



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

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|----------------|---------------|-----------------|-----------------------------------|
| Date: | 02/19/13 | Bill No: | Assembly Bill 479 |
| Tax Program: | Sales and Use | Author: | Donnelly |
| Sponsor: | Author | Code Sections: | RTC 6361.3 |
| Related Bills: | | Effective Date: | Upon enactment |

BILL SUMMARY

This bill exempts from the sales and use tax textbooks purchased by students from an institution of higher education or sold by a higher education book store.

ANALYSIS

CURRENT LAW

Except where the law provides a specific exemption or exclusion, California’s Sales and Use Tax Law¹ 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 any retailer. With the exception of school yearbooks and catalogues, tax generally applies to any books sold to elementary, high school, and college students. Tax also generally applies to any books sold to a library, the state, and any political subdivision of the state.

PROPOSED LAW

This bill provides a sales and use tax exemption for the sale and purchase of textbooks that are purchased by a student at an institution of higher education or sold by an entity whose primary purpose is to provide textbooks to students attending institutions of higher education.

The bill contains the following definitions:

- “Textbook” means any published material that is principally designed for use by a student at any institution of higher education as a source of instructional material. Textbooks include, but are not limited to, any book or edition of a book, that is directed or recommended by an instructor at an institution of higher education to purchase for use as a basis for a course of study at that institution.
“Textbook” does not include books on audio tape, computer disc, CD-Rom, or similar storage media.
- “Institution of higher education” means any public or private college or university that is nationally or regionally accredited or a postsecondary educational institution as defined in Education Code Section 66261.5, which includes a public or private institution of vocational, professional, or postsecondary education.

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

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

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LEGISLATIVE HISTORY

During the 2009-10 Legislative Session, similar legislation was introduced, but failed to pass. AB 1178 (Block) would have provided a partial state sales and use tax exemption on college textbooks and supplies purchased by students in institutions of higher education, for the period beginning July 1, 2011, and until January 1, 2015.

Other failed textbook exemption measures include:

| Year | Bill | Summary |
|------|------------------------|---|
| 2001 | AB 1077 (Mountjoy) | State tax exemption on any tangible personal property purchased by a K-12 public school or school district for use by that school or district. |
| 2001 | AB 1246 (Leonard) | State and local tax exemption for any textbook purchased by a higher education student or from an entity whose primary purpose is to provide textbooks to higher education students for use as a learning resource at that institution. |
| 2002 | SB 546 (McClintock) | State and local tax exemption on any textbook 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. |
| 2002 | AB 2636 (Leonard) | State sales and use tax exemption for the purchase of any instructional materials by any qualifying school entity, as defined. |

COMMENTS

1. **Sponsor and purpose.** The author is sponsoring this measure to help make textbooks more affordable for students enrolled in colleges and universities and vocational and professional schools. According to the author's office, the U.S. Public Interest Research Group conducted a survey in 2011 that disclosed 7 in 10 college students skipped purchasing a textbook because it was too expensive. This bill alleviates the textbook sales tax burden on students.
2. **This bill exempts textbook sales to anyone.** The bill exempts textbooks either (1) purchased by a student at an institution of higher education, or (2) sold by an entity whose primary purpose is to provide textbooks to students attending institutions of higher education. The bill appears to exempt textbooks sold to anyone, regardless of their student status. If it the author's intent that only students be able to purchase textbooks tax-free from an institution of higher education, BOE staff can work with the author's office to draft amendments to resolve this issue.
3. **Making purchases of eligible textbooks.** Purchases must be made from an institution of higher education or from an entity whose primary purpose is to provide textbooks to students attending institutions of higher education. The textbooks may be purchased via mail order, telephone, or the Internet.
4. **Definition of "institutions of higher education."** For this exemption, an institution of higher education includes public or private colleges or universities that are nationally or regionally accredited. This includes colleges and universities in the University of California, California State University, and California Community College systems, as well as private colleges. An institution of higher education may include public and private colleges and universities that are not located within California.

In addition, institutions of higher education include professional and vocational schools. In California, private postsecondary educational institutions are regulated by the Bureau for Private Postsecondary Education (BPPE) within the Department of Consumer Affairs. The BPPE's website provides a listing of approved institutions.

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Approved institutions include beauty colleges, dental and medical assisting programs, massage therapy schools, and truck driving schools. According to the BPPE, there are approximately 900 approved schools in California.

