

Senate Appropriations Committee Fiscal Summary
Senator Kevin de León, Chair



AB 919 (Williams) – Sales and Use Tax: Itinerant Vendors: Repayment

Amended: June 24, 2014
Urgency: No
Hearing Date: June 30, 2014

Policy Vote: G&F 6-1
Mandate: No
Consultant: Robert Ingenito

name

This bill meets the criteria for referral to the Suspense File.

Bill Summary: AB 919 would allow veteran vendors, as specified, to receive repayments of sales taxes paid to the Board of Equalization (BOE) between April 1 2002 and April 1, 2010.

Fiscal Impact:

- The bill contains a one-time \$50,000 General Fund appropriation to the State Controller's Office (SCO) for repayments, as specified. A cost pressure could result to the extent that total claims for repayments exceed \$50,000 (See Staff Comments).
- BOE indicates the bill would result in one-time costs of less than \$10,000 (General Fund).

Background: The sales and use tax (SUT) is imposed on retail sales of tangible personal property (TPP) unless specifically exempted. The SUT is generally not applied to sales between wholesalers and retailers, but rather is imposed on the retailer at the point of final sale to its customers. Persons selling TPP generally must obtain a seller's permit and report the tax on a BOE-prescribed return.

Current law allows about 15 entities that purchase products for resale to be designated as "consumers," and not retailers, of certain TPP that they purchase for resale. Thus, under a "consumer" reporting status, current law eliminates the need for the retailer to obtain a seller's permit and report the tax on his or her sales. Rather, these retailers are regarded as consumers, and they must pay tax on their purchases of taxable products they intend to sell. These include certain items purchased by optometrists, physicians, pharmacists, veterinarians, and others where the sales are, to varying degrees, incidental to their main businesses. For these entities, sales taxes are due when they purchase the product from the wholesaler, instead of when they resell the products to their customers. The benefit is that these businesses and BOE avoid the recordkeeping and auditing burdens on an incidental amount of sales. The cost to the State is that it loses the sales tax on the mark-up between the wholesale and retail price of the products being sold. In the case of cooked food, the state loses the full value of the product since the raw food materials are generally exempt from the tax.

STATE BOARD OF EQUALIZATION

Appeal Name: *William Connell*

Case ID: *ITEM #*

Date: *8/6/14* Exhibit No:

TP FTB DEPT PUBLIC COMMENT

- Define a "qualified repayment" as an amount equal to the state and local sales taxes paid during the period beginning April 1, 2002, and before April 1, 2010, less any amounts previously refunded, credited or paid through any means.
- Before January 1, 2016, authorize a qualified veteran to file a claim with BOE.
- By March 1, 2016, require BOE to certify to SCO the qualified repayment amount to be made.
- Appropriate \$50,000 to SCO to make payments of qualified repayments to qualified veterans.
- Require BOE to report to the Legislature by May 1, 2016, the name of each qualified veteran who was issued a repayment and the repayment amount.
- Require SCO to transfer back any used portion of the bill's appropriation back to the General Fund.

Incorrect

Staff Comments: This bill largely results from the efforts of a single individual whose interpretation of current law as it existed prior to the passage of SB 809 has been consistently rejected. Specifically, the individual filed three separate lawsuits between 1999 and 2008 against BOE seeking a sales tax refund for the period dating back to 1993. He failed all three times.

Nevertheless, BOE entered into a settlement agreement with the individual in April, 2010. Specifically, under the settlement, BOE agreed to refund him an undisclosed amount of money, while he (1) was required to refrain from further litigation or administrative claims against BOE, and (2) agreed to waive "any known or unknown claims."

The individual is now advocating for legislation to provide additional relief. Essentially, in enacting this bill, the Legislature would be retroactively conforming the law to support his notion that QIVs were never under legal obligation to collect sales tax, despite the fact that this position was repeatedly rejected by the courts, by BOE, and by Legislative Counsel.

