STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	**04/07/08**	Bill No:	**AB 3009**
Tax:	**Sales and Use**	Author:	**Brownley**
Related Bills:		Position:	**Support as Sponsor**

BILL SUMMARY

This bill would specify that a United States veteran, as specified, shall be regarded as a consumer, rather than a retailer, of food products and nonalcoholic beverages that he or she sells, provided that, for purposes of selling these items, the veteran has no employees and no permanent place of business.

ANALYSIS

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. The law does not contain a general exemption from sales or use tax for sales of tangible personal property by veterans.

Under the law, sales of food products for human consumption in this state are generally exempt from the sales tax unless the food products are sold in a heated condition (except hot bakery items or hot beverages, such as coffee, sold for a separate price), served as meals, consumed at or on the seller's facilities, ordinarily sold for consumption on or near the seller's parking facility, or sold for consumption where there is an admission charge. The term "food products" is defined in law to include most items normally regarded as food, including most beverages and bottled water. However, the law specifically excludes spirituous, malt, or vinous liquors, and carbonated beverages from the definition of "food products," and the retail sale of these items therefore are generally subject to tax.

Under the law, every retailer or any other person engaged in the business of selling 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 any taxable purchases.

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 such 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.

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 Board's formal position.

PROPOSED LAW

This bill would add Section 6018.3 to the Sales and Use Tax Law to specify that a "qualified itinerant vendor" is a consumer of, and shall not be considered a retailer of, food products and nonalcoholic beverages that he or she sells.

The bill would specify that a person is a "qualified itinerant vendor" when all of the following apply:

1) The person was a member of the United States Armed Forces, who received an honorable discharge or a release from active duty under honorable conditions from service,
2) For the purposes of selling food products and beverages, the person is a sole proprietor with no employees, and
3) The person has no permanent place of business in this state.

The bill would define "permanent place of business" as any building or other permanently affixed structure, including a residence that is used in whole or in part for the purpose of making sales of, or taking orders and arranging for shipment of, food products and beverages.

The provisions would specify that they shall not apply to either of the following:

1) A person engaged in the business of serving meals, food, or drinks to a customer at a location owned, rented, or otherwise supplied by the customer, or

2) A person operating a vending machine.

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.

BACKGROUND

For the past 10 years or so, several veterans have argued that state law which exempts honorably discharged veterans from locally-imposed license taxes and fees also exempts itinerant veterans from any tax imposed by the state. More specifically, it has been argued that Section 16102 of the Business and Professions Code exempts honorably discharged veterans from application of the sales and use tax on sales of food products and carbonated beverages from a mobile food cart. This section 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."

This provision was enacted way back in 1893 pursuant to AB 74, and was described in the chaptered bill as "An act to establish a uniform system of county and township government."

In 1999, the Board held that this provision does not apply to sales or use taxes imposed pursuant to California's Sales and Use Tax Law. The Board's decision was subsequently challenged unsuccessfully in Los Angeles Superior Court (No. BC 210257). The Board's decision is also consistent with that of the Office of Legislative Counsel in its opinion rendered in 1998.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Board of Equalization to specifically address the application of the Sales and Use Tax Law to itinerant veterans who themselves make sales of food products from mobile food carts as sole proprietors. Specifically, this bill would deem these veterans to be consumers of the products they sell, and provide for the collection of taxes at the point these veterans purchase the food items they sell, to the extent the law applies. The purpose of this bill is to provide modest relief to veterans seeking to make a living by itinerant sales of food and beverages in recognition of their military service. This bill would apply to veterans of past conflicts as well as veterans returning from foreign conflicts in which the United States is currently engaged.
2. **What would a veteran's tax obligations be?** Under this bill, a qualifying itinerant veteran making taxable sales of food products and nonalcoholic beverages would not be required to report sales tax on his or her sales of these items. Instead, those veterans would only be required to pay tax on their cost of any taxable purchases (as explained on page 1, sales and purchases of food products and noncarbonated beverages are generally not subject to tax and a qualifying veteran's purchase of these items would remain exempt from tax; the veteran's purchase of carbonated beverages from his or her supplier, however, would be subject to tax, based on the supplier's sales price). If the qualifying veteran makes no sales of alcoholic beverages or any other taxable sales besides food products and beverages, the veteran would not be required to obtain a seller's permit, file sales tax returns, or remit sales tax on his or her sales of the food products and beverages.
3. **Bill would not be problematic to administer.** The bill would apply to a very small group of itinerant veteran vendors that primarily operate out of mobile food carts. If this bill becomes law, the Board would no longer require these individuals to hold a seller's permit.

COST ESTIMATE

We estimate that the administrative costs associated with this measure attributable to identifying and notifying affected retailers, closing permits, and amending the Board's Regulation 1603, *Taxable Sales of Food Products,"* would be absorbable.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

The U.S. Census Bureau tabulated data by North American Industry Classification Codes (NAICS codes) in the *2002 Economic Census*. We examined the Census information and selected industries for itinerant food and beverage selling businesses. Some of the figures are for the nation as a whole, and some are specifically for California. However, as with most economic data, we believe itinerant food and beverage selling businesses in California are likely to have similar characteristics to their national counterparts. Some of the Census data are tabulated for non-employers, but more often, the data are only available for employers, and only for certain broadly defined industries. Less industry detail are available for non-employers than for employers.

