

AMENDED IN ASSEMBLY MAY 21, 1996

AMENDED IN ASSEMBLY APRIL 9, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

## ASSEMBLY BILL

**No. 3435**

**Introduced by Assembly Member Bowen  
(Coauthor: Assembly Member Villaraigosa)**

February 23, 1996

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An act to amend Sections 6011 and 6012 of, and to add Chapter 3.2 (commencing with Section 7287.15) to Part 1.7 of Division 2 of, the Revenue and Taxation Code, relating to local taxation.

### LEGISLATIVE COUNSEL'S DIGEST

AB 3435, as amended, Bowen. Local munitions tax.

The Bradley-Burns Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law provide for the specified imposition of sales, transactions, and use taxes by cities, counties, and local districts, which are administered by the State Board of Equalization.

This bill would authorize a city, county, or city and county to levy a special tax, as defined, by ordinance, approved by a  $\frac{2}{3}$  vote of the electors, at specified rates on the sale at retail within its jurisdiction of ~~firearms, as defined, and~~ munitions, as defined, *except as provided*. It would require that any ordinance levying a tax pursuant to this bill provide that the local entity imposing the tax shall contract with the State Board of Equalization to administer and enforce the tax. It

would require the tax to be collected by every retailer of a taxed item and would require the retailer to remit the tax to the board. It would require the board to allocate the tax revenues, in part, to the board for its administrative costs, with the balance to the levying local entities, and would require each local entity to expend those revenues for purposes of trauma care, hospital care, juvenile delinquency prevention programs, gang intervention programs, or gun safety programs, as specified. It would also provide that certain existing provisions with respect to local taxes shall, to the extent feasible and subject to specified exceptions, govern the administration of any tax so imposed.

The Sales and Use Tax Law imposes a state sales and use tax on the gross receipts from the sale of tangible personal property sold at retail in this state and on the sales price of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in this state by the purchaser.

This bill would provide, for purposes of that law, that the terms “sales price” and “gross receipts” do not include the amount of any tax imposed upon ~~firearms or~~ munitions by a city, county, or city and county pursuant to the 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. This act shall be known and may be cited  
2 as the “Local Hospital Emergency Room Financing Act  
3 of 1996.”

4 SEC. 2. Section 6011 of the Revenue and Taxation  
5 Code is amended to read:

6 6011. (a) “Sales price” means the total amount for  
7 which tangible personal property is sold or leased or  
8 rented, as the case may be, valued in money, whether  
9 paid in money or otherwise, without any deduction on  
10 account of any of the following:

11 (1) The cost of the property sold.

12 (2) The cost of materials used, labor or service cost,  
13 interest charged, losses, or any other expenses.

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

(b) The total amount for which the property is sold or leased or rented includes all of the following:

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

(2) Any amount for which credit is given to the purchaser by the seller.

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

(c) "Sales price" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

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

(3) The amount charged for labor or services rendered in installing or applying the property sold.

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

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

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

7 (6) The amount of any tax imposed by any city, county,  
8 city and county, or rapid transit district within the State  
9 of California with respect to the storage, use or other  
10 consumption in that city, county, city and county, or rapid  
11 transit district of tangible personal property measured by  
12 a stated percentage of sales price or purchase price,  
13 whether the tax is imposed upon the retailer or the  
14 consumer.

15 (7) Separately stated charges for transportation from  
16 the retailer's place of business or other point from which  
17 shipment is made directly to the purchaser, but the  
18 exclusion shall not exceed a reasonable charge for  
19 transportation by facilities of the retailer or the cost to the  
20 retailer of transportation by other than facilities of the  
21 retailer. However, if the transportation is by facilities of  
22 the retailer, or the property is sold for a delivered price,  
23 this exclusion shall be applicable solely with respect to  
24 transportation which occurs after the purchase of the  
25 property is made.

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

31 (9) The amount of any motor vehicle, mobilehome, or  
32 commercial coach fee or tax imposed by and paid the  
33 State of California that has been added to or is measured  
34 by a stated percentage of the sales or purchase price of a  
35 motor vehicle, mobilehome, or commercial coach.

36 (10) (A) The amount charged for intangible personal  
37 property transferred with tangible personal property in  
38 any technology transfer agreement, if the technology  
39 transfer agreement separately states a reasonable price  
40 for the tangible personal property.

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

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

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

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

32 (12) The amount of any tax imposed upon ~~firearms or~~  
33 munitions by a city, county, or city and county pursuant  
34 to Chapter 3.2 (commencing with Section 7287.15) of  
35 Part 1.7.

