California State
Board *of* Equalization

Legislative Enrolled Bill Analysis

Legislative and Research Division

Assembly Bill 88 (Gomez, et al.)
Program: Sales and Use Tax
Sponsor: Appliance Recycling Centers of America
Position: Support
Revenue and Taxation Code Section 6371.5
Effective: Immediately upon enactment, but operative as specified

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Summary: Provides a sales and use tax exemption for a public utility's ENERGY STAR refrigerator or clothes washer purchases that are provided at no cost to low-income participants, as defined.

Purpose: To eliminate the tax imposed on the utility company's purchase of these energy saving appliances, as the addition of tax decreases the available funds dedicated to replace them.

Fiscal Impact Summary: Annual state and local revenue loss of $4.5 million.

Existing Law: Except where the law provides a specific exemption or exclusion, California's Sales and Use Tax Law[1] imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer. Under the law, tax does not apply to tangible personal property sold to retailers or other sellers who resell the property before they make a taxable use of the property.

Current law imposes the sales or use tax on energy efficient appliance sales and purchases to the same extent as it imposes the tax on any other tangible personal property sales not otherwise statutorily exempted or excluded from tax. While the law statutorily exempts tangible personal property sales to the United States government, current law contains no statutory exclusion or exemption merely because the purchaser is a utility company or a local government agency. Therefore, unless a utility company purchases tangible personal property, such as appliances, for purposes of reselling that property prior to making a taxable use of the property, tax applies to the property's sale to the utility company.

California's sales and use tax rates. Since January 1, 2013, a statewide 7.5% sales and use tax rate applies to tangible personal property sales and purchases. The following table shows California's various sales and use tax rate components (the table excludes voter-approved city and county district taxes, which range from 0.1% to 2.5%):

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes (Revenue and Taxation Code (RTC) Sections 6051, 6051.3, 6201, and 6201.3)
1.0625%	Local Revenue Fund 2011	Realignment of local public safety services (RTC Sections 6051.15 and 6201.15)
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds (RTC Sections 6051.5 and 6201.5)
0.25%	State (Education Protection Account)	Until 01/01/17, schools and community college funding (Section 36, Article XIII, State Constitution)
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)

[1] Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code (RTC).

Rate	Jurisdiction	Purpose/Authority
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)
1.00%	Local (City/County) 0.75% City and County 0.25% County	City and county general operations (RTC Section 7203.1, operative 7/1/04); Dedicated to county transportation purposes
7.50%	**Total Statewide Rate**	

Proposed Law: Until January 1, 2021, this bill exempts from the statewide sales and use tax, and from the various locally-imposed district taxes, a public utility's purchase of an energy or water efficient home appliance, as defined, that is provided at no cost to a low-income participant.

The bill defines "energy or water efficient home appliance" as a refrigerator or clothes washer that meets performance requirements under the ENERGY STAR program, established pursuant to Section 6294a of Title 42 of the United States Code.

Further, the bill defines "public utility" to mean an entity defined in either Public Utilities Code Section 216 (generally an investor-owned utility, such as PG&E) or 224.3 (generally a municipally-owned utility, such as SMUD).

Also, the bill defines "low-income participant" as a participant in the California Public Utilities Commission's Energy Savings Assistance Program (ESAP), or a similar energy or water efficiency program, provided by a public utility with income guidelines that do not exceed the income guidelines for ESAP participants.

As a tax levy, the bill becomes effective immediately upon enactment, but is operative on the first day of the first calendar quarter commencing more than 90 days after the bill is effective.

Background: Last year's AB 816 (Hall), as amended on August 13, 2014, contained provisions similar to this bill. However, the bill was never heard.

In General: ENERGY STAR is the EPA's and the U.S. Department of Energy's joint program to conserve energy and protect the environment through energy efficient products and practices.

The EPA's ENERGY STAR website (http://www.energystar.gov) provides a qualified ENERGY STAR product listing in various product categories, which includes, among many other things, refrigerators, clothes washers, dishwashers, air conditioners, insulation, light bulbs and pool pumps.

The ESAP is an initiative put forth by the California Public Utilities Commission to help reduce excess energy waste and help lower-income families by reducing their monthly utility bills. The program provides participants no-cost weatherization services, including attic insulation, energy efficient refrigerators, energy efficient furnaces, weather stripping, caulking, low-flow showerheads, water heater blankets, and door and building envelope repairs which reduce air infiltration.

Commentary:

1. **Effect of the bill.** This bill eliminates the tax associated with a utility company's refrigerator and clothes washer purchases when those appliances are provided at no cost to qualifying low-income participants.

2. **Summary of amendments.** The **July 15, 2015** amendments stated the Legislature's intent that no inference be drawn in connection with this exemption to events occurring before this act's passage. The **June 30, 2015** amendments made clarifying changes and redefined "low-income participant" to mean a participant in the California Public Utilities Commission's ESAP or a similar energy or water efficiency program, provided by a public utility with income guidelines that do not exceed the income guidelines for ESAP participants. The **May 20, 2015 amendments** (1) redefined "energy or water efficient home appliance" to mean an ENERGY STAR refrigerator or clothes washer; (2) redefined "low-income participant" to mean a participant in the CARE program, as specified; (3) added a January 1, 2021 sunset date; and (4) provided an operative date of the first day of the first calendar quarter commencing more than 90 days after the bill's effective date. The **April 6, 2015 amendments** (1) added co-authors, (2) specified that any amounts the public utilities would have paid in tax shall be used to purchase additional energy or water efficient home appliances, as specified, (3) deleted from the proposed exemption Tier 1 or equivalent appliances, and (4) made other non-substantive, technical corrections.

3. **Bill would not be problematic to administer.** As amended, the bill's narrow scope would not materially affect the BOE's administrative responsibilities.

Administrative Costs:

The BOE will incur some absorbable administrative costs related to notifying affected retailers, developing and publishing applicable guidelines, and answering inquiries from the general public and affected retailers.

Revenue Impact:

Background, Methodology, and Assumptions. According to the California Public Utilities Commission, 2014 refrigerator and clothes washer expenditures for the four large investor-owned utilities (IOU) within the Low Income Energy Savings Assistance Program amounted to $54 million. These expenditures also include exempt installation costs. Staff subtracted an average of 10% for installation costs and estimated that total purchase costs would amount to $50 million. In addition, staff added two large publicly-owned utilities' (POU) expenditures for total estimated purchase costs of $4 million.

Staff estimates an annual $4.5 million annual state and local sales and use tax revenue loss ($54 million in expenditures x 8.42% average statewide sales and use tax rate).

Summary. The proposed sales and use tax exemption for a public utility's ENERGY STAR refrigerator and clothes washer purchases that the public utility provides to qualifying low-income participants at no cost would result in an estimated annual $4.5 million state and local sales and use tax revenue loss, as follows:

State General Fund	3.9375%	$ 2,126,250
Education Finance	0.25%	$ 135,000
Fiscal Recovery	0.25%	$ 135,000
Local Revenue 2011	1.06%	$ 573,750
Local Revenue 1991	0.50%	$ 270,000
Public Safety Fund	0.50%	$ 270,000
Bradley Burns	1.00%	$ 540,000
Special Districts	0.92%	$ 496,800
Total	8.42%	$ 4,546,800

Qualifying remarks. The revenue estimate is based on expenditure data of the four major IOUs and two major POUs. At the time of this estimate, data was unavailable for other public utilities' appliance expenditures that may be exempted under this bill's provisions. To that extent, this estimate may be understated.

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 BOE's formal position.