

Last year, in [AB 919](#) carried by his own legislator, Santa Barbara Assemblyman Das Williams, the Legislature decreed that “qualified veterans” could get sales tax refunds for the 2002-2010 period, with a \$50,000 maximum on total refunds and a Dec. 31, 2015, time limit for claims.

End of story? Not quite.

The Board of Equalization was supposed to take steps to notify veterans about the refunds. But Connell complains that it has been lackadaisical, failing to utilize the network of veterans’ organizations to spread the word.

Last month, the board’s staff told Connell in a letter that it had received just one claim for a refund. He sees that as proof that with just a few months remaining in the refund period, the notification process is failing.

“If you have a refund coming and nobody tells us, what the hell is going on? It never hit any of the veterans’ groups,” Connell said the other day on one of his frequent trips to Sacramento, this time to admonish the five-member board during one of its meetings.

However, BOE staffers say they’ve been diligent about seeking out veterans who might qualify for the refunds.

“Staff from the BOE’s sales and use tax department has been working with Mr. Connell since mid-November of last year to reach out to those who might be eligible for the tax repayment in AB 919,” BOE spokeswoman Venus Stromberg said in an email.

She added that BOE sent [emails](#) to veterans identified as potential beneficiaries and to chambers of commerce, added a special notice on its website, and recruited the Department of Veterans Affairs to contact veterans’ organizations.

It’s not satisfactory to Connell. “Nobody has any notification,” he said, worrying that with time running out, his crusade might come to naught.

Dan Walters: (310) 221-1195, dwalters@supone.com, @WaltersDae

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State Controller

CYNTHIA BRIDGES
Executive Director

May 20, 2015

Mr. William Connell

Mr. Connell:

On April 30, 2015, you spoke with my staff regarding the Board of Equalization's (BOE's) outreach efforts with respect to Assembly Bill 919 (AB 919). You stated that the BOE may have overlooked some specific organizations, including some Chambers of Commerce, and requested the BOE contact each and inform them of AB 919. Additionally, you requested BOE contact the Senate Veterans Affairs Committee as you believed they might be aware of individuals potentially impacted by AB 919.

The names of the organizations you identified were forwarded to staff in the BOE's Sales and Use Tax Department (SUTD) who is responsible for implementing AB 919, including BOE's outreach efforts. In response, staff recently contacted each of these organizations, as summarized below.

- American Legion – Although this organization was included in the BOE's prior mailings of the special notice (December 2014 and April 2015), staff contacted this organization and emailed copies of the notice to the American Legion Commander and to the Editor of the American Legion newsletter.
- Vietnam Veterans – A copy of the special notice was mailed to the Fresno chapter as well as 29 additional chapters located in California. A copy of the notice was also emailed to those chapters that had email addresses.
- California Association of County Veteran Service Officers – Staff located 96 addresses on this organization's website and mailed each a copy of the special notice.
- Veterans United for Truth – A copy of the special notice was mailed to this organization.

In addition to organizations above, you also stated that you did not believe the Chambers of Commerce of Los Angeles, Santa Barbara, or Ventura received a copy of the special notice. Staff confirmed that the distribution list used the special notice contained 110 Chambers of Commerce, including the Chambers of Commerce for the three cities you specifically inquired about. However, the Chambers of Commerce for each of the three cities you mentioned was recently contacted and another copy of the special notice was provided.

Last, staff recently contacted the Senate Veterans Affairs Committee and provided them with a copy of the special notice. Committee staff stated that they would forward the special notice to the Committee's contacts.

I hope the information provided above is helpful. Thank you for your continued interest in this matter.

Sincerely,

David J. Gau
Chief Deputy Director

DJG:ma

cc: Mr. Todd Gilman (MIC 70)



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State Controller

CYNTHIA BRIDGES
Executive Director

April 21, 2015

Mr. William Connell



Mr. Connell:

You recently contacted my staff and inquired about the number of veterans that have filed claims for refund with the Board of Equalization (BOE) pursuant to Assembly Bill 919 (AB 919). You also asked whether or not the veterans identified on the documents you provided to me in February 2015 had been contacted. While my staff communicated this information to you verbally, you asked to receive it in writing, which is the purpose of this letter.

On the day you spoke with my staff, the BOE had not received any claims for refund related to AB 919. However, the BOE have since received one claim for refund. Please note that due to taxpayer confidentiality laws, I cannot provide you with any details regarding this claim. Other impacted veterans still have substantial time to submit a claim since they need only be submitted prior to January 1, 2016.

When we spoke at the February 2015 Board Meeting in Culver City, you provided me with photocopies of three documents. You believed the case numbers, identified as "prior cases," that were handwritten at the bottom of each of these documents represented appeals cases of other veterans potentially impacted by AB 919. You asked that these documents be examined and the identified veterans be contacted and informed of AB 919.

My staff reviewed these documents and found that they were contact sheets prepared in 2007 by staff in the BOE's Taxpayers' Rights Advocate (TRA) Office. TRA Office staff prepares these documents when they are contacted by a taxpayer and each document is assigned a case number. This is done so that all inquiries can be tracked. The documents you provided are contact sheets for cases relating to your account. The "prior cases" listed at the bottom of these documents are actually prior cases TRA staff had created as a result of prior contacts you had made to the TRA Office. The case numbers are not those of other veterans. Consequently, these documents did not identify any additional taxpayers that may be impacted by AB 919.

I thought I would take this opportunity to provide you with an update on our outreach efforts related to AB 919. The Special Notice that was previously distributed in December 2014 was distributed again earlier this month. As mentioned in my prior correspondence, the Special Notice will be distributed once again in October 2015. Additionally, articles regarding AB 919 were included in March 2015 issues of our Tax Information Bulletin and our Newsletter to Tax Practitioners. As you recently requested, we will be contacting the office of Assemblymember Das Williams to obtain the names and contact information of any veterans they are aware of that may be impacted by AB 919. Afterwards, we will attempt to contact these veterans and inform them of the provisions of AB 919.

I appreciate your continued interest in ensuring veterans impacted by AB 919 are informed of this legislation.

Sincerely,

David J. Gau
Chief Deputy Director

Mr. William Connell

April 21, 2015

DJG:ma

cc: Mr. Todd Gilman (MIC 70)

1 TO THE MEMBERS OF THE CALIFORNIA BOARD OF EQUALIZATION,

2 **The Genius of Business & Professions Code 16102**

3 "Every soldier, sailor or marine of the United States who has received an honorable
4 discharge or a release from active duty under honorable conditions from such service may
5 hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous,
6 malt, vinous or other intoxicating liquor, without payment of any license, tax or fee
7 whatsoever, whether municipal, county or State, and the board of supervisors shall issue to
8 such soldier, sailor or marine, without cost, a license therefor." B&P Code 16102
9

10 Reason for Establishment: If for some reason a law is not clear by the text (which is again quite
11 clear), then we need to look at the original intent behind the law.

12 *" . . . the most Universal and effectual way of discovering the true meaning of a law,*
13 *when the words are dubious, is by considering the reason and spirit of it; or the cause*
14 *which moved the legislator to enact it." 1 William Blackstone Commentaries 61*

15 When reading the plain intent and taking into consideration the application of this law
16 upon the persons it was designed to effect, we must consider several salient facts. First, when it
17 comes to the defense of the country, there are those who will fight abroad hand to hand and
18 engage the enemy directly. Then, there are those who remain home and often, pay greater taxes
19 in support of the war. It is also noted, that many who go off to War are not going to come back.
20 It is they who will bear the greatest burden. Not only will they and their heirs be deprived of all
21 future earning potential, but also of the very existence of that person. Further, the effects of war
22 often go on to burden the individual who went to war in many ways. This is not disputed by
23 either side (if I may so presume).

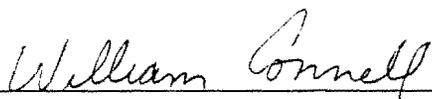
24 Many veterans of conflicts experience loss of limbs mental anguish and sometimes shock
25 from such extraordinary circumstances as only War tends to cause. People who have been in
26 such conflicts often end up tuning out of society altogether. Not only is this a problem to them,
27 but it is a problem for us since they once again live among us. There is a compelling state interest
28 in having such individuals reintroduced to society.

