

[Assembly Bill 1280](#) (Maienschein)

Date: Introduced

Program: Sales and Use Tax

Sponsor: National Federation of Independent Business

Code: Revenue and Taxation Code Section 6372

Effective: Upon enactment, but operative November 26, 2016

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Summary: Provides for an annual one-day, 6.5% state rate sales tax holiday for small businesses on the Saturday following Thanksgiving Day.

Purpose: To help stimulate retail sales for local small businesses during the year’s busiest shopping weekend. According to the author’s office, this bill helps to draw attention to local small businesses as viable places to shop and provides an incentive for consumers to support their local “mom and pop” stores.

Fiscal Impact Summary: Annual state sales and use tax loss of \$24 million (\$372 million x 6.5%).

Existing Law: Except where the law provides a specific exemption or exclusion, California’s Sales and Use Tax Law¹ 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.

Current exemptions are generally based on the nature or type of tangible personal property sold, such as the prescription medicine exemption. Currently, no general exemptions are available for small businesses. Additionally, there are no exemptions for certain time periods or specific dates.

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 table shows California’s various sales and use tax rate components, including the 1% Bradley-Burns Local Tax (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 (RTC Sections 6051, 6051.3, 6201, 6201.3)
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds (RTC Sections 6051.5 and 6201.5, operative 7/1/04)
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)
0.25%	State (Education Protection Account)	Until 01/01/17, schools and community college funding (Section 36, Article XIII, State Constitution)
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
1.0625%	Local Revenue Fund 2011	Realignment of local public safety services (RTC Sections 6051.15 and 6201.15)
1.00%	Local (City/County) 0.75% City and County 0.25% County	(RTC Section 7203.1, operative 7/1/04) General city and county operations County transportation purposes

¹ Part 1 of Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).

Rate	Jurisdiction	Purpose/Authority
7.50%	Total Statewide Rate	

Proposed Law: This bill exempts from the 6.5% state portion of the sales and use tax rate tangible personal property sold by a retailer that is a small business, as defined, during a one-day period beginning at 12:01 a.m. on the Saturday following Thanksgiving and ending at midnight on that same day. The bill defines “small business” as:

- 1) A retailer that remitted to the BOE less than two hundred thousand dollars (\$200,000) in tax for the previous four calendar quarters.
- 2) A retailer that has been in operation for less than four calendar quarters and remitted less than an average of fifty thousand dollars (\$50,000) in tax for each calendar quarter of operation.

The exemption would *not* apply to any tax levied pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law.

As a tax levy, the bill takes effect immediately, but becomes operative November 26, 2016.

Legislative History: Over the years, “sales tax holiday” bills have been introduced to provide a sales tax exemption for certain types of merchandise, all of which failed to pass. These bills include:

Year	Bill	Summary
2013	AB 718 (Melendez)	State tax exemption on the sale of tangible personal property during a one-day period on April 15, 2014, and recurring on every April 15 thereafter.
2011	AB 1007 (Cook)	State tax exemption on the sale of “qualified back-to-school products,” for \$100 or less, during a three day period in August 2012, and every following year until January 1, 2016.
2008	AB 1120 (Tran)	State and local tax exemption for the sale of “qualified disaster preparedness products,” as specified, during a seven-day period in October of each year until January 1, 2012.
2006	AB 2089 (Tran)	State tax exemption for the sale of “qualified disaster preparedness products,” as specified, during a nine-day period in October of each year until January 1, 2010.
2006	AB 548 (Garcia)	State and local tax exemption for the sale of any article of clothing, clothing accessories, or footwear for \$100 or less, school supplies for \$500 or less, and personal computers for \$1,000 or less, during a four-day period in August 2006.
2002	AB 1977 (Strickland)	State tax exemption for specified computer products purchased for \$2,000 or less, during a 3-day period at the end of August or the beginning of September.
2002	AB 2056 (Zettel)	State tax exemption for “qualified personal computer products,” during a 2-day period in August.
2001	AB 1199 (Cardenas)	State and local tax exemption for clothing and footwear purchased for \$200 or less, and computers and related accessories for \$1,000 or less, during the three-day period August 24 – 26, 2001.
2001	AB 1185 (Mountjoy)	State tax exemption for clothing and footwear purchased for \$200 or less, during a one-week period in August.
1999	AB 944 (Cardenas)	State tax exemption for clothing and footwear purchased for \$100 or less, during the three-day period August 24 -26, 2001.
1999	AB 1320 (Ashburn)	State and local tax exemption for tangible personal property purchased for \$500 or less during the week of January 17 to January 23, inclusive, starting in 2000, and continuing until 2004.

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.

