



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

Date Amended: **04/17/07**

Bill No: **[SB 792](#)**

Tax: **Sales and Use**

Author: **Florez**

Related Bills:

**BILL SUMMARY**

This bill would, among other things, require all sales tax imposed on the sale of thoroughbred horses in this state to be deposited into the Vincent-Maddy California Thoroughbred Race Cup Fund, created by this bill.

**ANALYSIS**

**CURRENT LAW**

Existing law imposes a sales or use tax on the sale or purchase of tangible personal property in this state, unless specifically exempted. Under existing law, animals are regarded as tangible personal property, and sales of animals by sellers engaged in the business of selling animals are generally subject to tax (an occasional sale of an animal by a seller that is not engaged in the business of selling animals is not subject to tax). With respect to horses, however, Revenue and Taxation Code Section 6356.5 provides an exemption from the state sales and use tax at the 5.25 percent rate for sales and purchases of racehorse breeding stock.

The statewide sales and use tax rate (7.25%) imposed on taxable sales and purchases of tangible personal property, including thoroughbred horses, is made up of the following components, and the revenues are allocated in the specific funds identified (additional district taxes are levied among various local jurisdictions and are not reflected in this chart):

<b>Rate</b>	<b>Jurisdiction</b>	<b>R &amp; T Code</b>
5.0%	State (General Fund)	6051, 6201, 6051.3, 6201.3
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

### PROPOSED LAW

This bill would, among other things, add Section 19536 to the Business and Professions Code to require all sales tax imposed on the sale of thoroughbred horses in this state to be deposited into the Vincent-Maddy California Thoroughbred Race Cup Fund, created by this bill.

The bill would become effective January 1, 2008.

### COMMENTS

- 1. Sponsor and Purpose.** The author is sponsoring this measure to increase the sport of horse racing in California.
- 2. It is questionable whether the ¼% Fiscal Recovery Fund revenues should be included within the provisions of this bill.** It is our understanding that the Fiscal Recovery Fund that receives the dedicated ¼ percent state sales and use tax is insulated from the state's financial operations, as its use is solely for the benefit of the bonds and its balances cannot be borrowed. Perhaps this component of the sales tax rate should be eliminated from the bill's provisions.
- 3. It is also questionable whether certain local taxes could constitutionally be transferred.** Proposition 1A, approved by voters in November 2004, added Section 25.5 to Article XIII of the Constitution, entitled "Protection of Local Government Revenues." This section provides that the Legislature shall not enact a statute to, among other things, change the method of distributing revenues derived under the Bradley-Burns law (Part 1.5 (commencing with Section 7200)). Transferring these local sales tax revenues derived from sales of thoroughbred horses to the proposed fund could be viewed as changing the method of distributing revenues, and could be considered a violation of the California Constitution.
- 4. Bill would have some administrative concerns.** The Board does not capture specific data on sales of thoroughbred horses. Although we expect that the number of sellers that are engaged in the business of selling these animals that report the tax on their sales to be relatively few (many would likely be regarded as exempt occasional sales), for those sellers that may sell thoroughbreds along with other horses, a segregation would have to be made on their returns to account for the sales tax attributable to the thoroughbreds. This would result in increased costs for sellers, as well as for the Board, to account for these transactions. For ease of administration, a preferable approach would be to require the transfer of sales tax revenue associated with the sales of thoroughbred horses that are authorized by the California Horse Racing Board, since that Board accumulates the data that would be necessary to make such transfers.
- 5. The Sales and Use Tax Law within the Revenue and Taxation Code should be amended.** Since this bill would change the disposition of sales tax revenues, it is recommended that the bill incorporate the proposed changes within the Sales and Use Tax Law.

**COST ESTIMATE**

Some administrative costs would be incurred in identifying all affected thoroughbred horse sellers, revising sales tax returns, data entry and programming, and accounting for the revenues to be transferred. An estimate of these costs is pending.

**REVENUE ESTIMATE**

The California Horse Racing Board each year authorizes sales for racehorses or breeding stock used in the production of racehorses when such sales are conducted on the premises of a racing association, and reports these sales in its annual report. We do not have information on other reported taxable sales of thoroughbred horses.

According to its annual report, during fiscal year 2005-06, there were 2,093 thoroughbred horses sold for a total of \$42,599,390. These sales generated a total of \$1,487,290 in sales tax that would be transferred pursuant to the provisions of this measure.

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*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 Board's formal position.*