This bill's ultimate fiscal impact is not completely known. Though the bill appropriates \$50,000, the actual costs to provide comprehensive repayments to QIVs could be higher. BOE indicates that it is aware of a small number of veterans that over the years have filed appeals on the issue related to the Business and Professions Code discussed above. The number of those veterans (and potentially others) that would seek repayments is not known. If a *single* QIV had average daily sales of about \$215 over the 8-year period covered in the bill, the resulting sales tax due to BOE (and now repaid under the provisions of the bill) would exceed \$50,000. Thus, to the extent that BOE is correct and veterans who have filed appeals previously were to come forward and request repayments, the \$50,000 might not be adequate, with a cost pressure being the result.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 919

AUTHOR: Williams

VERSION: 5/23/14

CONSULTANT: Bouaziz

HEARING: 6/11/14

FISCAL: Yes

TAX LEVY: No

SALES AND USE TAX: ITINERANT VENDORS: REPAYMENT

Enables a "qualified veteran" to receive from the state a "qualified repayment" of state and local sales taxes paid between April 1, 2002, and April 1, 2010.

Background and Existing Law

State law imposes a sales tax on retailers for the privilege of selling tangible personal property (TPP), absent a specific exemption. The tax is based upon the retailer's gross receipts from TPP sales in this state.

State law imposes a complementary use tax on the storage, use, or other consumption in this state of TPP purchased from any retailer. The use tax is imposed on the purchaser, and unless the purchaser pays the use tax to a retailer registered to collect, the purchaser is liable for the tax. The use tax is set at the same rate as the state's sales tax and must be remitted to the Board of Equalization (BOE).

Generally, retailers must obtain a seller's permit and report the sales and use tax on a BOE prescribed return, unless designated as "consumers." In which case, they neither obtain a seller's permit nor report the tax on sales. Instead, consumers pay tax when they purchase taxable products intended for sale. Various classes of retailers are classified as consumers, including qualified itinerant vendors. A qualified itinerant vendor (QIV) is a person that:

- Was a member of the Armed Forces of the United States (U.S.), who received an honorable discharge or release from active duty under honorable conditions;
- Is unable to obtain a livelihood by manual labor due to a service-connected disability;
- Is a sole proprietor with no employees; and,
- Has no permanent place of business in this state.

six

2. One man's personal cause. This bill, and the four related bills preceding it, stem from the efforts of veteran William M. Connell. Since at least June 25, 1993, Mr. Connell has operated a mobile food business known as "All American Surf Dog." Mr. Connell asserts that, under a law originally enacted in the 19th Century, he has no obligation to collect or remit sales and tax on his retail sales. Specifically, Mr. Connell has relied on Business & Professions Code Section 16102, which provides in its entirety:

unique and specific tax language
any! whatsoever!

"Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax, or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor."

the comma
incorrect for 1893 inactment

This provision was added in 1893 and was described in the chaptering bill as "An act to establish a uniform system of county and township government." Moreover, this statute is contained in Chapter 2 of Part 1 of Division 7 of the Business & Professions Code, entitled *Licensing by Counties*.

In 1999, the BOE held that, while this statute exempts honorably discharged veterans from *locally imposed* license taxes and fees, it does not provide an exemption from sales and use tax.

However, Mr. Connell was not satisfied with this interpretation. Thus, on May 12, 1999, June 2, 2004, and on June 4, 2008, Mr. Connell filed three separate lawsuits against the BOE seeking a sales and use tax refund for the period "1993 to present." He failed each time.

On April 29, 2010, Mr. Connell signed a "Settlement Agreement and Mutual Release of all Claims" (Settlement Contract) covering the entire period from June 25, 1993 through March 31, 2009. The BOE agreed to refund Mr. Connell an undisclosed amount of money. In addition to requiring the dismissal of Mr. Connell's appeal, the Settlement Contract required Mr. Connell to refrain from further litigation or administrative claims against the BOE, and furthermore, Mr. Connell agreed to waive "any known or unknown claims".

incorrect - abandonment of agreement.

At the same time that Mr. Connell was litigating his dispute in the courts, he was also advocating for legislation to amend the Sales and Use tax Law. In 2008, AB 3009 (Brownley) was introduced. The bill classified certain veterans as consumers and not retailers, of the food products and nonalcoholic beverages they sell. AB 3009 was held in the Assembly Committee on Revenue and Taxation. In 2009, however, Mr. Connell was successful in his efforts to pass SB 809 (Committee on Veterans Affairs), Chapter 621, Statutes of 2009, which granted consumer

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Support: American Legion Auxiliary, Unit 49; California Association of County Veterans Services Officer; California Board of Equalization; California Council of Chapter Military Officers Association of America; California State Commanders Veterans Council; California State Council Vietnam Veterans of America; California Taxpayers Association; Carpinteria Valley Chamber of Commerce; City of Carpinteria; County of Santa Barbara; Department of California, American Legion; Department of California AMVETS; Department of California Veterans of Foreign Wars; Military Order of the Purple Heart, Chapter 750; Veterans Caucus of the California Democratic Party; Veterans Coordinating Council of Santa Barbara; 1 individual letter.

