



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date:	04/18/12	Bill No:	Assembly Bill 1989
Tax Program:	Bicycle Surcharge	Author:	Carter
Sponsor:	Author	Code Sections:	PRC Article 6.5
Related Bills:		Effective Date:	01/01/13, but operative 07/01/13

BILL SUMMARY

This bill imposes a \$2 surcharge on the retailer for each new bicycle sold in this state, to be collected and administered by the Board of Equalization (BOE) under the Fee Collection Procedures Law, for specified purposes related to the creation and maintenance of bicycle trails.

ANALYSIS

CURRENT LAW

Under existing law, the sales or use tax applies to the sale or use of tangible personal property in this state, unless otherwise exempted or excluded by statute. Under current law, the sales and use tax applies to retail sales and purchases of bicycles to the same extent as it applies to any other retail sale of tangible personal property that is not otherwise exempted or excluded from tax by statute.

Currently, the average statewide sales and use tax rate is 8.11 percent. The BOE does not collect any additional taxes or fees on bicycles. However, there are many rules governing what is taxable. The BOE has several regulations, publications, and information that cover specific products and industries. In general, there are certain bicycle sales that may be exempted or excluded from imposition of the tax under the California Sales and Use Tax Law. These include, but are not limited to: sales for resale; sales to the United States government; sales delivered outside California; sales to American Indians residing in Indian Country; and sales by certain nonprofit and religious organizations.¹

PROPOSED LAW

This bill would add Article 6.5 (commencing with Section 5077.81) to Chapter 1 of Division 5 of the Public Resources Code to enact legislation that would establish the State Park Bicycle Facilities Fund and would, on and after July 1, 2013, impose a surcharge on every retailer for the privilege of selling a new bicycle in California at a rate of two dollars (\$2) per new bicycle.

Administration. Beginning with the fiscal year (FY) 2013-14, the BOE would be required to administer and collect the surcharge pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of the State Park Bicycle Facilities Fund, the references in the Fee Collection Procedures Law to “fee” would include the

¹ See BOE Publication 61 for a brief general description of exemptions and exclusions from the imposition of California sales and use taxes, <http://www.boe.ca.gov/pdf/pub61.pdf>

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surcharge imposed by this bill, and references to “feepayer” would include a retailer required to pay that surcharge.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fees administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The BOE would be authorized to prescribe, adopt, and enforce regulations relating to the administration and enforcement of the State Park Bicycle Facilities Fund and emergency regulations as necessary to implement the State Park Bicycle Facilities Fund.

Registration, Reporting, and Payment. Each retailer required to pay the new bicycle surcharge would be required to electronically register with the BOE using an application prescribed by the BOE, as described.

The surcharge imposed would be due and payable to the BOE quarterly on or before the last day of the month following each calendar quarter. In addition, a return for each calendar quarter would be required to be filed with the BOE using electronic media. The return would be due on or before the last day of the calendar month following each calendar quarter.

Disposition of Proceeds. This bill would establish the State Park Bicycle Facilities Fund (Fund), which would be created in the State Treasury. The Fund would consist of all surcharges, interest, penalties, and other amounts collected, less refunds and reimbursement to the BOE for expenses incurred in the administration and collection of the surcharge. All remaining moneys in the Fund would, upon appropriation by the Legislature, be used by the Department of Parks and Recreation as detailed in the bill, and consistent with Legislative intent to fund bicycle trail establishment and maintenance in cities, counties, and state parks throughout the state.

Definitions. This bill defines “bicycle” and “retailer,” both of which have references to other California codes that further define the terms. The definitions include the following:

"Bicycle" has the same meaning as that term is defined in Streets and Highway Code Section 890.2 which reads: “bicycle” means a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having either two or three wheels in a tandem or tricycle arrangement.

"Retailer" has the same meaning as that term is defined in Revenue and Taxation Code [Section 6015](#).

This act is effective January 1, 2013, but would not become operative until July 1, 2013.

BACKGROUND

In California, sales tax applies to the sale of tangible personal property (also commonly known as “merchandise” or “goods”) unless the sale is covered by a specific legal exemption or exclusion. Individuals, businesses, and groups that sell taxable

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merchandise in California must pay sales tax on their taxable sales. Sellers may charge their customers for sales tax reimbursement (referred to as “sales tax”).