1 The Genius of this particular law and the likely intent for its enactment by the legislature
2 was to encourage veterans who were honorably discharged from the military to get out into
3 society again. The law was designed specifically for vendors and hawkers which are jobs that
4 require direct contact with the public and the citizens of the state. The profession of hawking and
5 peddling of goods requires social interactions by the people who are doing such duties. Many
6 people who went to War may be averse to such acts since they may have lost limbs and so forth.

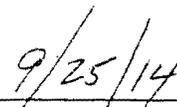
7 The second Genius of this law is that it works to encourage many of those Veterans, who
8 the citizens financially support, off welfare and gives them the capacity to be self-sufficient and
9 productive members of society. For many of us in society, we take our self-sufficiency for
10 granted and it is hard to recognize how others cannot be self sufficient. This law as it was
11 originally enacted gives the real opportunity for many members of the Veteran Community to
12 come off the welfare rolls. It allows them the chance to not only earn an honest income, but to do
13 it in the most dignified manner possible, with their own steam!

14 The final genius of this law may not have even been considered by the representatives
15 who unanimously enacted this law, but it is so fundamental that they should be given credit for it
16 well past the time they enacted it. It allows the rest of to see the effects of war by seeing those
17 who fought. In doing such, we are forced to remember so we may understand the effects of such
18 decisions in the future. With so much that goes on in our day to day lives, we often forget minor
19 things and even major calamities. War is no small matter to be entered into lightly and lest the
20 effects of Wars fought past be hidden, it may hamper our decision in entering future Wars. We
21 cannot fully understand the cost to us or our posterity if those who fought for us and the effects
22 such fighting had on them are hidden away in some closed room privately suffering.

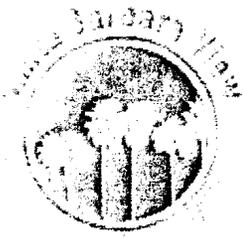
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24 Respectfully submitted,

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27 William Connell, US Army Hon. Discharged

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27 Date



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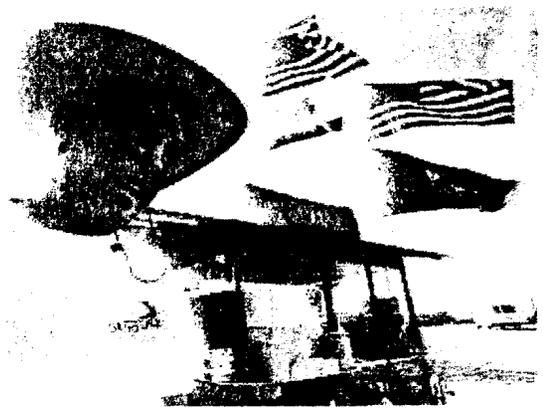
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Person of the Week: Bill Connell of Surf Dogs

By Editor on October 3, 2014 in News

Congratulations to Bill Connell, Carpinteria's hot dog guy, who has been fighting the State Board of Equalization over a distorted state law that costs him about \$7,000 in taxes annually. After a decade of fighting, Governor Jerry Brown signed into law AB 919 this week, which will clear up the legal language and help other veterans who operate small businesses like Bill get reimbursed to the tune of \$50,000! For that effort and eventual victory, *Santa Barbara View* makes Bill Connell the person of the week.



Surf Dogs was started in 1993 and is located on the ocean bluffs in Carpinteria on the ocean side of the freeway at the Ballard exit. Bill serves up some one of the best hotdogs you will ever have, from turkey dogs and Dodger dogs to sausages.

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29 1 0

Signed into Law: 1/27/2014

AB 919 (Williams) Itinerant Disabled Veteran Vendors Refund

SUMMARY

AB 919 reimburses certain disabled itinerant veteran vendors for any sales tax, interest, and penalties not collected from customers but paid during the period between April 1, 2002 and April 1, 2010.

BACKGROUND

Veterans with service connected disabilities returning to civilian life struggle to re-integrate into society. Unable to find a job, many veterans become vendors selling art, food, books, among other items.

For many years certain veteran vendors argued Section 16102 of the Business and Professions Code (B&PC) exempts honorably discharged veterans from paying any license, tax or fee, whatsoever, for their sales of goods, wares, or merchandise they own (except alcoholic beverages). The enactment of Section 16102 of B&PC dates back to 1893, long before the establishment of Sales and Use Tax Law.

Veteran vendors believed they were exempt from paying certain state and local sales tax; however, the Board of Equalization (BOE) considered veteran vendors "retailers" and, therefore, pursued collection of sales tax, interest, and penalties. Due to the misinterpretation, veteran vendors failed to collect sales tax reimbursement from customers resulting in out of pocket payment to the BOE.

To clarify the dispute, Senate Bill 809 (2009) granted "consumer" reporting status to qualified itinerant vendors (QIV) until January 1, 2012. Under a "consumer" reporting status, QIVs making otherwise taxable sales are not required to obtain a seller's permit or report tax on those sales. Rather, QIVs are only required to

pay tax on their cost of the taxable components of the products they sell, which has the effect of minimizing revenue loss and reporting burdens to specified small businesses. Senate Bill 805 (2011) extended these provisions to 2022.

NEED FOR THE BILL

While SB 809 and SB 805 helped QIVs from 2010 forward, they didn't address previously collected sales tax. This bill creates a temporary grant program to reimburse qualified veteran vendors for sales tax, interest, and penalties not collected from customers dating back to April 1, 2002.

A qualified veteran vendor is someone who:

1. has paid state and local sales and use taxes between April 1, 2002 and April 1, 2010,
2. not collected sales tax reimbursement from customers and,
3. paid interest or penalties associated with tax liabilities.

AB 919 requires a qualified veteran vendor to submit a written claim before January 1, 2016 in order to obtain reimbursement. Further, BOE will provide the number of qualified repayments to the Controller on or before March 1, 2016. The total amount of funds available for qualified repayment is capped at \$50,000. If the total amount of claims filed exceeds \$50,000, the BOE will determine the pro rata share due to each qualified veteran. No interest will be paid on any qualified repayment.

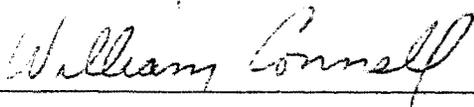
This bill is necessary because hard-working disabled veteran vendors misunderstood Section 16102 of the B&P Code. Veteran vendors did not collect sales tax reimbursement from customers, resulting in thousands of

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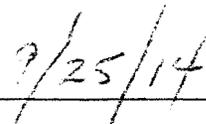
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23
24 Respectfully submitted,

25
26 

27 William Connell, US Army Hon. Discharged

28 

Date

steady stream of jokes and barbed commentary for the past 22 years. His battle with the state began one year later and has become the stuff of David-versus-Goliath lore in the halls of Sacramento. "I've been on defense for 21 years now," Connell exalted. "Now I get to go on the offense."

Connell had warm praise for Williams, who, he noted, was fond of his monster chili dogs after an afternoon of chasing waves. Despite his help, Connell said Williams will have to pay for such monster dogs in the future. "He gets nothing free," Connell stated. "Otherwise it could be viewed as a bribe."

Related Links

- "Hot Dog Man" Billy Connell Faces the Franchise Tax Board. [March 1, 2007]
- Carpinteria's "Hot Dog Man" Gets Big Boost [April 5, 2008]

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BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

February 19, 2015



Mr. Connell:

Thank you for meeting with me, Chief Counsel Randy Ferris, and Taxpayers' Rights Advocate Todd Gilman on January 21, 2015. During this meeting you provided suggestions regarding the Board of Equalization's outreach efforts with respect to Assembly Bill 919 (AB 919). Specifically, you stated the Special Notice (notice) should be provided to all AB 919 supporters, should be distributed multiple times, and should include additional examples of vendors potentially impacted by this legislation. This letter is to update you on our recent efforts in this regard.

