
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2019 - 2020 Regular Session

SB 952 (Nielsen) - Sales and use taxes: exemption: backup electrical generators: deenergization events

Version: May 29, 2020

Urgency: No

Hearing Date: June 9, 2020

Policy Vote: GOV. & F. 6 - 0

Mandate: No

Consultant: Robert Ingenito

Bill Summary: SB 952 would exempt from the state and local sales and use tax (SUT) specified backup electrical resources used by local jurisdictions during deenergization events.

Fiscal Impact: The California Department of Tax and Fee Administration (CDTFA) estimates that this bill would result in a one-time General Fund revenue loss of \$499,000. CDTFA would incur minor and absorbable administrative costs.

Background: Except where a specific exemption or exclusion is provided, current law imposes SUT on all retailers for the privilege of selling tangible personal property (TPP) at retail in California, or on the storage, use, or other consumption in the State of TPP purchased from a retailer. Unless purchasers pay the sales tax to the retailer, they are liable for the use tax, which the law imposes on any person consuming tangible personal property in the state. The use tax is the same rate as the sales tax.

After CDTFA collects SUT revenue (\$60 billion in 2018-19), it allocates the money to various state and local funds. Roughly half—collected from an approximately 3.9 percent rate—goes to the General Fund and can be spent on any state program, such as education, health care, and criminal justice. Another 1.25 percent, known as the Bradley-Burns rate, goes to cities and counties for general purposes. Three sales tax funds have uniform state rates and support specified programs—an approximately 1.1 percent rate for 2011 realignment (county-administered criminal justice, mental health, and social service programs); a 0.5 percent rate for 1991 realignment (county-administered health and social services programs); and a 0.5 percent rate for city and county public safety programs pursuant to Proposition 172 (1993). Additionally, some local governments levy optional local rates—known as Transactions and Use Taxes (TUTs)—and a small portion of these funds are used for general purposes. As of January 1, 2019, the average statewide SUT rate was 8.58 percent.

Current law does not provide public agencies, including cities, counties, and transit and transportation agencies, with a blanket exemption from the SUT, but does contain exemptions and other provisions for specific groups. Consequently, public agencies pay SUT like any other entity (the federal government is exempt). However, state law fully exempts some items (such as prescription drugs and food) from the SUT, while others are exempt from the state portion, but not the local share. Specifically, California law contains partial state SUT exemptions for sales and purchases of manufacturing and research and development equipment (at a 3.9375 percent rate), and five partial

exemptions at a 5 percent rate, as follows: (1) farm equipment and machinery, (2) diesel fuel used for farming and food processing, (3) teleproduction and postproduction equipment, (4) timber harvesting equipment and machinery, and (5) racehorse breeding stock.

Investor-owned utilities have been found responsible for a portion of the State's wildfires in recent years; consequently, they have taken extra precautions by implementing Public Safety Power Shutoffs (PSPS) in certain regions. A PSPS, also referred to as de-energization, is a preventative measure to reduce the risk of utility infrastructure starting wildfires where the electric utility turns off power to distribution lines. Power loss negatively affects communities, with especially serious consequences for vulnerable populations that rely on medical devices powered by electricity and important emergency and public services such as fire departments and water agencies. In anticipation of PSPS, some businesses and community members purchase portable or backup electric generators, which are propane, solar, or diesel-powered devices that provides temporary electrical power.

Proposed Law: This bill would, among other things, provide a SUT exemption for "backup generator resources" (as defined) when a city, county, special district, or other entity of local government purchases the product for exclusive use during a deenergization event (as defined), for calendar years 2020 through 2025.

The bill also would require the Legislative Analyst's Office (LAO) to annually collaborate with CDTFA to review and submit a report to the Legislature regarding the effectiveness of the SUT exemption, as specified.

Related Legislation: SB 1424 (Kopp, 1994) would have provided a SUT exemption for tangible personal property purchased or leased by any city, county, community college district, school district, county superintendent of schools, or special district, as defined, if the purchase or lease exceeds \$1,000 and is made with a purchase order. The bill was held under submission on the Suspense File of this Committee.

Staff Comments: In developing its estimate of revenue loss, CDTFA focused on the purchase of "commercial" size backup power generators, large enough to power essential operations of a small to medium sized agency. The bill would apply to all local government agencies in California; however, CDTFA assumes that agencies in designated High Fire-Threat Districts (HFTDs) would be its target population. HFTDs are geographic regions within the State that the California Public Utilities Commission (CPUC) has designated as being an elevated or extreme risk for wildfire due to close proximity to public utility infrastructure, vegetation, wind dynamics, and other factors.

CDTFA research indicates that the minimum amount of wattage necessary in a commercial generator to power a small to medium sized business is 20-30 kilowatts (kw). Although local government agencies vary with respect to office and employee size, staff assumed this power range, and an average price of \$7,039.

CPUC data indicate that 52 counties include either a Tier 2 (elevated) or Tier 3 (extreme) HFTD within their boundaries. Lacking data at the zip code level, staff

determined that within the 52 counties are a total of 3,604 HFTD local government agencies (52 county governments, 449 incorporated cities, and 3,103 special districts).

CDTFA notes that the author's office fact sheet states that "many" agencies have already purchased backup generators, but was not able to provide an estimate of how many or what percentage of local governments have already purchased generators. Thus, the department assumed that half of its identified population would purchase a generator under the bill. Ultimately, CDTFA assumes that this bill would exempt \$12.7 million in generator sales from the SUT. The resulting state and local revenue loss would be \$1.1 million, \$499,000 of which would be General Fund.

CDTFA notes that the actual revenue loss that would result from this bill is subject to considerable uncertainty. For instance, the number of local agencies that previously purchased generators is unknown. Additionally, staff cannot determine the extent to which a local agency might purchase multiple generators. Most importantly, staff cannot know in advance the number, location and scope of future deenergization events. Its revenue estimate reflects an assumption that deenergization events impacting all HFTD regions across the State will occur within a one to two-year period following the bill's proposed operative date of January 1, 2021.

The department would incur minor and absorbable costs to update its website, revise publications, and answer questions.

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