



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/26/11	Bill No:	Assembly Bill 1280
Tax Program:	Sales and Use	Author:	Hill
Sponsor:	Author	Code Sections:	HSC 11100 and 11100.02
Related Bills:		Effective Date:	01/01/12

This analysis only addresses the provisions that impact the BOE.

BILL SUMMARY

Among other things, this bill would require the State Board of Equalization (BOE) to notify all retailers no later than April 1, 2012, of the requirement to submit specified transaction information related to retail sales of nonprescription products containing ephedrine and related substances to the National Precursor Log Exchange (NPLEx).

ANALYSIS

CURRENT LAW

Revenue and Taxation Code

Under existing law, state and local sales and use taxes are imposed on the sale or use of tangible personal property in this state, including prescription and nonprescription drugs, unless specifically exempted in the law. Section 6369, for example, provides an exemption for prescription medicines sold or furnished under specified conditions.

Currently, the total combined sales and use tax rates are between 7.25 and 9.25 percent, depending on the location in which the merchandise is sold. The BOE does not collect any additional taxes or fees on the nonprescription drugs.

Health and Safety Code

Under existing law, Health and Safety Code Section 11100 requires any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes specified controlled substances, including ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine (related substances), to any person or entity in this state or any other state to submit a report to the Department of Justice of all of those transactions.

Section 11100 also makes it unlawful for any retail distributor to sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine or related substances, and to knowingly sell more than nine grams of ephedrine or related substances, other than pediatric liquids, as defined. A first violation by a retail distributor is a misdemeanor, and a subsequent conviction of a violation subjects the retail distributor to imprisonment in county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

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.

PROPOSED LAW

This bill would amend, repeal, and add Section 11100 of the Health and Safety Code, to remove provisions related to sales of ephedrine and related substances.

The bill would also add and repeal Section 11100.02 of the Health and Safety Code to regulate ephedrine and related substances. Among other things, Section 11100.02 would require, in order to facilitate the monitoring of the sales of nonprescription products containing ephedrine or related substances, the retail distributor to record information, as specified, at the point of sale regarding the proposed transaction. On and after July 1, 2012, the retail distributor would be required to transmit the transaction information immediately to the NPLEx, which is administered by the National Association of Drug Diversion Investigators, for the purpose of determining if the proposed sale would violate Section 11100.02 or the federal Combat Methamphetamine Epidemic Act of 2005.

The term "retail distributor" would be defined to mean a grocery store, general merchandise store, drug store, or other related entity whose only activities, with respect to distribution of products containing ephedrine and related substances, are limited exclusively to the sale of these products for personal use. "Grocery store," "general merchandise store," and "drug store" would be defined by their Standard Industrial Classification (SIC) codes.

With respect to the BOE, this bill would require the BOE to notify, no later than April 1, 2012, all retailers about the requirement to submit transaction information to NPLEx.

This bill would become effective January 1 2012.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author and intended to provide teeth to existing federal law limiting the sales of pseudoephedrine products by tracking purchases in a networked, unified electronic log, which would prevent a criminal from going store to store and accumulating large quantities of ephedrine products. Currently, such purchases are maintained in paper logs independently at each retail location, which are, therefore, not conducive to providing real-time feedback that would alert a retailer if the customer has exceeded federal purchasing limits.
- 2. The BOE-related provisions of the bill would not be problematic.** Requiring the BOE to notify all retailers about the requirement to submit transaction information regarding sales of products containing ephedrine and related substances to NPLEx would not be problematic.

Over the last few years, the BOE has transitioned from paper filing to electronic filing (eFile) of sales and use tax returns. The majority of sales and use tax accounts now e-file their return, which has resulted in cost savings, due in part to the reduction in the cost of printing, mailing, and processing paper returns. Along with the reduction in mailing paper returns, the BOE has also reduced the number of special notices by which we notified retailers of changes in the sales and use tax law. Consistent with the paperless effort, the BOE proposes to notify retailers affected by this bill through a combination of electronic and paper notices.

3. **“All Retailers” or “Retail Distributors”?** The requirement to collect and report to the NPLeX information regarding transactions involving the sale of products containing ephedrine and related substances is imposed only on “retail distributors,” as defined above. Is the BOE directed to notify **“all retailers”** or only “retail distributors,” based on the SIC codes for those businesses?

BOE staff assumes that the bill intends for the BOE to notify all “retail distributors” of the proposed requirements, and not all retailers that the provisions of this measure may or may not pertain. Accordingly, the BOE would target retail distributors, as defined, for notification as described below under Cost Estimate.

COST ESTIMATE

The BOE would notify affected retailer distributors through a combination of electronic and paper notices, including by e-mail, web posting, and mailing of paper notices to those retailers without e-mail addresses and the larger retailers in the State. The BOE estimates that approximately 175,000 retailers would need to be notified by BOE, as required by the bill. Of this amount, BOE estimates the majority would receive notification electronically, with the remainder receiving paper notification. BOE costs would be related to developing, printing, and mailing (postage) a notice to retailers, alerting them to their reporting requirements pursuant to this bill. Staff has also received preliminary confirmation from the author's office that there is no intent to include the BOE's phone number as the contact number on the notices to retailers. This seems logical as BOE has no knowledge or expertise in the subject matter. As such, costs are estimated be minor (between \$10,000 and \$50,000) and absorbable.

REVENUE ESTIMATE

This measure would not affect the state's revenues.

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