

DEPARTMENT OF VETERANS AFFAIRS

OFFICE OF THE SECRETARY
 POST OFFICE BOX 942895
 SACRAMENTO, CALIFORNIA 94295-0001
 Telephone: (916) 653-2158



December 10, 2014

Mr. William M. Connell
 [REDACTED]

Dear Mr. Connell,

On behalf of the California Department of Veterans Affairs, I would like to thank you for your military service and your work and advocacy before the legislature to address the issues relating to reimbursement for veteran itinerant vendors who improperly paid taxes and fees with the passage of Assembly Bill 919.

As you may know, this has been an ongoing process and has had the attention of the Legislature for a number of legislative cycles. With the passage of Assemblymember Williams' legislation, facilitated by your efforts, veterans who were improperly charged can finally seek the repayment they are owed. While this impacts only a small number of veterans, the Department's mission is to honor all California veterans, whether it is an issue affecting one veteran or thousands, to the fullest extent possible and I applaud your relentless efforts over the past 21 years.

Please accept this as my commitment to assist you with any questions or issues that may arise. I have tasked my Communications Unit and Public Affairs office to make publicizing this new law a priority through the Department's social media outlets, departmental newsletters and the internet website and by educating veterans, veteran's service organizations and service providers and the legislature.

Thank you for your support of California's veterans and your work for the people of California. If you should have any additional questions please contact my Deputy Secretary for Legislation J.P. Tremblay at (916) 653-2010 or my legislative consultant Phil McAllister at (916) 653-1961.

Respectfully,

Peter J. Gravett
 Major General (Retired)
 Secretary

STATE BOARD OF EQUALIZATION

Appeal Name: William Connell
 Case ID: _____ ITEM # _____
 Date: 11-17-15 Exhibit No: 11.1
 TP FTB DEPT (PUBLIC COMMENT)

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.

Proposed Law

Assembly Bill 919 enables a "qualified veteran" to receive from the state a "qualified repayment" of state and local sales taxes paid to the BOE during the eight-year period beginning on and after April 1, 2002, and before April 1, 2010.

The bill defines a "qualified veteran" as a person who met the requirements of a QIV during the period in which the sales were made, and paid to the BOE state and local sales taxes during the period beginning April 1, 2002, and before April 1, 2010. To qualify, the QIV must also not have collected sales tax from customers.

AB 919 defines 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.

The bill limits the allowable repayment amount to \$50,000, upon appropriation by the Legislature.

State Revenue Impact

Upon appropriation by the Legislature, the maximum allowable repayment amount is \$50,000.

Comments

1. Purpose of the bill. According to the author, "Disabled veterans transitioning from military to civilian life can struggle to re-integrate. 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 Jan 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 AB 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 our veterans made, it should take the opportunity to do so. AB 919 provides modest assistance to those veterans who have been required to remit sales tax, interest, and penalties to the BOE, and who lack significant assets."

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:

"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 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.

Abandonment of Agreement

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".

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

reporting status to QIVs until January 1, 2012. In 2011, SB 805 (Committee on Veterans Affairs), Chapter 246, Statutes of 2011, was introduced to delete this sunset date outright, making the preferential provisions permanent. SB 805 was amended in the Assembly Committee on Revenue and Taxation to provide a sunset extension to January 1, 2022. Thus, until that date, Mr. Connell can continue to operate his business without collecting or remitting sales tax.

Although there may be other similarly situated individuals, ~~Committee staff has not been made aware of anyone other than Mr. Connell~~ who failed to collect sales tax based on their understanding of the 1893 statute.

3. Related Legislation.

- 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 never heard in this Committee.
- 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.
- 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.
- AB 3009 (Brownley), of the 2007-08 Regular Session: AB 3009 would have provided that, for purposes of the SUT Law, certain U.S. veterans shall be considered consumers of, and not retailers of, food products and nonalcoholic beverages they sell. AB 3009 was held in the Assembly Committee on Revenue and Taxation.

