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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**02/22/13**	Bill No:	**Senate Bill 732**
Tax Program:	**Sales and Use**	Author:	**Berryhill**
Sponsor:	**Author**	Code Sections:	**RTC 6011 & 6012**
Related Bills	**AB 220 (Ting)** **AB 1077 (Muratsuchi)**	Effective Date:	**Operative 90 days following 1st calendar quarter**

BILL SUMMARY

This bill excludes from sales and use tax the trade-in value of a vehicle for a new vehicle (including a new motorcycle).

ANALYSIS

CURRENT LAW

Existing law[1] imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in this state. 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.[2] The use tax is measured by the sales price of the property. Under Revenue and Taxation Code (RTC) Sections 6011 and 6012, "sales price" and "gross receipts," respectively, 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, 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 Board of Equalization's (BOE) Sales and Use Tax 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 vehicle trade-in (or any other tangible personal property) 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 vehicle for $20,000 and accepts a trade-in with a $4,000 value as partial payment, sales tax is still based on the $20,000 selling price.

This is also true in cases where the purchaser pays no money 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 is required to report sales tax on the fair retail market value of the diamond ring traded in.

PROPOSED LAW

This bill amends RTC Sections 6011 and 6012 to provide that the terms "sales price" and "gross receipts," respectively, do not include the value of a vehicle traded in for a

[1] Part 1, Division 2, Chapter 2 (commencing with Section 6051) of the Revenue and Taxation Code (RTC).
[2] Part 1, Division 2, Chapter 3 (commencing with Section 6201) of the RTC.

new vehicle, including a new motorcycle, when the value of the trade-in vehicle is separately stated on the new vehicle invoice or bill of sale, or similar document provided to the purchaser.

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.

LEGISLATIVE HISTORY

Several similar measures have been introduced over the last 14 years:

- During the2009-10 Legislative Session, SBx6 5 (Hollingsworth), SB 658 (Walters, et al.), and SB 714 (Dutton) were held in the Senate Revenue and Taxation Committee.
- During the 2007-08 Legislative Session, SB 1417 (Hollingsworth) was also held in the Senate Revenue and Taxation Committee.
- During the 1997-98 Legislative Session, AB 1340 (Prenter & Bowler) died on the Assembly Appropriations Committee suspense file, and AB 1691 (Prenter) failed passage in the Assembly Revenue and Taxation Committee.

COMMENTS

1. **Sponsor and purpose.** The author is sponsoring this bill to provide equity with other states that provide trade-in exceptions. According to the author's office, currently, California taxpayers are expected to pay sales tax on the full price of a new vehicle purchase, even when they are providing a trade-in vehicle in lieu of a total cash payment. The state's sales tax was never designed to place a tax burden on the exchange of goods between individuals and businesses.

2. **"Vehicle" should be defined.** The RTC and the Vehicle Code (VC) define the terms "vehicle" and "motor vehicle" differently. RTC Section 6022 defines the term "vehicle" and "motor vehicle" by reference to VC Sections 415 and 670. RTC Section 6272 defines the term "vehicle" by reference to VC Section 670, and further defines "vehicle" to include off-highway motor vehicles subject to identification under Division 16.5.

   VC Section 670 states that a "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, except rail cars or human-powered vehicles. Division 16.5 states that "vehicle" includes various off-highway vehicles, i.e., race cars, snow mobiles, all-terrain vehicles, amphibious vehicles, go carts, and even golf carts.

   In addition, VC Section 415 defines "motor vehicle" to include any vehicle which is self-propelled. This term can, therefore, include such items as bulldozers, tractors, buses, and recreational vehicles in addition to the vehicles noted under VC Section 670 and Division 16.5. Consequently, in order for the BOE to properly administer the proposed exclusion, consistent with the author's intent, we recommend that the bill define the term "vehicle." Without a definition, the bill could be interpreted more broadly than intended, resulting in an even greater revenue loss than anticipated.

3. **What would be considered a "new" vehicle?** Vehicle dealers routinely use vehicles temporarily before reselling them. For example, a dealer's service department or administrative department may temporarily use vehicles as service vehicles. Some customers borrow vehicles while their own vehicles are repaired or

while they await delivery of their new car. In general, a vehicle removed from resale inventory for company or customer use is subject to the use tax based on the vehicle's fair rental value for the period of such use.

Even though a vehicle may be used on a temporary basis, would the vehicle qualify as "new" for purposes of the proposed trade-in exclusion? BOE staff can assist the author's office with this concern.

4. **The bill would not apply to other common trade-in items.** While the bill limits the proposed exclusion to new vehicle trade-ins, purchasers also receive credit for other trade-in merchandise. Jewelry, appliances, tires, and car batteries are just a few examples.
5. **With the suggested amendments, this bill would not complicate the BOE's administration.** If the bill is amended to define "new vehicle," the BOE's current car dealer auditing practices would not be materially impacted.
6. **Related legislation.**
   - **AB 220 (Ting)** exempts from the state sales and use tax super ultra-low emission vehicles and advanced technology partial zero emission vehicles.
   - **AB 1077 (Muratsuchi)** excludes from the sales and use tax any Internal Revenue Code qualified plug-in electric vehicles tax credit, and any amount received, awarded, or allowed under a state alternative fuel vehicle incentive program.

COST ESTIMATE

An estimate is pending to determine costs to notify car dealers, audit claimed and/or netted exclusions, revise the BOE's regulation and publications, and respond to taxpayer inquiries.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

According to information from the California Department of Finance, new vehicle registrations in California totaled 1,518,398 for 2012.

According to the National Automobile Dealers Association (NADA) about 57% (or 865,000 cars) were obtained as trade-ins on new car purchases.

According to NADA, the 2012 average selling price for these used cars was $17,300. New car dealers normally use the wholesale value of a used car when traded-in on a new vehicle. The wholesale value of the trade-in is estimated to be about 62% of the retail selling price of the used car. Thus the average trade-in value is $10,700 (62% x $17,300 = $10,700). Total trade-in value for the estimated 865,000 cars during 2012 is $9,255.5 million ($10,700 x 865,000 = $9,255.5 million). Therefore, sales and use tax loss will be $775.6 million.

REVENUE SUMMARY

The first full year revenue loss from this measure is estimated to be:

Tax Exemption on Trade-ins

Sales and Use Tax	***Rate***	***Revenue Loss***
State	4.19%	$387,805,000
Fiscal Recovery Fund	0.25%	$23,139,000
Local Revenue Fund	0.50%	$46,278,000
Local Public Safety Fund	0.50%	$46,278,000
Local Revenue Fund 2011	1.06%	$98,108,000
Local Bradley Burns	1.00%	$92,555,000
Special District Tax	0.88%	$81,448,000
Total Estimated Tax Loss	**8.38%**	**$775,611,000**

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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