Following our meeting, staff identified nine additional supporters of AB 919 that had not previously been provided with a copy of the notice. Copies of the notice were provided to these supporters, both by mail and email. To date, copies of the notice have been provided to individuals potentially impacted by AB 919, 110 California Chamber of Commerce offices, all supporters of AB 919, the California Department of Veterans Affairs, and the office of Pete Conaty & Associates (a governmental consulting, legislative advocacy, and lobbying firm). We will also continue to notify any other individuals potentially impacted by AB 919, which may be later identified.

As you had suggested, we will be distributing the notice two additional times this year, in April and October. Additionally, we will be including information regarding AB 919 in upcoming issues of the Tax Information Bulletin and in the Newsletter to Tax Practitioners, which is distributed to over 80,000 practitioners.

Lastly, with respect to the examples of the vendors and types of goods/services such vendors commonly sell, staff included the entire list of examples you mentioned in the online Veteran's Tax Topic webpage that was recently developed. This guide is now available on our website at www.boe.ca.gov/sutax/veterans.htm and provides sales and use tax information and property tax information relevant to veterans.

I appreciate your interest in ensuring veterans impacted by AB 919 are informed of this legislation.

Sincerely,

David J. Gau
Chief Deputy Director

cc: Mr. Randy Ferris (MIC 82)
Mr. Robert Tucker (MIC 82)
Mr. Todd Gilman (MIC 70)

Veteran Small Business Champion of the Year



William Connell

All American Surf Dogs

William "Bill" Connell, "the Hot Dog Man", relocated to Carpinteria, California twenty two years ago after serving in the military in Europe and winning the European heavy-weight boxing championship. After his boxing career, Connell decided to start a small business selling hot dogs and cold drinks and located his hot dog stand in Carpinteria – where he sold his first hot dog on July 1, 1992 for \$1. That would be the beginning of a 16-year labor of love and fight to have the State of California recognize a California law enacted in the 1800s, ensuring that disabled veterans without a permanent place of business who sell wares on the street be exempt from collecting sales tax. Connell battled state bureaucracy in spite of the economic distress he suffered, and because of his efforts, Senate Bill 809 was made into law in 2009, which now helps an estimated 5,000 disabled veteran business owners make a living free from fees and taxes.

Sent Wendy 10/9/13

This was sent from the Chair of
the Senate Veterans Affairs Committee Chair
answering them! (as soon as possible)

October 10, 2013

Ms. Diane F. Boyer-Vine
Legislative Counsel
State Capitol
Sacramento, CA 95814

Dear Ms. Boyer-Vine:

I request a written opinion regarding the State's current and historical tax treatment of qualified veterans, as defined in Business and Professions (B&P) Section 16102, which states:

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 therefor.

(Amended by Stats. 1941, Ch. 646.)

My general interest is whether the exemption for veterans from taxes under §16102 provides an exemption from the State sales tax. More specific questions are listed below.

I realize that your Office has produced other opinions on this general topic in response to earlier requests from other legislators. (Two examples are enclosed.) I also am aware that the Attorney General has issued a relevant opinion (No. 09-402, July 19, 2010), a copy of which is attached. I believe that my request differs from earlier requests in terms of substantive breadth, historical depth (pre-1901), determination of controlling legal statute, and legislative intent.

The background information and consequent questions will address two separate issues:

1. The scope of the taxes and fees from which a qualified veteran vendor is exempted.
2. Confirming the earliest controlling statute that determines the eligibility of a qualified veteran vendor in terms of the vendor's "ownership" relation to the goods being sold.

Background: Scope of Taxes and Fees Covered by the Exemption

According to the annotated codes, B&P §16102 was derived from former Political Code Section 4041.14, as added by Chapter 755, Statutes of 1929 (Assembly 773). Later amendments do not affect the language substantively. However, the concept, and to a great degree, the language presenting the concept predate the 1929 enactment. To document this history, I am including documents regarding Assembly Bill 773 and earlier law containing the veteran's exemption.

In 1893 the Legislature enacted County Government Act of 1893, which appears to be the first act "to establish a uniform system of county and township governments." Section 27 of that Act (Chapter 234 of California State law) contains the exemption language in fairly similar format to the present section, particular with regards to the tax language. The Section continued in this act for a period of years.

In 1897 the Legislature reenacted the exemption adopted similar language as part of section 25 of the County Government Act of 1897.

Yet another similar section became part of the Political Code (Section 3366) in 1901. An annotated version showing the early California case law referring to the section is provided.

A separate act providing somewhat similar exemption for ex-Union soldiers and sailors from only the license requirement appears in 1905.

An annotated version of the Political Code from 1924 shows the parallel appearance of former Political Code Section 3366 and Section 4041, subdivision 25, as well as the 1905 enactment is provided.

The 1929 text through amendments of 1935, codification as Business & Professions Code Section 16102 in 1941 and the amendment to the new code section in that same year. The changes made seem non-substantive at this point in time.

Civil War era

Legislative Act of 1893

In 1893, the California Legislature passed "An Act to Establish a Uniform System of County and Township Governments," which took effect in 1895 as Chapter 234 of California State law. The act was a large omnibus bill that generally established the powers, duties, and responsibilities of California's counties and towns.

Section 25 of the act, entitled "General Permanent Powers of Board," (relating to the powers of county boards of supervisors) granted boards of supervisors the following authority:

"To license, for purposes of regulation and revenue, all and every kind of business not prohibited by law, and transacted and carried on in such county, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; ..."

This power was granted with the following caveat:

"... *provided*, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise, 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 therefor."

(Ch. 234, §25, Para. 27).

It is believed this was the first time this exemption for disabled veterans (the "Veterans' Exemption") appeared in California law although it is possible to have existed earlier in statute. The Veterans' Exemption currently is found in California's B&P Code.

Legislative Act of 1897

Similar language to the above-quoted portion of the County Government Act of 1893 was re-enacted as subdivision 25 of section 25 of the County Government Act of 1897. The County Government Act of 1897 was apparently enacted to supersede the County Government Act of 1893. With one minor capitalization difference (namely, the word "state" is not capitalized in the 1897 provision), the first sentences of the 1893 and 1897 versions are identical, including the punctuation of the key phrase of the exemption (i.e., "without payment of any license, tax, or fee whatsoever"). (See Stats. 1897, ch. 277, § 25; subd. 25, p. 465.)

Boyer-Vine, D.
Opinion Request: Veteran Vendors
October 10, 2013

Legislative Act of 1901

In 1901, the Veterans' Exemption was placed in the California Political Code. In January 1901, Assembly Bill 456 was introduced to amend Political Code Section 4045, which related to the powers of county boards of supervisors to impose a license tax on persons, businesses, and occupations. This initial version of AB 456 listed specific businesses upon which a county board of supervisors could impose a license tax, with no mention of a Veterans' Exemption. A subsequent Assembly amendment to AB 456 replaced the list of specific businesses upon which a county board of supervisors could impose a license tax with language stating that all persons, occupations, and businesses could be subjected to a license tax. In March 1901, AB 456 took its final form after it was gutted and amended in the Senate.

In its final form, AB 456 no longer amended Political Code Section 4045, but instead created Political Code Section 3366. The new section mirrored -- almost word-for-word -- the provision in Chapter 234 that gave county boards of supervisors the authority to impose a license tax, subject to the Veterans' Exemption. When Section 3366 was enacted in March 1901, it did not explicitly repeal or amend any section of Chapter 234.

There were two main substantive differences between Political Code Section 3366 and Chapter 234. First, Section 3366 applied to counties and towns, while Chapter 234 only applied to counties. It appears that the legislative intent behind creating Section 3366 was to give cities and towns the same business licensing power and Veterans' Exemption that Chapter 234 previously had only given to counties. Second, the Veterans' Exemption in Section 3366 omitted a comma between the words "license" and "tax" that was present in Chapter 234. As enacted, the Veterans' Exemption in Section 3366 stated that qualified disabled veterans must be issued a business license "without payment of any license tax, or fee whatsoever, whether municipal, county or state." With the exception of the missing comma, this language mirrors in both the 1893 veterans' exemption (Chapter 234) and the exemption in the County Government Act of 1897. *It is likely the 1901 omission of the comma between the words "license" and "tax" was accidental.*

Legislative Act of 1907

In 1907, the Legislature enacted Political Code section 4041, which superseded the County Government Act of 1897. (Stats. 1907, ch. 282, § 1, p. 370.) As enacted, subdivision 22 of Political Code section 4041 contains the same substantive language with regard to the veterans' exemption from license taxes contained in the two prior noncodified versions, including the insertion of a comma between the words "license" and "tax" but not between "tax" and "or" (i.e., "without payment of any license, tax or fee whatsoever").