X AB 1869 in 2006 by Walker
 X AB 809 by Montroy Assembly Actions

*Reg suggestion by BOE
 in 1999 Jan Suggarlin
 1-2*

Assembly Committee on Revenue and Taxation:	9-0
Assembly Appropriations Committee:	16-0
Assembly Floor:	78-0



October 24, 2014

Re: Bill Connell, Member of the Carpinteria Valley Chamber of Commerce

To Whom It May Concern:

Bill Connell has been the owner of "American Surf Dog" in Carpinteria for the past 20 years. He has also been an active member of the Carpinteria Valley Chamber of Commerce, in good standing, during this time.

Connell's business was recognized by the Carpinteria Valley Chamber of Commerce as the "2002 Business of the Year," the "2003 Entrepreneur of the Year" by the local Hispanic Chamber of Commerce, and was selected by the US Small Business Administration as the 2010 "Veteran's Business Champion," representing the entire state of California.

He has diligently worked with local elected officials for more than 15 years to pass AB 919, which recently became law, after Governor's Brown's signature this fall. The new law will return a portion of the state's sales tax revenue, which was illegally taken from more than 5,000 itinerate veterans, who own businesses similar to his.

Cordially yours,

A handwritten signature in black ink that reads "Lynda Lang". The signature is written in a cursive, flowing style.

Lynda Lang
CEO/President
Carpinteria Valley Chamber of Commerce

2014 1/1/15

**AB 919 (Williams)
Itinerant Disabled Veteran Vendors Refund**

SUMMARY

AB 919 reimburses certain disabled itinerant veteran vendors for any sales tax, interest, and penalties not collected from customers but paid during the period between April 1, 2002 and April 1, 2010.

pay tax on their cost of the taxable components of the products they sell, which has the effect of minimizing revenue loss and reporting burdens to specified small businesses. Senate Bill 805 (2011) extended these provisions to 2022.

BACKGROUND

Veterans with service connected disabilities returning to civilian life struggle to re-integrate into society. Unable to find a job, many veterans become vendors selling art, food, books, among other items.

NEED FOR THE BILL

While SB 809 and SB 805 helped QIVs from 2010 forward, they didn't address previously collected sales tax. This bill creates a temporary grant program to reimburse qualified veteran vendors for sales tax, interest, and penalties not collected from customers dating back to April 1, 2002.

For many years certain veteran vendors argued Section 16102 of the Business and Professions Code (B&PC) exempts honorably discharged veterans from paying any license, tax or fee, whatsoever, for their sales of goods, wares, or merchandise they own (except alcoholic beverages). The enactment of Section 16102 of B&PC dates back to 1893, long before the establishment of Sales and Use Tax Law.

A qualified veteran vendor is someone who:

1. has paid state and local sales and use taxes between April 1, 2002 and April 1, 2010,
2. not collected sales tax reimbursement from customers and,
3. paid interest or penalties associated with tax liabilities.

Veteran vendors believed they were exempt from paying certain state and local sales tax; however, the Board of Equalization (BOE) considered veteran vendors "retailers" and, therefore, pursued collection of sales tax, interest, and penalties. Due to the misinterpretation, veteran vendors failed to collect sales tax reimbursement from customers resulting in out of pocket payment to the BOE.

AB 919 requires a qualified veteran vendor to submit a written claim before January 1, 2016 in order to obtain reimbursement. Further, BOE will provide the number of qualified repayments to the Controller on or before March 1, 2016. The total amount of funds available for qualified repayment is capped at \$50,000. If the total amount of claims filed exceeds \$50,000, the BOE will determine the pro rata share due to each qualified veteran. No interest will be paid on any qualified repayment.

To clarify the dispute, Senate Bill 809 (2009) granted "consumer" reporting status to qualified itinerant vendors (QIV) until January 1, 2012. Under a "consumer" reporting status, QIVs making otherwise taxable sales are not required to obtain a seller's permit or report tax on those sales. Rather, QIVs are only required to

This bill is necessary because hard-working disabled veteran vendors misunderstood Section 16102 of the B&P Code. Veteran vendors did not collect sales tax reimbursement from customers, resulting in thousands of

Paul Wellman

Billy Connell

'Hot Dog Man' Sales Tax Bill Signed

Tuesday, September 30, 2014

By [Nick Welsh \(Contact\)](#)

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Governor Jerry Brown signed into law a bill allowing Carpinteria's famed Hot Dog Man, Bill Connell, to be compensated for sales taxes levied that by law he should not have had to pay. Connell, a Vietnam-era veteran, has been waging a one-man war with the state comptroller's office on behalf of veteran street vendors for 21 years, insisting they were legally exempt from such taxes.

