STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	**Enrolled**	Bill No:	**AB 646**
Tax:	**Sales and Use**	Author:	**Horton**
Board Position:	**Support – Board sponsored**	Related Bills:	**AB 249 (Matthews)**

BILL SUMMARY

This bill would specify that sales of medicines to clinics, as defined, for the treatment of any person pursuant to the order of a licensed physician and surgeon, dentist, and podiatrist, are exempt from sales and use tax.

ANALYSIS

Current Law

Under existing law, sales or use tax applies to all sales or purchases of tangible personal property, unless otherwise exempted or excluded from the computation of sales or use tax. Section 6369 of the Sales and Use Tax Law provides an exemption from tax for the sale and use of medicines sold to a licensed physician and surgeon, podiatrist, dentist, or health facility for the treatment of a human being. "Health facility" is defined within this statute by a cross-reference to Section 1250 of the Health and Safety Code. Section 1250 provides a comprehensive description of the types of establishments that fall under that term, including hospitals, skilled nursing facilities, psychiatric facilities, and others. However, outpatient clinics – which basically provide care to patients who remain less than 24 hours - do not fall within this comprehensive description. Consequently, sales of medicines to outpatient clinics for the treatment of a human being are subject to tax to the same extent as any other sale of tangible personal property.

Existing law defines outpatient clinics under Section 1200 of the Health and Safety Code. This section provides that, "clinic" means an organized outpatient health facility which provides direct medical, surgical, dental, optometric, or podiatric advice, services, or treatment to patients who remain less than 24 hours, and which may also provide diagnostic or therapeutic services to patients in the home as an incident to care provided at the clinic facility.

Proposed Law

This bill would amend Section 6369 of the Sales and Use Tax Law to incorporate a cross-reference to Section 1200 of the Health and Safety Code for purposes of enhancing the definition of "health facility" to include within the exemption, medicines sold to surgical clinics and similar health facilities for the treatment of human beings.

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 operative on the first day of the calendar quarter commencing more than 90 days from the date the bill is enacted.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Board of Equalization. Its purpose is to provide an equitable solution to a confusing area in the sales and use tax law that has resulted in errors in reporting tax on sales of medicines to surgical clinics. Surgical clinics and similar outpatient clinics essentially provide the same service to patients as hospitals and any other qualifying health facility, and there is no logical reason why these facilities should be taxed in a manner differently than those establishments already benefiting from the existing exemption.

2. **Enactment of this bill would update the Sales and Use Tax Law to reflect practices in modern medicine.** Advances in medicine have made it possible to perform on an outpatient basis many procedures that historically were performed only in hospitals. In addition, due to the rising costs of hospitalization, many insurers are offering incentives or provisions to guide patients toward less expensive outpatient services. It is illogical and inequitable to impose the tax on medicines that these outpatient clinics furnish to patients in connection with essentially the same services that were previously performed only by hospitals.

3. **Related legislation.** Another measure, AB 249 (Matthews), which is also enrolled, would also amend Section 6369 for purposes of codifying the Board's regulation regarding lancets and glucose test strips. AB 646 contains a double-jointing provision with AB 249.

COST ESTIMATE

Administrative costs would include providing notices to affected retailers, auditing claimed exemptions, and amending the Board's regulation. These costs are expected to be absorbable.

REVENUE ESTIMATE

It is expected that any loss of revenues associated with this measure would be minimal. The Board has found that most vendors making sales to health facilities have not made the distinction between a "health facility" under Section 1250 of the Health and Safety Code and a "clinic" under Section 1200 of the Health and Safety Code for purposes of collecting and remitting tax on sales to clinics. Consequently, most sales to these clinics have not been reported as taxable. Therefore, any loss of revenue associated with this proposal would result from a few, if any, vendors that have been properly reporting the tax.

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