



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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| Date Introduced: | 02/18/11 | Bill No: | Senate Bill 805 |
| Tax Program: | Sales and Use | Author: | Committee on Veterans Affairs |
| Sponsor: | Board of Equalization | Code Sections: | RTC 6018.3 |
| Related Bills: | | Effective Date: | Upon Enactment |

BILL SUMMARY

This bill would eliminate the January 1, 2012 sunset date for the provision that classifies specified itinerant veteran vendors as consumers of tangible personal property sold for \$100 or less, as specified.

ANALYSIS

CURRENT LAW

Under California's Sales and Use Tax Law (Part 1, Division 2 of the Revenue and Taxation Code, commencing with Section 6001), except where specifically exempted by statute, sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. The law does not contain a general exemption from sales or use tax for sales of tangible personal property by veterans.

Under the law, generally every retailer or any other person engaged in the business of selling tangible personal property of a kind the retail sale of which is taxable in this state is required to obtain a seller's permit and report the tax on his or her sales on a return prescribed by the BOE. However, California's Sales and Use Tax Law places a variety of retailers making taxable sales of tangible personal property under a "consumer" reporting status. Under a "consumer" reporting status, a qualifying retailer making otherwise taxable sales is not required to obtain a seller's permit or report tax on those sales. Rather, the qualifying retailer is only required to pay tax on his or her cost of the taxable components of the products he or she sells.

The "consumer" reporting status is intended primarily to minimize reporting burdens placed on smaller businesses and entities, while minimizing the associated revenue loss that can accompany a complete exemption from the tax. The law has extended this consumer reporting status to certain sales by such entities as nonprofit youth groups, Parent-Teacher Associations, nonprofit veterans' organizations, various charitable organizations, schools and school districts, optometrists, veterinarians, podiatrists, licensed hearing aid dispensers, and others with respect to certain products they sell.

With respect to certain veterans that sell goods, Section 6018.3 provides that, until January 1, 2012, a "qualified itinerant vendor" is a consumer of tangible personal property owned and sold by the qualified itinerant vendor, except alcoholic beverages and tangible personal property sold for more than \$100.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

This provision specifies that a person is a “qualified itinerant vendor” when all of the following apply:

- 1) The person was a member of the United States Armed Forces, who received an honorable discharge or a release from active duty under honorable conditions from service,
- 2) The person is unable to obtain a livelihood by manual labor due to a service-connected disability.
- 3) For the purposes of selling tangible personal property, the person is a sole proprietor with no employees, and
- 4) The person has no permanent place of business in this state.

The law also defines “permanent place of business” as any building or other permanently affixed structure, including a residence that is used in whole or in part for the purpose of making sales of, or taking orders and arranging for shipment of, tangible personal property, and excludes from that term, any building or other permanently affixed structure, including a residence, used for any of the following:

- 1) The storage of tangible personal property.
- 2) The cleaning or the storage of equipment or other property used in connection with the manufacture or sale of tangible personal property.

These provisions, however, do not apply caterers or vending machine operators.

PROPOSED LAW

This bill would delete the January 1, 2012 sunset date in Revenue and Taxation Code Section 6018.3, so that qualified itinerant veteran vendors would remain consumers indefinitely with respect to tangible personal property they sell for \$100 or less under the specified conditions.

This bill would become effective immediately.

BACKGROUND

Revenue and Taxation Code Section 6018.3 was added during the 2009 Legislative Session (Stats. 2009, Ch. 621, Committee on Veteran Affairs) and became operative on April 1, 2009. This bill had the unanimous support of all Members of the BOE, and passed the Legislature unanimously.

For several years prior to enactment of SB 809, several veterans had argued that state law which exempts honorably discharged veterans from locally-imposed license taxes and fees also exempts itinerant veterans from any tax imposed by the state. More specifically, they argued that Business and Professions Code Section 16102 exempts honorably discharged veterans from application of the sales and use tax on sales of food products and carbonated beverages from a mobile food cart. This section reads in its entirety as follows:

“Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever,

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whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefore.”

This provision was enacted in 1893 pursuant to AB 74, and was described in the chaptered bill as “An act to establish a uniform system of county and township government.” In its present form (which has remained unchanged since 1941), Section 16102 falls within Chapter 2 of Part 1 of Division 7 of the Business and Professions Code, entitled *Licensing by Counties*.

In 1999, the BOE held that this Business Code provision does not apply to sales or use taxes imposed pursuant to California’s Sales and Use Tax Law. The BOE’s decision was subsequently challenged unsuccessfully in Los Angeles Superior Court (No. BC 210257). The BOE’s decision is also consistent with that of the Office of Legislative Counsel in its two opinions specific to this issue rendered in 1998 and 2006, concluding that the exemption provided in this Business and Professions Code section only applies to county license tax and license fees, and does not apply to sales and use taxes.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the BOE in order to enable qualifying veterans to retain their consumer status with respect to their itinerant sales. This provision represents one small step towards recognizing our disabled veterans who have already made, or are making the transition from military to civilian employment, and it should not be allowed to sunset. This provision assists in this transition by simplifying reporting requirements under the Sales and Use Tax Law for those qualifying disabled veterans that are honorably discharged or released from service that desire to engage in the business of selling goods they own. For qualifying disabled veterans without employees or a permanent place of business, this provision eliminates the need for them to hold a seller’s permit, file sales tax returns, and remit sales tax on their sales.
- 2. What are a qualifying veteran’s tax obligations?** Under these provisions, a qualifying itinerant disabled veteran making taxable sales of goods, wares or merchandise owned by him or her is not required to report sales tax on his or her sales of these items. Instead, the veteran is only required to pay tax on his or her cost of any taxable purchases of the items or the component parts of the items he or she sells. For example, when a veteran is selling his or her own paintings, the veteran would pay tax on his or her purchase of the paint, brushes, and canvas used to make the painting. The sale of the painting, itself, would thereafter be exempt from tax. Under this provision, if the qualifying veteran makes no sales of alcoholic beverages or sales that exceed the \$100 cap, the veteran is not required to obtain a seller’s permit, file sales tax returns, or remit sales tax on his or her sales of the goods he or she sells. This essentially eliminates the sales tax compliance costs and associated recordkeeping that can be unduly burdensome for disabled veterans.
- 3. Enactment of bill would simplify matters.** These provisions apply to a small group of itinerant disabled veteran vendors, and if the sunset date were not repealed, the BOE would have to re-register these individuals, re-issue a seller’s permit to them, and ensure that they are in compliance with the law.

COST ESTIMATE

The BOE would incur insignificant, absorbable costs to administer this bill.

REVENUE ESTIMATE

The annual revenue loss associated with this provision is about \$22,000. The following table shows how these revenues are distributed among the various funds (assuming the General Fund rate is reduced to 5% on and after July 1, 2011):

| | Rates | Dollars |
|------------------------------|--------------|----------------|
| State | 5.25% | \$14,542 |
| General Fund | 5.00% | \$13,850 |
| Fiscal Recovery Fund | 0.25% | \$692 |
| Local | 2.00% | \$5,540 |
| Transit | 0.85% | \$2,386 |
| Total State and Local | 8.11% | \$22,497 |

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