In 2009, the legislature concluded Connell's interpretation of the law was correct. This year — thanks to a bill authored by Assemblymember Das Williams — the legislature voted 175-to-1 to set aside \$50,000 to compensate Connell and any other veterans who may have been taxed on sales proceeds from vending cart operations. Connell estimates he has up to \$30,000 coming.

If there are more claims than the funding can accommodate, Connell said the proceeds are to be distributed in a pro-rata fashion. "This is the camel's nose under the tent," he proclaimed. Given that the comptroller estimated there are 5,600 potential beneficiaries, Connell said the total amount under contention could easily "wind up in the millions."

Connell has become a fixture around Carpinteria, selling hot dogs out of his "Surf Dog" cart and dispensing a steady stream of jokes and barbed commentary for the past 22 years. His battle with the state began one year later and has become the stuff of David-versus-Goliath lore in the halls of Sacramento. "I've been on defense for 21 years now," Connell exalted. "Now I get to go on the offense."

Connell had warm praise for Williams, who, he noted, was fond of his monster chili dogs after an afternoon of chasing waves. Despite his help, Connell said Williams will have to pay for such monster dogs in the future. "He gets nothing free," Connell stated. "Otherwise it could be viewed as a bribe."

Related Links

- ["Hot Dog Man" Billy Connell Faces the Franchise Tax Board](#) [March 1, 2007]
 - [Carpinteria's "Hot Dog Man" Gets Big Boost](#) [April 5, 2008]
-

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Billy Connell

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201)

Senate Bill No. 805

CHAPTER 246

An act to amend Section 6018.3 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 6, 2011. Filed with Secretary of State September 6, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 805, Committee on Veterans Affairs. Sales and use taxes: consumers: veterans: itinerant vendors.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price. That law, with certain exceptions, defines a retailer as a seller who makes any retail sale of tangible personal property and as a person who makes more than 2 retail sales of tangible personal property during any 12-month period, and defines a retail sale as a sale of tangible personal property for any purpose other than resale in the regular course of business.

Existing law provides that a qualified itinerant vendor, as defined, is a consumer, and not a retailer, of tangible personal property owned and sold by the qualified itinerant vendor, except for alcoholic beverages or items sold for more than \$100, so that the retail sale subject to tax is the sale of tangible personal property to the qualified itinerant vendor. This provision will be repealed on January 1, 2012.

This bill would extend that repeal date to January 1, 2022.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

Senate Bill No. 809

CHAPTER 621

An act to add and repeal Section 6018.3 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 809, Committee on Veterans Affairs. Sales and use taxes: consumers: veterans: itinerant vendors.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price. That law, with certain exceptions, defines a retailer as a seller who makes any retail sale of tangible personal property and as a person who makes more than 2 retail sales of tangible personal property during any 12-month period, and defines a retail sale as a sale of tangible personal property for any purpose other than resale in the regular course of business.

This bill would specify, until January 1, 2012, that a qualified itinerant vendor, as defined, is a consumer, and not a retailer, of tangible personal property owned and sold by the qualified itinerant vendor, except for alcoholic beverages or items sold for more than \$100, so that the retail sale subject to tax is the sale of tangible personal property to the qualified itinerant vendor.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these taxes.

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This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

October 14, 2014

California State Board of Equalization
Mr. Jerome E. Horton, Chairman
621 Capitol Mall
Sacramento, CA 95814

RE: AB 919

Dear Chairman Horton,

Congratulations on passage of AB 919 this past September 27, 2014. Moving forward on repayments due our veterans, William M. Connell has been working on a proposed formula for repayment that could be implemented administratively by the State Board of Equalization, to be guided by the mantra "Leave no one behind" and the "Genius" letter sent to our Governor and each of your offices. We will finally be able to find a cure for the many mistakes that have been made over the last 21 years.

