



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

**DRAFT**

Date Amended:	<a href="#">Chapter 18 of the Third Extraordinary Session</a>	Bill No:	<b>ABx3 3</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Evans</b>
Related Bills:			

**BILL SUMMARY**

This bill implements various tax provisions related to the 2009-10 Special Session budget agreement. Among other things, increases the **state sales and use tax rate** by 1 percent beginning April 1, 2009. These provisions sunset on either July 1, 2011, or July 1, 2012, the latter if the voters approve the proposed Budget Stabilization constitutional amendment at a statewide election held during the calendar year 2009.

**ANALYSIS**

**CURRENT LAW**

Under current law, the statewide sales and use tax rate is 7.25 percent. Of the 7.25 percent base rate, 6.25 percent is the state portion and 1 percent is the local portion. The components of the state sales and use tax rate are as follows:

- 5 percent state tax allocated to the state’s General Fund (Sections 6051, 6051.3, 6201, and 6201.3)
- 0.25 percent state tax allocated to the Fiscal Recovery Fund (Section 6051.5 and 6201.5)
- 0.50 percent state tax allocated to the Local Revenue Fund which is dedicated to local governments for program realignment (Section 6051.2 and 6201.2)
- 0.50 percent state tax allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution).

In addition to the state portion of sales use tax rate, the following local taxes are imposed by cities and/or counties and are administered by the Board:

- 1 percent Bradley-Burns Uniform Local Sales and Use Tax which is allocated to cities and counties (Part 1.5, commencing with Section 7200).
- Transactions and Use Tax levied at varying rates from 0.10 to 1 percent by some cities, counties, and special taxing jurisdictions in various cities and counties within the state and which are distributed to those local agencies (Parts 1.6 and 1.7, commencing with Section 7251).

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### PROPOSED LAW

This bill would add Sections 6051.7 and 6201.7 to the Revenue and Taxation Code to impose a state sales and use tax at a rate of 1 percent.

This bill is an urgency measure and would become effective immediately. However, the sales and use tax rate increase would become operative on April 1, 2009.

The provisions would sunset on either July 1, 2011, or July 1, 2012, the latter if the voters approve the proposed Budget Stabilization constitutional amendment at a statewide election held during the calendar year 2009.

### BACKGROUND

California's last state sales and use tax increase occurred in July 1991 with the enactment of AB 2181 (Ch. 85, Stats. 1991). The rate was increased by 1.25 percent in response to the budget shortfall.

Prior to that increase, for a 13-month period beginning December 1, 1989 and ending December 31, 1990, a 0.25 percent state sales and use tax increase was enacted in response to the October 17, 1989 earthquake (commonly referred to as the Loma Prieta earthquake) in the San Francisco Bay Area (SB 33x, Ch. 14x, Stats. 1990, First Extraordinary Session).

Other recent measures related to the state sales and use tax rate include Assembly Bill 7x and Assembly Bill 9e. AB 7x (Ch. 13, Stats. 2003) would have increased the state tax rate by 0.5 percent along with a corresponding decrease of 0.5 percent in the local tax rate as of July 1, 2004. However, these provisions were superseded by the passage of Proposition 57 (AB 9e) in the March 2004 Primary Election, which increased the state tax rate by 0.25 percent along with a corresponding decrease of 0.25 percent in the local tax rate, as of July 1, 2004.

### COMMENTS

1. **Purpose.** The purpose of this bill is to provides the statutory changes necessary to implement the 2009-10 Special Session Budget agreement to address the fiscal emergency declared by the Governor by proclamation December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.
2. **Fixed-price contracts and fixed-priced taxable lease agreements entered into prior to April 1, 2009.** The bill's provisions do not exempt fixed-price contracts or fixed priced taxable leases from the 1 percent rate increase. Consequently, the tax rate increase will apply to such contracts and leases.
3. **Impact of rate change on the Board.** Tax rate changes historically have had a significant effect on the Board. However, this impact is minimized when the rate change takes place on the first day of a calendar quarter and when the Board has sufficient lead time (at least 90 days) prior to the rate change. Since the proposed tax rate increase would become operative on April 1, 2009, the Board should have sufficient lead time to properly inform the public and prepare revised publications and tax returns.

