

Amend Revenue and Taxation Code Section 6007 of, and add Revenue and Taxation Code Section 6009.2 to, the Sales and Use Tax Law to define “retail sale,” “sale at retail,” and “storage” and “use” to include any sale or purchase of counterfeit tangible personal property, as specified, regardless of whether the sale is for resale in the regular course of business.

Source: Honorable Jerome E. Horton

Existing Law. Existing law imposes the sales tax on the “retail sale” or “sale at retail” (hereinafter referred to “retail sale”) of tangible personal property in California, measured by gross receipts, unless specifically exempted or excluded by law. Under Section 6007 of the Sales and Use Tax Law, a retail sale is defined as a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. Retail sales of counterfeit goods and pirated intellectual property in the form of tangible personal property in this state are subject to sales tax to the same extent as legitimate sales, and the tax is measured by the gross receipts from those sales. Sales of tangible personal property (whether counterfeited, pirated, or legitimate) to persons who purchase the property for the purpose of incorporating it into a manufactured article to be sold, as, for example, any raw material becoming a component part of the manufactured article, are not “retail sales” and are not subject to tax. Also, sales of tangible personal property to retailers who resell the tangible personal property before making a taxable use of the property are generally not subject to tax.

This Proposal. This proposal would do the following:

- Revise the definition of “retail sale” in Section 6007 to include any sale in this state of counterfeit tangible personal property by a “convicted seller” regardless of whether the sale is for resale in the regular course of business.
- Add a new provision that would specify that “storage” and “use” include a convicted purchaser’s purchase of counterfeit tangible personal property regardless of whether the purchase is for resale.
- Specify that a notice of determination for any unreported tax on these sales or purchases to a convicted seller or convicted purchaser shall be mailed within one year from the last day of the month following the conviction date.

By revising the definitions in this manner, any sale and purchase of these counterfeit items in this state, regardless of whether that sale or purchase is by the manufacturer, wholesaler, distributor, or retailer, would be subject to sales tax when the purchaser or seller is convicted, as specified.

Background. The sale and purchase of counterfeit goods can do significant harm. While the discounted prices of counterfeit goods may be alluring to purchasers, often, the counterfeit goods are of poor quality. These counterfeit goods unfairly compete with the original brand, and can tarnish the reputation of the original brand, causing losses in revenue. Moreover, some counterfeit products have the potential for causing sickness or injury, such as counterfeit drugs or auto parts.

While criminal and civil laws punish and impose fines for these illegal sales, considerable trafficking of these goods continues. Sponsoring this proposal would demonstrate that the BOE is serious about deterring these illegal sales and generate needed state and local revenues.

Section 6007 of the Revenue and Taxation Code is amended to read:

6007. (a) A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner, or factor to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.

(b) (1) Notwithstanding subdivision (a), a "retail sale" or "sale at retail" shall include any sale by a convicted seller of tangible personal property with a counterfeit mark on, or in connection with, that sale regardless of whether the sale is for resale in the regular course of business.

(2) A "convicted seller" means a person convicted of a violation under Section 350 or Section 653w of the California Penal Code or Title 18, Section 2320 of the United States Code on or after the date of sale.

(3) "Counterfeit mark" has the same meaning as that term is defined in Section 2320 of Title 18 of the United States Code.

(4) For purposes of this subdivision, Chapter 5 (commencing with Section 17200) of Part 2 of, and Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of, the Business and Professions Code, and Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code shall not apply to any person other than a convicted seller.

(5) Notwithstanding Article 2 of Chapter 5 (commencing with Section 6481), any notice of deficiency determination to a convicted seller shall be mailed within one year after the last day of the calendar month following the date of conviction.

Section 6009.2 is added to the Revenue and Taxation Code, to read:

6009.2. (a) Notwithstanding Sections 6008, 6009, and 6009.1, "storage" and "use" each shall include a convicted purchaser's purchase of tangible personal property with a counterfeit mark on, or in connection with, that purchase, regardless of whether the purchase is for resale in the regular course of business.

(b) "Convicted purchaser" means a person convicted of a violation under Section 350 or Section 653w of the California Penal Code or Title 18, Section 2320 of the United States Code on or after the date of purchase.

(c) For purposes of this section, Chapter 5 (commencing with Section 17200) of Part 2 of, and Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of, the Business and Professions Code, and Title 1.5 (commencing with Section 1750)

of Part 4 of Division 3 of the Civil Code shall not apply to any person other than a convicted purchaser.

(d) "Counterfeit mark" has the same meaning as that term is defined in Section 2320 of Title 18 of the United States Code.

(e) Notwithstanding Article 2 of Chapter 5 (commencing with Section 6481), any notice of deficiency determination to a convicted purchaser shall be mailed within one year after the last day of the calendar month following the date of conviction.

It is the intent of the Legislature that any fine imposed or restitution awarded pursuant to Section 350, Section 653w or Section 1202.4 of the California Penal Code or Title 18, Section 2320 of the United States Code shall be satisfied prior to the collection of tax from convicted sellers or convicted purchasers as defined in Sections 1 and 2 of this Act.

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