeallFebruary 5, 2013

An act to amend Section 6151 of the Revenue and Taxation Code, and to amend Section 12306.6 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 172, as introduced, Beall. In-home supportive services: sales tax.

Existing law, the Sales and Use Tax Law, imposes a sales tax on retailers for the privilege of selling tangible personal property at retail, measured by the gross receipts from the sale of tangible personal property sold at retail in this state. A violation of specified provisions of this law is a crime. Existing law similarly imposes a sales tax on providers of support services, for the privilege of selling support services at retail, measured by the gross receipts from the sale of those services in this state at a specified rate of those gross receipts.

Existing law creates the Personal Care IHSS Quality Assurance Revenue Fund in the State Treasury, and requires the revenue from the tax, less refunds, to be deposited in the fund. The fund is continuously appropriated to the State Department of Social Services for purposes of providing specified supplementary payments to providers of in-home supportive services. Existing law requires the IHSS provider tax and related supplementary payments to be implemented no earlier than January 1, 2012 and further provides for these provisions to become operative only if a specified federal approval is granted.

This bill would make a technical, nonsubstantive change by extending the earliest implementation date for the provider tax and supplementary payment provisions from January 1, 2012, to July 1, 2012.

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

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 6151 of the Revenue and Taxation Code
2 is amended to read:

3 6151. (a) Beginning on the date for which the federal Centers
4 for Medicare and Medicaid Services approves implementation of
5 the state plan amendment described in subdivision (c) of Section
6 12306.6 of the Welfare and Institutions Code, but no earlier than
7 ~~January~~ July 1, 2012, for the privilege of selling support services
8 at retail, the sales tax is hereby extended to all providers at the
9 rate, as described in subdivision (b), of the gross receipts of any
10 provider from the sale of all support services sold at retail in this
11 state.

12 (b) The rate extended by subdivision (a) is the rate, as may be
13 amended from time to time, imposed by Article 1 (commencing
14 with Section 6051) plus the rate imposed by Section 35 of Article
15 XIII of the California Constitution for the privilege of selling
16 tangible personal property at retail in this state.

17 (c) Notwithstanding the implementation date of this article as
18 provided for in subdivision (a), no tax shall be collected pursuant
19 to this article prior to the receipt of approval by the federal Centers
20 for Medicare and Medicaid Services of the implementation of
21 Section 12306.6 of the Welfare and Institutions Code.

22 SEC. 2. Section 12306.6 of the Welfare and Institutions Code,
23 as amended by Section 36 of Chapter 47 of the Statutes of 2012,
24 is amended to read:

25 12306.6. (a) (1) Notwithstanding any other ~~provision of~~ law,
26 beginning on the date for which the federal Centers for Medicare
27 and Medicaid Services authorizes commencement of the
28 implementation of this section, but no earlier than ~~January~~ July 1,
29 2012, and concurrent with the collection of the sales tax extended
30 to support services pursuant to Article 4 (commencing with Section
31 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and
32 Taxation Code, a provider of in-home supportive services shall
33 receive a supplementary payment under this article equal to a

1 percentage, as set forth in paragraph (2), of the gross receipts, as
2 defined in subdivision (b) of Section 6150 of the Revenue and
3 Taxation Code, of the provider for the sale of in-home supportive
4 services, plus an amount described in paragraph (3) if applicable.
5 If the underlying payment for in-home supportive services that is
6 being supplemented is a Medi-Cal payment, then the supplementary
7 payment shall also be a Medi-Cal payment. Supplementary
8 payments shall be made only to those providers from whom the
9 tax imposed pursuant to Section 6151 of the Revenue and Taxation
10 Code has been collected.

11 (2) The percentage applicable to the supplementary payment
12 required by paragraph (1) shall equal the rate described in
13 subdivision (b) of Section 6151 of the Revenue and Taxation Code
14 and shall only be applied to services provided under this article,
15 including personal care option services reimbursable under the
16 Medi-Cal program.

17 (3) The supplementary payment of an individual provider whose
18 payroll withholding required for federal income tax purposes and
19 for purposes of taxation for the Social Security and Medicare
20 programs is increased due to the supplementary payment, in
21 comparison to the amounts for those purposes that would be
22 withheld without the supplementary payment, shall be increased
23 by an additional amount that is equal to the amount of this
24 additional federal withholding.

25 (b) (1) All revenues deposited in the Personal Care IHSS
26 Quality Assurance Revenue Fund established pursuant to Section
27 6168 of the Revenue and Taxation Code shall be used solely for
28 purposes of the In-Home Supportive Services program, including,
29 but not limited to, those services provided under the Medi-Cal
30 program. All supplementary payments required by this section
31 shall be paid from the Personal Care IHSS Quality Assurance
32 Revenue Fund.

