



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>04/16/02</b>	Bill No:	<b>AB 2636</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Leonard</b>
Board Position:	<b>Support</b>	Related Bills:	

### BILL SUMMARY

This bill would provide a 5 percent *state* sales and use tax exemption for the purchase of any “instructional materials”, as defined, by any “qualifying school entity,” as also defined.

### ANALYSIS

#### Current Law

The existing Sales and Use Tax Law imposes a tax on the sale of, or the storage, use, or other consumption in this state of, tangible personal property, unless that property is specifically exempted or excluded by statute.

Generally, public and private schools and school districts are required to pay sales or use tax on their purchases of tangible personal property to the same extent as any other person in this state. In fact, all units of local government as well as the State of California are generally required to pay sales or use tax on their purchases of tangible personal property. Sales to and purchases by the federal government, however, are exempt from sales and use tax.

Under current law, the State Board of Education is charged with adopting basic instructional materials in history, social science, science, mathematics, language arts and reading for use in kindergarten and grades 1 through 8.

#### Proposed Law

This bill would add Section 6361.4 to the Sales and Use Tax Law to provide a five percent *state* sales and use tax exemption for instructional materials purchased by a “qualifying school entity.”

The bill would define “instructional materials” by reference to Section 60451 of the Education Code as that section read on January 1 2002, and would define “qualifying school entity” to mean any public school, public school district, or county office of education, including any charter school, serving kindergarten and grades 1 to 12 inclusive, or any part thereof.

*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.*

The bill would become effective immediately, but would become operative on the first day of the calendar quarter commencing more than 90 days after the date the bill is enacted.

### **Background**

Historically, sales to the state and local governments have been subject to the sales and use tax. Other bills proposing to provide a general exemption for sales to, or purchases by, the state, school districts, governmental contractors, or other public entities have failed passage in the past, for example:

AB 4275 (Wyman) of the 1985-1986 Legislative Session would have exempted all purchases or leases of tangible personal property by any subdivision of the state and each governmental unit in the state.

AB 42 (Katz), as amended July 16, 1987, would have exempted all purchases or leases of tangible personal property by the state, the University of California, or any city, county, special district, or school district.

SB 204 (Kopp, et al.) of the 1987-1988 Session would have exempted all purchases and leases of tangible personal property by any city and county in this state.

SB 416 (Kopp) of the 1987-1988 session, SB 140 (Kopp, et al.) of the 1989-1990 session, and SB 1424 (Kopp) of the 1993-1994 session would have exempted all purchases or leases of tangible personal property by the state, any city and county, special district, or school district if the purchase or lease exceeded \$1,000 and was made with a purchase order.

AB 3176 (Bradley) of the 1987-1988 session would have exempted all purchases or leases of tangible personal property by any school district.

AB 2345 (Ducheny) of the 1999-00 session would have provided a 5% sales and use tax exemption for sales of books to public schools, public school students under the direction of the teacher, or to the public school teacher for professional development.

AB 2348 (Ducheny) of the 1999-00 session would have provided a sales and use tax exemption for sales of college textbooks to students.

SB 1701 (Johnson) of the 1999-00 session would have provided a 5% sales and use tax exemption for purchases of textbooks by a public school.

AB 1077 (Mountjoy) of the 2001 session would have provided a 5% state sales and use tax exemption for the purchase of any tangible personal property by a K-12 public school or school district for use by that school or district. The Board supported this measure.

AB 1246 (Leonard) of the 2001 session would have exempted from sales and use tax any textbook that is purchased by a student at an institution of higher education or from an entity whose primary purpose is to provide textbooks to students attending institutions of higher education, for use as a learning resource in any course of study at that institution. The Board supported this measure.

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SB 546 (McClintock) of the 2001 session would have exempted from sales and use tax the sale and purchase of any textbook, as defined, purchased by a K-12 public school or school district, or an accredited private school, or sold to a student of an accredited private school or institution of higher education. The Board supported this measure.

SB 1064 (Polanco) of the 2001 session would have exempted from sales and use tax any tangible personal property that is purchased by a school for educational purposes. The Board supported this measure.

## COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author and is intended to reduce financial burdens on public schools.
2. **April 16, 2002 amendments limit the proposed exemption.** As amended, the bill would exempt purchases by qualifying school entities of “instructional materials”, as defined in specified provisions of the Education Code as they read on January 1, 2002. In its introduced version, the bill would have exempted *all* purchases by these entities.
3. **What are “instructional materials”?** Under the reference to the Education Code for purposes of defining the items proposed to be exempted, “instructional materials” means materials in the core curriculum that are aligned to content standards for pupils in kindergarten and grades 1 to 12, inclusive, that meet all of the following requirements:
  - (a) The instructional materials are aligned with content standards adopted by the State Board of Education in 1997 or 1998.
  - (b) The instructional materials for pupils in kindergarten and grades 1 to 8, inclusive, have been adopted by the State Board of Education pursuant to Chapter 2 (commencing with Section 60200) of Part 33, using criteria aligned to the adopted content standards.
  - (c) The instructional materials for pupils in grades 9 to 12, inclusive, are basic instructional materials, as defined in subdivision (a) of Section 60010, that have been reviewed and approved, through a resolution adopted by the local governing board, as being aligned with the content standards adopted by the State Board of Education in 1997 or 1998.
4. **Partial exemptions complicate administration of the tax.** The creation of a partial exemption under existing law for a somewhat broad exemption such as that proposed in this bill would complicate reporting requirements for a large number of retailers. Enactment of this measure would require retailers of instructional materials who sell to schools to first determine whether the school is public (versus private) and whether it is a K-12 school (as opposed to a pre-school). Then, the retailer would be required to compute and collect the applicable local and district taxes on the sale, and then segregate these partially exempt sales from other sales in order to properly complete their sales and use tax returns. This would place an added

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record-keeping burden on retailers. In addition, the Board’s experience with its administration of other partial exemptions indicates that errors on returns increase, which has a corresponding increase in the Board’s workload.

**COST ESTIMATE**

Some costs would be incurred in programming, notifying affected retailers, answering inquiries, writing appropriate regulations, revising and processing of returns. An estimate of these costs is pending.

**REVENUE ESTIMATE**

**Background, Methodology, and Assumptions**

According to the California Department of Education, total expenditures per student that would qualify under this measure are estimated to be \$204. The total number of students in K-12 public schools is 6,050,895. Therefore, the total expenditures that would be exempted under this measure are estimated to be \$1.2 billion (\$204 x 6,050,895).

**Revenue Summary**

The annual revenue loss from exempting \$1.2 billion from the state sales and use tax is estimated to be the following:

State loss (5.00%)	\$60.0 million
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