Legislative Act of 1929

In 1929, the Legislature enacted Assembly Bill 773 (Stockwell). This bill amended Political Code Section 4041, which covered the jurisdiction and powers of county boards of supervisors, by adding Political Code Section 4041.14. The new section duplicated Political Code Section 3366 by giving county boards of supervisors the power to regulate all licit business within their borders and impose licensing fees upon those businesses, but was limited to counties. When Section 4041.14 was enacted, it did not explicitly repeal or amend any part of Chapter 234 or Section 3366.

(Also note that, two years earlier, a Senate measure proposed changes to existing Section 4041 concerning the jurisdiction and powers of the board of supervisors similar to that accomplished in 1929. Senate Bill 683 proposed the location of the license, and exemption from licensing and taxes text in Section 4041. This bill did not get out of its first policy committee in 1927.)

The Veterans' Exemption in Political Code Section 4041.14 mirrored exactly the Veterans' Exemption in Chapter 234. As enacted, Section 4041.14 stated that qualified veterans must be issued a business license "without payment of any license, tax or fee whatsoever, whether municipal, county or state." *Section 4041.14 included the comma between the words "license" and "tax" originally present in Chapter 234, while Section 3366 did not, further strengthening the likelihood that the omission of the comma in Section 3366 was accidental.*

Legislative Act of 1941

In 1941, the Legislature added several sections to the B&P Code that consolidated and revised county and city business licensing law. The 1941 act added Division 7, Part 1, entitled "Licensing for Revenue and Regulation," to the B&P Code. Part 1 had two relevant chapters — Chapter 1 covered business licensing by cities, while Chapter 2 covered business licensing by counties, and each chapter contained a Veterans' Exemption. When the act took effect in September 1941 it repealed Political Code Sections 3366 and 4041.14 and did not repeal or amend any part of Chapter 234.

Chapter 1 of the act, which related to cities, added Section 16000 to the B&P Code and granted cities the power to license and collect any license fee from any licit business conducted within their jurisdiction. Chapter 1 also created Section 16001, which contained a Veterans' Exemption that required qualified veterans to be issued a business license "without payment of any license tax or fee whatsoever, whether municipal, county or State." Except for the comma omitted between the words "license" and "tax" this language is identical to the Veterans' Exemption in Chapter 234. The Veterans' Exemption in Section 16001 is missing the comma between the words "license" and "tax" that was present in Chapter 234, Political Code Section 4041.14, and B&P Code Section 16102. *This supports the argument that the omission of the comma in Section 16001, like the omission of the comma in Political Code Section 3366, was accidental.*

Chapter 2 of the act, which related to counties, added Section 16100 to the B&P Code and granted counties the power to license and collect any license fee from any licit business conducted within their jurisdiction. Chapter 2 also created Section 16102, which contained a Veterans' Exemption that required qualified veterans to be issued a business license "without payment of any license, tax, or fee whatsoever, whether municipal, county or State." *This language is identical to the Veterans' Exemption in Chapter 234 and further supports the argument that the omission of the comma in Section 16001, like the omission of the comma in Political Code Section 3366, was accidental.*

Relevant Case Law

Only two published California appellate cases have any discussion directly relevant to the veterans' exemption statutes discussed above: *In re Gilstrap* (1915) 171 Cal. 108 (*Gilstrap*) and *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750 (*Brooks*).

Analytical Considerations

The Veterans' Exemption survives in its present form in B&P Code Sections 16001, 16001.5, and 16001.7 (all of which relate to business licensing by cities), and Section 16102 (which relates to business licensing by counties). Section 16001 is substantively the same as it was when enacted in 1941 with the exception that it broadens the class of qualified veterans eligible for the Veteran's Exemption. Section 16001 still lacks the comma, which for reasons mentioned above, likely was omitted by accident.

The original Veterans' Exemption in Chapter 234 contained a comma between the words "license" and "tax." The comma disappeared when the Veterans' Exemption appeared in 1901 in Political Code Section 3366. The comma reappeared in 1929 in Political Code Section 4041.14, and in 1941 in B&P Code Section 16102. Due to ignorance of Chapter 234's existence, California courts declared that the 1929 comma insertion was accidental and the comma should not be taken into consideration when interpreting the meaning of the Veterans' Exemption. In light of the fact that the comma was present in 1893 and reappeared in 1929 and 1941, it is likely the comma's omission in 1901 was accidental.

It appears that the Veterans' Exemption and its surrounding language was pasted directly from Chapter 234 which was created in 1893, into Political Code Section 3366 in 1901, which was then copied into Political Code Section 4041.14 in 1929, which was then copied into B&P Code Sections 16000 *et. seq.* in 1941, where the Veterans' Exemption exists today. Other than the language of the Veterans' Exemption itself and the placement of the Veterans' Exemption within Chapter 234, it is unknown whether there is any extrinsic evidence that may shed light on the legislative intent behind creating the Veterans' Exemption.

The significance of the comma between "license" and "tax" has been debated previously. In *Brooks v. County of Santa Clara*, 191 Cal.App.3d 750 (1987), California's Sixth Appellate Court

Boyer-Vine, D.
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reasoned that the comma between the words "license" and "tax" in the Veterans' Exemption in B&P Code Section 16102 was accidentally inserted in 1929. The court reasoned that, because there was no comma in the phrase when it appeared in 1901 in Political Code Section 3366, the insertion of the comma in the phrase in 1929 in Political Code Section 4041.14 was inadvertent. However, the *Brooks* court apparently was unaware that when the Veterans' Exemption first appeared in 1893 in Chapter 234, it contained a comma between the words "license" and "tax" because the court did not cite Chapter 234 in its discussion of the legislative history of the Veterans' Exemption. Because the court did not have full knowledge of the legislative history behind the Veterans' Exemption and the comma at issue, the court erroneously concluded that the comma was inadvertently inserted in 1929 in Political Code Section 4041.14 and in B&P Code Section 16102.

In July 2010, the California Department of Justice issued Opinion No. 09-402 (*93 Ops. Cal. Atty. Gen. 70*) that concluded the comma inserted between the words "license" and "tax" was accidental, and therefore the Veterans' Exemption in B&P Code section 16102 does not establish a general exemption from state or local sales taxes. The Department of Justice opinion relied extensively on the *Brooks* decision in reaching its conclusion that the comma was accidentally inserted. Like the court in *Brooks*, the Department of Justice opinion did not take into consideration the presence of a comma in the Veterans' Exemption in Chapter 234. Accordingly, the reliability of the conclusion the Department of Justice reached is questionable because the *Brooks* court erred in concluding that the comma in the Veterans' Exemption was accidentally inserted.

As shown above, relying on the *Brooks* decision and the 2010 Department of Justice opinion is likely to mislead the casual observer into believing that the Veterans' Exemption was originally intended not to insert a comma between the words "license" and "tax." However, the earlier law (1893) places a comma not only between "license" and "tax," but also between "tax" and the conjunction "or," which precedes the word "fee." The second comma, which is optional, shows a serial relationship between three nouns— "license," "tax," and "fee." *Given the history of the Veterans' Exemption, it is likely that a comma was intended to be included between the words "license" and "tax." Its early presence in 1893, its apparently accidental disappearance in 1901, and its restoration in 1929 strongly suggest that conclusion.*

Background: Relationship between Vendor and Goods Being Sold

The 1941 enactment creating the existing B&P Code Section 16102 states that the qualified veterans "may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor"

In 2009 the Legislature enacted SB 809 (Ch. 621 Stats. 2009), which was sponsored formally by the BOE and authored by the Senate Committee on Veterans Affairs. This bill added Section 6018.3 to the Revenue and Taxation Code. SB 809 provides that, for purposes of the Sales and

Use Tax (SUT) Law, specified United States (U.S.) veterans shall be considered consumers of, and not retailers of, food products and nonalcoholic beverages they sell.

