



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

Date:	<b>02/22/13</b>	Bill No:	<b><u>Assembly Bill 919</u></b>
Tax Program:	<b>Sales and Use</b>	Author:	<b>Williams</b>
Sponsor:	<b>BOE Member Yee</b>	Code Sections:	<b>RTC 6018.2</b>
Related Bill:		Effective Date:	<b>01/01/14</b>

**BILL SUMMARY**

This bill enables qualified itinerant veteran vendors to receive repayment of sales tax paid to the Board of Equalization (BOE) for the eight-year period beginning on and after April 1, 2002, and before April 1, 2010, as specified.

**ANALYSIS**

**CURRENT LAW**

Existing law<sup>1</sup> imposes the sales tax on the retail sale of tangible personal property in this state. Existing law also imposes the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The sales or use tax is computed on the retailer's gross receipts or the sales price, respectively, unless the law provides a specific exemption or exclusion.

Generally, persons engaged in the business of selling tangible personal property must obtain a seller's permit. These persons must also report the tax on a BOE prescribed return. However, California's Sales and Use Tax Law places a variety of retailers on a "consumer" reporting status. Under a "consumer" reporting status, the law eliminates the need for the retailer to obtain a seller's permit and report the tax on his or her sales. Rather, these retailers are regarded as consumers, and they must pay tax on their purchases of taxable products they intend to sell.

This "consumer" reporting status extends to various classes of retailers, such as qualified itinerant veterans when they sell particular goods. Until January 1, 2022, the law<sup>2</sup> regards these "qualified itinerant vendors" as consumers of tangible personal property they own and sell, except alcoholic beverages and any sale over \$100.

The law defines "qualified itinerant vendor" as a person that:

- Was a United States Armed Forces member who received an honorable discharge or a release from active duty under honorable conditions,
- Is unable to obtain a livelihood by manual labor due to a service-connected disability,
- Is a sole proprietor with no employees, and
- Has no in-state permanent place of business.

The law defines "permanent place of business" as any building or other permanently affixed structure, including a residence, used to sell, take orders, and arrange for

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

<sup>2</sup>RTC Section 6018.3 of the Sales and Use Tax Law.

shipment of, tangible personal property. The definition excludes any building or other permanently affixed structure, including a residence, used for any of the following:

- 1) Tangible personal property storage.
- 2) The cleaning or storage of property used in connection with the manufacture or sale of tangible personal property.

### **PROPOSED LAW**

This bill states legislative findings and declarations, and states the bill's public purpose.

The bill states the Legislature's intent that the sales tax, interest, and any penalties paid by qualified veterans on sales for \$100 or less (excluding alcoholic beverages) for the period April 1, 2002 but before April 1, 2010 be repaid in accordance with this bill.

The bill's repayment provisions do the following:

- Permit a qualified veteran to receive from the state a qualified repayment if the repayment provisions are satisfied.
- Specify the bill's procedures shall be the exclusive procedure and remedy for the claims for, or action for, a repayment of state, local and district tax, interest or penalties paid by a qualified veteran.
- Define a "qualified veteran" as a person who
  - (1) For the period April 1, 2002 and before April 1, 2010, met the requirements of a qualified itinerant vendor as set forth in law,<sup>3</sup> and,
  - (2) Paid to the BOE, state, local and district taxes, and any associated interest and penalties for which the qualified veteran collected no sales tax reimbursement from customers.
- Define "qualified repayment" as an amount equal to the state, local and district taxes for which the qualified veteran collected no sales tax reimbursement from customers, and any associated interest or penalties.
- Before January 1, 2015, authorize a qualified veteran to file a claim with the BOE.
- On or before March 1, 2015, require the BOE to certify to the Controller the qualified repayment amount to be made, and authorize \$50,000 as the total amount available for these repayments, upon the Legislature's appropriation.
- Allow for a proration if claims exceed \$50,000.
- Prohibit the payment of interest on any qualified repayment.