4. **This bill should contain a specific appropriation to the Board.** This bill proposes a sales and use tax rate increase that would take effect April 1, 2009, which is in the middle of the state's fiscal year. An adequate appropriation would be required to cover the Board's costs incurred in administering the tax rate change that would not be identified in the Board's 2008-09 budget.
5. **Partial tax exemptions would apply to the proposed 1 percent state sales and use tax.** There are five partial sales and use tax exemptions: (1) farm equipment and machinery, (2) timber harvesting equipment and machinery, (3) diesel fuel used in farming activities and food processing, (4) racehorse breeding stock, and (5) property used in teleproduction and post production activities. These partial tax exemption statutes contain provisions that exclude the exemptions from any taxes levied pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law and Transactions and Use Tax Law. These partial tax exemptions also do not apply to taxes levied pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code (also known as the Local Revenue Fund tax), and pursuant to Section 35 of Article XIII of the California Constitution (also known as the Local Public Safety Fund tax). Therefore, the partial tax exemption statutes only apply to the state General Fund portion of the sales and use tax rate.

As of July 1, 2004, the state rate subject to the partial exemptions is 5.25 percent. If the proposed 1 percent increase were to become law, the state rate subject to the partial exemptions would be 6.25 percent.

6. **The 1 percent state sales and use tax would not be included in the calculation of the sales tax prepayment rate on motor vehicle fuel, diesel fuel, and aircraft jet fuel.** Suppliers and wholesalers of motor vehicle fuel (gasoline), diesel fuel, and aircraft jet fuel are required to collect a prepayment of a portion of the sales tax when they remove fuel at the terminal rack, enter the fuel into California, or sell the fuels at any point after the removal from the terminal rack. The Board determines the sales tax prepayment rates on these fuels. The rate of prepayment is based on 80 percent of the combined state and local sales tax rate on the average selling price of the fuel as specified in industry publications.

Effective January 1, 2009, the prepayment rates for motor vehicle fuel is \$0.12 per gallon, diesel fuel is \$0.135 per gallon, and aircraft jet fuel is \$0.105 per gallon. These rates are scheduled to remain in effect through March 31, 2010. If the price of these fuels increases or decreases and results in prepayments that consistently exceed or are significantly lower than the fuel retailers' sales tax liability, the Board may adjust the prepayment rates. The Board is required, by November 1 of each year, to establish the prepayment tax rate for these fuels.

Section 6480.1 requires the Board to establish the sales tax prepayment rates. The specific language in the statutes provides that "the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established pursuant to Section 6051, 6051.2, 6051.3, 6051.5, 7202, and 7203.1 of the Revenue and Taxation Code and Section 35 of Article XIII of the California Constitution on the average selling price as determined by the State Energy Resources Conservation and Development Commission in its latest publication of the Quarterly Oil Report."

Because Section 6480.1 includes the code sections of each state and local tax component, the proposed 1 percent would need to be added to Section 6480.1. Without this amendment to Section 6480.1, the prepayment rate would not take into account the additional 1 percent rate resulting in lower than normally required prepayment amounts.

**COST ESTIMATE**

The Board would incur non-absorbable costs related to modifying returns, updating and revising computer programs, notifying all taxpayers registered with the Board, revising publications, training staff, and answering inquiries from the public. In addition, it is anticipated that errors on returns would increase resulting in additional workload in the return processing area. These costs are estimated to be either:

<b>Sunset Date July 1, 2011</b>			
Start Up April 1 through June 30, 2009	Ongoing First Year FY 2009-10	Final Year (Ongoing & Close Out) FY 2010-11	Close Out Year following Final FY 2011-12
\$2,404,000	\$1,222,000	\$2,867,000	\$ 765,000

<b>Sunset Date July 1, 2012</b>				
Start Up April 1 through June 30, 2009	Ongoing First Year FY 2009-10	Ongoing Second Year FY 2010-11	Final Year (Ongoing & Close Out) FY 2011-12	Close Out Year following Final FY 2012-13
\$2,404,000	\$1,222,000	\$1,222,000	\$2,867,000	\$ 765,000

As previously stated, the 1 percent tax rate increase will expire on either July 1, 2011, or July 1, 2012, depending upon whether the voters approve the proposed Budget Stabilization constitutional amendment in a statewide election to be held on May 19, 2009. The costs shown for the Final Year (FY 2010-11 or FY 2011-12) and Close Out Year (FY 2011-12 or FY 2012-13) are estimated costs associated with processing the termination of the tax rate increase. If adjustments are needed to these estimates, a future Budget Change Proposal will be submitted.

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