

**Add Revenue and Taxation Code Section 6012.4 to the Sales and Use Tax Law to specify that the “gross receipts” and “sales price” from the retail sale of a wireless communication device, as defined, is limited to the amount charged for the sale of that device when it is sold in a bundled transaction, as defined.**

**Source: Honorable Michelle Steel**

### **Existing Law**

Under existing law, the sales tax is imposed on the gross receipts from the sale of tangible personal property, unless specifically exempted or excluded by law. “Gross receipts” and “sales price” are terms defined in the law to mean the total amount of the sale or lease or rental price, without any deduction on account of the cost of materials used, labor or service costs, interest charged, losses, or any other expenses related to the sale of the property. Normally, a service sold in connection with a taxable sale of tangible personal property is regarded as part of the sale, and therefore subject to tax on the total gross receipts derived from the sale, including the charge for both the service and the tangible personal property transferred.

However, due to the marketing and retail pricing strategies that contradicted conventional and customary retail practices of the wireless telecommunications industry, the Board of Equalization in 1999 adopted existing Regulation 1585, *Cellular Telephones, Pagers, and other Wireless Telecommunications Devices*, to specifically address the application of sales and use tax in connection with these devices and related charges for services.

Under the regulation, the amount upon which sales or use tax is computed is generally dependent upon whether the device was sold in a “bundled” or “unbundled” transaction. “Bundled” transactions are defined in the regulation as those sales in which the customer is required to activate or contract for utility service with a wireless telecommunications service provider for a period greater than one month as a condition of the sale. Generally, in order for customers to receive the promotional or discounted sales price of the devices, they must agree to activate or sign up for utility service with a provider for more than a one-month period. Under the regulation, generally, the retailer is required to compute tax on the sale of the device based on the “unbundled sales price.”

The “unbundled sales price” is defined in the regulation as the price at which the retailer has sold specific types of devices to customers who are not required to activate or contract for utility service as a condition of the sale. If the retailer has not previously sold a specific device in other than a bundled transaction, the unbundled sales price is equal to the fair retail selling price of the device.

If the sale is unbundled (the customer is not required to activate or contract for utility service as a condition of the sale), the tax applies to the actual gross receipts from the sale of the device to the customer.

### **This Proposal**

This proposal would add Section 6012.4 to the Sales and Use Tax Law to provide that the terms "gross receipts" and "sales price" attributable to the retail sale of a wireless communication device, as defined, shall be limited to the amount charged for the sale of the device when it is sold in a bundled transaction, as defined.

The proposal would define "bundled transaction," "wireless telecommunications device," and "wireless telecommunications provider."

The intent of this proposal is to minimize the confusion experienced by consumers over the amount of tax retailers are charging in connection with their purchases of cell phones and other wireless devices. Because purchasers are generally accustomed to paying sales tax reimbursement to retailers based on the purchase price of goods they buy, this proposal would minimize the confusion by requiring that tax reimbursement be computed on only the specific amount charged for the sale of the device.

The combined state and local revenue loss associated with this proposal is estimated to be \$82 million annually.

*Section 6012.4 is added to the Revenue and Taxation Code, to read:*

6012.4. (a) Notwithstanding Sections 6011 and 6012, "gross receipts" and "sales price" from the retail sale of a wireless communication device shall be limited to the amount charged for the sale of the wireless telecommunication device when that device is sold in a bundled transaction.

(b) "Bundled transaction" means a retail sale of a wireless telecommunication device that contractually requires the retailer's customer to activate or contract with a wireless telecommunications service provider for utility service for a period greater than one month as a condition of that sale.

(c) "Wireless telecommunication device" means a portable communication device, such as a wireless telephone or pager, requiring activation by a wireless telecommunications service provider or seller of utility services in order to send, receive, or send and receive transmissions via a network of wireless transmitters throughout multiple service areas, or otherwise. The term includes devices based on analog technology and devices based on digital technology.

(d) "Wireless telecommunications service provider" means a utility regulated by the Public Utilities Commission or Federal Communication Commission and that offers or provides wireless communication or paging services.