### **BACKGROUND**

In 2009, the BOE sponsored legislation<sup>4</sup> that made these veterans consumers. Subsequent legislation<sup>5</sup> extended the January 1, 2012 sunset date to January 1, 2022. For several years prior to these legislative acts, several veterans had argued that state law, which exempts honorably discharged veterans from locally-imposed license taxes

<sup>3</sup> RTC Section 6018.3 of the Sales and Use Tax Law.

<sup>4</sup> SB 809, (Stats. 2009, Ch. 621, Comm. on Veteran Affairs), operative April 1, 2010 to January 1, 2012.

<sup>5</sup> SB 805 (Stats. 2011, Ch. 246, Comm. on Veteran Affairs).

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*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.*

and fees, also exempts itinerant veteran vendors from any state-imposed tax. Specifically, they argued that the law<sup>6</sup> exempts honorably discharged veterans from payment of the sales and use tax on mobile food cart sales of food products and carbonated beverages. This provision reads in its entirety as follows:

“Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefore.”

In 1893, this provision was added to law. The chaptered bill was described as “An act to establish a uniform system of county and township government.” In its present form (which has remained unchanged since 1941), Section 16102 falls within Chapter 2 of Part 1 of Division 7 of the Business and Professions Code, entitled *Licensing by Counties*.

In 1999, the BOE held that this Business and Professions Code provision does not apply to California’s Sales and Use Tax Law. A veteran vendor unsuccessfully challenged the BOE’s decision in Los Angeles Superior Court (No. BC 210257). The BOE’s decision is also consistent with that of the Office of Legislative Counsel. That Office rendered two opinions specific to this issue in 1998 and 2006. The Office of Legislative Counsel concluded that the Business and Professions Code exemption only applies to county license tax and license fees, and does not apply to sales and use taxes.

## COMMENTS

1. **Sponsor and purpose.** As the sponsor of this bill, BOE Member Betty Yee notes that in 2009, the Legislature unanimously voted to specify that honorably discharged veterans with service-related disabilities who have no permanent place of business are consumers, not retailers, of certain goods they sell. As a result, these veterans are no longer responsible for sales tax on goods sold for less than \$100 per item (except alcohol beverages). The purpose of that legislation was to ease the economic burdens of veterans who have served our nation and sustained permanent injuries in foreign conflicts. The sponsor indicates that due to a variety of statutes, some itinerant veterans in need of this relief have acted on the belief they could make sales of small items without responsibility for the tax. These itinerant veterans lack substantial assets and many experienced forced collection action when the BOE ultimately collected the tax.

The sponsor believes the circumstances warranting this treatment apply to periods before 2009, and a small number of itinerant veterans are in need of this relief for prior periods. BOE Member Yee notes that in recognition of their military service, this legislation would provide modest relief to some of our veterans who have been required to remit sales tax, interest, and penalties to the BOE, in those unfortunate situations in which they failed to collect the sales tax reimbursement from their customers.

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<sup>6</sup> Business and Professions Section 16102.

- 2. **The BOE records are adequate to process refund claims.** The BOE has retained computer files and taxpayer payment histories sufficiently far back to track payments attributable to any claims for repayment that may be filed under the bill.
- 3. **How many veterans will claim a refund?** The BOE is aware of a small number of veterans that have filed appeals on the issue related to the Business and Professions Code explained previously. We do not know how many other qualified veterans this bill may reach. However, we expect that the number will be minimal.

**COST ESTIMATE**

Some costs will be incurred to notify qualified veterans and process claims for refund. These one-time costs are expected to be insignificant (less than \$10,000).

**REVENUE ESTIMATE**

The bill limits the allowable repayment amount to \$50,000, upon appropriation by the Legislature. Further, the bill requires the BOE to certify the repayment amounts to the Controller no later than March 1, 2015. Accordingly, if qualified veterans claim the total repayment amount, the revenue loss of \$50,000 will occur in fiscal year 2014-15.

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Analysis prepared by:	Sheila T. Waters	(916) 445-6579	03/28/13
Contact:	Michele Pielsticker	(916) 322-2376	
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