

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 658

Introduced by Senator Walters

(Principal coauthor: Assembly Member Duvall)

(Coauthor: Senator Dutton)

*(Coauthors: Assembly Members Bill Berryhill, DeVore, Jeffries, Knight,
and Silva)*

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

SB 658, as amended, Walters. Sales and use taxes: exclusion: trade-in *motor* vehicle.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale of tangible personal property sold at retail in this state, or 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. That law defines the terms "gross receipts" and "sales price."

This bill would provide, for purposes of that law, that the terms "gross receipts" and "sales price" do not include the value of a *motor* vehicle traded in for a new *motor* vehicle, *including a new motorcycle*, if the value of the trade-in *motor* vehicle is separately stated on the new *motor* vehicle invoice or bill of sale or similar document provided to the purchaser.

Counties and cities are authorized to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and districts are authorized to impose transactions and use taxes in conformity with Sales and Use Tax Law. Amendments to the Sales and Use Tax Law

are incorporated into these taxes. Section 2230 of the Revenue and Taxation Code provides that 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 Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse cities and counties for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

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

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.
21 (c) “Sales price” does not include any of the following:
22 (1) Cash discounts allowed and taken on sales.
23 (2) The amount charged for property returned by customers
24 when that entire amount is refunded either in cash or credit, but
25 this exclusion shall not apply in any instance when the customer,

1 in order to obtain the refund, is required to purchase other property
2 at a price greater than the amount charged for the property that is
3 returned. For the purpose of this section, refund or credit of the
4 entire amount shall be deemed to be given when the purchase price
5 less rehandling and restocking costs are refunded or credited to
6 the customer. The amount withheld for rehandling and restocking
7 costs may be a percentage of the sales price determined by the
8 average cost of rehandling and restocking returned merchandise
9 during the previous accounting cycle.

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

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

17 (B) The amount of manufacturers' or importers' excise tax
18 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
19 Code for which the purchaser certifies that he or she is entitled to
20 either a direct refund or credit against his or her income tax for
21 the federal excise tax paid or for which the purchaser issues a
22 certificate pursuant to Section 6245.5.

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

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

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

1 shall be applicable solely with respect to transportation which
2 occurs after the purchase of the property is made.

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

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

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

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

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

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

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

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

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

11 (13) The value of a *motor* vehicle traded in for a new ~~vehicle~~
12 *motor vehicle, including a new motorcycle*, if the value of the
13 trade-in *motor* vehicle is separately stated on the new *motor* vehicle
14 invoice or bill of sale or similar document provided to the
15 purchaser.

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

18 6012. (a) "Gross receipts" mean the total amount of the sale
19 or lease or rental price, as the case may be, of the retail sales of
20 retailers, valued in money, whether received in money or otherwise,
21 without any deduction on account of any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (B) The amount of manufacturers' or importers' excise tax
29 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
30 Code for which the purchaser certifies that he or she is entitled to
31 either a direct refund or credit against his or her income tax for
32 the federal excise tax paid or for which the purchaser issues a
33 certificate pursuant to Section 6245.5.

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

39 (6) The amount of any tax imposed by any city, county, city
40 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.

(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.

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

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third

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

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

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

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

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

21 (13) The value of a *motor* vehicle traded in for a new ~~vehicle~~
22 *motor vehicle, including a new motorcycle*, if the value of the
23 trade-in *motor* vehicle is separately stated on the new *motor* vehicle
24 invoice or bill of sale or similar document provided to the
25 purchaser.

26 For purposes of the sales tax, if the retailers establish to the
27 satisfaction of the board that the sales tax has been added to the
28 total amount of the sale price and has not been absorbed by them,
29 the total amount of the sale price shall be deemed to be the amount
30 received exclusive of the tax imposed. Section 1656.1 of the Civil
31 Code shall apply in determining whether or not the retailers have
32 absorbed the sales tax.

33 SEC. 3. Notwithstanding Section 2230 of the Revenue and
34 Taxation Code, no appropriation is made by this act and the state
35 shall not reimburse any local agency for any sales and use tax
36 revenues lost by it under this act.

37 SEC. 4. This act provides for a tax levy within the meaning of
38 Article IV of the Constitution and shall go into immediate effect.
39 However, the provisions of this act shall become operative on the

- 1 first day of the first calendar quarter commencing more than 90
- 2 days after the effective date of this act.

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