STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**03/08/11**	Bill No:	**Assembly Bill 279**
Tax Program:	**Sales and Use**	Author:	**Garrick**
Sponsor:	**BOE Member Michelle Steel**	Code Sections:	**RTC 6012.4**
Related Bills:		Effective Date:	**1st calendar quarter 90 days after enactment**

BILL SUMMARY

This bill would specify that the "gross receipts" and "sales price" from the retail sale of a wireless communication device (device), as defined, is limited to the amount charged for the sale of that device when that device is sold in a bundled transaction, as defined.

ANALYSIS

CURRENT LAW

Under existing law, the sales tax is imposed on the gross receipts from the sale of tangible personal property, unless specifically exempted by law. "Gross receipts" and "sales price" are terms defined in the law meaning the total amount of the sale or lease or rental price, without any deduction on account of the cost of materials used, labor or service costs, interest charged, losses, or any other expenses related to the sale of the property. Normally, a service that is sold in connection with a taxable sale of tangible personal property is regarded as part of the sale, and therefore subject to tax on the receipts derived from the sale of that service.

However, due to the marketing and retail pricing strategies that contradicted conventional and customary retail practices of the wireless telecommunications industry, the Board of Equalization (BOE) in 1999 adopted existing Regulation 1585, *Cellular Telephones, Pagers, and other Wireless Telecommunications Devices*, to specifically address the application of sales and use tax in connection with these devices and related charges for services.

Under the regulation, the amount upon which tax is computed is generally dependent upon whether the device was sold in a "bundled" or "unbundled" transaction. "Bundled" transactions are defined in the regulation as those sales in which the customer is required to activate or contract for utility service with a wireless telecommunications service provider for a period greater than one month as a condition of the sale. Generally, in order for customers to receive the promotional or discounted sales price of the devices, they must agree to activate or sign up for utility service with a provider for more than a one-month period. Under the regulation, generally, the retailer is required to compute tax on the sale of the device based on the "unbundled sales price."

The "unbundled sales price" is defined in the regulation as the price at which the retailer has sold specific types of devices to customers who are not required to activate or contract for utility service as a condition of the sale. If the retailer has not previously sold a specific device in other than a bundled transaction, the unbundled sales price is equal to the fair retail selling price of the device.

If the sale is unbundled (the customer is not required to activate or contract for utility service as a condition of the sale), the tax applies to the actual gross receipts from the sale of the device to the customer.

PROPOSED LAW

This bill would add Revenue and Taxation Code Section 6012.4 to the Sales and Use Tax Law to provide that the terms "gross receipts" and "sales price" from the retail sale of a wireless communication device, as defined, shall be limited to the amount charged for the sale of the device when it is sold in a bundled transaction, as defined.

The bill would define "bundled transaction," "wireless telecommunications device," and "wireless telecommunications provider."

As a tax levy, the bill would become operative on the first day of the calendar quarter commencing more than 90 days after the bill is enacted.

BACKGROUND

A similar bill was considered in the 2005-06 Legislative Session. That bill, AB 2320 (La Malfa), was held in the Assembly Revenue and Taxation Committee.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored BOE Member Michelle Steel. Its purpose is to minimize the confusion experienced by consumers over the amount of tax retailers are charging in connection with their purchases of cell phones and other wireless devices. The author's office believes that only the specific amount charged for the sale of the device should be the amount upon which tax is computed.
2. **Enactment of this measure would lessen the confusion among purchasers.** Because purchasers are generally accustomed to paying sales tax reimbursement to retailers based on the purchase price of goods they buy, the BOE receives a number of inquiries from purchasers regarding the amount of sales tax they were charged in connection with contracts involving purchases of cellular phones and other wireless devices. Enactment of this measure would minimize those inquiries.
3. **Bill would only apply on a prospective basis.** Retailers have relied on the BOE's regulation on this issue, and it is our understanding that this legislation is not intended to have a retroactive effect.

COST ESTIMATE

The BOE would incur absorbable costs to administer this bill. These costs would be attributable to notifying affected retailers, revising the BOE's regulation, revising publications, and answering inquiries from taxpayers and the public.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

According to the Telecommunications Association, the wireless device market will total approximately $22.845 billion in the United States in FY 2011-12.

Based on a survey of three major wireless device providers, the average sales price to a purchaser of a wireless device sold separately (e.g., not in a bundled transaction) is $336.14, and the average discounted price of a wireless device sold in a bundled transaction is $61.97. Therefore, the average discounted sales price for a wireless device sold in a bundled transaction amounts to 18.4 of the average sales price of a similar device sold in an "unbundled" transaction ($61.97/$336.14 = 18.4%). For the purpose of this estimate, we assume that the average sales price for wireless devices sold in bundled transactions as a whole is 18.4% of the sales price of these devices sold separately. Accordingly, the annual revenue loss of this measure is calculated as follows:

REVENUE SUMMARY

	FY 2011-12 (in thousands)
U.S. Wireless Market	$ 22,845,000
California's Portion of Sales:	2,741,000
Proposed Taxable Amount (18.4%)	505,000
Proposed Excluded Amount (81.6%)	$ 2,236,000
Estimated Average State and Local Revenue Loss (8.11%)	$ 181,300

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