

Add Revenue and Taxation Code Section 6010.15 of the Sales and Use Tax Law to exclude from the computation of sales or use tax, the transfer of tangible personal property by a pawnbroker back to the person that pledged the property, under specified conditions.

Source: California Pawnbrokers Association

Existing Law. Existing law¹ imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in this state. The use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from a retailer.² The sales tax is measured by gross receipts from retail sales. The use tax is measured by the sales price of the property. Under the law, “sales price” and “gross receipts,” respectively, are defined to include the total amount of the sale or lease or rental price, whether received in money or otherwise. The total amount of the sale, lease or rental price includes all of the following:

- Any services that are a part of the sale.
- All receipts, cash, credits and property of any kind.
- Any amount for which credit is allowed by the seller to the purchaser.

Pawnbrokers are considered retailers under the Sales and Use Tax Law, as they are in the business of making retail sales of tangible personal property. Tax applies to sales by pawnbrokers to the same extent as sales by any other retailer of tangible personal property in this state.

Collateral Loans. California’s Department of Justice regulates pawnbrokers and enforces California’s Financial Code relative to pawnbrokers.³ Pawnbrokers lend money to the person that pledged the property (“customer”) on items of collateral, including gold and diamond jewelry, musical instruments, televisions, electronics, tools, household items, and firearms, among other things. Pawnbrokers base their loans on the collateral’s value, and hold the collateral until the customer’s loan and related charges and interest has been repaid.

When a customer pays back the loan, the pawnbroker returns the merchandise (the collateral) to the customer. If the customer has not repaid the loan by the end of the loan period, the pawnbroker is required to send a 10-day reminder notice to the customer. The customer can either (1) retrieve the collateral by paying all charges due, (2) renew the contract by paying all charges by the date on the notice, or (3) default on the loan. If a customer defaults, the collateral becomes the pawnbroker’s property (“vested property”).

After title has vested with the pawnbroker, the customer no longer has any legal right to the property that would distinguish him or her from any other customer. Accordingly, when a customer subsequently wishes to retrieve the collateral from the pawnbroker for consideration, and the pawnbroker transfers the property back to the customer, that transaction constitutes a retail sale under the Sales and Use Tax Law, and tax applies to the consideration the customer gave to the pawnbroker for that transfer (unless the sale is otherwise exempt or excluded from the sales or use tax). Customers are often surprised that they must pay sales tax on the reacquisition of their own item, and the additional sales tax sometimes serves as an impediment to regaining ownership.

This Proposal. This proposal excludes from the definition of “sale” and “purchase,” the transfer of tangible personal property by a pawnbroker to a person that pledged the property under specified conditions. The transfer would be exempt from tax, provided the transfer occurs no more than six

¹ Part 1, Division 2, Chapter 2 (commencing with Section 6051) of the Revenue and Taxation Code (RTC).

² Part 1, Division 2, Chapter 3 (commencing with Section 6201) of the RTC.

³ Division 8 (Sections 21000-21037) of the Financial Code.

months after the pawnbroker obtained title to the property, and the person is not required to pay the pawnbroker any amount in excess of the unpaid loan balance and allowable charges and interest as set forth in the Financial Code. The changes eliminate what some perceive as double taxation, and a public policy counterproductive to customers regaining ownership of their property.

Revenue Impact. Industry sources indicate that the national average pawn loan amount is \$150 and that 85% of pawn customers repay their loans and redeem their collateral within the contract period. An estimated 30 million U.S. consumers use licensed pawnbrokers' services. Staff estimates that about 3.6 million Californians (12% x 30 million) utilize pawn store services, and that, of the 15% that fail to timely repay their loans, less than one-half percent purchase their item after the pawnbroker has vested title (3.6 million x 15% x 0.5%) or 2,700. Therefore, the taxable sales that this proposal would exclude amount to approximately 405,000 (2,700 x \$150), with an estimated annual revenue loss of \$33,250 (\$405,000 x 8.21% average rate).

Section 6010.15 is added to the Revenue and Taxation Code, to read:

6010.15. (a) "Sale" and "purchase" for the purpose of this part do not include the transfer of vested property by a pawnbroker to a person who pledged the property to the pawnbroker as security for a loan and from whom title to the property transferred to the pawnbroker pursuant to Section 21201 of Division 8 of the Financial Code, if both the following requirements are met:

(1) The transfer occurs no more than six months after title to the property transferred to the pawnbroker from the person;

(2) As consideration for the transfer of the property the person is not required to pay the pawnbroker any amount in excess of the remaining unpaid balance of the actual amount borrowed under the loan as of the date the pawnbroker becomes vested with title to the property, together with:

(A) Charges and interest due under the loan pursuant to Division 8 (commencing with Section 21000) of the Financial Code as of the date the pawnbroker is vested with title, plus,

(B) If the principal amount of the original loan, as described in Section 21051 of the Financial Code, was \$2,500 or more, interest at the last monthly contractual interest rate, for that period of time from the date the pawnbroker is vested with title to the date of the transfer.

(b) If the amount of consideration paid by the person to the pawnbroker exceeds the amount described in paragraph (2) of subdivision (a), this exclusion shall not apply and the transaction shall be considered a sale as defined in Section 6010.

(c) As used in this section, "pawnbroker" and "vested property" have the meanings ascribed to them in Division 8 of the Financial Code.