

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1087

Introduced by Assembly Member Ma

February 27, 2009

An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, ~~to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1087, as amended, Ma. ~~Sales-State Board of Equalization: sales and use taxes: exclusions:~~ *administration: transportation charges.*

The Sales and Use Tax Law imposes a tax on retailers measured by gross receipts from the sale of tangible personal property sold at retail in this state, or 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, measured by the sales price of the property. That law provides various exclusions from gross receipts and sales price, including an exclusion for ~~separately-stated~~ *separately stated* charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, as specified.

~~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 the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Amendments to~~

~~the Sales and Use Tax Law are automatically incorporated into these laws.~~

~~This bill would specify that, if the charges for transportation are not separately stated, or if they are combined with handling or other charges, that those exclusions from gross receipts and sales price would not apply and the charges would be included in gross receipts or sales price state that charges for transportation are separately stated when stated as a single amount and not combined in a single amount with other charges.~~

~~This bill would result in a change in state taxes for the purpose of increasing state revenues 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, but its operative date would depend on its effective date.~~

~~Vote: $\frac{2}{3}$ -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 6011 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6011. (a) "Sales price" means the total amount for which
- 4 tangible personal property is sold or leased or rented, as the case
- 5 may be, valued in money, whether paid in money or otherwise,
- 6 without any deduction on account of any of the following:
- 7 (1) The cost of the property sold.
- 8 (2) The cost of materials used, labor or service cost, interest
- 9 charged, losses, or any other expenses.
- 10 (3) The cost of transportation of the property, except as excluded
- 11 by other provisions of this section.
- 12 (b) The total amount for which the property is sold or leased or
- 13 rented includes all of the following:
- 14 (1) Any services that are a part of the sale.
- 15 (2) Any amount for which credit is given to the purchaser by
- 16 the seller.
- 17 (3) The amount of any tax imposed by the United States upon
- 18 producers and importers of gasoline and the amount of any tax
- 19 imposed pursuant to Part 2 (commencing with Section 7301) of
- 20 this division.

1 (c) “Sales price” does not include any of the following:

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

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

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

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

22 (B) The amount of manufacturers’ or importers’ excise tax
23 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
24 Code for which the purchaser certifies that he or she is entitled to
25 either a direct refund or credit against his or her income tax for
26 the federal excise tax paid or for which the purchaser issues a
27 certificate pursuant to Section 6245.5.

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

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

39 (7) Separately stated charges for transportation from the
40 retailer’s place of business or other point from which shipment is

1 made directly to the purchaser, but the exclusion shall not exceed
2 a reasonable charge for transportation by facilities of the retailer
3 or the cost to the retailer of transportation by other than facilities
4 of the retailer. However, if the transportation is by facilities of the
5 retailer, or the property is sold for a delivered price, this exclusion
6 shall be applicable solely with respect to transportation which
7 occurs after the purchase of the property is made. ~~If the charges~~
8 ~~for transportation are not separately stated, or if they are combined~~
9 ~~with handling or other charges, then this exclusion shall not apply~~
10 ~~and those charges for transportation are included in the sales price.~~
11 *Charges for transportation are separately stated for the purposes*
12 *of this paragraph if those charges are stated as a single amount*
13 *and are not included within a single amount that combines*
14 *transportation charges with other charges.*

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

19 (9) The amount of any motor vehicle, mobilehome, or
20 commercial coach fee or tax imposed by and paid the State of
21 California that has been added to or is measured by a stated
22 percentage of the sales or purchase price of a motor vehicle,
23 mobilehome, or commercial coach.

24 (10) (A) The amount charged for intangible personal property
25 transferred with tangible personal property in any technology
26 transfer agreement, if the technology transfer agreement separately
27 states a reasonable price for the tangible personal property.

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

38 (C) If the technology transfer agreement does not separately
39 state a price for the tangible personal property, and the tangible
40 personal property or like tangible personal property has not been

1 previously sold or leased, or offered for sale or lease, to third
2 parties at a separate price, the retail fair market value shall be equal
3 to 200 percent of the cost of materials and labor used to produce
4 the tangible personal property subject to tax. The remaining amount
5 charged under the technology transfer agreement is for the
6 intangible personal property transferred.

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

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

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

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

22 SEC. 2. Section 6012 of the Revenue and Taxation Code is
23 amended to read:

24 6012. (a) “Gross receipts” mean the total amount of the sale
25 or lease or rental price, as the case may be, of the retail sales of
26 retailers, valued in money, whether received in money or otherwise,
27 without any deduction on account of any of the following:

28 (1) The cost of the property sold. However, in accordance with
29 any rules and regulations as the board may prescribe, a deduction
30 may be taken if the retailer has purchased property for some other
31 purpose than resale, has reimbursed his or her vendor for tax which
32 the vendor is required to pay to the state or has paid the use tax
33 with respect to the property, and has resold the property prior to
34 making any use of the property other than retention, demonstration,
35 or display while holding it for sale in the regular course of business.
36 If that deduction is taken by the retailer, no refund or credit will
37 be allowed to his or her vendor with respect to the sale of the
38 property.

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

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

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

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

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

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

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

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

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

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

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

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

34 (B) The amount of manufacturers' or importers' excise tax
35 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
36 Code for which the purchaser certifies that he or she is entitled to
37 either a direct refund or credit against his or her income tax for
38 the federal excise tax paid or for which the purchaser issues a
39 certificate pursuant to Section 6245.5.

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

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

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser. ~~If the charges for transportation are not separately stated, or if they are combined with handling or other charges, then this exclusion shall not apply and those charges for transportation are included in gross receipts.~~ *Charges for transportation are separately stated for the purposes of this paragraph if those charges are stated as a single amount and are not included within a single amount that combines transportation charges with other charges.*

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

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

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

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

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

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

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

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

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

35 For purposes of the sales tax, if the retailers establish to the
36 satisfaction of the board that the sales tax has been added to the
37 total amount of the sale price and has not been absorbed by them,
38 the total amount of the sale price shall be deemed to be the amount
39 received exclusive of the tax imposed. Section 1656.1 of the Civil

1 Code shall apply in determining whether or not the retailers have
2 absorbed the sales tax.
3 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
4 ~~Article IV of the Constitution and shall go into immediate effect.~~
5 ~~However, the provisions of this act shall become operative on the~~
6 ~~first day of the first calendar quarter commencing more than 90~~
7 ~~days after the effective date of this act.~~

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