36 SEC. 3. Section 6012 of the Revenue and Taxation  
37 Code is amended to read:

38 6012. (a) “Gross receipts” mean the total amount of  
39 the sale or lease or rental price, as the case may be, of the  
40 retail sales of retailers, valued in money, whether

1 received in money or otherwise, without any deduction  
2 on account of any of the following:

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

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

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

20 (4) The amount of any tax imposed by the United  
21 States upon producers and importers of gasoline and the  
22 amount of any tax imposed pursuant to Part 2  
23 (commencing with Section 7301) of this division.

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

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

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

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

30 (c) "Gross receipts" do not include any of the  
31 following:

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

33 (2) Sale price of property returned by customers when  
34 that entire amount is refunded either in cash or credit,  
35 but this exclusion shall not apply in any instance when the  
36 customer, in order to obtain the refund, is required to  
37 purchase other property at a price greater than the  
38 amount charged for the property that is returned. For the  
39 purpose of this section, refund or credit of the entire  
40 amount shall be deemed to be given when the purchase

1 price less rehandling and restocking costs are refunded or  
2 credited to the customer. The amount withheld for  
3 rehandling and restocking costs may be a percentage of  
4 the sales price determined by the average cost of  
5 rehandling and restocking returned merchandise during  
6 the previous accounting cycle.

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

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

14 (B) The amount of manufacturers' or importers'  
15 excise tax imposed pursuant to Section 4081 or 4091 of the  
16 Internal Revenue Code for which the purchaser certifies  
17 that he or she is entitled to either a direct refund or credit  
18 against his or her income tax for the federal excise tax  
19 paid.

20 (5) The amount of any tax imposed by any city, county,  
21 city and county, or rapid transit district within the State  
22 of California upon or with respect to retail sales of  
23 tangible personal property measured by a stated  
24 percentage of sales price or gross receipts whether  
25 imposed upon the retailer or the consumer.

26 (6) The amount of any tax imposed by any city, county,  
27 city and county, or rapid transit district within the State  
28 of California with respect to the storage, use or other  
29 consumption in that city, county, city and county, or rapid  
30 transit district of tangible personal property measured by  
31 a stated percentage of sales price or purchase price,  
32 whether the tax is imposed upon the retailer or the  
33 consumer.

34 (7) Separately stated charges for transportation from  
35 the retailer's place of business or other point from which  
36 shipment is made directly to the purchaser, but the  
37 exclusion shall not exceed a reasonable charge for  
38 transportation by facilities of the retailer or the cost to the  
39 retailer of transportation by other than facilities of the  
40 retailer. However, if the transportation is by facilities of

1 the retailer, or the property is sold for a delivered price,  
2 this exclusion shall be applicable solely with respect to  
3 transportation which occurs after the sale of the property  
4 is made to the purchaser.

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

10 (9) The amount of any motor vehicle, mobilehome, or  
11 commercial coach fee or tax imposed by and paid to the  
12 State of California that has been added to or is measured  
13 by a stated percentage of the sales or purchase price of a  
14 motor vehicle, mobilehome, or commercial coach.

15 (10) (A) The amount charged for intangible personal  
16 property transferred with tangible personal property in  
17 any technology transfer agreement, if the technology  
18 transfer agreement separately states a reasonable price  
19 for the tangible personal property.

20 (B) If the technology transfer agreement does not  
21 separately state a price for the tangible personal  
22 property, and the tangible personal property or like  
23 tangible personal property has been previously sold or  
24 leased, or offered for sale or lease, to third parties at a  
25 separate price, the price at which the tangible personal  
26 property was sold, leased, or offered to third parties shall  
27 be used to establish the retail fair market value of the  
28 tangible personal property subject to tax. The remaining  
29 amount charged under the technology transfer  
30 agreement is for the intangible personal property  
31 transferred.

32 (C) If the technology transfer agreement does not  
33 separately state a price for the tangible personal  
34 property, and the tangible personal property or like  
35 tangible personal property has not been previously sold  
36 or leased, or offered for sale or lease, to third parties at a  
37 separate price, the retail fair market value shall be equal  
38 to 200 percent of the cost of materials and labor used to  
39 produce the tangible personal property subject to tax.  
40 The remaining amount charged under the technology

1 transfer agreement is for the intangible personal  
2 property transferred.