Since BPPE approves the operation of institutions subject to the California Private Postsecondary Education Act of 2009, perhaps the bill should also provide that a professional or vocational school is one that is approved by the BPPE. BOE staff can work with the author's office to clarify if needed.

5. Administrative and technical concerns:

- **Term “primary purpose” should be defined.** Eligible textbooks may be purchased from entities whose *primary purpose* is to provide textbooks to students attending institutions of higher education. According to the author's office, the exemption targets college and university bookstores that are separate entities from the actual college or university that they serve. One such example is the Hornet Bookstore, which services the California State University Sacramento, but is a separate entity from that university. The exemption is not intended to apply to all sellers of textbooks, such as Amazon and Barnes & Noble.

In order to accomplish the author's intent, it is recommended that the term “primary purpose” be defined. Several sales and use tax exemptions define “primarily” to mean deriving 50% or more of gross revenues from specified business activities. BOE staff can assist with drafting appropriate amendments.

- **Definition of “textbook.”** Subdivision (b)(2)(A) defines “textbook” to mean any published material *principally designed* for use by a student at any institution of higher education that is *directed or recommended by an instructor* at an institution of higher education. However, an instructor recommended book is not necessarily principally designed for use by a college student. For example, an English professor may require the reading of *The Life of Pi*, a fantasy novel about spirituality, for his or her English class, but it was not principally designed for use by a college student. To avoid any ambiguity, the phrase “principally designed for use” should be replaced with “used.”
- **Term “at.”** Subdivision (a) specifies that the textbook is exempt if purchased by a student *at* an institution of higher education. The term “at” generally denotes physical location. While administratively the BOE would allow exempt purchases via the Internet, mail order, or telephone, we suggest the term “from” be substituted for “at” for clarity.
- **Term “directed.”** The term “directed” could mean “suggested” or “required.” To avoid any ambiguity, perhaps the term “directed” should be replaced with “required.”

COST ESTIMATE

The BOE would incur minor costs to notify affected retailers, prepare a special publication and exemption certificate, and answer inquiries from the public and taxpayers. An estimate of these costs is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Textbook Spending – California. According to the *California Student Aid Commission* (CSAC), average per capita spending on textbooks in FY 2013-14 is estimated to be \$936. For FY 2013-14, higher education enrollment is estimated to be 2 million full-time students (University of California, California State University, California Community College, and private colleges and universities). Accordingly, total textbook purchases for FY 2013-14 is estimated to be \$1.87 billion (2 million students x \$936).

Using the *National Center for Education Statistics* (NCES) enrollment forecast, we estimate higher education enrollment in FY 2014-15 and FY 2015-16. In relation to average spending on textbooks, we adjust for inflation using a specific consumer price index factor that includes textbooks, as forecast by *IHS Global Insight*, a national economic forecasting firm. Higher education students’ purchases of textbooks are estimated as follows:

| Estimated Textbook Sales | | | |
|---------------------------------|-----------------------|-----------------------|-----------------------|
| | FY 2013-14 | FY 2014-15 | FY 2015-16 |
| Number of students | 2 million | 2.05 million | 2.08 million |
| Average textbook cost | \$936 | \$956 | \$973 |
| Total Textbook Spending | \$1.87 billion | \$1.96 billion | \$2.02 billion |

REVENUE SUMMARY

The state and local revenue loss from exempting college textbooks purchases would be as follows:

| Estimated Sales & Use Tax Loss | | | |
|---|--------------------------|--------------|--------------|
| <i>(in millions)</i> | | | |
| | (6 months) FY 2013-14 | FY 2014-15 | FY 2015-16 |
| State (6.50%) | 62 | 127 | 131 |
| Local Tax (1%) | 9 | 20 | 20 |
| Special District (0.88%) | 8 | 17 | 18 |
| | \$79 | \$164 | \$169 |

Qualifying Remarks. Under this bill, vocational school students’ textbook purchases will also be exempt from the tax. According to *Bureau for Private Postsecondary Education (BPPE)*, which oversees and regulates private postsecondary educational institutions, about 300,000 students attend 900 vocational schools in California. These schools cover a broad range of disciplines, including barbering, flight instruction, dental,

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and truck driving. Textbook purchases can vary significantly among these disciplines. For example, students attending barber schools do not require as many textbooks as dental school students. For this reason, it is difficult to estimate textbook purchases by vocational school students.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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