There are three different Veterans Groups or subsets that are in need of administrative adjudication of this matter:

- (1) Those Veteran Vendors who the State Board does not know of.
- (2) Those Veteran vendors that the State knows of from 2002 till 2010, and that the State Board of Equalization has records of these Veterans and of denying them this tax exemption as contained in B&P 16102.
- (3) Those Veteran Vendors who prior to 2002 have been denied the tax exemption. Those Veteran Vendors the SBOE knows of and has records of. (Decisions and Recommendations denying those Veterans their tax exemption.) An SBOE inquiry of District records should yield more of these Veterans.

My records indicate that these Veterans have been requesting the tax burden be exempted from at least 1991 until present. I would be interested in assisting the S.B.O.E. in this task so that "No Honorably Discharged Veteran Vendor is left behind." I have already met with various Veteran's groups to properly identify all Veterans concerned.

Thank you.

Respectfully,

William M. Connell
U.S. Army Honorably Discharged

Legislative Counsel
D Boyer Vesp

All State Attorneys
Erroy Lawyer !
Sent on 9/30/14

1 TO THE GOVERNOR. OF CALIFORNIA,

2 **The Genius of Business & Professions Code 16102**

3 "Every soldier, sailor or marine of the United States who has received an honorable
4 discharge or a release from active duty under honorable conditions from such service may
5 hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous,
6 malt, vinous or other intoxicating liquor, without payment of any license, tax or fee
7 whatsoever, whether municipal, county or State, and the board of supervisors shall issue to
8 such soldier, sailor or marine, without cost, a license therefor." B&P Code 16102

9
10 The Reason for Establishment: If for some reason a law is not clear by the text (which is again
11 quite clear), then we need to look at the original intent behind the law.

12 "*. . . the most Universal and effectual way of discovering the true meaning of a law,*
13 *when the words are dubious, is by considering the reason and spirit of it; or the cause*
14 *which moved the legislator to enact it."* 1 William Blackstone Commentaries 61

15 When reading the plain intent and taking into consideration the application of this law
16 upon the persons it was designed to effect, we must consider several salient facts. First, when it
17 comes to the defense of the country, there are those who will fight abroad hand to hand and
18 engage the enemy directly. Then, there are those who remain home and often, pay greater taxes
19 in support of the war. It is also noted, that many who go off to War are not going to come back.
20 It is they who will bear the greatest burden. Not only will they and their heirs be deprived of all
21 future earning potential, but also of the very existence of that person. Further, the effects of war
22 often go on to burden the individual who went to war in many ways. This is not disputed by
23 either side (if I may so presume).

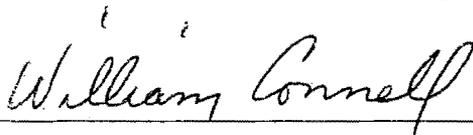
24 Many veterans of conflicts experience loss of limbs mental anguish and sometimes shock
25 from such extraordinary circumstances as only War tends to cause. People who have been in
26 such conflicts often end up tuning out of society altogether. Not only is this a problem to them,
27 but it is a problem for us since they once again live among us. There is a compelling state interest
28 in having such individuals reintroduced to society.

1 The Genius of this particular law and the likely intent for its enactment by the legislature
2 was to encourage veterans who were honorably discharged from the military to get out into
3 society again. The law was designed specifically for vendors and hawkers which are jobs that
4 require direct contact with the public and the citizens of the state. The profession of hawking and
5 peddling of goods requires social interactions by the people who are doing such duties. Many
6 people who went to War may be averse to such acts since they may have lost limbs and so forth.

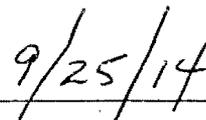
7 The second Genius of this law is that it works to encourage many of those Veterans, who
8 the citizens financially support, off welfare and gives them the capacity to be self-sufficient and
9 productive members of society. For many of us in society, we take our self-sufficiency for
10 granted and it is hard to recognize how others cannot be self sufficient. This law as it was
11 originally enacted gives the real opportunity for many members of the Veteran Community to
12 come off the welfare rolls. It allows them the chance to not only earn an honest income, but to do
13 it in the most dignified manner possible, with their own steam!

