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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**08/13/14**	Bill No:	**Assembly Bill 816**
Tax Program:	**Sales and Use**	Author:	**Hall**
Sponsor:	**Author**	Code Sections:	**RTC 6371.5**
Related Bill:		Effective Date:	**Upon enactment**

BILL SUMMARY

This bill provides a sales and use tax exemption for purchases of energy and water efficient home appliances purchased by a public utility that are provided at no cost to participants in an energy efficiency program.

ANALYSIS

CURRENT 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 sales and purchases of energy efficient appliances 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 sales of tangible personal property 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 sale of the property 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)

[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 Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
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

This bill provides a sales and use tax exemption for all the sales and use tax components listed above for a public utility company's purchase of an energy or water efficient home appliance that is provided at no cost to a participant in a federal, state, or ratepayer-funded energy efficiency program for use by that participant in the energy efficiency program.

The bill defines "energy or water efficient home appliance" as an appliance that meets performance requirements under the ENERGY STAR program, established pursuant to Section 6294a of Title 42 of the United States Code, or a similarly labeled refrigerator, dishwasher, washer, dryer, or other appliance with a Tier I equivalent or better energy efficiency rating.

Further, the bill defines "public utility" to mean an entity defined in 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).

As a tax levy, the bill becomes effective immediately upon enactment.

IN GENERAL

ENERGY STAR is a joint program of the EPA and the U.S. Department of Energy 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.

In addition to the ENERGY STAR program, the Consortium for Energy Efficiency (CEE) establishes advanced **tiers of energy performance** for appliances and other products. CEE is a nonprofit organization that, among other things, supports energy efficiency program administrators, such as utility companies. The CEE and ENERGY STAR work together, and in many cases their specifications are the same.

There are three levels of CEE tiers, I, II and III, with the highest number (III) being the best for energy efficiency. The CEE website http://www.cee1.org/content/frequently-asked-questions#qpls outlines the appliances and other property that fall within the Tier system, including residential gas boilers, commercial lighting, gas water heaters, and refrigerators.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author to eliminate the tax associated with a utility company's purchases of replacement appliances provided at no cost to participants in a low-income energy assistance program. This program, funded by rate-payers, provides no-cost weatherization services to low-income households who meet specific income guidelines. Services provided include replacement of old furnaces, water heaters, or refrigerators with new, modern energy efficient models. The author believes the tax imposed on the utility company's purchase of these items should be eliminated, as the addition of tax decreases the available funds dedicated to replacing these energy saving appliances.

2. **Bill should define "Tier 1 equivalent."** While the bill makes specific reference to applicable United States Code while defining the more commonly understood "ENERGY STAR" program, the bill does not define "Tier 1 equivalent." We suggest an appropriate definition be included to eliminate any future uncertainty.

3. **"Home appliance" is not defined.** While common household appliances, such as refrigerators, dishwashers, clothes washers, etc., are commonly recognized as "appliances," the term can also mean any instrument, apparatus, or device for a particular purpose or use (see Dictionary.com). Many utility companies make energy improvements to qualified low-income homes for no charge that include things like compact fluorescent lights, in-ground pool pumps, attic insulation, and showerheads. It appears that under the broader "appliance" definition, these items could be included within the exemption's scope, since many of these items are qualified ENERGY STAR products. A definition should be added to eliminate any ambiguity and avoid any unanticipated revenue losses.

4. **"Participant" should be defined.** As written, the bill requires that the utility company provide the appliance at no cost to the participant for use by that participant in an emergency efficiency program. However, it is our understanding that this bill is intended to target low-income participants. This should be clarified. Otherwise, any tangible personal property installed at no cost by a utility company for a participant in any energy efficiency program could be exempted from the tax, regardless of income.

5. **The bill provides no lead time.** The proposed exemption takes effect immediately, which provides the BOE with no lead time to notify retailers. In order for retailers to properly claim a sales tax exemption under this bill, and be relieved of any sales tax liability, retailers must accept in good faith an exemption certificate from a utility company that certifies that the utility company's purchase qualifies for this exemption. Adequate lead time should be provided in the bill to allow the BOE sufficient time to notify and educate retailers of their sales tax responsibilities associated with this new exemption.

COST ESTIMATE

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

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

In analyzing the bill's revenue impact, we consulted the California Public Utilities Commission (CPUC). In response to our request, the CPUC compiled expenditures for the 2013 program year. The data compiled reflected expenditures for the four large investor owned utilities (IOU) within the Low Income Energy Savings Assistance Program.

The four IOUs' expenditures amount to $237 million. This total reflects expenditures for a broad range of appliances and devices, including clothes washers, refrigerators, microwaves, central air conditioners, evaporative coolers, compact fluorescent lights, among other items. CPUC indicated that these expenditures also include exempt installation costs. Using the range of 30% to 50% as installation cost for the broad range of appliances and devices, we estimate that total purchase costs would be $129 million.

This bill does not define *home appliance*. Assuming that the intent of this bill is to provide an exemption to all purchases of tangible personal property provided at no cost to participants described in the bill, we estimate annual state and local sales and use tax loss of $11 million ($129 million in expenditures x 8.42% sales and use tax rate)

REVENUE SUMMARY

The proposed sales and use tax exemption on purchases of energy and water efficient home appliances by a public utility that are provided at no cost to participants in an energy efficiency program would result in an estimated annual sales and use tax loss of $11 million.

It should be noted that the above analysis is based on the data provided by CPUC, data reflecting expenditures by IOUs. CPUC does not regulate Public Owned Utilities (POU) or Municipally Owned Utilities (MOU). At the time of preparing this estimate, we have not been able to ascertain any expenditures for POUs or MOUs.

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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