STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	**05/21/09**	Bill No:	**AB 1486**
Tax:	**Sales and Use**	Author:	**Furutani**
Related Bills:			

BILL SUMMARY

This bill would provide that, until January 1, 2015, specified nonprofit organizations shall be regarded as consumers, rather than retailers, of certain sales of tangible personal property to the organizations' members, under specified conditions.

SUMMARY OF AMENDMENTS

The amendments to this bill since our last analysis add a sunset date of January 1, 2015 and specify that the tangible personal property may not be used for political campaigning or issue advocacy.

ANALYSIS

CURRENT LAW

Under California's Sales and Use Tax Law (Part 1, Division 2 of the Revenue and Taxation Code, commencing with Section 6001), except where specifically exempted by statute, sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. Under the law, sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in this state, unless the sale is specifically exempt from taxation by statute. This tax is imposed on the retailer who may collect reimbursement from the customer if the contract of sale so provides. The Sales and Use Tax Law provides no general statutory exemption from the sales or use tax merely because the seller or the purchaser is engaged in charitable activities, is a nonprofit organization, or enjoys certain privileges under property tax statutes or income tax statutes.

Under the law, every retailer or any other person that makes three or more retail sales of tangible personal property of a kind the retail sale of which is taxable in this state is required to obtain a seller's permit and report the tax on his or her sales on a return prescribed by the Board. However, California's Sales and Use Tax Law places a variety of retailers making taxable sales of tangible personal property under a "consumer" reporting status. Under a "consumer" reporting status, a qualifying retailer making otherwise taxable sales is not required to obtain a seller's permit or report tax on those sales. Rather, the qualifying retailer is only required to pay tax on his or her cost of the taxable components of the products he or she sells.

The "consumer" reporting status is primarily intended to minimize reporting burdens placed on smaller businesses and entities, while minimizing the associated revenue loss that can accompany a complete exemption from the tax. The law has extended this consumer reporting status to certain sales by such entities as nonprofit youth groups, PTAs, nonprofit veterans' organizations, various charitable organizations, schools and school districts, optometrists, veterinarians, podiatrists, licensed hearing aid dispensers, and others with respect to certain products they sell.

PROPOSED LAW

This bill would add Section 6018.9 to the Sales and Use Tax Law to specify that, until January 1, 2015, an organization described in Section 501(c) of the Internal Revenue Code is a consumer of, and shall not be considered a retailer for purposes of any transfer of tangible personal property to its members, as defined, if the following requirements are met:

1. The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.
2. The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.
3. Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.
4. The tangible personal property is not used for political campaigning or issue advocacy.

The bill would define "member" by reference to Corporations Code Section 5056.

The bill would become operative on the first day of the first calendar quarter commencing more than 90 days from the bill's effective date.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the California State Council of Laborers, to relieve nonprofit organizations from the burdensome and time-consuming task of maintaining records and filing sales tax returns for their sales of promotional items to members, when the sales prices of those promotional items are no more than the price paid by the organization.
2. **The May 21, 2009 amendments** add a sunset date of January 1, 2015 and specify that the tangible personal property may not be used for political campaigning or issue advocacy.
3. **Amendments raise some administrative issues.** The amendment that specifies that the property may not be used for issue advocacy purposes raises some questions. Essentially, it appears that provision could be interpreted to mean that any item containing a logo of a nonprofit organization that advocates issues could be excluded from this bill. For example, would purchases of t-shirts or hats containing such logos as SPCA, MADD, or the NRA, etc. be excluded? This should be clarified.
4. **This bill only applies to promotional items sold at cost.** As long as a nonprofit organization only makes sales of tangible personal property described in the bill, then the nonprofit organization would not need to possess a seller's permit, file sales tax returns, or remit sales tax on those sales. However, if a nonprofit organization makes any other sales of tangible personal property, or sells the promotional items even slightly above cost, they would still be required to file sales tax returns and maintain records to report the proper amount of tax.

COST ESTIMATE

We estimate that the administrative costs associated with this measure attributable to identifying and notifying affected nonprofit organizations and amending the Board's affected regulations and publications would be absorbable.

REVENUE ESTIMATE

Enactment of this bill would not result in a state or local revenue loss, since any sales tax reimbursement or use tax collected currently on sales of the property would equal the amount of sales or use tax required to be paid on the cost price under the provisions of this measure.

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