

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 323

Introduced by Senator Lara

(Principal coauthor: ~~Senator~~ *coauthors: Senators DeSaulnier and Lieu*)

(Coauthors: ~~Senators De León, Hancock, Hill, Leno, and Monning~~ *Monning, and Yee*)

(Coauthors: Assembly Members Ammiano, *Atkins*, Bloom, *Buchanan*, Eggman, Garcia, Gomez, Gordon, Lowenthal, Mitchell, and Rendon)

February 19, 2013

An act to amend Sections 6361 and 23701d of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Lara. Taxes: exemptions: prohibited discrimination.

The Sales and Use Tax Law exempts from the taxes imposed by that law the sales of food products, nonalcoholic beverages, and other tangible personal property made or produced by an organization, as defined, but only if sold on an irregular or intermittent basis and the organization's profits from the sales are used exclusively in furtherance of the purposes of the organization. The Corporation Tax Law, in modified conformity with federal income tax laws, exempts the income of various types of organizations from taxes imposed by that law.

This bill would revise the Sales and Use Tax Law exemption for those organizations, as provided. This bill would also provide that an organization that is a public charity youth organization that discriminates on the basis of gender identity, race, sexual orientation, nationality,

religion, or religious affiliation is not exempt from the taxes imposed by that law.

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 6361 of the Revenue and Taxation Code
2 is amended to read:
3 6361. (a) Any organization listed or described in subdivision
4 (b) is a consumer and shall not be considered a retailer within the
5 provisions of this part, of food products, nonalcoholic beverages,
6 or other tangible personal property made or produced by members
7 of the organization provided, however, that the organization's sales
8 are made on an irregular or intermittent basis, and that the
9 organization's profits from those sales are used exclusively in
10 furtherance of the purposes of the organization.
11 (b) For purposes of this section, "organization" includes any of
12 the following:
13 (1) Any nonprofit organization which meets all of the following
14 conditions:
15 (A) The organization qualifies for tax-exempt status under
16 Section 501(c) of the Internal Revenue Code.
17 (B) The organization's primary purpose is to provide a
18 supervised program of competitive sports for youth, or to promote
19 good citizenship in youth.
20 (C) The organization does not discriminate on the basis of
21 gender identity, race, sex, sexual orientation, nationality, religion,
22 or religious affiliation.
23 (2) (A) Any youth group sponsored by or affiliated with a
24 qualified educational institution, including, but not limited to, any
25 student activity club, athletic group, or musical group.
26 (B) For purposes of this section, "qualified educational
27 institution" means any of the following:

1 (i) Any public elementary, secondary, or vocational-technical
2 school providing education for kindergarten, grades 1 to 12,
3 inclusive, and college undergraduate programs, or any part thereof,
4 operated by state or local government.

5 (ii) Any nonprofit private educational institution providing
6 education for kindergarten, grades 1 to 12, inclusive, and college
7 undergraduate programs, or any part thereof, that meets the
8 requirements of the State Department of Education for a school.
9 “Private educational institution” means any entity providing
10 education which satisfies the requirements of state and local laws
11 pertaining to private educational institutions in effect on January
12 1, 1990, and which does not discriminate on the basis of gender
13 identity, race, sex, sexual orientation, nationality, religion, or
14 religious affiliation.

15 (3) (A) Little League, Bobby Sox, Boy Scouts, Cub Scouts,
16 Girl Scouts, Campfire, Inc., Young Men’s Christian Association,
17 Young Women’s Christian Association, Future Farmers of
18 America, Future Homemakers of America, 4-H Clubs, Distributive
19 Education Clubs of America, Future Business Leaders of America,
20 Vocational Industrial Clubs of America, Collegiate Young Farmers,
21 Boys’ Clubs, Girls’ Clubs, Special Olympics, Inc., American Youth
22 Soccer Organization, California Youth Soccer Association, North,
23 California Youth Soccer Association, South, and Pop Warner
24 football.

25 (B) An organization listed above shall not discriminate on the
26 basis of gender identity, race, sexual orientation, nationality,
27 religion, or religious affiliation.

28 (c) For purposes of this section, “irregular or intermittent” means
29 associated directly with a particular event, such as fairs, galas,
30 parades, scout-a-ramas, games, and similar activities. That term
31 includes refreshment stands or booths that are utilized at scheduled
32 events of organized leagues, but does not include storefront or
33 mobile retail outlets which ordinarily require local business
34 licenses.

35 SEC. 2. Section 23701d of the Revenue and Taxation Code is
36 amended to read:

37 23701d. (a) A corporation, community chest or trust, organized
38 and operated exclusively for religious, charitable, scientific, testing
39 for public safety, literary, or educational purposes, or to foster
40 national or international amateur sports competition (but only if