3 (D) For purposes of this paragraph, “technology  
4 transfer agreement” means any agreement under which  
5 a person who holds a patent or copyright interest assigns  
6 or licenses to another person the right to make and sell a  
7 product or to use a process that is subject to the patent or  
8 copyright interest.

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

11 For purposes of the sales tax, if the retailers establish to  
12 the satisfaction of the board that the sales tax has been  
13 added to the total amount of the sale price and has not  
14 been absorbed by them, the total amount of the sale price  
15 shall be deemed to be the amount received exclusive of  
16 the tax imposed. Section 1656.1 of the Civil Code shall  
17 apply in determining whether or not the retailers have  
18 absorbed the sales tax.

19 (12) The amount of any tax imposed upon ~~firearms or~~  
20 ~~munitions~~ by a city, county, or city and county pursuant  
21 to Chapter 3.2 (commencing with Section 7287.15) of  
22 Part 1.7.

23 SEC. 4. Chapter 3.2. (commencing with Section  
24 7287.15) is added to Part 1.7 of Division 2 of the Revenue  
25 and Taxation Code, to read:

26

27 CHAPTER 3.2 LOCAL ~~FIREARMS AND~~ MUNITIONS TAX

28

29 7287.15. (a) In addition to any other tax authorized  
30 by this division, the governing body of a city, county, or  
31 city and county may levy a special tax (as defined in  
32 Section 53721 of the Government Code) by an ordinance  
33 approved by two-thirds of the electors voting on the  
34 measure on the privilege of selling at retail within its  
35 jurisdiction ~~either or both of the following:~~

36 ~~(1) All firearms, at a rate of one dollar (\$1), or a~~  
37 ~~multiple thereof, per firearm, but not to exceed a rate of~~  
38 ~~ten dollars (\$10) per firearm, or at a proportionate rate~~  
39 ~~for any other quantity or fraction thereof.~~



1 ~~(2) All~~ all munitions, at a rate of one cent (\$0.01), or a  
2 multiple thereof, per munition, but not to exceed a rate  
3 of ten cents (\$0.10) per munition, or at a proportionate  
4 rate for any other quantity or fraction thereof.

5 (b) For purposes of this chapter:

6 ~~(1) “Firearms” means weapons from which a~~  
7 ~~projectile is fired by gunpowder.~~

8 ~~(2)~~

9 (1) “Munitions” means projectiles with their fuses,  
10 propelling charges, or primers fired from weapons, and  
11 any of the individual components thereof, as specified in  
12 the local ordinance.

13 ~~(3)~~

14 (2) “Trauma center” means a trauma facility, as  
15 defined in Article 2.5 (commencing with Section  
16 1798.160) of Chapter 6 of Division 2 of the Health and  
17 Safety Code, and rules or regulations promulgated  
18 thereunder.

19 ~~(4)~~

20 (3) “Trauma treatment” means treatment of one or  
21 more types of potentially seriously injured persons that is  
22 provided by a trauma center.

23 7287.16. (a) Any ordinance levying a tax pursuant to  
24 this chapter shall provide that the city, county, or city and  
25 county, shall contract prior to the effective date of the  
26 ordinance with the State Board of Equalization to  
27 perform all functions incident to the administration or  
28 operation of the ordinance for as long as the city, county,  
29 or city and county, has an operative ordinance enacted  
30 pursuant to this chapter.

31 (b) Any ordinance levying a tax pursuant to this  
32 chapter shall take effect immediately upon its approval  
33 by the voters, but shall become operative on the first day  
34 of the first calendar quarter commencing more than 110  
35 days after voter approval of the ordinance.

36 7287.17. ~~Every~~ (a) *Except as provided in subdivision*  
37 *(b), every* retailer engaged in business in a city, county,  
38 or city and county that has an operative ordinance  
39 enacted pursuant to this chapter shall, at the time of  
40 making the sales of munitions, collect the tax from the

1 consumer and give to the consumer a receipt therefor in  
2 the manner and form prescribed by the State Board of  
3 Equalization.

4 *(b) Subdivision (a) does not apply to either of the*  
5 *following:*

6 *(1) Any delivery, transfer, or sale of munitions made*  
7 *to any person properly identified as a full-time paid peace*  
8 *officer, as defined in Chapter 4.5 (commencing with*  
9 *Section 830) of Title 3 of Part 2 of the Penal Code, who is*  
10 *authorized by his or her employer to carry firearms while*  
11 *performing his or her duties.*

12 *(2) Any delivery, transfer, or sale of munitions made*  
13 *to an authorized representative of a city, city and county,*  
14 *county, or state or federal government for use by that*  
15 *governmental entity.*

16 7287.18. All revenues collected pursuant to a tax  
17 authorized by this chapter shall be remitted to the State  
18 Board of Equalization and allocated by the board as  
19 follows:

20 (a) First, for reimbursement of the board, pursuant to  
21 the contract between the board and the city, county, or  
22 city and county, of the reasonable costs of administering  
23 and enforcing the ordinance on behalf of the local entity.