Specifically, SB 809:

1. Provides that a "qualified itinerant vendor" is a consumer of, and shall not be considered a retailer of specific tangible personal property (TPP), food products and nonalcoholic beverages that he/she sells.
2. Provides that a person is a "qualified itinerant vendor" when all of the following apply:
 - a. The person was a member of the U.S. Armed Forces, who received an honorable discharge or a release from active duty under honorable conditions.
 - b. The person is a sole proprietor with no employees; and,
 - c. The person has no "permanent place of business" in this state.
3. Defines "permanent place of business" as any building or other permanently affixed structure, including a residence that is used in whole or in part for making sales of, or taking orders and arranging for shipment of, food products and beverages. "Permanent place of business" does not include any building or other permanently affixed structure, including a residence, used for the storage of food and nonalcoholic beverages or for the cleaning and storage of equipment used in the preparation and vending of food and nonalcoholic beverages.
4. Provides that this bill shall not apply to a person who is:
 - a. 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,
 - b. Operating a vending machine.

With regard to the bill's stated purpose, the BOE stated: "In recent years, we have seen large numbers of veterans return home from two major foreign conflicts in which the United States Armed Forces are actively engaged. Many of these returning veterans face continuing challenges from physical or psychological disabilities directly related to their military service. The BOE has been advised in public hearings that some of these veterans seek to make a modest living from the itinerant sales of food and beverages."

Some critics have alleged that the bill appears to have been crafted narrowly by the BOE in order to meet the unique needs of the one persistent vendor and end the public debate over the appropriate application over the broader, existing veterans' exemption that is the focus of this opinion request.

If the aim was to provide relief to itinerant veterans who have served their country with honor, why does this bill only apply to sales of food products and beverages? Under SB 809, other itinerant veterans who sell non-edible TPP are still considered retailers and required to obtain a seller's permit.

QUESTIONS/ISSUES RAISED

Scope of Taxes and Fees in the Exemption

1. It is unclear whether the 1893 Veterans' Exemption (Chapter 234) has ever been explicitly amended or repealed. If the Veterans' Exemption was amended or repealed, what specific act repealed or amended it?
2. If Chapter 234 was never repealed, is it still in effect in parallel with subsequent statutes? If not, why not? Would subsequent statutes that are more narrowly constructed merely be reaffirmations of a subset of Chapter 234's grant of exemption rather than replacements of Chapter 234?
3. What was the legislative intent behind the Veterans' Exemption in Chapter 234?
 - a. Chapter 234, Section 25, paragraph 27 gives counties the power to "fix rates of license tax." This license tax power is modified by the Veterans' Exemption, raising the presumption that the scope of the exemption is limited to county license taxes. However, what do we make of the language of the Veteran's Exemption that states "without payment of any license, tax, or fee whatsoever, whether *municipal, county or state*"?
 - b. If the plain meaning of the text in Chapter 234 is to exempt qualified veterans from merely paying licensing fees associated with running a qualified business, why would the Legislature separate out the words "license," "tax," and "fee" in the Veterans' Exemption?
 - c. Taking into account that Chapter 234 says, "without payment of any license, tax, or fee whatsoever, whether municipal, county or State," was the Veteran's Exemption (Chapter 234) originally intended to exempt qualified veterans from merely paying licensing fees associated with running a qualified business, or was it intended to be a general exemption from paying any sales or use taxes related to running a qualified business?
 - d. Was this exemption intended to be limited to Civil War veterans or applied more broadly?

- e. The Legislature likely intended a comma to be present in between the words "license" and "tax." The presence of a second comma before the conjunction "or" clearly indicates the intent for this to be a serial list of three nouns. Considering the placement of these commas, how would this guide the interpretation of the scope of the Veterans' Exemption?

More specifically, if existing law were found to include an earlier statute (such as Chapter 234) that contains the comma between "license" and "tax" and a later-enacted statute that does not contain a comma in that location, in the absence of any other interpretive consideration, how would they be harmonized? Specifically, does not the wording of the second statute constitute merely a reinforcement of a small portion of the first statute? (In the sense that the second statute's "any license tax" or "(any) license fee" are just subsets of the first statute's broad scope of "any license, fee, or tax whatsoever.")

Taking the history of the Veterans' Exemption into consideration, would the legislative intent and or purpose behind Chapter 234's Veterans' Exemption be applicable to Political Code 3366, and its progeny, Political Code 4041.14 and Business and Professions Code Sections 16000 et. seq.? If the Veterans' Exemption in Chapter 234 is still in effect, would it trump the current B&P Code Section 16000-series Veterans' Exemption?

4. Political Code Section 3366, which later became B&P Code Section 16101, and Political Code Section 4041.14, which later became B&P Code Section 16102, added the following language to the Veterans' Exemption: "provided, however, no license can be collected or any penalty for the nonpayment thereof..."

- a. Does this language indicate that the contemporaneous usage of the word "license" meant a license was equivalent to a tax or fee? Would a person pay a "license," similar to paying a tax?
- b. Does this language give meaning to the comma? Or that that the legislature interpreted Chapter 234 as exempting payment for licenses and taxes and fees?
- c. In general, what is the distinction between a "license tax" and a "license fee?" in the context of the statutes under discussion in this request?

5. Does available case law (*Gilstrap, Brooks*, or any other case) shed light on this matter?
6. Do we have any indications as to how local governments and the Board of Equalization interpreted Chapter 234, Political Code Section 3366, Political Code Section 4041.14, and B&P Code Section 16102 in light of their actual execution of those laws from the effective date of Chapter 234 onward? Were veteran vendors, in practice, exempted from any state or local taxes and fees other than those directly associated with business licenses based upon the statutes under discussion in this request?

Relationship of Vendors to Goods Being Sold

7. The 1941 enactment creating the existing B&P Code Section 16102 states that the qualified veterans “may hawk, peddle and vend any goods, wares or merchandise owned by him.” The section includes the phrase “owned by him” to be used in determining the eligibility of goods that qualify for sale within the scope of the veterans exemption.
 - a. By designating the qualifying goods as being “owned by” the veteran, this phrase required the veteran to be in a consumer status with regard to the goods. What is the phrase’s meaning, what was the purpose of including the phrase, and what is its legal effect?

For example, was it included to protect government entities from being defrauded by veterans who might be induced into acting as “fronts” for other nonqualified business entities? [Such as has occurred in the case in the State’s Disabled Veteran Business Enterprise (DVBE) Program.]
 - b. SB 809 (2009) added to the Revenue and Taxation Code “veterans exemption” language stating that “(a) qualified itinerant vendor is a consumer of, and shall not be considered a retailer of, tangible personal property owned and sold by the qualified itinerant vendor. . . .”
 - i. What is the phrase’s meaning, what was the purpose of including the phrase, and what is its legal effect?
 - ii. Is it redundant to or different from the effect of the existing “owned by him” in B&P 16102, which has been law since 1941?

Should you or your deputies have questions about this request, you are authorized to address them to Wade Teasdale with the Senate Veterans Affairs Committee at (916) 651-1503. After receiving authorization from Mr. Teasdale, you also may discuss the history of this issue with William Connell (805) 566-6549.

Boyer-Vine, D.
Opinion Request: Veteran Vendors
October 10, 2013

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Thank you for your Office's exemplary competence and its consistently prompt and courteous attention to all my requests.