33 (2) The Director of Finance shall determine the sum required
34 to be deposited in the Personal Care IHSS Quality Assurance
35 Revenue Fund to fund the initial supplementary payments from
36 the fund. As soon thereafter as reasonably possible, this sum shall
37 be transferred, in the form of a loan, from the General Fund to the
38 Personal Care IHSS Quality Assurance Revenue Fund. At the time
39 sufficient revenues have been deposited in the Personal Care IHSS
40 Quality Assurance Revenue Fund pursuant to Section 6168 of the

1 Revenue and Taxation Code to sustain the continued operation of
2 the fund for that portion of the supplementary payment described
3 in paragraph (2) of subdivision (a) plus an additional amount equal
4 to the General Fund loan made pursuant to this paragraph, plus
5 interest, the sum transferred from the General Fund, including
6 interest, shall be repaid to the General Fund. Subsequent
7 supplementary payments pursuant to this section shall be made
8 from revenue deposited in the Personal Care IHSS Quality
9 Assurance Revenue Fund pursuant to Section 6168 of the Revenue
10 and Taxation Code.

11 (3) The Department of Finance, on an ongoing basis, shall
12 determine the amount necessary to implement paragraph (3) of
13 subdivision (a), and subdivision (c) of Section 12302.2, and
14 immediately transfer this amount from the General Fund to the
15 Personal Care IHSS Quality Assurance Revenue Fund.

16 (c) (1) The Director of Health Care Services shall seek all
17 federal Medicaid approvals necessary to implement this section,
18 including using the revenues obtained pursuant to Article 4
19 (commencing with Section 6150) of Chapter 2 of Part 1 of Division
20 2 of the Revenue and Taxation Code as the nonfederal share for
21 supplementary payments. As part of that request for approval, the
22 director shall seek to make the supplementary payments effective
23 as of ~~January~~ *July* 1, 2012.

24 (2) This section shall become operative only if the federal
25 Centers for Medicare and Medicaid Services grants Medicaid
26 approvals sought pursuant to paragraph (1).

27 (3) If Medicaid approval is granted pursuant to paragraph (2),
28 within 10 days of that approval the Director of Health Care
29 Services shall notify the State Board of Equalization and the
30 appropriate fiscal and policy committees of the Legislature of the
31 approval.

32 (d) If Article 4 (commencing with Section 6150) of Chapter 2
33 of Part 1 of Division 2 of the Revenue and Taxation Code becomes
34 inoperative pursuant to subdivision (b) of Section 6170 of the
35 Revenue and Taxation Code, supplementary payments shall cease
36 to be made pursuant to subdivision (a) when all moneys in the
37 fund have been expended.

38 (e) (1) Notwithstanding the rulemaking provisions of the
39 Administrative Procedure Act, Chapter 3.5 (commencing with
40 Section 11340) of Part 1 of Division 3 of Title 2 of the Government

1 Code, the department and the State Department of Health Care
 2 Services may implement and administer this section through
 3 all-county letters or similar instruction from the department and
 4 the State Department of Health Care Services until regulations are
 5 adopted. The department and the State Department of Health Care
 6 Services shall adopt emergency regulations implementing this
 7 section no later than 12 months following the initial effective date
 8 of the supplementary payments. The department and the State
 9 Department of Health Care Services may readopt any emergency
 10 regulation authorized by this section that is the same as or
 11 substantially equivalent to an emergency regulation previously
 12 adopted under this section.

13 (2) The initial adoption of emergency regulations implementing
 14 this section and the one readoption of emergency regulations
 15 authorized by this subdivision shall be deemed an emergency and
 16 necessary for the immediate preservation of the public peace,
 17 health, safety, or general welfare. Initial emergency regulations
 18 and the one readoption of emergency regulations authorized by
 19 this section shall be exempt from review and approval by the Office
 20 of Administrative Law. The initial emergency regulations and the
 21 one readoption of emergency regulations authorized by this section
 22 shall be submitted to the Office of Administrative Law for filing
 23 with the Secretary of State and each shall remain in effect for no
 24 more than 180 days, by which time final regulations may be
 25 adopted.

26 (f) This section shall remain in effect only until the January 1
 27 following the date supplementary payments cease to be made
 28 pursuant to subdivision (d), and as of that date is repealed.

29 SEC. 3. This act is an urgency statute necessary for the
 30 immediate preservation of the public peace, health, or safety within
 31 the meaning of Article IV of the Constitution and shall go into
 32 immediate effect. The facts constituting the necessity are:

33 In order to improve public health by maximizing federal funding
 34 for the Medi-Cal program at the earliest time possible, it is
 35 necessary for this act to take effect immediately.

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