Similarly, use tax applies to the purchase of taxable merchandise that will be used, consumed, stored, or given away in this state unless the purchase is exempt or excluded from tax. Individuals, businesses, and groups must pay use tax on their taxable purchases. The state use tax is complementary to, and mutually exclusive of, the state sales tax.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author and is intended to support the maintenance of bicycle trails and paths, signage, and related bicycle facilities in cities, counties, and state parks.
- 2. The surcharge would apply to all retail sales of bicycles in this state.** As provided in this bill, the surcharge applies to retailers for the privilege of selling a new bicycle in this state. There are no exemptions or exclusions. Is it the author’s intent that the surcharge would apply to sales for resale, or sales to the US government, or to persons outside this state, or for other sales that may be exempt from the state’s sales and use tax laws? Would a manufacturer, importer, or distributor in California, which makes sales to bicycle rental or bicycle sales shops and which receives a resale certificate, be the retailer responsible for the surcharge?

It does not appear that there are any retailers that are exempt from the surcharge, such as certain non-profit organizations that operate retail stores, or retailers that operate in Indian Country.

Does the surcharge apply to California residents that purchase their new bicycle from an out-of-state retailer? Since the surcharge is imposed on the retailer of a bicycle in this state, are sales made by an out-of-state retailer to a California resident subject to the surcharge? If the sale by an out-of-state retailer is structured a certain way, could the statutory language be interpreted to mean that the retailer completed its performance with respect to delivery of the bike when it is received by the California consumer, so that the sale occurred in this state and the out-of-state retailer is responsible for the surcharge?

- 3. Funding necessary for administrative start-up costs.** The provisions of this bill would be effective immediately but would be operative on July 1, 2013. If passed, this bill could become effective in the middle of the 2012-13 fiscal year. The BOE would incur administrative start-up costs related to identifying and registering taxpayers, developing computer programs, and developing forms, publications, and returns, training staff, and creating regulations related to the proposed surcharge.

Typically, the BOE would seek payment from the Fund for administrative start-up costs through the budget change proposal (BCP) process. However, the Fund would not have a balance to reimburse the BOE’s administrative start-up costs prior to the collection of the tax. To address this funding issue, this bill should be amended to add language authorizing a loan from the General Fund, or other eligible fund, to the Fund, to be repaid from taxes collected.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the bicycle surcharge program. Without an appropriation for administrative start-up costs, the BOE would have to

divert General Fund dollars to the proposed tax program, which would have a negative impact on the revenues of State and local government.

- 4. Proposed surcharge would be subject to the sales tax.** Under current Sales and Use Tax Law, the total gross receipts from the sale of tangible personal property at retail is subject to sales tax unless specifically exempted or excluded by law. Because the new bicycle surcharge imposed pursuant to this measure is not specifically exempted or excluded, it would be included in the total amount of the gross receipts and, therefore, subject to sales tax. In general, as in the case of an out-of-state retailer required to be registered with the BOE and making sales to California residents, use tax would still be collected by the out-of-state retailer, but since this measure only imposes the surcharge on the retailer of new bicycles in this state, out-of-state retailers making sales to California residents may not be subject to the surcharge.

In order to be reimbursed for the surcharge, retailers subject to the surcharge pursuant to this measure may request payment from their customers. Ultimately, this cost would be reflected in the retail sales price of bicycles sold to the consumer and would be subject to the sales tax, unless specifically exempt or excluded. The impact on state and local sales tax revenues is discussed in the Revenue Estimate.

COST ESTIMATE

The BOE would incur non-absorbable costs to adequately develop a new surcharge program. These costs would include identifying and registering surcharge payers, developing computer programs, and designing forms, publications, and returns, training staff, and creating regulations related to the proposed surcharge. While a detailed estimate of these costs is pending, the costs to administer a new program could be major, in excess of one million dollars.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Based on projections from the National Bicycle Dealers Association (NBDA), the average number of bicycles sold in the United States (US) between 2008 and 2010 was 17.7 million. California generally accounts for about 12 percent of the US total population, so based on the NBDA figure, the average number of bicycles sold in California between 2008 and 2010 would be 2.1 million (17.7 million x 12 percent = 2.1 million). Assuming no change in numbers sold, and that all sales are subject to sales tax, the proposed surcharge would result in estimated annual revenues of \$4.2 million (2.1 million units x \$2 = \$4.2 million). Additionally, the expected annual sales tax revenue from the surcharge would be \$341,000 (8.11% sales tax x \$4.2 million = \$341,000).

REVENUE SUMMARY

Based on industry data, we estimate that the \$2 surcharge would result in annual revenues of \$4.2 million. Additionally, we estimate that under this bill, there will be annual state and local sales tax gain of \$341,000.

Qualifying Remarks. It should be noted that not all bicycle retail sales are subject to sales tax. Examples include sales to the US Government, and sales delivered outside California. To the extent that certain retail sales are exempt, the sales tax revenue portion of this estimate is probably overstated. Also, our estimate assumes no taxpayer response to the imposition of the surcharge.

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