1 no part of its activities involved the provision of athletic facilities
2 or equipment), or for the prevention of cruelty to children or
3 animals, no part of the net earnings of which inures to the benefit
4 of any private shareholder or individual, no substantial part of the
5 activities of which is carrying on propaganda or otherwise
6 attempting to influence legislation, (except as otherwise provided
7 in Section 23704.5), and which does not participate in, or intervene
8 in (including the publishing or distribution of statements), any
9 political campaign on behalf of (or in opposition to) any candidate
10 for public office. An organization is not organized exclusively for
11 exempt purposes listed above unless its assets are irrevocably
12 dedicated to one or more purposes listed in this section. Dedication
13 of assets requires that in the event of dissolution of an organization
14 or the impossibility of performing the specific organizational
15 purposes the assets would continue to be devoted to exempt
16 purposes. Assets shall be deemed irrevocably dedicated to exempt
17 purposes if the articles of organization provide that upon
18 dissolution the assets will be distributed to an organization which
19 is exempt under this section or Section 501(c)(3) of the Internal
20 Revenue Code or to the federal government, or to a state or local
21 government for public purposes; or by a provision in the articles
22 of organization, satisfactory to the Franchise Tax Board; that the
23 property will be distributed in trust for exempt purposes; or by
24 establishing that the assets are irrevocably dedicated to exempt
25 purposes by operation of law. The irrevocable dedication
26 requirement shall not be a sole basis for revocation of an exempt
27 determination made by the Franchise Tax Board prior to the
28 effective date of this amendment.

29 (b) (1) In the case of a qualified amateur sports organization—

30 (A) The requirement of subdivision (a) that no part of its
31 activities involves the provision of athletic facilities or equipment
32 shall not apply.

33 (B) That organization shall not fail to meet the requirements of
34 subdivision (a) merely because its membership is local or regional
35 in nature.

36 (2) For purposes of this subdivision, “qualified amateur sports
37 organization” means any organization organized and operated
38 exclusively to foster national or international amateur sports
39 competition if that organization is also organized and operated
40 primarily to conduct national or international competition in sports

1 or to support and develop amateur athletes for national or
2 international competition in sports.

3 (c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section
4 23701, an organization organized and operated for nonprofit
5 purposes in accordance with this section shall be exempt from
6 taxes imposed by this part, except as provided in this article or in
7 Article 2 (commencing with Section 23731), upon its submission
8 to the Franchise Tax Board of one of the following:

9 (A) A copy of the determination letter or ruling issued by the
10 Internal Revenue Service recognizing the organization's exemption
11 from federal income tax under Section 501(a) of the Internal
12 Revenue Code, as an organization described in Section 501(c)(3)
13 of the Internal Revenue Code.

14 (B) A copy of the group exemption letter issued by the Internal
15 Revenue Service that states that both the central organization and
16 all of its subordinates are tax-exempt under Section 501(c)(3) of
17 the Internal Revenue Code and substantiation that the organization
18 is included in the federal group exemption letter as a subordinate
19 organization.

20 (2) Upon receipt of the documents required in subparagraph
21 (A) or (B) of paragraph (1), the Franchise Tax Board shall issue
22 an acknowledgment that the organization is exempt from taxes
23 imposed by this part, except as provided in this article or in Article
24 2 (commencing with Section 23731). The acknowledgment may
25 refer to the organization's recognition by the Internal Revenue
26 Service of exemption from federal income tax as an organization
27 described in Section 501(c)(3) of the Internal Revenue Code and,
28 if applicable, the organization's subordinate organization status
29 under a federal group exemption letter. The effective date of an
30 organization's exemption from state income tax pursuant to this
31 subdivision shall be no later than the effective date of the
32 organization's recognition of exemption from federal income tax
33 as an organization described in Section 501(c)(3) of the Internal
34 Revenue Code, or its status as a subordinate organization under a
35 federal group exemption letter, as applicable.

36 (3) If, for federal income tax purposes, an organization's
37 exemption from tax as an organization described in Section
38 501(c)(3) of the Internal Revenue Code is suspended or revoked,
39 the organization shall notify the Franchise Tax Board of the
40 suspension or revocation, in the form and manner prescribed by

1 the Franchise Tax Board. Upon notification, the board shall
2 suspend or revoke, whichever is applicable, for state income tax
3 purposes, the organization's exemption under paragraph (1) of this
4 subdivision.

5 (4) (A) This subdivision shall not be construed to prevent the
6 Franchise Tax Board from revoking the exemption of an
7 organization that is not organized or operated in accordance with
8 this chapter or Section 501(c)(3) of the Internal Revenue Code.

9 (B) *This subdivision shall not prevent the Franchise Tax Board*
10 *from confirming that an organization is in compliance with*
11 *subdivision (d) prior to issuing an acknowledgment described in*
12 *paragraph (2).*

13 (5) If the Franchise Tax Board suspends or revokes the
14 exemption of an organization pursuant to paragraph (3) or
15 *subparagraph (A) of paragraph (4)*, the exemption shall be
16 reinstated only upon compliance with Section 23701, regardless
17 of whether the organization can establish exemption under
18 paragraph (1).

19 (d) (1) Notwithstanding any other law, an organization
20 organized and operated exclusively as a public charity youth
21 organization that discriminates on the basis of gender identity,
22 race, sexual orientation, nationality, religion, or religious affiliation
23 shall not be exempt from taxes imposed by this part.

24 (2) For purposes of this subdivision, a "public charity youth
25 organization" includes, but is not limited to, those organizations
26 listed in subparagraph (A) of paragraph (3) of subdivision (b) of
27 Section 6361.

28 (e) The Franchise Tax Board may prescribe rules and regulations
29 to implement this section.

30 SEC. 3. This bill would take effect immediately as a tax levy.