Sincerely,

BEN HUESO
Senator, 40th District
Chair, Committee on Veterans Affairs

Enclosures:

1. Assembly Bill 773 (Stockwell, 1929)
 - a. All versions of AB 773
 - b. Procedural history of AB 773 from the 1929
 - c. Assembly Final History Summary of AB 773 from the 1929 Legislative Digest, prepared by Legislative Counsel
 - d. Excerpt regarding Assembly member James E. Stockwell from the 1929 "Legislative Handbook."
2. Senate Bill 683 (Chamberlin, 1927)
 - a. All versions of SB 683
 - b. Procedural history of SB 683 from the 1927 Senate Final History
3. Former Political Code section 4041 excerpted from Deering's Political Code, 1924
4. Chapter 57, Statutes of 1855.
5. Excerpt regarding section 27 from Chapter 234, Statutes of 1893
6. Chapter 209, Statutes of 1901
7. Chapter 297, Statutes of 1905
8. Chapter 436, Statutes of 1915
9. Excerpt regarding former Political Code section 3366 from The Political Code of the State of California adopted March 12, 1872, edited by James H. Deering
10. Chapter 188, Statutes of 1917
11. Chapter 164, Statutes of 1921
12. Excerpt regarding former Political Code section 3366 and 4041 subd. 22 from The Political code of the State of California adopted March 12, 1872, edited by James H. Deering
13. Chapter 138, Statutes of 1935
14. Chapter 61, Statutes of 1941
15. Chapter 646, Statutes of 1941
16. Brooks v. County of Santa Clara, 191 Cal.App.3d 750; 236 Cal.Rptr. 509 [Apr. 1987]
17. Legislative Counsel Opinion #0902454, March 15, 2009

Boyer-Vine, D.
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- 18. Legislative Counsel Opinion #4756, March 20, 1997
- 19. Attorney General Opinion No. 09-402, July 19, 2010

SB	809	2009	passed	no no votes
S.B	305	2012	passed	no no votes
AB	919	2014	passed	1 no votes

Signed into law by two different governors!

Attorney General questions asked Oct 10, 2013
must be answered in full - so that we
as a state and myself as a vendor can
put this issue behind us.

— Be Honest —

Answer the previous question in full,
America Truth, Justice, the American Way
Moving at "light speed" get the correct answers
ready for the S, 302 and Clous of Senate
Committee of Veterans Affairs

STATEMENT OF PRINCIPLE
(Special Exemption From Tax Related Burdens)

On March 24, 1893, the State of California adopted an Act (the "ACT"), Exhibit A, that recognized that "... every soldier, sailor or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle and vend any goodswithout payment of any license, tax, or fee whitsoever..." (emphasis added)*.

By including the word, "whitsoever", the clear legislative intent was to remove ALL tax related burdens from this limited group of former military people.

Under the provisions of California Code of Civil Procedure Section 1859 (Enacted 1872), Exhibit B, the intention of the legislature must be followed if at all possible.

However, subsequent, to the adoption of the ACT, other tax related acts were passed which did not specifically exempt this limited group from their provisions, and CONTRARY TO THE CLEAR INTENT OF THE LEGISLATURE, tax related burdens have been place on these former military people.

It is the position of this STATEMENT OF PRINCIPLE that, in the interests of justice and in keeping with the provisions of Section 1859 of the Code of Civil Procedure, the legislative intent of the ACT should be carried out and that all provisions of any law, state or local, that contradicts the clear intent of the ACT be modified so as to exempt this limited group from any state or local tax related burdens.

Specifically this STATEMENT OF PRINCIPLE is directed to the need to clarify Section 6051 (et seq.) of the Revenue and Taxation Code, copy attached as Exhibit C, to make it clear that the former military people who come within the provisions of the ACT be exempt from the requirements of collecting sales tax.

Request is hereby made that the proper parties take necessary and proper action to modify Section 6051 of the Revenue and Taxation Code and its related provisions to comply with the intent of the legislature and the ACT by specifically exempting the former military people who come within the provisions of the ACT from the requirements of collecting sales tax.

Respectfully submitted,

William M. Cornell

William M. Cornell
1000 1/2 Street

*A copy of Section 16102 of the Business and Professions Code that relates to this matter is attached as Exhibit D.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 16, 2008

LEGISLATIVE COMMITTEE

Reported by: Juli Price Jackson

No. CSR 5214

1 P R E S E N T

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3 For the Board
4 of Equalization:

Judy Chu
Chair

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Betty T. Yee
Vice-Chair

6

Bill Leonard
Member

7

8

Michelle Steel
Member

9

10

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

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Diane G. Olson
Chief, Board
Proceedings Division

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450 N STREET
SACRAMENTO, CALIFORNIA
DECEMBER 16, 2008

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AM 5 DR. CHU: I'd like to call the meeting of the
Board of Equalization to order.

8 MS. SHEDD: Good morning, Madam Chair and
9 Members of the Board.

10 You have before you the agenda for the
11 Legislative Committee. I'd like to make an
12 announcement. There are two items that are taken off
13 calendar, that is 1-1 and proposal 1-6 to work out some
14 technical amendments.

15 We'll put it back on in January.

09:33 16 All items are on consent with the exception of
AM 17 3-7. So, a motion to adopt the consent agenda --
18 MS. YEE: Madam Chair, I'd like to propose one
19 more change if I could?

20 And this relates to -- under Business Taxes,
21 item 3-5. And I appreciate the staff putting this on
22 consent. This is what was formerly in Assembly
23 Bill 3009 from last year.

24 MS. SHEDD: That's correct.

09:33 25 MS. YEE: We have been in discussions in our
AM 26 office with the Senate Ethics committee staff and there
27 have been some proposals by the proponents, as well as
28 the legislative staff, about other options for narrowing

1 the application of exemption that would bring in the
2 concept of service-connected disability. And we'd like
3 to have a look at that.

4 DR. CHU: Okay.

5 MS. SHEDD: Take this one off.

6 MS. YEE: We'll bring the revised proposal
7 back.

09:34 8 DR. CHU: Okay. So, that means 1.1 is is off,
AM 9 1.6 is off, and 3.5 is off.
10 And we do have a speaker, however, on 3.5 on
11 the itinerant vendors issue. And since he is here, why
12 don't we call him up to speak on this?

13 That's William Connell.

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1 WILLIAM CONNELL

09:34 2 ---o0o---
3 AM MR. CONNELL: Feels like I'm home again. Good
4 morning to all and happy holidays and merry Christmas.

5 I'm here this morning to be part of a solution

09:35 6 and not to add to this problem. A clear review of the
7 AM law of 1872, 1893 is required. The original intent of
8 the Veterans Tax Exemption Act should be followed.

9 All of the Board members should realize that to
10 honor this existing law would be considered revenue
11 neutral. I never wished for a handout nor my brother
12 and sister veterans. All of us have earned this
13 personal privilege.

09:36 14 In reading and applying the plain meaning of
15 AM the existing act, Assembly Bill 74, will give the proper
16 direction to this Board. The Honorable Bill Leonard,
17 the Honorable Betty Yee will be of great assistance to
18 the entire Board, as I know they have worked very hard
19 on this -- especially you, Ms. Yee.

20 I truly wish for no future misunderstanding or
09:36 21 misinterpretation of this veterans tax exemption. I
22 AM will fully support and any and all efforts by this Board
23 to bring my fifteen year nightmare to an end.

24 Many thanks for all of your efforts.

25 And I am here representing myself, also in the
26 central coast of California, ten different service
27 groups. I speak for all of them. That's over 100,000
28 veterans.

2 these conflicts need some help.

3 I really appreciate all of what you have done.

4 Thank you so much.

5 I'll see you tomorrow morning for the

6 regulation hearing.

7 Thank you again.

8 DR. CHU: Okay, thank you, Mr. Connell.

9 Okay, so, we have a consent calendar and these

09:37 10 are all items that we've discussed before. Some of
AM 11 these items temps were a victim of the Governor's
12 massive vetos last year. So, we're bringing these items
13 back for bills for the coming year.

14 And, so, could we have a motion for the consent
15 calendar?

16 MS. YEE: Move to adopt the consent calendar.

17 MS. MANDEL: Second.

18 DR. CHU: Okay. Motion by Ms. Yee, second by
19 Ms. Mandel to adopt the legislative consent calendar.

20 And without objection, that is adopted.

09:38 21 So, we have one actual item for discussion and
AM 22 that's item 3-7 and that's to eliminate the exclusion
23 for delivery charges.

24 Staff report?

25 MS. SHEDD: Yes, that is amend Section 6011 and
26 6012 to eliminate the sales and use tax exclusion for
27 separately stated charges for transportation.

