



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/17/11	Bill No:	<u>Senate Bill 516</u>
Tax Program:	Sales and Use	Author:	Correa
Sponsor:	California Motorcycle Dealers Association	Code Sections:	RTC 6011 & 6012
Related Bills:		Effective Date:	Upon enactment, but operative 1st calendar quarter 90 days after enactment

BILL SUMMARY

This bill would provide an exclusion from the computation of sales and use tax on the value of a motorcycle traded in for a new motorcycle under specific circumstances.

ANALYSIS

CURRENT LAW

Existing law imposes a sales or use tax on the sale of, or the storage, use, or other consumption of, tangible personal property, unless specifically exempted by statute. Under existing law, the sales tax is imposed on retailers for the privilege of selling tangible personal property at retail. The use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from a retailer. The sales tax is measured by gross receipts from retail sales. The use tax is measured by the sales price of the property. Under Revenue and Taxation Code Sections 6011 and 6012, respectively, "sales price" and "gross receipts" are defined to include the total amount of the sale or lease or rental price, whether received in money or otherwise. The total amount of the sale or lease or rental price includes all of the following:

- Any services that are a part of the sale.
- All receipts, cash, credits and property of any kind.
- Any amount for which credit is allowed by the seller to the purchaser.

The BOE's Regulation 1654, *Barter, Exchange, and "Trade-Ins,"* explains the application of tax to sales and purchases involving "trade-ins." Subdivision (b)(1) provides that the value of a trade-in of a used vehicle or any other item of tangible personal property (which would include a motorcycle) may not be excluded from the computation of sales tax with respect to the property being sold for which the trade-in allowance is given. For example, if a dealer sells a new motorcycle for \$12,000 and accepts a trade-in motorcycle with a value at \$6,000 as partial payment, sales tax is still based on the \$12,000 selling price.

And when merchandise is "traded-in" on the purchase price of other merchandise, the retailer accepting the trade-in must include in the amount subject to tax the amount agreed upon between the retailer and the purchaser as the allowance for the merchandise traded in. This is true even in cases where no further money is required to be paid by the purchaser in the trade. For example, if a person brings a diamond ring to a jeweler and makes an even exchange for a different ring, the jeweler would be required to report sales tax on the fair retail market value of the rings.

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.

PROPOSED LAW

This bill would amend Sections 6011 and 6012 of the Sales and Use Tax Law to provide that the definitions for “sales price” and “gross receipts” do not include the value of a motorcycle traded-in for a new motorcycle, when the value of the trade-in motorcycle is separately stated on the new motorcycle invoice or bill of sale or similar document provided to the purchaser.

This bill would become operative on the first day of the first calendar quarter commencing more than 90 days after the bill is enacted.

BACKGROUND

Last Legislative Session, three measures were introduced to exclude the value of a used vehicle traded-in for a new vehicle: SB 658 (Walters)¹, SB 714 (Dutton), and SBx6 5 (Hollingsworth). All three measures were placed on the Senate Revenue and Taxation Committee’s suspense file.

In the 2007-08 Session, a similar bill, SB 1417 (Hollingsworth), was also considered by the Legislature. That bill died in the Senate Revenue and Taxation Committee.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the California Motorcycle Dealers Association to provide an economic incentive for Californians to purchase new motorcycles by lowering the sales tax burden.
2. **“Motorcycle” is clearly defined in the bill.** Vehicle Code Section 400 referenced in the bill for purposes of defining “motorcycle” makes it clear that the term would not include such things as motorized bicycles, scooters, or mopeds, but would include three-wheeled motorcycles.
3. **The bill would not apply to other items commonly traded in.** The bill limits the proposed exclusion to trade-ins of motorcycles for new motorcycles. Therefore, should a person trade-in a motorcycle for a new or used car or a used motorcycle, or trade in a car for a new or used motorcycle, the exclusion proposed in the bill would not apply. Also, the bill would not apply to other commonly traded-in items for which purchasers receive credit for their trade-ins, such as vehicles, jewelry, washing machines and dryers, trading cards, tires, and car batteries.
4. **Enactment of this measure would not complicate the BOE’s administration.** From a tax administrative standpoint, enactment of this bill would not materially affect the BOE’s current auditing practices of motorcycle dealers. Currently, trade-in values are already closely examined in audits of dealers, since consistent trade-in underallowances may be an indication that a dealer is attempting to reduce the selling price of the motorcycles being sold in an effort to reduce his or her tax liability (e.g. take a 2010 mint condition Harley that is being traded in for a 2011 new Harley. In order to make a sale, a dealer may under-value the 2010 Harley, so that he or she could lower the sales price of the new Harley. Although the dealer’s profit margin would be the same, the sales tax base would be reduced, since the tax would be computed on a lower base).

¹ SB 658, as amended April 2, 2009 also would have excluded the value of a used vehicle traded-in for a new motorcycle.

COST ESTIMATE

Some administrative costs would be incurred in notifying motorcycle dealers, revising the BOE's regulation and publications, and answering inquiries from taxpayers. These costs are expected to be absorbable.

REVENUE ESTIMATE**BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

According to the U.S. Bureau of Economic Analysis (BEA), there were approximately \$12.6 billion in motorcycle sales in the United States in 2010. California accounts for approximately 11.7 percent of new vehicle registrations nationally; thus, we assume roughly \$1.5 billion in California motorcycle sales in 2010 (\$12.6 billion x 11.7 percent).

We were unable to locate data regarding the proportion of California motorcycle sales that involved used motorcycles. Instead, BEA data indicate that approximately 42 percent of all vehicles sold nationally were used vehicles. We assume that the same proportion is applicable to motorcycles.

Thus, used motorcycle sales in California can be approximated by the percentage of U.S. motorcycle sales that occur in California, and the percentage of those that are used, about \$0.614 billion (\$12.6 billion in U.S. sales x 11.7 percent sold in California x 42 percent used vehicles).

REVENUE SUMMARY

This bill would reduce state and local sales and use tax revenue by approximately \$50 million per year (the 2011-12 average sales and use tax rate of 8.11 percent x \$0.614 billion).

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