

Introduced by Senator Huff

February 20, 2013

An act to amend Section 6012 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 373, as introduced, Huff. Sales and use taxes: gross receipts: definition.

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

This bill would make a technical, nonsubstantive change to the definition of the term "gross receipts."

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6012 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6012. (a) "Gross receipts" mean the total amount of the sale
- 4 or lease or rental price, as ~~the case may be~~ *applicable*, of the retail
- 5 sales of retailers, valued in money, whether received in money or
- 6 otherwise, without any deduction on account of any of the
- 7 following:

1 (1) The cost of the property sold. However, in accordance with
2 any rules and regulations as the board may prescribe, a deduction
3 may be taken if the retailer has purchased property for some other
4 purpose than resale, has reimbursed his or her vendor for tax which
5 the vendor is required to pay to the state or has paid the use tax
6 with respect to the property, and has resold the property prior to
7 making any use of the property other than retention, demonstration,
8 or display while holding it for sale in the regular course of business.
9 If that deduction is taken by the retailer, no refund or credit will
10 be allowed to his or her vendor with respect to the sale of the
11 property.

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

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

16 (4) The amount of any tax imposed by the United States upon
17 producers and importers of gasoline and the amount of any tax
18 imposed pursuant to Part 2 (commencing with Section 7301) of
19 this division.

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

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

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

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

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

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

28 (2) Sale price of property returned by customers when that entire
29 amount is refunded either in cash or credit, but this exclusion shall
30 not apply in any instance when the customer, in order to obtain
31 the refund, is required to purchase other property at a price greater
32 than the amount charged for the property that is returned. For the
33 purpose of this section, refund or credit of the entire amount shall
34 be deemed to be given when the purchase price less rehandling
35 and restocking costs are refunded or credited to the customer. The
36 amount withheld for rehandling and restocking costs may be a
37 percentage of the sales price determined by the average cost of
38 rehandling and restocking returned merchandise during the
39 previous accounting cycle.

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

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

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

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

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

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

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

38 (9) The amount of any motor vehicle, mobilehome, or
39 commercial coach fee or tax imposed by and paid to the State of
40 California that has been added to or is measured by a stated

1 percentage of the sales or purchase price of a motor vehicle,
2 mobilehome, or commercial coach.

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

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

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

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

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

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

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

1 For purposes of the sales tax, if the retailers establish to the
2 satisfaction of the board that the sales tax has been added to the
3 total amount of the sale price and has not been absorbed by them,
4 the total amount of the sale price shall be deemed to be the amount
5 received exclusive of the tax imposed. Section 1656.1 of the Civil
6 Code shall apply in determining whether or not the retailers have
7 absorbed the sales tax.

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