14 The final genius of this law may not have even been considered by the representatives
15 who unanimously enacted this law, but it is so fundamental that they should be given credit for it
16 well past the time they enacted it. It allows the rest of to see the effects of war by seeing those
17 who fought. In doing such, we are forced to remember so we may understand the effects of such
18 decisions in the future. With so much that goes on in our day to day lives, we often forget minor
19 things and even major calamities. War is no small matter to be entered into lightly and lest the
20 effects of Wars fought past be hidden, it may hamper our decision in entering future Wars. We
21 cannot fully understand the cost to us or our posterity if those who fought for us and the effects
22 such fighting had on them are hidden away in some closed room privately suffering.

23
24 Respectfully submitted,

25 
26 _____

27 William Connell, US Army Hon. Discharged

25 
26 _____

27 Date



STATE BOARD OF EQUALIZATION

TAXPAYERS' RIGHTS ADVOCATE OFFICE MIC: 70
450 N STREET, SACRAMENTO, CALIFORNIA 95814-0070
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0070
916-324-2798 • FAX 916-323-3319
TOLL-FREE 888-324-2798
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Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

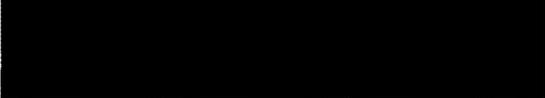
JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

October 24, 2014

Mr. William Connell



Re:



Dear Mr. Connell:

As you requested in our telephone conversation of October 20, 2014, enclosed are copies of the following documents that addressed estimates of the number of itinerant veteran vendors:

- May 15, 2007 memorandum from Todd C. Gilman to Honorable Members, *Follow-up to March 20, 2007 Taxpayers' Bill of Rights Hearings – Business and Professions Code Section 16102 (Veterans Exemption)*, with attachment: May 10, 2007 Revenue Estimate, *Proposed Application of Section 16102 of the California Business and Professions Code*, prepared by Joe Fitz
- August 1, 2007 memorandum from Todd C. Gilman to Honorable Members, *Itinerant Vendors – Follow Up to June 1, 2007 Board Meeting*, with attachment: July 10, 2007 memorandum from Joe Fitz to Todd Gilman (same title)

You also requested a list of the payments on your seller's permit accounts. Enclosed is a print-out of the recorded transactions (payments and various types of payment reversals) on your seller's permits 097-259073 and 099-304618. The list of transactions indicates the effective date, the period to which the transaction relates if applicable, the amount applied to the referenced period, if any ("Payment Amt"), and the transaction amount ("Remit Amt").

Abbreviations shown on the documents indicate the following:

APP	Applied payment
NEG	Negative amount (reversal of payment(s))
RFD	Refund
DIS	Dishonored check

Please note that one transaction amount, for example one check received by the Board of Equalization (BOE), may be applied to multiple periods. Therefore, the total payments received by the BOE, less payment reversals, can be found by adding the amounts in the "Payment Amt." column. The total net payments received in each account are as follows:

SR GH 097-259073 (5/3/02 – 3/31/09)	\$9,335.39
SR GH 099-304618 (10/22/94 – 3/31/03)	9,374.31

During our conversation, you stated that you wish to waive your rights to confidentiality in regard to the materials in your BOE file to allow anyone to view the contents of your file. I suggested it would be best if you provided a written consent. You may send it to my attention if

you wish and I will ensure it is added to your BOE record. Please be aware that the BOE is strictly bound by confidentiality statutes. There are two types of confidential information:

1. Personal identifying information. Information such as name, address, social security number, banking information, etc. is confidential pursuant to the Information Practices Act of 1977, specifically, **Civil Code section 1798.24**. Please note that Civil Code subsection 1798.24(b) requires that any waiver of confidentiality under this statute specify the time period for which the waiver is valid. If no time period is specified, the waiver is only valid for 30 days.
2. Information related to a taxpayer's business affairs. For example, sales and use tax information, such as reported sales or payments remitted for tax, interest, or penalties, is confidential pursuant to **Revenue and Taxation Code sections 7056 and 7056.5**.

