

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1523

Introduced by Assembly Member Charles Calderon

February 27, 2009

An act to add Sections 6376.3 and 6376.4 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1523, as amended, Charles Calderon. Sales and use taxes: exemption: fixed price contract.

Existing law imposes a state sales and use tax on retailers and on the storage, use, or other consumption of tangible personal property in this state at the *combined* rate of ~~6 $\frac{1}{4}$ %~~ 7 $\frac{1}{4}$ % of the gross receipts from the retail sale of tangible personal property in this state and of the sales price of tangible personal property purchased from any retailer for storage, use, or other consumption in this state.

This bill would, during the period of *the imposition of a 1% sales and use tax increase above the rate of 6 $\frac{1}{4}$ % commencing on April 1, 2009*, exclude from that 1% rate of tax, the gross receipts from certain sales and uses of tangible personal property that are subject to a fixed price pursuant to a contract entered into prior to ~~the operative date of the sales and use tax increase~~ *April 1, 2009*.

This bill would also, for any increase in the sales and use tax rate on and after January 1, 2010, exclude from that increased rate of tax, the gross receipts from certain sales and uses of tangible personal property

that are subject to a fixed price pursuant to a contract entered into prior to the operative date of the sales and use tax *rate* increase.

This bill would make certain legislative findings and declarations that a fixed price contract exemption serves a statewide public purpose.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6376.3 is added to the Revenue and
2 Taxation Code, to read:

3 6376.3. From ~~the operative date of the act adding Sections~~
4 ~~6051.7 and 6201.7~~ April 1, 2009, to the date on which the taxes
5 imposed by Sections 6051.7 and 6201.7 cease to be operative,
6 there is exempted from the taxes imposed by this part an amount
7 equal to an amount that is attributable to a 1 percent rate of tax
8 with respect to the following:

9 (a) The gross receipts from the sale of, and the storage, use, or
10 other consumption in this state of, the following:

11 (1) Tangible personal property, if the seller is obligated to
12 furnish or the purchaser is obligated to purchase the property for
13 a fixed price pursuant to a contract entered into prior to the
14 operative date of the act adding Sections 6051.7 and 6201.7.

15 (2) Materials and fixtures obligated pursuant to an engineering
16 construction contract or a building construction contract entered
17 into for a fixed price prior to the operative date of the act adding
18 Sections 6051.7 and 6201.7.

19 For purposes of this subdivision, tangible personal property shall
20 not be deemed obligated pursuant to a contract for any period of
21 time for which any party to the contract has the right to terminate
22 the contract upon notice, whether or not the right is exercised.

23 (b) A lease of tangible personal property that is a continuing
24 sale of the property for any period of time for which the lessor is
25 obligated to lease the property for an amount fixed by the lease
26 prior to the operative date of the act adding Sections 6051.7 and
27 6201.7. For purposes of this subdivision, the sale or lease of
28 tangible personal property shall be deemed not to be obligated
29 pursuant to a contract or lease for any period of time for which
30 any party to the contract or lease has the unconditional right to

1 terminate the contract or lease upon notice, whether or not that
2 right is exercised.

3 (c) The possession of, or the exercise of, any right or power
4 over tangible personal property pursuant to a lease that is a
5 continuing purchase of the property for any period of time for
6 which the lessee is obligated to lease the property for an amount
7 fixed by a lease entered into prior to the operative date of the act
8 adding Sections 6051.7 and 6201.7. For purposes of this
9 subdivision, the storage, use, or other consumption of, or
10 possession of, or exercise of any right or power over, tangible
11 personal property shall be deemed not to be obligated pursuant to
12 a contract or lease for any period of time for which any party to
13 the contract or lease has the unconditional right to terminate the
14 contract or lease upon notice, whether or not the right is exercised.

15 SEC. 2. Section 6376.4 is added to the Revenue and Taxation
16 Code, to read:

17 6376.4. On and after January 1, 2010, from the operative date
18 of an act that increases the sales and use tax rate, to the date on
19 which the taxes imposed by that act ~~ceases~~ *cease* to be operative,
20 there ~~are~~ *is* exempted from the taxes imposed by this part an
21 amount equal to an amount that is attributable to the rate of tax
22 imposed with respect to the following:

23 (a) The gross receipts from the sale of, and the storage, use, or
24 other consumption in this state of, the following:

25 (1) Tangible personal property, if the seller is obligated to
26 furnish or the purchaser is obligated to purchase the property for
27 a fixed price pursuant to a contract entered into prior to ~~July 1,~~
28 ~~1993~~ *the operative date of the act that increased the sales and use*
29 *tax rate.*

30 (2) Materials and fixtures obligated pursuant to an engineering
31 construction contract or a building construction contract entered
32 into for a fixed price prior to the operative date of the act that
33 increased the sales and use tax rate.

34 For purposes of this subdivision, tangible personal property shall
35 not be deemed obligated pursuant to a contract for any period of
36 time for which any party to the contract has the right to terminate
37 the contract upon notice, whether or not the right is exercised.

38 (b) A lease of tangible personal property that is a continuing
39 sale of the property for any period of time for which the lessor is
40 obligated to lease the property for an amount fixed by the lease

1 prior to the operative date of the act that increased the sales and
2 use tax rate. For purposes of this subdivision, the sale or lease of
3 tangible personal property shall be deemed not to be obligated
4 pursuant to a contract or lease for any period of time for which
5 any party to the contract or lease has the unconditional right to
6 terminate the contract or lease upon notice, whether or not that
7 right is exercised.

8 (c) The possession of, or the exercise of, any right or power
9 over tangible personal property pursuant to a lease that is a
10 continuing purchase of the property for any period of time for
11 which the lessee is obligated to lease the property for an amount
12 fixed by a lease entered into prior to the operative date of the act
13 that increased the sales and use tax rate. For purposes of this
14 subdivision, the storage, use, or other consumption of, or
15 possession of, or exercise of any right or power over, tangible
16 personal property shall be deemed not to be obligated pursuant to
17 a contract or lease for any period of time for which any party to
18 the contract or lease has the unconditional right to terminate the
19 contract or lease upon notice, whether or not the right is exercised.

20 SEC. 3. The Legislature finds and declares that Section 1 of
21 this act fulfills a statewide public purpose because of the following:

22 This act provides necessary relief to the retailers or contractors
23 who entered into a fixed price contract or a fixed price lease
24 agreement prior to the operative date of the 1 percent sales and
25 use tax increase above the rate of 6.25 percent. A fixed price
26 contract exemption would protect the business expectations of
27 parties who enter into fixed price contracts and protect them from
28 an unplanned increase in the tax rate.

29 SEC. 4. This act provides for a tax levy within the meaning of
30 Article IV of the Constitution and shall go into immediate effect.