

Amend Revenue and Taxation Code Section 6018.3 of the Sales and Use Tax Law to eliminate the sunset date and thereby extend indefinitely the provision that makes a United States disabled veteran, as specified, 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, as defined.

Source: Legal Department, Sales and Use Tax Department, and Taxpayers' Rights Advocate

Existing Law

Under California's Sales and Use Tax Law (Part 1, Division 2 of the Revenue and Taxation Code, commencing with Section 6001), except where specifically exempted by statute, sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. The law does not contain a general exemption from sales or use tax for sales of tangible personal property by veterans. However, Section 6018.3 of the Sales and Use Tax Law provides, until January 1, 2012, 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, except alcoholic beverages and tangible personal property sold for more than \$100. To be a "qualified itinerant vendor," Section 6018.3 requires the following:

- 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) The person is unable to obtain a livelihood by manual labor due to a service-connected disability.
- 3) For the purposes of selling tangible personal property, the person is a sole proprietor with no employees, and
- 4) The person has no permanent place of business in this state.

As a "consumer," a qualifying itinerant disabled veteran making taxable sales of merchandise he or she owns is not required to report sales tax on his or her sales of these items. Instead, these veterans are required only to pay tax on their cost of any taxable purchases of the items or the component parts of the items he or she sells. Under these provisions, as long as the qualifying disabled veteran makes no sales of alcoholic beverages or sales of items over \$100, the veteran is not required to obtain a seller's permit, file sales tax returns, or remit sales tax on his or her sales of the goods he or she sells. This "consumer" method essentially eliminates the sales tax compliance costs and associated recordkeeping that can be unduly burdensome for disabled veterans.

Background. Section 6018.3 was added to the Sales and Use Tax Law in 2009 by SB 809 (Ch. 621, Stats. 2009) and became operative on April 1, 2010. For

over a decade prior to enactment of this bill, several veterans had argued that Business and Professions Code Section 16102's exemption from the imposition of taxes or fees associated with county licenses to engage in the business of selling tangible personal property created an exemption under the Sales and Use Tax Law. The Board of Equalization (BOE) opined that the Business and Professions Code did not create a sales and use tax exemption. (This position is consistent with that of the Legislative Counsel in its opinions dated October 28, 1998 (Ops. Cal.Leg. Counsel, No.14321, Business License Tax Exemption: Disabled Veterans), and August 17, 2006 (Ops. Cal. Leg. Counsel, No. 0611388, Veteran Business Licensing). Moreover, this position was confirmed by the Los Angeles County Superior Court (Case No. BC316467), which dismissed petitioner's lawsuit against the BOE on this very issue, on the ground that the complaint did not state facts.)

Introduced by the Senate Committee on Veterans Affairs, SB 809 was recognized as a measure that provided one small step towards acknowledging our disabled veterans who have already made, or are making the transition from military to civilian employment. At its April 15, 2009 Legislative Committee, the BOE voted to unanimously support SB 809.

This Proposal

This proposal would eliminate the January 1, 2012 sunset date contained in Section 6018.3 of the Sales and Use Tax Law to extend indefinitely the provision that makes a United States disabled veteran, as specified, a consumer, rather than a retailer, of goods they sell.

Section 6018.3 of the Revenue and Taxation Code is amended to read:

6018.3. (a) 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, except alcoholic beverages or tangible personal property sold for more than one hundred dollars (\$100).

(b) For purposes of this section, a person is a "qualified itinerant vendor" when all of the following apply:

(1) The person was a member of the Armed Forces of the United States, who received an honorable discharge or a release from active duty under honorable conditions.

(2) The person is unable to obtain a livelihood by manual labor due to a service-connected disability.

(3) For the purposes of selling tangible personal property, the person is a sole proprietor with no employees.

(4) The person has no permanent place of business in this state.

(c) For purposes of this section, "permanent place of business" means 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, tangible personal property. For purposes of this section, "permanent place of business" does not

include any building or other permanently affixed structure, including a residence, used for any of the following:

(1) The storage of tangible personal property.

(2) The cleaning or the storage of equipment or other property used in connection with the manufacture or sale of tangible personal property.

(d) This section 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.

(2) A person operating a vending machine.

~~—(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed.~~