Opposition: None Received.

16 support

approx 30 more
Veterans groups (local, state,
and national, are in support,

none opposed

Date of Hearing: January 13, 2014

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Raul Bocanegra, Chair

AB 919 (Williams) – As Amended: January 6, 2014

Majority vote. Fiscal committee.

SUBJECT: Sales and Use Tax Law: veterans: itinerant vendors: repayment

SUMMARY: Enables a "qualified veteran" to receive from the state a "qualified repayment" of state and local sales taxes paid to the State Board of Equalization (BOE) during the eight-year period beginning on and after April 1, 2002, and before April 1, 2010. Specifically, this bill:

1) Contains the following legislative findings and declarations:

- Wrong* ★
- a) Prior to the enactment of [SB 809], which became operative on April 1, 2010, there was considerable uncertainty among honorably discharged veterans with respect to their responsibilities under California's Sales and Use Tax (SUT) Law. These veterans relied upon Business and Professions Code (B&PC) Section 16102, which exempts honorably discharged veterans from payment of any license, tax or fee, whatsoever, for their sales of goods, wares, or merchandise owned by them (except alcoholic beverages), and as a result, failed to pay sales tax or to collect sales tax reimbursement on their retail sales.
 - b) This uncertainty resulted in deficiency assessments by the BOE against these veterans and subsequent payments to the BOE by these veterans of the tax, interest, and penalty for amounts that the BOE determined to be due.
 - c) For the public purpose of assuring equity in the payment of sales tax among qualified veterans for tangible personal property (TPP) owned and sold by those veterans for \$100 or less, it is the intent of the Legislature that the sales tax, interest, and any penalties paid by these veterans on those sales during the period on and after April 1, 2002, and before April 1, 2010, for which there was no sales tax reimbursement collected from customers, be repaid in accordance with this bill.

2) Defines a "qualified veteran" as a person who:

- a) Met the requirements of a "qualified itinerant vendor" as set forth in Revenue and Taxation Code (R&TC) Section 6018.3 during the period in which the sales were made; and,
- b) Paid to the BOE state and local sales taxes during the period beginning April 1, 2002, and before April 1, 2010, for which no sales tax reimbursement was collected from customers, and also paid any interest or penalties associated with those tax liabilities.

- 4) Classifies a qualified itinerant vendor (QIV) as a consumer, and not a retailer, of TPP owned and sold by the QIV, except for alcoholic beverages or TPP sold for more than \$100. (R&TC Section 6018.3)
- 5) Specifies that a person is a QIV when all the following conditions apply:
 - a) The person was a member of the Armed Forces of the United States (U.S.), who received an honorable discharge or release from active duty under honorable conditions;
 - b) The person is unable to obtain a livelihood by manual labor due to a service-connected disability;
 - c) For purposes of selling TPP, the person is a sole proprietor with no employees; and,
 - d) The person has no permanent place of business in this state.
- 6) Specifies that this preferential tax treatment does not apply to a person:
 - a) Engaged in the business of serving meals, food, or drinks to a customer at a location owned, rented, or otherwise supplied by the customer (i.e., a caterer); or,
 - b) Operating a vending machine.

FISCAL EFFECT: This bill limits the allowable repayment amount to \$50,000, upon appropriation by the Legislature.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

Disabled veterans transitioning from military to civilian life can struggle to reintegrate. Frequently, they are unable to find a job and many veterans become vendors selling art, food, books, among other items.

As a result of previous misinterpretations of the law governing the collection of sales tax on the part of certain disabled veteran vendors, the Legislature passed and the Governor signed Senate Bill 809 in 2009. That bill granted certain qualified vendors an exemption from collecting sales tax from consumers through [January] 1, 2012. Senate Bill 805 (2011) extended these provisions to 2022.