28 This change will simply the law related to the



STATE BOARD OF EQUALIZATION

TAXPAYERS' RIGHTS ADVOCATE OFFICE MIC: 70
450 N STREET, SACRAMENTO, CALIFORNIA 95814-0070
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0070
916-324-2798 • FAX 916-323-3319
TOLL-FREE 888-324-2798
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

March 20, 2007

Mr. William M. Connell



RE: SR GH 097-259073
SR GH 099-304618

Dear Mr. Connell:

This is in response to your letter of March 5, 2007. You state you have not received complete materials relative to your "freedom of information act" requests. The Taxpayers' Rights Advocate Office has forwarded all of your Public Records Act and Information Practices Act requests to the Board's Disclosure Officer, including your March 5, 2007 request. I understand responses to your requests are currently in process. Please send all future requests for public records directly to the Board's Disclosure Officer at the following address:

Ms. Carol Bailey, Disclosure Officer
Legal Department, MIC 82
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0082

You asked for copies of all materials relating to the February 27, 2007 Taxpayers' Bill of Rights Hearings in Culver City, including letters and e-mails of support for your area of concern. I have enclosed a copy of the transcript of the hearings and correspondence from John W. Barnes, Veterans United for Truth, Teamsters & Warehousemen Local No. 381, and Salud Carbajal, First District Supervisor, County of Santa Barbara. Copies of all correspondence were provided to the Board Members.

Thank you for contacting the Taxpayers' Rights Advocate Office. I look forward to seeing you at the Taxpayers' Bill of Rights Hearings on March 20, 2007.

Sincerely,

Todd Gilman
Chief, Taxpayers' Rights and
Equal Employment Opportunity Division

TG: ls
Connell 3-20-07.doc
Enclosures

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

5901 Green Valley Circle, Room 207

Culver City, California

REPORTER'S TRANSCRIPT

FEBRUARY 27, 2007

ITEM F1

BUSINESS TAXPAYERS' BILL OF RIGHTS HEARINGS

Reported by: Beverly D. Toms

No. CSR 1662

P R E S E N T

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For the Board
of Equalization:

Betty Yee
Chairwoman

Judy Chu
Vice-Chair

Bill Leonard
Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John Chiang,
State Controller (per
Government Code
Section 7.9)

Gary Evans, Acting
Chief, Board Proceedings
Division

Board of Equalization
Staff:

Todd Gilman
Taxpayers' Rights Advocate

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INDEX OF SPEAKERS

SPEAKER:	PAGE
WILLIAM CONNELL	6
ROBERT M. HANDY	10
SASNFOR D. COOK	14

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 Culver City, California

2 February 27, 2007

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4 MR. EVANS: Next item is the Business Taxes
5 Taxpayers' Bill of Rights Hearings.

6 MS. YEE: Okay, Mr. Gilman.

7 MR. EVANS: There are several speakers outside.

8 MS. YEE: Okay. Let me have Mr. Gilman
9 introduce the item.

10 UNIDENTIFIED SPEAKER: Save the best for last.

11 MR. GILMAN: Good evening, Madam Chairman Yee
12 and Members of the Board, Todd Gilman, Taxpayers' Rights
13 Advocate with the State Board of Equalization.

14 The annual Taxpayers' Bill of Rights hearing in Culver
15 City allows taxpayers the opportunity to address the
16 Board in regard to suggestions for changes to laws,
17 policies and procedures administered by the Board of
18 Equalization.

19 Topics may include agency services, tax-related
20 legislation and other issues related to Sales and Use
21 Tax, environmental fees and excise taxes administered by
22 the Board of Equalization.

23 We have four speakers this evening. And we
24 have three documents submitted as part of the hearing
25 for public record. And after the individuals have had a
26 chance to speak I'll briefly make a comment about the
27 documents that have been submitted. I believe that you
28 have copies of those. We will address that at the end

1 of the hearing.

2 Our first speaker is Mr. William Connell.

3 Mr. Connell. You sit over here.

4 (inaudible)

5 MR. CONNELL: If you could set up -- we didn't
6 know -- you didn't -- if he can put it right here in the
7 chair next to me.

8 MR. GILMAN: Whatever is good for you.
9 Whatever you want to do.

10 Go sit down, I'll get --

11 MR. EVANS: Three minutes.

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1 marines and airmen have been killed in Iraq or
2 Afghanistan. That figure is approximately 11 percent of
3 the total people killed.

4 While there are no accurate figures available
5 for the amount of wounded, the best estimate is there
6 are at least 30,000 plus. One can estimate that if 11
7 percent of the people who have been killed are
8 California citizens, one can also estimate that 11
9 percent of the people who have been wounded are
10 California citizens, as well.

11 The California Veterans Board, an official --
12 in their official publications for the State of
13 California clearly state in their wordings that 16102 is
14 a veterans benefit. So, it is not only in the -- you
15 know, in the Business and Professional Code, it's also
16 in the Veterans' Code.

17 As new veterans return to California they will
18 be faced with unemployment. In my role as Chair of the
19 Veterans United for Truth I speak for many veterans'
20 organizations nationwide. They all have concerns
21 throughout the country about the problems with returning
22 veterans receiving or getting back their jobs or -- or
23 being employed.

24 MR. EVANS: Time has expired.

25 MR. HANDY: Today's new veterans are coming
26 home jobless and many of them are homeless. If you read
27 the paper and watch T. V. you'll see that in -- recently
28 the problems that are in the media, the problems at

1 Walter Reed, the mold, the mouse droppings, the
2 cockroaches and all the other stuff that the media is
3 covering, but the media is not really covering the fact
4 that the patients in Walter Reed are damaged for the
5 rest of their life.

6 The young men and women, our children, with no
7 arms, no legs, faces burned, ears missing, suffering
8 post-traumatic stress syndrome, will be scarred for the
9 rest of their life.

10 16102 will be a small help to these veterans.
11 In my own family, my son, who has been -- is a Reservist
12 that's been activated three times on -- as a Reservist.
13 Currently he's returned from Afghanistan.

14 Humans Resource people are reluctant to hire
15 returning veterans because they may be recalled back on
16 active duty, whether it be Reservist or National Guard.
17 They also are reluctant to hire them because of
18 post-traumatic stress disorder that's being spoken about
19 so much.

20 John, my son, has a wife, two kids, a cat and a
21 mortgage. He's not alone. During today, as I drove
22 down here from Santa Barbara, we passed, you know,
23 numerous vehicles that had yellow ribbons or yellow
24 magnets on the back of their cars saying, "Support the
25 veterans."

26 Members of the Board, you have a -- today you
27 have the power to support our veterans. Support them by
28 supporting and voting for 16102.

1 Thank you.

2 MS. YEE: Thank you, Mr. Handy.

3 MR. GILMAN: Our next speaker is Mr. Sanford D.

4 Cook.

5 Mr. Cook, would you please approach, please.

6 MR. COOK: Pardon me, my leg's gone to sleep.

7 MS. YEE: Welcome, Mr. Cook. Thank you for

8 your patience.

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1 SANFORD COOK

2 MR. COOK: My name is Sanford Cook and I'm the
3 Vice-Chair of Veterans United for Truth and I won't go
4 through the -- the submission we gave to you. I'll just
5 very briefly say that we have found ourselves in
6 supporting Mr. Connell's view and others' view of this.

7 We're constantly in the Catch 22 of the
8 Legislature saying -- saying that "the Board of
9 Equalization won't let us do anything," and the Board of
10 Equalization saying, "Well, the Legislature won't let us
11 do anything" and the staff lawyers for the BOE saying,
12 "It can't be done."

13 We believe it can be done. We believe that you
14 can sit back and look at this law and see what it was
15 intended to do. And that the comma that we wrestle with
16 is not inadvertent. The Legislature tried to remove it
17 several times and refused.

18 The last time they tried to remove the word
19 "State" and it was refused. We have 200,000 homeless
20 veterans, of which we presume just based on best guess,
21 16,000 live here in California. I can tell you that
22 there are two Afghan war veterans living under a bridge
23 in San Luis Obispo.

24 We need something to help them. And those who
25 are willing to work need this additional margin that
26 16102 gives them to make them a little extra competitive
27 in a very simple market of hawkers, vendors and
28 peddlers.

1 It's little enough to do for somebody who takes
2 500 bucks a month and fights in the desert and never
3 knows when he's coming home. So, I ask you to consider
4 this not as something new but as something that needs to
5 be reestablished in the mind and in the workings of
6 California.

