

ASSEMBLY BILL

No. 22

Introduced by Assembly Member Charles Calderon

June 25, 2008

An act to add Section 7061 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 22, as introduced, Charles Calderon. State Board of Equalization: sales and use taxes: tangible personal property: digital property report.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. The State Board of Equalization is authorized to enforce that law, as provided.

This bill would require the State Board of Equalization, within 60 days of the effective date of this act, to submit a report to the Legislature on transactions involving digital property within this state, that includes, but is not limited to, a proposed regulation that would provide that sales of digital property are subject to tax for purposes of the Sales and Use Tax Law and the revenue impact of that regulation. This bill also makes findings and declarations regarding the taxation of electronic transmissions of information.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 10, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 10, 2008, pursuant to the California Constitution.

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. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) The Sales and Use Tax Law, administered by the State Board
- 4 of Equalization, imposes a tax on the gross receipts from the sale
- 5 in this state of, or the storage, use, or other consumption in this
- 6 state of, tangible personal property.
- 7 (b) The State Board of Equalization is authorized to prescribe,
- 8 adopt, and enforce rules and regulations relating to the
- 9 administration and enforcement of the Sales and Use Tax Law.
- 10 These regulations are issued by the State Board of Equalization to
- 11 implement, interpret, or make specific provisions of the Sales and
- 12 Use Tax Law and to aid in the administration and enforcement of
- 13 that law.
- 14 (c) Under the existing regulations, policies, and practices of the
- 15 State Board of Equalization, the electronic transmission of
- 16 information that does not involve the transfer of tangible personal
- 17 property is not taxable under the Sales and Use Tax Law.
- 18 (d) Currently, therefore, if a subscriber receives a monthly report
- 19 via the Internet and the only hard copy of that report is generated
- 20 by the subscriber using his or her own computer, the company's
- 21 charge for the subscription to the report is not subject to tax.
- 22 (e) The increased use and sophistication of the Internet and
- 23 electronic equipment like personal computers, cellular telephones,
- 24 and devices that store, organize, and play audio and visual files
- 25 has, in turn, increased the amount of transactions in this state
- 26 involving the electronic transmission of information and "digital
- 27 property" that is received by a consumer through remote
- 28 telecommunications from a seller.
- 29 (f) "Digital property" includes, but is not limited to, music,
- 30 movies, and books, which, if delivered in a tangible storage media,
- 31 would be subject to sales and use tax in this state under the Sales
- 32 and Use Tax Law.

1 (g) Given these developments in the types of transactions
2 between consumers and sellers, it is imperative that California's
3 sales and use taxes reflect those developments.

4 SEC. 2. Section 7061 is added to the Revenue and Taxation
5 Code, to read:

6 7061. On or before 60 days after the effective date of the act
7 adding this section, the board shall submit to the Legislature a
8 report on transactions involving digital property within this state
9 that includes, but is not limited to, the following:

10 (a) A draft of a proposed regulation that would provide that
11 sales of digital property are subject to tax for purposes of the Sales
12 and Use Tax Law (Part 1 (commencing with Section 6001) of
13 Division 2).

14 (b) The revenue impact of the proposed regulation.

15 (c) The changes required to administer the proposed regulation.

16 (d) The board may adopt regulations to implement this section.

17 The adoption, amendment, or repeal of a regulation authorized by
18 this section is hereby exempted from the rulemaking provisions
19 of the Administrative Procedure Act (Chapter 3.5 (commencing
20 with Section 11340) of Part 1 of Division 3 of Title 2 of the
21 Government Code).

22 SEC. 3. This act addresses the fiscal emergency declared by
23 the Governor by proclamation on January 10, 2008, pursuant to
24 subdivision (f) of Section 10 of Article IV of the California
25 Constitution.

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