While SB 809 and SB 805 benefit those qualified disabled veterans returning to the civilian workforce from 2010 and moving forward, disabled veteran vendors who operated before the adoption of [SB 809] still paid several years' worth of sales tax, interest and penalties to the BOE.

This bill targets a small group of itinerant disabled veteran vendors. These veterans live on the fringe of our economy often as a direct result of their military service. To the extent that the Legislature can offer a little financial relief in recognizing the sacrifices

expect that the number will be minimal."

4) Proponents of this bill note:

Because veteran vendors misunderstood Section 16102 of the [B&PC], they did not collect sales tax from their customers but instead ended up having to pay it out of their own pockets to the Board of Equalization.

While legislation has already passed to clarify the law regarding qualified itinerant vendors and the collection of sales tax so that this problem no longer occurs, [this] legislation is needed to allow qualified veteran vendors to submit a claim for reimbursement of the monies paid during the years where clarity in the law was lacking.

5) Committee staff comments:

- a) Retailers and consumers: The sales tax is imposed on retailers for the privilege of selling TPP. As such, retailers of TPP must generally obtain a seller's permit and report and remit the tax to the BOE. Existing law, however, classifies a variety of retailers as *consumers*, and not retailers, of specified TPP they sell. These retailers are not required to obtain seller's permits or to report tax on their qualifying sales. Instead, these retailers are only required to pay tax on the taxable goods used to produce the property they sell. This "consumer reporting status" is primarily designed to alleviate reporting burdens for small businesses, while minimizing the revenue losses associated with complete SUT exemptions.
- b) One man's personal cause: This bill, and the four related bills preceding it, stem from the efforts of veteran William M. Connell. Since at least June 25, 1993, Mr. Connell has operated a mobile food business known as "All American Surf Dog." For years, Mr. Connell has asserted that, under a law originally enacted in the 19th Century, he has no obligation to collect or remit SUT on his retail sales. Specifically, Mr. Connell has relied on B&PC Section 16102, which provides in its entirety:

Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor.

This provision was added in 1893 (long before enactment of the SUT Law), and was described in the chaptering bill as "An act to establish a uniform system of county and township government." Moreover, this statute is contained in Chapter 2 of Part 1 of Division 7 of the B&PC, entitled *Licensing by Counties*.

As such, in 1999, the BOE held that, while this statute exempts honorably discharged

seeking retroactive relief for sales tax payments made to the BOE between April 1, 2002, and April 1, 2010. Essentially, this bill is asking the Legislature to retroactively conform the law to support Mr. Connell's position that he was never under a legal obligation to collect sales tax; this, despite the fact that Mr. Connell's position was repeatedly rejected as lacking merit by the courts, by the BOE itself, and by the Legislature's own Office of Legislative Counsel.

- d) A highly questionable precedent: This bill would establish a highly questionable precedent by essentially providing retroactive relief to conform the law to one individual's repeatedly rejected legal interpretation. In addition, while it is conceivable that there are other similarly situated individuals, Committee staff has not been made aware of any other vendors who failed to collect sales tax based on their understanding of a 1893 statute. Thus, this bill could arguably be considered special legislation and, despite the legislative declaration to the contrary, a gift of public funds. Finally, if this bill were to pass, it is not clear how the BOE would be in a position to pay Mr. Connell, given that he signed a Settlement Contract with the BOE forever releasing his claims for this period in exchange for an unspecified settlement payment. Would this Settlement Contract simply be ignored? Would the amount of the unspecified payment be deducted from the amount paid to Mr. Connell? This bill does not address either issue.
- e) Suggested technical amendments:
- i) On page 2, in line 4, delete "805" and insert "809";
 - ii) On page 2, in line 9, delete "Code that" and insert "Code, which";
 - iii) On page 4, in line 9, delete "repayment" and insert "repayments"; and,
 - iv) On page 4, in line 11, delete "exceed" and insert "exceeds".
- f) Related legislation:
- i) AB 855 (Ma) of the 2011-12 Regular Session: AB 855 would have retroactively applied preferential consumer status to QIVs as of January 1, 1986. AB 855 was referred to the Senate Committee on Governance and Finance, where it was never heard.
 - ii) SB 805 (Committee on Veterans Affairs), Chapter 246, Statutes of 2011: As originally introduced, SB 805 would have deleted outright the sunset date for the provisions of the SUT Law that currently classify a QIV as a consumer, and not a retailer, of specified TPP the QIV sells. SB 805 was instead amended in this Committee to extend the sunset date for the preferential consumer status provisions from January 1, 2012, until January 1, 2022.
 - iii) SB 809 (Committee on Veterans Affairs), Chapter 621, Statutes of 2009: SB 809 provided that a QIV is a consumer, and not a retailer, of TPP the QIV owns and sells, except alcoholic beverages or TPP sold for more than \$100.