I recommend that you reference the above statutes in your written consent. In addition, if you wish to include personal identifying information in your consent, you will need to specify the time period for which your authorization is valid.

As always, please don't hesitate to contact me if I can be of further assistance.

Sincerely,



Todd C. Gilman, Chief
Taxpayers' Rights and
Equal Employment Opportunity Division

TCG:ls
Connell 102314.docx

Enclosures

cc (with enclosures):

- Ms. Cynthia Bridges, Executive Director, MIC 73
- Mr. Randy Ferris, Chief Counsel, MIC 83
- Ms. Joann Richmond, Chief, Board Proceedings Division, MIC 81
- Mr. Jeffrey McGuire, Deputy Director, Sales and Use Tax Department, MIC 43
- Ms. Thea Etheridge, Disclosure Office, MIC 82
- Ms. Lauren Simpson, Taxpayers' Rights Advocate Office, MIC 70

**SUMMARY OF ISSUES AND BACKGROUND INFORMATION
WILLIAM CONNELL – VETERANS EXEMPTION**

Original: February 2007

Update: November 2009

EXHIBIT 11

M e m o r a n d u m

To : Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice Chair
Honorable Bill Leonard, Second District
Honorable Michelle Steel, Third District
Honorable John Chiang, Controller

Date: August 1, 2007

From : Todd Gilman, Chief
Taxpayers' Rights Advocate and Equal Employment Opportunity Division, MIC: 70

Subject : **Itinerant Vendors – Follow Up to June 1, 2007 Board Meeting**

At the June 1, 2007 Board Meeting I provided a report to the Board on the interpretation of Business and Professions Code Section (Section) 16102, along with a Revenue Estimate which provided the number of veterans that are vendors that would be affected if the proposed change in interpretation of the law were to be made. During the meeting, the Board requested clarification of who makes up the itinerant vendor community, as well as more information on vendor income figures, both of which were referenced in the Revenue Estimate prepared by Mr. Joe Fitz.

Attached is a report prepared by Mr. Joe Fitz, which provides detailed information regarding the two issues that were discussed at the meeting. Mr. Fitz worked with the Sales and Use Tax Department to identify examples of itinerant vendors that may sell taxable items and examples of goods or services commonly sold by itinerants that may be taxable. The report also examines the kind of products sold by itinerant vendor businesses referenced in published reports by the U.S. Census Bureau.

I hope you find the attached report helpful. If you require additional information or have questions on the revenue figures or the number of affected itinerant vendors, please contact Mr. Joe Fitz at (916) 323-3802.

TG

G:\TRA-OIC-EEO\TRAO\TBOR Hearings\Yearly Files\2007\Follow up Reports\Veteran follow up report 080107.doc
Attachment

Memorandum

To: Todd Gilman

Date: July 10, 2007

From: Joe Fitz
Chief Economist
Research & Statistics Section

Subject: Itinerant Vendors – Followup to June 1, 2007 Board Meeting

This is in response to a request from Chairwoman Yee during your presentation at the June 1, 2007 Board hearings on a follow-up to the March 20, 2007 Taxpayers' Bill of Rights Hearings (agenda item P1.2a). The presentation was in regard to Business and Professions Code Section 16102 (Veterans Exemption). The Board expressed a need for clarification of who makes up the itinerant vendor community and more information on vendor income figures, both of which were referenced in the Revenue Estimate provided with your presentation. Accordingly, the following information is intended to address Item 4 of the June 8, 2007 memo from Gary Evans to Ramon J. Hirsig, "May – June 2007 Post Board Meeting Assignments."

We asked the Sales and Use Taxes Department staff to identify examples of itinerant vendors that may sell taxable items and examples of goods or services commonly sold by itinerants that may be taxable. Examples of vendors include swap meet or flea market vendors, lunch wagon operators, caterers, and coffee cart providers. Examples of goods and services include firewood, Christmas trees, fireworks, automotive tools, interior design services, home repair services, landscaping, computer repair, and mobile windshield repair.

