



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

DRAFT

Date:	05/13/13	Bill No:	<u>Assembly Bill 799</u>
Tax Program:	Sales and Use	Authors:	Wagner
Sponsor:	BOE Member Steel	Sections:	RTC 6019
Related Bills:	AB 798 (Wagner)	Effective:	Upon enactment

BILL SUMMARY

This bill provides that a “retailer” does not include a person making fewer than 13 retail sales of tangible personal property during any 12-month period.

ANALYSIS

CURRENT LAW

Existing law imposes a sales tax on retailers for the privilege of selling tangible personal property at retail. A “retailer” is defined¹ as any seller who makes any retail sale or sales of tangible personal property. A retailer is further defined as any individual or specified entity making more than two retail sales of tangible personal property during any 12-month period.²

An “occasional sale” includes a sale:

- Of property not held or used by a seller in the course of activities for which he or she is required to hold a seller’s permit, and
- That is *not* one of a series of sales sufficient in number, scope, and character to constitute an activity for which he or she is required to hold a seller’s permit.

Anyone who desires to engage in business as a seller in this state must obtain a seller’s permit.³ Three or more sales in any twelve month period is considered the minimum number sufficient to require the holding of a permit.

Therefore, for example:

1. A person who is not engaged in business as a seller sells a used hammer and makes no other sales during a 12-month period in which the sale of the hammer occurred. The sale of the hammer is an exempt occasional sale and the person is not required to obtain a seller’s permit.
2. A person opens a hardware store and makes a single sale of a hammer and then closes the business. The person is in the business of selling hardware and is required to obtain a seller’s permit. The single sale of the hammer is not an occasional sale.

PROPOSED LAW

This bill changes the definition of “retailer” to mean an individual or specified entity making more than 12 retail sales of tangible personal property during any 12-month period.

¹ Revenue and Taxation Code (RTC) Section 6015

² RTC Section 6019

³ RTC Section 6066

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.

As a tax levy, the bill becomes effective immediately.

IN GENERAL

Regulation 1595, *Occasional Sales*, provides guidance as to whether a seller's permit is required when making sales of tangible personal property. Generally, a person who makes three or more sales for substantial amounts in a 12-month period is required to hold a seller's permit, regardless of whether the sales are at retail or for resale. Each sale during the 12 month period is included in determining whether a seller's permit is required. A person who makes a substantial number of sales for relatively small amounts is also required to hold a seller's permit.

The following types of sales are excluded from this determination:

- a) Trade-ins made incidental to a non-selling activity (an accountant trading in an old photocopier for a new one).
- b) Sales made by an auctioneer on behalf of the person (the auctioneer is the retailer and liable for the tax, not the person).
- c) Sales of horses through claiming races (the racing association is the retailer and liable for the tax, not the person owning the horse).
- d) Sales of vehicles, vessels or aircraft when sold by individuals not required to hold a permit⁴. However, the use tax is imposed on the purchaser.

In determining whether the sales are for "substantial" amounts, the BOE considers the facts of each situation. In the 1993 Memorandum Opinion of Pratt North Plaza Associates the BOE concluded that a \$400 sale is a substantial amount for the purposes of the occasional sales rules. However, the issue of whether sales in amounts less than \$400 are substantial was not specifically addressed.

LEGISLATIVE HISTORY

SB 607 (Bowen, 2005-06). For purposes of defining activities that require a seller's permit, SB 607 proposed defining "a series of sales sufficient in number, scope and character" to mean three or more sales in any 12-month period where the gross receipts from those sales exceeds \$1,200. The bill advanced from the Senate to the Assembly Floor before expiring on the inactive file.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by BOE Member Michelle Steel to exempt average Californians, who are not in business, from the burdensome requirements of obtaining a seller's permit and remitting sales tax for occasional sales and barter transactions, especially online.
2. **Garage Sales.** BOE's Publication [107](#) explains that currently each individual garage sale is considered a "sale." Therefore one is not a retailer for hosting two or fewer garage sales per year. Is it reasonable to assume 12 garage sales per year will be the new standard?
3. **Online Sales.** Persons holding a "virtual garage sale" online could make up to 12 individual sales, during any 12-month period, before needing a seller's permit.

⁴ RTC Sections 6282 and 6283

- 4. Related legislation.** AB 798 (Wagner) expands the definition of “occasional sale” to include sales of \$2,000 or less when (1) the consideration for that sale is other than money, and (2) the seller makes no more than 12 sales of tangible personal property that exceed \$2,000 during any 12-month period.

COST ESTIMATE

A detailed cost estimate is pending. However, the BOE would incur costs to (1) identify and notify taxpayers, (2) close seller’s permits, and (3) modify the eReg system.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Data from the BOE’s taxpayer records does not indicate the number of sales taxpayers make. As a proxy for sales numbers, we chose to consider taxpayers with annual taxable sales of \$2,000 or less as meeting the criteria of 12 or fewer taxable sales per year.

Based on Sales and Use Tax Department records, approximately 173,000 occasional sellers have taxable sales less than \$2,000. These sellers reported total taxable sales of approximately \$76 million in calendar year 2011. Sales averaged \$439 per seller.

Because we only received data for two calendar years, we cannot discern clear data trends.

REVENUE SUMMARY

Based on administrative data, we estimate a revenue loss of approximately \$3.2 million in fiscal year 2013-14 (half-year impact). In 2014-15 and future years, we estimate revenue losses of about \$6.4 million per year.

Revenue Source	Rates	Fiscal Year	
		2013-14	2014-15
State General Fund	3.94%	1,498,159	2,996,319
State Education Protection	0.25%	95,061	190,122
Fiscal Recovery Fund	0.25%	95,061	190,122
Local Revenue Fund	0.50%	190,122	380,243
Public Safety Fund	0.50%	190,122	380,243
Local Revenue Fund 2011	1.06%	403,058	806,116
Bradley Burns (Local Tax)	1.00%	380,243	760,487
Special District Tax	0.88%	334,614	669,229
Total State and Local Revenue	8.38%	\$3,186,440	\$6,372,881

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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