7 Thank you very much.

8 MS. YEE: Thank you very much, Mr. Cook.

9 MR. GILMAN: Thank you, Mr. Cook. Our next
10 speaker is Ms. Karen Coogle. Ms. Coogle, would you
11 please, approach, please.

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OR

HOULD

A SPECIAL GROUP OF
DISABLED VETERANS BE EXEMPT
FROM ALL TAX RELATED BURDENS
IN THE STATE OF CALIFORNIA,
SPECIFICALLY FROM THE
REQUIREMENT THAT
THEY COLLECT AND TRANSMIT
CALIFORNIA SALES TAX?

SPECIAL GROUP OF DISABLED VETERANS

EXEMPTION FROM SALES TAX COLLECTION REQUIREMENT

ARGUMENT

In 1893 the legislature of the State of California passed a law making a special group of people who had served in the armed forces of the United States of America (specifically, those veterans who as a result of their service in the armed forces are properly certified as being "unable to obtain a livelihood by manual labor") exempt from any tax burdens whatsoever. (See Chapter CCXXXIV, 27 approved March 24, 1893, the "Act")

It appears that this statute is still the law and the reasons for its adoption appear to be as valid today as they were in 1893 - to get disabled veterans off of welfare.

Section 1859 of the Code of Civil Procedure provides that the intent of the legislature (which was to relieve this special group of veterans from any tax burdens whatsoever) must be followed.

However, without any regard to the ACT or the legislative intent to protect this limited number of "special case" disabled veterans from any and all tax burdens whatsoever, laws imposing tax related burdens have been imposed on these disabled veterans contrary to the intent of the ACT and the 1893 legislature. (See Section 6051 (et seq) of the Revenue and Taxation Code -- Sales Tax).

Under the provisions of the Sales Tax laws, the Board of Equalization has required this special group of Veterans to collect sales tax, which is clearly a violation of the intent of the 1893 legislature and the ACT pursuant to which this special group of veterans was to be relieved of any state and local tax burdens "*whatsoever*".

In addition, in clear violation of the Act and the intent of the 1893 legislator, the State Board of Equalization has unlawfully confiscated personal funds belonging to this group of disabled veterans (based on the veterans' failure to forward allegedly collectible sales taxes to the State) IN VIOLATION OF THE 5TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA!

In the interests of justice it appears that the matter be rectified by the adoption of specific wording in the sales tax statutes exempting this limited class of disabled veterans from any tax burdens and specifically relieving them, *ab initio*, from having to collect and pay over to the State any sales tax.

U.S. Constitution: Fifth Amendment

Fifth Amendment - Rights of Persons

Amendment Text | Annotations

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CHAPTER CCCCXXIV

An Act to establish a uniform system of county and township governments.

Approved March 24, 1893.)

The People of the State of California, represented in Senate and Assembly, do enact as follows:

27. To license, for purposes of regulation and revenue, all and every kind of business not prohibited by law, and transacted and carried on in such county, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; provided, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise, except liquors, malt, wines, 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 therefor. A certificate of disability by a surgeon of the United States Army or Navy shall be sufficient proof of such disability, and a certificate of honorable discharge from the United States Army or Navy, or an exemplified copy thereof, shall be sufficient proof of such service and honorable discharge, and upon presentation a license shall be issued as aforesaid.

STATEMENT OF PRINCIPLE
(Special Exemption From Tax Related Burdens)

On March 24, 1893, the State of California adopted an Act (the "ACT"). Exhibit A, that recognized that "... every soldier, sailor or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle and vend any goods ... without payment of any license, tax, or fee whatssoever..." (emphasis added)*.

By including the word, "whatssoever", the clear legislative intent was to remove all tax related burdens from this limited group of former military people.

Under the provisions of *California Code of Civil Procedure Section 1859 (Enacted 1872)*, Exhibit B, the intention of the legislature must be followed if at all possible.

However, subsequent, to the adoption of the ACT, other tax related acts were passed which did not specifically exempt this limited group from their provisions, and CONTRARY TO THE CLEAR INTENT OF THE LEGISLATURE, tax related burdens have been place on these former military people.

It is the position of this STATEMENT OF PRINCIPLE that, in the interests of justice and in keeping with the provisions of Section 1859 of the Code of Civil Procedure, the legislative intent of the ACT should be carried out and that all provisions of any law, state or local, that contradicts the clear intent of the ACT be modified so as to exempt this limited group from any state or local tax related burdens.

Specifically this STATEMENT OF PRINCIPLE is directed to the need to clarify Section 6051 (et seq.) of the Revenue and Taxation Code, copy attached as Exhibit C, to make it clear that the former military people who come within the provisions of the ACT are exempt from the requirements of collecting sales tax.

Request is hereby made that the proper parties take necessary and proper action to modify Section 6051 of the Revenue and Taxation Code and its related provisions to comply with the intent of the legislature and the ACT by specifically exempting the former military people who come within the provisions of the ACT from the requirements of collecting sales tax.

Respectfully submitted,

William Connell,
US Army Veteran

*A copy of Section 16102 of the Business and Professions Code that relates to this matter is attached as Exhibit D.

CHAPTER CCXXXIV

An Act to establish a uniform system of county and township governments.

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The People of the State of California, represented in Senate and Assembly, do enact as follows:

27. To license, for purposes of regulation and revenue, all and every kind of business not – prohibited by law, and transacted and carried on in such county, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; *provided*, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise, 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. A certificate of disability by a surgeon of the United States Army or Navy shall be sufficient proof of such disability, and a certificate of honorable discharge from the United States Army or Navy, or an exemplified copy thereof, shall be sufficient proof of such service and honorable discharge, and upon presentation a license shall be issued as aforesaid.

CCP

1859. In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Exhibit B

6051. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of $2\frac{1}{2}$ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on or after August 1, 1933, and to and including June 30, 1935, and at the rate of 3 percent thereafter, and at the rate of $2\frac{1}{2}$ percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent on and after July 1, 1949, and to and including July 31, 1967, and at the rate of 4 percent on and after August 1, 1967, and to and including June 30, 1972, and at the rate of $3\frac{3}{4}$ percent on and after July 1, 1972, and to and including June 30, 1973, and at the rate of $4\frac{3}{4}$ percent on and after July 1, 1973, and to and including September 30, 1973, and at the rate of $3\frac{3}{4}$ percent on and after October 1, 1973, and to and including March 31, 1974, and at the rate of $4\frac{3}{4}$ percent thereafter.

Exhibit C

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16102. 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 therefor.

Exhibit D

ILLUSTRATION

Hypothetical Situation:

Imagine a disabled veteran who has been certified by a doctor as being "unable to obtain a livelihood by manual labor", with only stubs left of his fingers, and diminished mental capacity because of a head injury resulting from being shot in the head while on patrol, is selling balloons, which enables him to earn enough money to get off the welfare rolls.

He is in a public park holding a dozen helium filled balloons which he is selling for \$1.43 apiece.

A little girl comes up to him and wants to buy 3 balloons.

According to the State Board of Equalization, the disabled veteran, who "hawks" his wares at numerous locations with varying rates of sales tax, has to calculate and collect sales tax on the sale of his balloons to the little girl.

If the sales tax at the particular location is 8.37%, tell me how the disabled veteran, with only stubs for fingers (to operate a calculator) and because of a head injury, with reduced mental capacity, is going to figure out the amount of sales taxes due?

Do you think that you, or the members of the Board of Equalization can do the following calculations in a reasonable period of time without a calculator or paper or pencil?!

$$3 \times \$1.43 = ?^* \quad \times 8.37\% = ?^{**} \quad \text{Total? } ^{***}$$

Since the disabled veteran (and probably most readers of this illustration without a calculator or paper and pencil) cannot do these calculations and he does not want to be charged with violating the sales tax laws, he gives up and goes back on welfare .

In order to prevent this situation, (the imposition of tax burdens on disabled veterans) isn't this the reason the legislature adopted section 27 of Chapter CCXXIV in 1893?!!

* \$4.29 **\$1.52 ***\$5.81