We also examined kinds of products sold by itinerant vendor businesses in published reports by the U.S. Census Bureau. Examples include groceries and meals, vitamins, cosmetics, clothing, curtains, appliances, electronic goods, furniture, rugs, computers, kitchenware, jewelry, books, flowers, magazines, art, and souvenirs.

The Census Bureau data also indicate that retail sales made by sole proprietor itinerant vendors with employees, which we believe are the most relevant data for sales and use tax permittees, ranged from an average of \$143,412 per business for mobile food sellers to \$265,811 per business for other direct selling establishments. See Table 1 for details.

The average retail sales per business for all sole proprietor itinerant businesses with employees in Table 1 is \$237,276 per operator. If all sole proprietors with and without employees are included, average retail sales per business falls considerably to about \$27,000 per business. However, this average is based on unknown, but potentially large numbers of agents of companies with party plan business models such as Amway and Avon where the agent may not need a taxable sales permit. This average also includes unknown numbers of other part time employees that may need permits that would bring down the average dramatically because of their part time status.

Table 2 shows how the data discussed above were used to calculate sales that would no longer be subject to taxation under this proposal. As shown in the table, we believe that about \$3.433 billion in taxable sales would no longer be subject to sales and use taxes under this proposal. We estimate that there are about 5,600 veteran sole proprietors, married co-owners or registered domestic partners that hold sales and use tax permits.

Table 1	
Itinerant Vendor Sole Proprietor Veterans	
Section 16102 - Veterans Exemption	
	M
Taxable Sales in 2005 by Itinerant Vendors	
Proportion Related to the Sales Tax	
Estimated Taxable Sales (Sales Tax Only)	
Estimated Alcohol Sales % of Taxable Sales ^{1/}	
Estimated Nonalcohol Sales % of Taxable Sales	95.2%
Estimated Nonalcohol Taxable Sales	\$6,106
Percent Sales by Sole Proprietors, Married Co-Owners and Domestic Partners	30.7%
Estimated Sole Proprietors Taxable Sales	\$1,873
Estimated Percent Veteran Sole Proprietors ^{2/}	9.7%
Estimated Veteran Sole Proprietors Taxable Sales Relevant to Section 16102	\$183
<p>1/ Source: U.S. Bureau of Economic Analysis. 2/ Sources: <i>The Small Business Economy</i>, December 2006, U.S. Small Business Administration and the <i>2007 U.S. Statistical Abstract</i>, U.S. Census Bureau.</p>	

Table 2	
All Sole Proprietor Veterans	
Section 16102 - Veterans Exemption	
	Millions of Dollars
Total 2005 Taxable Sales	\$536,904
Proportion Related to the Sales Tax	97%
Estimated Taxable Sales (Sales Tax Only)	\$520,797
Estimated Alcohol Sales Percent of Taxable Sales ^{1/}	3.4%
Estimated Nonalcoholic Sales Percent of Taxable Sales	96.6%
Estimated Nonalcoholic Taxable Sales	\$503,300
Percent Sales by Sole Proprietors, Married Co-Owners and Domestic Partners	7.0%
Estimated Sole Proprietors Taxable Sales	\$35,231
Estimated Percent Veteran Sole Proprietors ^{2/}	9.7%
	\$3,433
<p>1/ Source: U.S. Bureau of Economic Analysis. 2/ Sources: <i>The Small Business Economy</i>, December 2006, U.S. Small Business Administration and the <i>2007 U.S. Statistical Abstract</i>, U.S. Census Bureau.</p>	

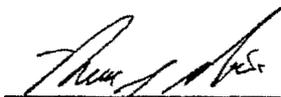
Legislative History, Case Law, Implications under the Sales and Use Tax Law

Mr. Ferris provided an analysis of the relevant legislative history of Section 16102 and its related statutory antecedents, and provided a discussion of all relevant case law including *In re Gilstrap* (1915) 171 Cal. 108 (*Gilstrap*) and *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750 (*Brooks*). Based on his analyses, Mr. Ferris opined that “. . . there does not appear to be an adequate basis for the Board to conclude that Section 16102 establishes an exemption for veteran retailers under the Sales and Use Tax Law. . . . In short, Section 16102’s exemption appears to be limited to license taxes and fees.” He also notes that even if Section 16102 could be read to create a sales tax exemption, it would not appear to relieve veterans of their use tax collection obligations: “Veterans would still owe a debt (not a tax or a fee) to California for failure to collect the use tax their customers would owe based on their customers’ purchases of goods from them in California.”