Date of Hearing: January 23, 2014

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Mike Gatto, Chair

AB 919 (Williams) – As Amended: January 17, 2014

Policy Committee: Revenue and Taxation

Vote: 9-0

Urgency: No State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill allows a qualified veteran to receive from the state a repayment of state and local sales taxes paid to the State Board of Equalization (BOE) during the eight-year period beginning on and after April 1, 2002, and before April 1, 2010, as specified. The bill lays out an administrative process for filing and processing of repayments and provides the amount of total authorized repayment shall not exceed \$50,000 for all taxpayers, and is subject to appropriation by the Legislature.

FISCAL EFFECT

This bill limits the allowable repayment amount to \$50,000 (GF), upon appropriation by the Legislature. The BOE will have minor and absorbable administrative costs for receiving and processing the reimbursement filings.

COMMENTS

- 1) Purpose. According to the author, disabled veterans transitioning from military to civilian life can struggle to reintegrate. Frequently they are unable to find a job and many veterans become vendors selling art, food, books among other items. The author argues this bill targets a small group of itinerant disabled veteran vendors who live on the fringe of our economy often as a direct result of their military service. The author contends that, to the extent the Legislature can offer financial relief in recognizing the sacrifices made by our veterans, it should take the opportunity to do so. The author states that AB 919 provides modest assistance to veterans who have been required to remit sales tax, interest, and penalties to the BOE, and who lack significant assets.
- 2) Sponsor. The bill's sponsor, the BOE, notes the Legislature unanimously voted to specify that honorably discharged veterans with service-related disabilities who have no permanent place of business are consumers, not retailers of certain goods they sell. The purpose of that legislation was to ease the economic burdens of veterans who sustained permanent injuries in foreign conflicts. BOE argues that some itinerant veterans acted on the belief they could make sales of small items without responsibility for the tax. These itinerant veterans lack substantial assets and many experienced forced collection action by BOE. The sponsor believes a small number of these veterans are in need of relief for prior periods; specifically to allow qualified veteran vendors to submit a claim for reimbursement of the monies paid during the years when the law was unclear.

d) The Legislature in considering this bill ignores the settlement contract voluntarily entered into by the taxpayer and the BOE.

7) Related legislation.

a) SB 805 (Committee on Veterans Affairs), Chapter 246, Statutes of 2011, extended the sunset date for the preferential consumer status provisions from January 1, 2012, until January 1, 2022.

b) SB 809 (Committee on Veterans Affairs), Chapter 621, Statutes of 2009 provided that a qualified veteran, as specified, is a consumer, and not a retailer, of TPP, with certain limitations.

8) There is no registered opposition to this bill.

Analysis Prepared by: Roger Dunstan / APPR. / (916) 319-2081

Erin at 916-319-2037

8:30 am ^{at Room} 4005

Talking Points for Bill Connell
for Assembly Revenue & Taxation Committee Testimony on 6/11/14 Rm

9:30 am hearing

- Thank you for hearing this bill today. I am a disabled Vietnam ^{ERA, 112} veteran vendor who owns a hot dog stand, and I have been working on this sales tax issue for 21 years.
- Thanks to the work of prior legislatures, SB 809 and SB 805 have made clear California's commitment to its disabled veteran vendors. Both of those bills had no 'no' votes. To date, neither has this bill. AB 919 would simply close the loop for veterans who operated prior to these bills becoming law.
- Over the years that I've worked on this issue, I have met and heard stories of other similarly situated veterans who peddle their wares all over the state—men and women who sell t-shirts, jarred olives, tourist knick-knacks, pizza, and yes, hot dogs.
- The amount of money that these veterans would receive may seem small to you, but it is a big deal to those of us who do this work.
- Thank you for your time, and I urge an aye vote on AB 919.

Spoke on all points as advised.