Commentary:

1. **Effect of the bill.** During the one-day holiday, any item of tangible personal property would be eligible for the 6.5% sale and use tax exemption as long as that item is purchased from a small business retailer, irrespective of price.
2. **Definition of “small business.”** The definition of “small business” may benefit certain larger businesses that remit less sales tax in proportion to their total sales as a result of their nontaxable sales, such as sales for resale (wholesale sales) or sales made in interstate commerce. These larger businesses may qualify as a “small business,” and thus benefit from the sales tax holiday. To accomplish the author’s intent, further limits on the definition of “small business” may be needed.

In addition, the bill defines “small business” as one that *remitted* to the BOE less than \$200,000 in tax for the previous four calendar quarters. Retailers that remitted no taxes due to delinquency would qualify as small businesses. Similarly, a retailer that reports \$1 million in taxes due, but only remits \$199,999 in the previous four calendar quarters, may qualify. BOE staff is available to work with the author’s office to resolve this concern.

This bill should also clarify whether a retailer with multiple locations qualifies under the aggregate for all business locations

3. **Exemption will not apply to next day merchandise exchanges and rain checks.** Under current law, merchandise exchanges are considered two separate transactions: a rescission of the original sale and a sale of the replacement merchandise. For example, if a customer purchases a medium-sized shirt and exchanges it for a small-sized shirt, the transaction is regarded as a separate sale of the small-sized shirt and a rescission of the original sale of the medium-sized shirt. The retailer is allowed to deduct from taxable sales an amount for the sales price of the medium-sized shirt, and is also required to include in the taxable sales amount, the sales price of the small-sized shirt. Under the proposed holiday period, if the medium-sized shirt is purchased during the sales tax holiday period, and is exchanged for the small-sized shirt *after* the holiday period, the proposed exemption would not apply to the small-sized shirt, since that transaction occurred after the exempt holiday period. This may result in reporting errors by retailers and added customer inquiries and confusion.

Rain checks similarly cause confusion. A retailer’s rain check does not constitute a sale. Therefore, a rain check redeemed for taxable property outside the proposed holiday period would not be eligible for the exemption.

4. **Partial exemptions complicate administration.** Currently, most sales and use tax exemptions are applied to the total applicable sales and use tax. However, a few partial exemptions exist in which only the state tax portion of the sales and use tax rate is exempted, such as the farm equipment and teleproduction equipment exemptions. These partial exemptions are difficult for both retailers and the BOE, and complicate return preparation and processing. Moreover, errors attributable to these partial exemptions occur frequently. This results in additional return processing workload for the BOE.
5. **Other states.** Fifteen states will hold a sales tax holiday in 2015: Alabama, Arkansas, Connecticut, Georgia, Iowa, Louisiana, Maryland, Mississippi, Missouri, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Eligible items include clothing, computers, school supplies, energy star products, firearms and hunting supplies, hurricane preparedness items, and severe weather preparedness kits. For most states, the exemption applies to specified items. Most states also place dollar limits on the amount exempt from sales tax.

Only Louisiana exempts most individual tangible personal property purchases. The exemption applies to the first \$2,500 spent on individual items of tangible personal property for non-business use. Vehicles and meals are excluded from the exemption.

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Administrative Costs: BOE will incur administrative costs to notify affected retailers, modify tax returns, prepare a special publication, audit claimed exemptions, and answer inquiries from taxpayers and the general public. A cost estimate is pending.

Revenue Impact:

Background, Methodology, and Assumptions

This revenue estimate is based on retailers remitting less than \$200,000 in tax four calendar quarters of BOE taxpayers’ sales tax revenue data. This includes data for the period October 1, 2013 through September 30, 2014 (fourth quarter 2013, first quarter 2014, second quarter 2014, and third quarter 2014). The following breakdown depicts the revenue impact:

- During those four calendar quarters over \$5.7 billion was remitted from an estimated measure of \$68 billion ($\$5.7 \text{ billion} / 8.42\% \text{ (average statewide sales and use tax rate)} = \68 billion).
- $\$68 \text{ billion} / 365 \text{ (days)} = \$186 \text{ million (tax per day)}$
- $\$186 \text{ million (tax per day)} \times 2 \text{ (expected sales to be at least double during holiday weekend)} = \$372 \text{ million} \times 6.5\% \text{ (state rate)} = \$24 \text{ million (state tax per day)}$

Revenue Summary

Staff expects sales to be at least twice as high on average on small business Saturday during the holiday shopping season. Therefore, staff estimates taxable measure on small business Saturday will amount to approximately \$372 million. The proposed one-day, 6.5% state rate sales tax holiday for small businesses on the Saturday following the Thanksgiving Day sales would result in an estimated annual sales and use tax loss of \$24 million ($\$372 \text{ million} \times 6.5\%$). The following provides a breakdown:

State	4.1875%	\$15,460,000
Fiscal Recovery Fund	0.2500%	\$920,000
Local Revenue Fund 2011	1.0625%	\$3,920,000
Local Revenue Fund	0.5000%	\$1,850,000
Local Public Safety Fund	0.5000%	\$1,850,000
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Statewide Average Rate	6.5000%	\$24,000,000

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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