Mr. Ferris also points out that if the Board were to rule that Section 16102 creates an exemption applicable to both the sales and use taxes, the exemption could not be limited to itinerant veteran-retailers, pursuant to the *Brooks* opinion, which held that veterans selling from fixed locations and through agents and employees can qualify for Section 16102’s exemption. Further, Mr. Ferris notes that if the Board ruled that Section 16102’s exemption is *not* limited to license taxes and fees, it would appear that the exemption would also have to apply to other special taxes and fees administered by the Board that are associated with sales of nonalcoholic goods, including fuel and cigarette and tobacco products taxes.

I hope the attached reports are helpful and have adequately responded to your requests. If you require additional information about the estimates of number of affected veterans and revenue estimates, please contact Mr. Joe Fitz at 916-323-3802. If you have questions about the legal analysis, you may contact Mr. Randy Ferris at 916-322-0437.

Approved:



Ramon J. Hirsig
Executive Director

TCG: ls

Veterans - Memo to Members 5-15-07.doc

Attachments

cc (with attachments):

Mr. Ramon J. Hirsig (MIC 73)
Ms. Kristine Cazadd (MIC 83)
Ms. Margaret S. Shedd (MIC 66)
Ms. Randie L. Henry (MIC 43)
Acting Deputy Director, Property and Special Taxes Department (MIC 63)
Mr. Dave Hayes (MIC 67)
Mr. Randy Ferris (MIC 82)
Mr. Joe Fitz (MIC 67)



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Today



Person of the Week: Bill Connell of Surf Dogs

by Editor on October 3, 2014 in News

Congratulations to Bill Connell, Carpinteria's hot dog guy, who has been fighting the State Board of Equalization over a distorted state law that costs him about \$7,000 in taxes annually. After a decade of fighting, Governor Jerry Brown signed into law AB 919 this week, which will clear up the legal language and help other veterans who operate small businesses like Bill get reimbursed to the tune of \$50,000! For that effort and eventual victory, *Santa Barbara View* makes Bill Connell the person of the week.



Surf Dogs was started in 1993 and is located on the ocean bluffs in Carpinteria on the ocean side of the freeway at the Ballard exit. Bill serves up some one of the best hotdogs you will ever have, from turkey dogs and Dodger dogs to sausages.

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SBA
U.S. Small Business Administration

CALIFORNIA
SMALL BUSINESS
WEEK

2010

SMALL BUSINESS: DRIVING AMERICA'S ECONOMY

Veteran Small Business Champion of the Year



William Connell

All American Surf Dogs

William "Bill" Connell, "the Hot Dog Man", relocated to Carpinteria, California twenty two years ago after serving in the military in Europe and winning the European heavy-weight boxing championship. After his boxing career, Connell decided to start a small business selling hot dogs and cold drinks and located his hot dog stand in Carpinteria - where he sold his first hot dog on July 1, 1992 for \$1. That would be the beginning of a 16-year labor of love and fight to have the State of California recognize a California law enacted in the 1800s, ensuring that disabled veterans without a permanent place of business who sell wares on the street be exempt from collecting sales tax. Connell battled state bureaucracy in spite of the economic distress he suffered, and because of his efforts, Senate Bill 809 was made into law in 2009, which now helps an estimated 5,000 disabled veteran business owners make a living free from fees and taxes.

William M. Connell

Los Angeles District Office
Veteran Small Business Champion of the Year
All American Surf Dogs
Carpinteria, CA

Small Business Week is part of SBA's National Small Business Week celebration in all the states and U.S. Territories.
Go to www.nationalsmallbusinessweek.com

Los Angeles District Office
330 North Brand Blvd., Suite 1200
Glendale, CA
www.sba.gov/ca/la/index.html
818-552-3201