

[Senate Bill 197](#) (Bates, et al.)

Date: 04/20/17

Program: Sales and Use

Sponsor: Author

Revenue and Taxation Code Section 6369.7

Effective: Upon enactment

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**Summary:** Exempts from sales and use tax a qualified person's building material and supply purchases for use in specified military and veteran military facility construction.

**Summary of Amendments:** Since the previous analysis, the bill was amended with non-substantive technical changes and added two coauthors.

**Purpose:** According to the author, the bill's purpose is to lower the cost of constructing new medical facilities serving veterans and active duty troops afflicted with posttraumatic stress disorder, traumatic brain injury, and related conditions.

**Fiscal Impact Summary:** A one-time state and local revenue loss of \$223,000.

**Existing Law:** Except where the law provides a specific exemption or exclusion, California's Sales and Use Tax Law<sup>1</sup> imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer.

**Construction contractors.** Under the Sales and Use Tax Law and the Board of Equalization's (BOE) [Regulation 1521](#), "Construction Contractors," specific rules apply to the furnishing and installing of tangible personal property pursuant to a construction contract. Generally, a construction contractor that makes improvements to real property is the consumer of materials, such as electrical wiring, concrete, and other items, furnished and installed in performing construction contracts. As the consumer, tax generally applies to a construction contractor's building materials purchases. In contrast, a construction contractor generally is regarded as the retailer of fixtures, which are accessories to a structure that do not lose their identity when installed (such as lighting and plumbing fixtures and air conditioners, among other items). Sales tax generally applies to the contractor's fixture sales.

**Nonprofit organizations.** The Sales and Use Tax Law provides no general statutory exemption from the sales or use tax merely because the seller or the purchaser is engaged in charitable activities, is a nonprofit organization, or enjoys certain privileges under property tax statutes or income tax statutes. Therefore, unless the law provides a specific exemption or exclusion, tax generally applies to tangible personal property sales to nonprofit organizations.

**Proposed Law:** This bill exempts from sales and use tax, the sale and purchase of building materials and supplies purchased by a qualified person for use by that qualified person in the construction and equipping of a qualified facility. The bill defines the following terms:

- "Building materials and supplies" includes machinery, equipment, materials, accessories, appliances, furniture, and any other tangible personal property of any other nature or description necessary to construct and equip that facility to provide services for which the facility is designed, and does not include tools used in construction activities.

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<sup>1</sup> Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

- “Qualified facility” means either a medical facility, or temporary residential facility for families of patients receiving in-patient or out-patient care at a medical facility, located on a United States military base in California. It also means a United States Department of Veteran Affairs medical center, or a related temporary residential facility for patients’ families.
- “Qualified nonprofit organization” means an Internal Revenue Code Section 501(c)(3) organization that offers to construct a qualified facility as a gift to the United States Department of Defense or the United States Department of Veterans Affairs, as specified.
- “Qualified person” means a qualified nonprofit organization or a contractor, subcontractor, or builder working under contract with a qualified nonprofit organization to construct a qualified facility.

The bill further specifies that an exemption shall not be allowed unless the purchaser furnishes the retailer with a copy of an exemption certificate, as specified. If a purchaser furnishes the seller with an exemption certificate and uses the materials or fixtures in a manner not qualifying for the exemption, the purchaser shall be liable for the tax, with applicable interest, as if the purchaser were a retailer, and the purchaser’s cost of the materials or fixtures shall be deemed the gross receipts from that retail sale.

**Background:** This bill relates to the activities of a nonprofit organization, the Intrepid Fallen Heroes Fund. According to its [website](#), this organization is currently building a series of [Intrepid Spirit](#) centers that will enhance the provision of traumatic brain injury and psychological health care for wounded veterans. Five centers have been constructed in other states, and one is currently under construction. These efforts are funded entirely with donations from the public, and additional centers will be built as sufficient funds are raised for their construction.

### Commentary:

1. **Effect of the bill.** This bill exempts from sales and use tax, sales of building materials and supplies to contractors, subcontractors, builders and qualifying nonprofit organizations to construct and equip specified medical and residential facilities for wounded veterans and their families that are gifted to the United States, as specified.
2. **The April 20, 2017 amendments** make non-substantive technical changes and adds two coauthors. **The March 20, 2017 amendments** made several technical changes and clarified that, for purposes of the proposed exemption, any tools normally used in construction of a qualified facility by a qualified person shall not be considered “building materials and supplies.”
3. **The BOE’s administration would not be significantly impacted.** The bill’s language narrowly defines the circumstances under which the proposed exemption would apply; however, the language is broad in terms of scope of the exemption (e.g., it includes a facility’s construction materials along with all medical equipment, furniture, and apparatus necessary to equip the facility necessary to provide the services for which it is designed).

**Costs:** BOE will incur administrative costs for notification, regulation revision, and responding to inquiries. These costs are expected to be absorbable.

**Revenue Impact:** Currently, BOE is aware of one planned California project. Staff estimates total construction and equipment costs for the project to be \$9 million. Based on 2012 Census construction data, staff assumes an estimated 30% will be material costs; hence building materials and supplies costs are estimated to be \$2.7 million (30% × \$9 million = \$2.7 million).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

**Revenue Summary:** The revenue impact from exempting building material and supply purchases by qualified persons for use in the construction of military and veteran medical facilities is estimated to be:

Genera Fund	3.9375%	\$106,000
Local Revenue 2011	1.0625%	\$29,000
Local Revenue 1991	0.5000%	\$14,000
Local Public Safety Fund	0.5000%	\$14,000
Bradley Burns	1.2500%	\$34,000
Special Districts	0.9600%	\$26,000
<b>Total</b>	<b>8.2100%</b>	<b><u>\$223,000</u></b>

**Qualifying Remarks.** This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.