STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

DRAFT

Date Amended:	**Chapter 725**	Bill No:	**AB 1612**
Tax:	**Sales Tax**	Author:	**Budget Committee**
Related Bills:			

BILL SUMMARY

In part, this budget trailer bill would impose a sales tax on providers of in-home support services (IHSS), and would require a seller, as defined, who is actively engaged in arranging for the retail sale of support services to apply for a seller's permit and collect the sales tax from the provider and remit the tax to the Board of Equalization (BOE).

The sales tax provisions would only become operative if a certain requests for approvals are granted by the federal Centers for Medicare and Medicaid Services.

ANALYSIS

CURRENT LAW

Under existing law, California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state, unless the sale is specifically exempted or excluded from tax by law. This tax is imposed on the retailer who may collect reimbursement from the customer if the contract of sale so provides.

Currently, and until July 1, 2011, the statewide sales and use tax rate is 8.25% and is imposed on taxable sales and purchases of tangible personal property. This rate is made up of the following components (additional district taxes are levied among various local jurisdictions and are not reflected in this chart):

Rate	Jurisdiction	R & T Code
4.75% 0.25% 1.00%[1] 6.00%	State (General Fund)	6051, 6201, 6051.3, 6201.3 6051.7, 6201.7
0.25%	State (Fiscal Recovery Fund)	6051.5, 6201.5
0.50%	Local Revenue Fund	6051.2, 6201.2
0.50%	Local Public Safety Fund	§35 Art XIII St. Constitution
1.00%	Local (0.25% County transportation funds 0.75% City and county operations)	7203.1

[1] This one percent sales and use tax rate will end on July 1, 2011. Thereafter, the state General Fund rate will be 5 percent.

Generally, California's Sales and Use Tax Law does not impose a sales or use tax on sellers whose only sales consist of services. Therefore, under current law, sales of services by providers such as accountants, lawyers, doctors and other healthcare practitioners, maids, housekeepers, caretakers, and others, are generally not subject to sales or use tax.

Under the Welfare and Institutions Code, an IHSS program has been established to provide personal services and home care for over 400,000 eligible poor, aged, blind and disabled individuals by about 350,000 providers throughout the state to enable recipients to remain in their own homes and avoid institutionalization.

The Department of Social Services oversees the IHSS program at the state level and counties administer services at the local level.

Under current law, funding of the IHSS program is provided through a combination of about 50% federal (Medicaid), 32% state, and 18% county dollars.

Providers of these services (workers) receive payment for their hours worked. The providers submit timesheets twice a month to the county and are paid through a check issued by the State Controller. However, under certain conditions, a portion of a provider's wage may be paid from the recipient of the services.

PROPOSED LAW

This bill, among other things, adds Article 4 (commencing with Section 6150) to the Revenue and Taxation Code to do the following:

- Impose a sales tax of 7.25% (6.25% on and after July 1, 2011) on providers of support services at retail, measured by the gross receipts from the sale of those services. The proposed tax will become operative only if specified federal approval requests for matching funds are granted.
- For efficient administration of the tax, require sellers that are actively engaged in arranging for the retail sale of support services (such as a county social service department) to register with the BOE, collect the tax from the provider, and report and pay the tax to the BOE.
- Specify that sales tax prepayments shall not apply to sellers until no later than three months after the date that federal approval is obtained.
- Define "provider" to mean a natural person who is authorized by law to provide all of the support services as described in the bill and who makes a retail sale.
- Define "seller" to include the following:
    1. The Department of Social Services in its capacity as the state agency that oversees the IHSS program,
    2. A county in which county staff serve as homemakers pursuant to Welfare and Institutions Code Section 12302,
    3. A county that contracts with a nongovernmental contractor to arrange for the retail sale of support services, or
    4. Any other nongovernmental person that arranges for the retail of support services.
- Define "personal care services" and "support services."

- Require the revenues from the proposed tax to be deposited in the State Treasury to the credit of the Personal Care IHSS Quality Assurance Revenue Fund, created by the bill.