The NAICS code that describes the type of qualified vendors for purposes of this bill is called "mobile food vendors," defined under NAICS code 722330. The most detailed sales data for non-employers is for "special food services," a broader industry classification. Special food services include caterers that operate from fixed locations. Special food services also include food services contractors who operate cafeterias.

As discussed earlier, Census data are more detailed for the U.S. than they are for California. The most detailed data for mobile food services are only available for U.S. mobile services vendors with employees. As shown in Table 1, these data show that sales made by U.S. mobile food vendors with employees were 3.0 percent of special food services sales. While we would like to have more specific data for California mobile food vendors without employees, we believe that the most accurate estimate we can make with the available data is to apply this 3.0 percent estimate to California Census data for sales made by non-employer special food service providers.

Table 2 shows that California sales made by special food service providers without employees were $509.2 million in 2005, the most recent year available. If we assume that 3.0 percent of these sales were made by mobile food service providers (Table 1), estimated sales made by mobile food service providers without employees was $15.3 million.

In December 2007, the Small Business Administration released a report that discussed new data on business ownership characteristics of veterans.[1] According to the report, the self-employment rate for veterans is higher than for non-veterans. Of employed persons, 15.1 percent of veterans are self-employed, compared to 10.1 percent for the overall population of employed persons. Based on these data it seems reasonable to expect that 15.1 percent of estimated mobile food services sales in California are made by veterans. As shown in Table 2, this implies $2,310,300 in retail sales made by veterans meeting the qualifications of this bill.

[1] *The Small Business Economy for Data Year 2006: a Report to the President.* U.S. Small Business Administration, December, 2007.

Table 1
U.S. Mobile Food Services Share of Special Food Services

NAICS Code	Industry	U.S. Sales ($ Millions)	U.S.Sales Percent of NAICS Industry
7223	Special Food Services	$26,446	100%
722330	Mobile Food Services	$802	3.0%

Source: U.S. Census Bureau, *2002 Economic Census.*

The U.S. Census data are for retail sales. However, not all retail sales are taxable. We took retail sales from Table 2 and determined the taxable portions under current law and under this measure in Table 3. The taxable percentages of sales were determined from examining the U.S. Census Bureau "product lines" tables in the *2002 Economic Census* and selecting taxable product lines. We assume that 15 percent of the costs of meals are typically nonalcoholic carbonated beverages. We assume a 100 percent markup on nonalcoholic carbonated beverage sales.

Table 2
Estimated Retail Sales Made by California Mobile Food Services Veteran Sole Proprietors without Employees in 2005

Business	Sales Made by California Non-employers ($ Millions)	U.S. Veteran Self-Employment Rate	Estimated Veteran California Sole Proprietors (Dollars)
Special Food Services	$509.2		
Estimated Mobile Food Services, 3% of Special Food Services (See Table 1)	15.3	15.1%	$2,310,300

Source of Special Food Services Sales: U.S. Census Bureau, "Nonemployer Statistics."

As shown in Table 3, of the $2,310,300 in retail sales under current law, $1,473,278 are taxable. Under the proposed law, $110,496 would be taxable (sales taxes on carbonated beverages prior to retail markup). The difference in the two figures is $1,362,782.

Table 3
Estimated Taxable Sales Made by Veteran Mobile Food Services Sellers

	Product Lines Percentages of Sales and Other Assumptions (Percent) a/	Retail Sales (Dollars)	Current Law Taxable Sales (Dollars)	AB 3009 Taxable Purchases (Dollars)
Mobile Food Services		*$2,310,300*		
Nontaxable Receipts and Alcohol	8.9%		n.a.	n.a.
Meals	91.1%	$2,104,683	n.a.	n.a.
Hot Prepared Food and Carbonated Beverages b/	70.0%		$1,473,278	n.a.
Carbonated Beverages Portion of Meals c/ d/	15.0%		$220,992	$110,496
TOTALS		*$2,104,683*	$1,473,278	$110,496
Difference (Proposed Law Minus Current Law)				$1,362,782

a/ Source: U.S. Census Bureau, *2002 Economic Census,* "Product Lines" for Accommodations and Food Services and Retail Trade.
b/ Hot meals assumed to be 70 percent of the value of all meals, based on Sales and Use Taxes Department staff experience.
c/ Nonalcoholic beverage retail prices assumed to average 15 percent of total meal prices.
d/ Assume 100 percent markup on wholesale costs.

Revenue Summary

Under this bill, taxable sales decline by $1,362,782. Based on this figure, the annual revenue loss associated with this measure is estimated to be $108,341, distributed as shown in Table 4.

Table 4
State and Local Sales and Use Tax Revenues for Veteran Mobile Food Services Sellers Regarded as Consumers

	Tax Rates	Dollars
State	5.25%	$71,546
General Fund	5.00%	$68,139
Fiscal Recovery Fund	0.25%	$3,407
Local	2.00%	$27,256
Transit	0.70%	$9,539
State and Local	***7.95%***	***$108,341***

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