

AMENDED IN SENATE MAY 6, 2009
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, *Harkey*,
Jeffries, Knight, ~~and Silva~~ *Silva*, and Smyth)

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~~ laws. 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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (D) For purposes of this paragraph, “technology transfer
37 agreement” means any agreement under which a person who holds
38 a patent or copyright interest assigns or licenses to another person
39 the right to make and sell a product or to use a process that is
40 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 motor
12 vehicle, including a new motorcycle, if the value of the trade-in
13 motor vehicle is separately stated on the new motor vehicle invoice
14 or bill of sale or similar document provided to the purchaser.

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

17 6012. (a) "Gross receipts" mean the total amount of the sale
18 or lease or rental price, as the case may be, of the retail sales of
19 retailers, valued in money, whether received in money or otherwise,
20 without any deduction on account of any of the following:

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

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

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

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

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

- (1) Any services that are a part of the sale.
- (2) All receipts, cash, credits and property of any kind.
- (3) Any amount for which credit is allowed by the seller to the purchaser.

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

- (1) Cash discounts allowed and taken on sales.
- (2) Sale price of 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 price received for labor or services used 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 or for which the purchaser issues a 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

1 with respect to the storage, use or other consumption in that city,
2 county, city and county, or rapid transit district of tangible personal
3 property measured by a stated percentage of sales price or purchase
4 price, whether the tax is imposed upon the retailer or the consumer.

5 (7) Separately stated charges for transportation from the
6 retailer's place of business or other point from which shipment is
7 made directly to the purchaser, but the exclusion shall not exceed
8 a reasonable charge for transportation by facilities of the retailer
9 or the cost to the retailer of transportation by other than facilities
10 of the retailer. However, if the transportation is by facilities of the
11 retailer, or the property is sold for a delivered price, this exclusion
12 shall be applicable solely with respect to transportation which
13 occurs after the sale of the property is made to the purchaser.

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

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

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

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

37 (C) If the technology transfer agreement does not separately
38 state a price for the tangible personal property, and the tangible
39 personal property or like tangible personal property has not been
40 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 motor
22 vehicle, including a new motorcycle, if the value of the trade-in
23 motor vehicle is separately stated on the new motor vehicle invoice
24 or bill of sale or similar document provided to the purchaser.

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

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

36 SEC. 4. This act provides for a tax levy within the meaning of
37 Article IV of the Constitution and shall go into immediate effect.
38 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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