24 (b) Second, for transmission not later than April 15 of  
25 each calendar year to each city, county, or city and county  
26 that has an operative ordinance enacted pursuant to this  
27 chapter, in an amount corresponding to the amount of  
28 revenues derived within that jurisdiction from a tax  
29 levied by that ordinance.

30 Moneys transmitted to a city, county, or city and county  
31 pursuant to this section shall only be expended by that  
32 local entity for purposes of trauma care, hospital care,  
33 juvenile delinquency prevention programs, gang  
34 intervention programs, or gun safety programs. These  
35 moneys shall be used to supplement, not supplant,  
36 existing funding levels for those purposes and programs.  
37 Moneys transmitted to a county may be transferred by  
38 the county to any city within the county's boundaries, to  
39 be expended or used by the city only as specified in this  
40 paragraph.

1 7287.19. The State Board of Equalization shall  
2 administer and enforce this chapter, and may prescribe,  
3 adopt, and enforce rules and regulations for those  
4 purposes pursuant to Chapter 3.5 (commencing with  
5 Section 11340) of Part 1 of Division 3 of Title 2 of the  
6 Government Code. The board may prescribe the extent  
7 to which any rule or regulation shall be applied without  
8 retroactive effect.

9 7287.20. Except as provided in Section 7287.21, to the  
10 extent feasible or practicable, Chapter 5 (commencing  
11 with Section 6451), Chapter 6 (commencing with Section  
12 6701), Chapter 7 (commencing with Section 6901), and  
13 Chapter 8 (commencing with Section 7051) of Part 1,  
14 shall govern determinations, collection of tax,  
15 overpayments and refunds, and administration under this  
16 chapter.

17 7287.21. (a) The return and payment of the tax  
18 imposed by this chapter is due and payable to the board  
19 annually on or before February 15 following the end of  
20 the calendar year during which the tax was collected.

21 (b) For purposes of computing interest due on any  
22 amount of tax not paid when due, interest shall be  
23 computed to the 15th day of each succeeding month.

24 (c) Except in the case of fraud, intent to evade this  
25 chapter or accompanying rules and regulations, or failure  
26 to make a return, every notice of a deficiency  
27 determination shall be mailed within three years after the  
28 15th day of the second month following the one-year  
29 period for which the amount is proposed to be  
30 determined or within three years after the return is filed,  
31 whichever period expires later. In the case of a failure to  
32 make a return, every notice of determination shall be  
33 mailed within eight years after the 15th day of the second  
34 month following the one-year period for which the  
35 amount is proposed to be determined.

36 (d) (1) Except as provided in paragraph (2), no  
37 refund shall be approved by the board after three years  
38 from the 15th day of the second month following the  
39 one-year period for which the overpayment was made, or  
40 with respect to determinations made under Article 2

1 (commencing with Section 6481), Article 3  
2 (commencing with Section 6511), and Article 4  
3 (commencing with Section 6536) of Chapter 5 of Part 1,  
4 after six months from the date the determinations  
5 become final, or after six months from the date of  
6 overpayment, whichever period expires later, unless a  
7 claim therefor is filed with the board within that period.  
8 No credit shall be approved by the board after the  
9 expiration of that period unless a claim for credit is filed  
10 with the board within that period, or unless the credit  
11 relates to a period for which a waiver has been granted  
12 pursuant to Section 6488.

13 (2) A refund may be approved by the board for any  
14 period for which a waiver has been granted under Section  
15 6488 if a claim for refund is filed with the board before the  
16 expiration of the waiver period.

17 (e) In all other instances where the due date specified  
18 in subdivision (a) conflicts with a due date specified in  
19 Chapter 5 (commencing with Section 6451), Chapter 6  
20 (commencing with Section 6701), Chapter 7  
21 (commencing with Section 6901), and Chapter 8  
22 (commencing with Section 7051) of Part 1, the due date  
23 specified in subdivision (a) shall be substituted for any  
24 due date specified in those chapters, and periods running  
25 from or to, or otherwise based on, the otherwise  
26 applicable due date shall be adjusted accordingly.

