

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2749

Introduced by Assembly Member Brough
(Coauthor: Senator Pan)

February 19, 2016

An act to add Section 1656.5 to the Civil Code, ~~and to add Section 6012.4 to the Revenue and Taxation Code~~, relating to heavy equipment rentals.

LEGISLATIVE COUNSEL'S DIGEST

AB 2749, as amended, Brough. Heavy equipment rentals: rental ~~agreements; sales and use taxes; exclusions; agreements.~~

Existing law prescribes the manner in which contracts or agreements may be created.

This bill would establish, in a rental agreement of heavy equipment property by a qualified heavy equipment renter, a rebuttable presumption that the parties agreed to the addition of estimated personal property tax reimbursement to the rental price of heavy equipment property to a lessee if specified conditions occur, including that the rental agreement states that the estimated personal property tax reimbursement amount charged is the amount estimated by the qualified heavy equipment renter owed for personal property tax on that heavy equipment property for a specified ~~lien date~~, *date* and that any amounts in excess of the actual amount of personal property taxes owed on the heavy equipment property will be remitted to the State Board of Equalization for deposit into the state General Fund.

This bill would require, on or before October 1, 2017, and on or before every October 1 each year thereafter, a qualified heavy equipment renter

to file a return with the State Board of Equalization, in the form and manner as prescribed by the board, if the qualified heavy equipment renter has collected estimated personal property tax reimbursement amounts in excess of the actual amount of personal property tax owed on the heavy equipment property for the previous fiscal year lien date. The bill would require the qualified heavy equipment renter to remit that excess estimated personal property tax reimbursement amount with the return and would require the board to deposit those amounts into the General Fund.

~~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 of tangible personal property purchased from a retailer for the storage, use, or other consumption in this state measured by sales price. That law defines the terms “gross receipts” and “sales price.”~~

~~This bill would, on and after January 1, 2017, exclude from the terms “gross receipts” and “sales price” the amount of any personal property tax reimbursement added to the rental price of heavy equipment property if the rental agreement meets the conditions of the presumption created by this bill.~~

~~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 to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are incorporated into these laws.~~

~~Existing law requires the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.~~

~~This bill would provide that notwithstanding those provisions, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.~~

Vote: majority. 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 1656.5 is added to the Civil Code, to
2 read:

1 1656.5. (a) Whether a qualified heavy equipment renter may
2 add estimated personal property tax reimbursement to the rental
3 price of heavy equipment property to a lessee depends solely upon
4 the terms of the rental agreement. It shall be presumed that the
5 parties agreed to the addition of estimated personal property tax
6 reimbursement to the rental price of heavy equipment property to
7 a lessee if all of the following conditions occur:

8 (1) The rental agreement expressly provides for the addition of
9 estimated personal property tax reimbursement.

10 (2) Estimated personal property tax reimbursement is separately
11 stated and charged on the rental agreement.

12 (3) The rental agreement states that the estimated personal
13 property tax reimbursement amount charged is the amount
14 estimated by the qualified heavy equipment renter owed for
15 personal property tax on that heavy equipment property for a
16 specified lien date, and that any amounts in excess of the actual
17 amount of personal property taxes owed on the heavy equipment
18 property will be remitted to the State Board of Equalization for
19 deposit into the state General Fund.

20 (4) The estimated personal property tax reimbursement amount
21 shall not exceed 0.75 percent of the rental price of the heavy
22 equipment property.

23 (b) The presumptions created by this section are rebuttable
24 presumptions.

25 (c) On or before October 1, 2017, and on or before every
26 October 1 each year thereafter, a qualified heavy equipment renter
27 shall file a return with the State Board of Equalization, in the form
28 and manner as prescribed by the board, if the qualified heavy
29 equipment renter has collected estimated personal property tax
30 reimbursement amounts in excess of the actual amount of personal
31 property tax owed on the heavy equipment property for the
32 previous fiscal year lien date. The qualified heavy equipment renter
33 shall remit that excess estimated personal property tax
34 reimbursement amount with the return and the board shall deposit
35 those amounts into the General Fund.

36 (d) For purposes of this section, all of the following definitions
37 shall apply:

38 (1) "Heavy equipment property" means rental property of a
39 qualified heavy equipment renter.

1 (2) “Qualified heavy equipment renter” means a renter that
2 satisfies both of the following:

3 (A) The principal business of the renter is the rental of qualified
4 heavy equipment.

5 (B) The renter is engaged in a line of business described in Code
6 532412 or 532310 of the North American Industry Classification
7 System published by the United States Office of Management and
8 Budget, 2012 edition.

9 (3) “Rental price” means the total amount of the charge for
10 renting the heavy equipment property, excluding any separately
11 stated charges that are not rental charges, including, but not limited
12 to, separately stated charges for delivery and pickup fees, damage
13 waivers, environmental mitigation fees, sales tax reimbursement,
14 or use taxes.

15 ~~SEC. 2. Section 6012.4 is added to the Revenue and Taxation~~
16 ~~Code, to read:~~

17 ~~6012.4. On and after January 1, 2017, for purposes of this part,~~
18 ~~“gross receipts” and “sales price” do not include the amount of~~
19 ~~any personal property tax reimbursement added to the rental price~~
20 ~~of heavy equipment property when the rental agreement meets the~~
21 ~~conditions specified in paragraphs (1) to (4), inclusive, of~~
22 ~~subdivision (a) of Section 1656.5 of the Civil Code for purposes~~
23 ~~of the presumption established by that section.~~

24 ~~SEC. 3. Notwithstanding Section 2230 of the Revenue and~~
25 ~~Taxation Code, no appropriation is made by this act and the state~~
26 ~~shall not reimburse any local agency for any sales and use tax~~
27 ~~revenues lost by it under this act.~~