The bill also adds Section 12306.6 to the Welfare and Institutions Code to do the following:

- Require the Director of the Department of Health Care Services (DHCS) to seek federal approval from the federal Centers for Medicare and Medicaid Services to implement these provisions, and notify the BOE within 10 days of receiving that approval.
- Specify that a provider of IHSS shall receive a supplementary payment equal to the sales tax collected plus an amount attributable to any payroll withholding for federal income tax and Social Security and Medicare taxes, as specified.

As an urgency bill, these provisions take effect immediately, but the imposition of the sales tax is contingent upon specified federal approval.

COMMENTS

1. **Purpose.** The idea of the imposition of the sales tax on IHSS workers' salaries was advanced by advocates in recent months, including the IHSS worker union (SEIU), and is intended to generate additional federal funds to provide some additional General Fund savings.

   Under this bill, each IHSS worker (provider) would pay sales tax on their total wages that would be deducted from their paychecks (the IHSS program is administered by the counties, but all IHSS worker paychecks are generated by the State Controller). The bill intends to return to the IHSS worker the full amount of the sales tax withheld. There are approximately 350,000 IHSS workers in California, and about 60 "sellers" who arrange for the retail sale of IHSS.

   As "sellers" defined in the bill, the sales tax would actually be remitted to the BOE by the various county social services departments and other nonprofit consortia who arrange for the providing of in-home services. Again, the intention is for them to receive federal matching funds from federal Medicaid dollars. Because of the large number of providers in each county, the "sellers" will each likely have measures of tax liabilities in excess of $17,000 per month, and as such, will be required to report the tax quarterly with two prepayments each quarter pursuant to Section 6471 of the Sales and use Tax Law.

2. **Bill doesn't provide the BOE or affected taxpayers with much lead time.** Although the bill specifies that sales tax prepayments shall not apply to sellers "until no later than three months" after the date federal approval is obtained, the tax is operative the date the federal approval is made. This provides virtually no time to enable the BOE to notify the affected "sellers" to commence collection of the tax and to enable sellers to issue a supplementary payment as required by the bill.

3. **Bill has some confusing areas.** For example, as part of DHCS's request for federal approval, the bill requires that the director of DHCS seek to make the supplementary payments effective as of July 1, 2010 (the supplementary payments are to reimburse the providers for the amount of sales tax collected from them and to make up any differences in the providers pay due to any additional payroll withholding and other taxes attributable to the supplementary payments). However, the imposition of the sales tax does not begin until the date federal approval is

made. It is unclear why supplementary payments would be necessary before commencement of the tax.

Another confusing area relates to the definition of “provider” in Section 6150. In (d)(2) the bill specifies that a “provider” means a nongovernmental person that arranges for the retail sale of all support services and excludes any natural person who provides services under the direction of the nongovernmental person. Yet, in defining “seller,” the bill includes any other nongovernmental person that arranges for the retail sale of support services. These definitions seem to overlap and are confusing.

Staff will work with DHCS and the Department of Social Services to address these areas so that the BOE can properly administer the sales tax.

COST ESTIMATE

We understand the number of "sellers" as described in the language will be approximately 60 – this includes county department of social services and a relative few nonprofit organizations that arrange for these in-home services. Although this is not a large number, the BOE will need to create specific tax returns and programming for these sellers since the tax is specific to a sale of a service rather than a sale of tangible personal property, and the rate is not consistent with the applicable rate for sales of tangible personal property. Necessary forms, publications, and regulations would need to be drafted and staff would need to be trained on how to handle these accounts. Due to the number of anticipated accounts, it is not likely that additional staff will be needed to administer the program. However, some programming costs will be required.

REVENUE ESTIMATE

Enactment of this bill, in and of itself, does not increase revenues. However, if the federal government approvals are obtained as required by the bill, according to a healthcare consulting firm, Sellers Dorsey, who was retained to research the feasibility of increasing federal funding for personal care services to help California’s IHSS program, the estimated annual gain to the state would amount to $190 million (at the 6% rate).

Assuming the tax commences on and after January 1, 2011, for fiscal year 2010-11, the tax at the 7.25% rate for a six month period (January through June) would amount to $115 million (6%/$190 million x 7.25% = $230 million/2).

Beginning fiscal year 2011-12, using Sellers Dorsey estimates, the applicable sales tax rate will be 6.25%, resulting in annual revenues of approximately $198 million (assuming wages, the number of providers, and the number of recipients remain the same).

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