

LEGISLATIVE FISCAL OFFICE

Fiscal Note



Fiscal Note On: **SB 9** SLS 09RS 117
 Bill Text Version: **ENROLLED**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

Date: June 24, 2009 4:43 PM	Author: LONG
Dept./Agy.: Revenue/Wildlife and Fisheries	Analyst: Deborah Vivien
Subject: Changes provisions related to dealer demonstration boats	

TAX EXEMPTIONS EN DECREASE GF RV See Note Page 1 of 2

Grants a sales tax exemption from all of the state sales tax and all of the local sales tax for new boats, vessels, or other water craft used as demonstrators. (7/1/09)

Current law subjects the sale of boats at retail to 4% state sales tax and local tax at the appropriate local rate. Boats used as manufacturer demonstrators are not subject to sales tax until sold at retail. The Department of Wildlife and Fisheries registers a dealer for a placard that can be used on any demonstrator boat until it is sold.

Current law, as per Act 632 of the 2008 Regular Session, defines immovable tangible personal property in Civil Code Article 466 as things that are attached to a building such as doors, shutters, gutters, cabinetry, plumbing, heating, cooling, electrical and similar systems or things that are attached to a construction other than a building and serve its principal use. Other things are component parts of a building or other construction if they are attached to such a degree that they cannot be removed without substantial damage to themselves or to the building or other construction. Repairs to moveable tangible personal property are subject to state and local sales tax.

Current law subjects the purchase of tangible personal property, including railroad ties to 4% state sales tax and the

EXPENDITURES	2009-10	2010-11	2011-12	2012-13	2013-14	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

REVENUES	2009-10	2010-11	2011-12	2012-13	2013-14	5 -YEAR TOTAL
State Gen. Fd.	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

EXPENDITURE EXPLANATION

There is no anticipated direct material effect on governmental expenditures as a result of this measure.

REVENUE EXPLANATION

Water Craft Demonstrators Taxable upon Resale

Water craft dealers are typically sent demonstrator models from the manufacturer. The dealer registers with the Department of Wildlife and Fisheries to receive a portable placard with temporary registration numbers that serve as registration for any demonstrator model while it is being used as such. The registration is in effect for three years and can be transferred between boats without additional registration requirements. When the boat is sold at retail, state and local sales tax is due and proof of payment must be presented to WLF in order for the buyer to register the boat. Under this bill, demonstrator boats will be considered used when they are sold at retail because they have received a previous registration. Under current law, registration of a used boat does not require proof of payment of sales tax to WLF when the buyer registers the boat, even if it is sold by a dealer. Thus, there does not appear to be a change to sales tax liabilities since taxes are still due when a boat is finally sold (new or used), however, buyers of demonstrator boats will no longer have to show proof of payment of sales taxes to WLF when they register the boat.

This legislation seems directed toward "team boats" that are lent by dealers to local celebrities or professional fishermen to promote sales. As such, the bill states that the boats can only be used for certain activities related to increasing sales of such boats provided they do not occur on more than six consecutive days for no more than 12 days per calendar month. There is no maximum time period for a boat to be considered a demonstrator model.

In addition, the bill clarifies that, as of July 1, 2009, demonstrator models of boats, vessels and other water craft are exempt from 3% of state sales tax until they are sold at retail by including them in the same exemption as demonstrator trucks, cars and new aircraft. The bill further exempts demonstrator water craft from the remaining 1% of state sales tax. These provisions are equivalent to current law treatment of demonstrator boats.

Definition of Tangible Personal Property for Sales Tax Purposes

Act 632 of the 2008 Regular Session appears to have changed the taxability of certain property such that transactions formerly not subject to tax as involving an immovable are now subject to tax involving a movable. This bill appears to return the taxability of affected transactions to their situation prior to the 2008 law. The extent to which tax collections may have been affected since the 2008 law change is unknown but are expected to be minimal.

Senate

Dual Referral Rules

House

13.5.1 >= \$500,000 Annual Fiscal Cost

6.8(F) >= \$500,000 Annual Fiscal Cost

13.5.2 >= \$500,000 Annual Tax or Fee Change

6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease

Gregory V. Albrecht
Chief Economist

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CONTINUED EXPLANATION from page one: BILL SUMMARY (continued)

applicable local tax if the sale takes place in state. Property imported for export is exempt from state sales tax. Materials consumed in fabrications relating to railroad ties are also taxed at 4% state sales tax and the applicable local tax. Proposed law specifically adds boats and water craft to the exemption from 3% of the state sales tax and from all local sales tax during the period of demonstration for factory-authorized dealers (consistent with the treatment of trucks, cars and airplanes). This exemption is suspended until June 30, 2009. The bill also exempts demonstrator water craft from the remaining 1% of state sales tax. The bill requires the specific demonstrator boats to be registered with the Department of Wildlife and Fisheries as demonstrator models. The sale of the boat at retail will then be subject to state and local sales tax, but proof of sales taxes paid to WLF will no longer be required when the buyer registers the water craft. Proposed law states that tangible personal property shall not include any property that would have been considered immovable property prior to the enactment on July 1, 2008 of Act 632 of the 2008 Regular Session of the Legislature. Proposed law is declared remedial, curative, procedural and is to be applied retroactively to all transactions occurring on or after July 1, 2008. Proposed law exempts railroad ties purchased prior to long-term preservative treatment (green ties) and sold in this state to railroads for use on tracks outside the boundaries of the taxing authority from state and local sales tax. The application of long-term preservative treatment and sales of treated ties (black ties) by a third party will continue to be subject to state and local sales tax.

Effective upon governor's signature.

REVENUE EXPLANATION (continued)

Definition of Tangible Personal Property for Sales Tax Purposes (continued)

This bill mediates the potential consequences of the passage of Act 632 by providing that certain tangible personal property will be declared immovable. The only items excluded are those that were without dispute as a moveable prior to July 1, 2008. Changes in tax law resulting from Act 632 were not heavily advertised to taxpayers, and it is doubtful that many increases in actual payments related solely to Act 632 occurred without an audit judgment, which were very few. Since actual state sales tax collections appear to be minimal as all included items were not in dispute as moveables in the years prior to the passage of Act 632, the fiscal impact of the bill to the state general fund is expected to be minimal. However, if the list of excluded items is expanded to resolve past disputes of any kind, a material general fund impact could result, not only from future collections but also the retroactive language of the bill.

Local sales tax collections may be impacted to a greater degree depending on local standards of judgment prior to July 1, 2008. It is possible that the impact locally could be larger than that of the state if the excluded items were previously considered taxable by local judgment.

Green Railroad Ties Sales Tax Exemption

This bill will provide a sales tax exemption for green ties purchased by railroads for installation on tracks outside of the boundaries of the taxing authority, whether state or local.

It is unclear exactly how many purchases by railroads of green railroad ties for use out of state are currently occurring and are affected by this bill. One railroad indicates that it does not make such purchases in the state and suggests there is little or no revenue loss to the state resulting from the bill. However, no information has been provided concerning industry practices overall, and with 16 railroads operating in the state on about 3,250 miles of track, it is reasonable to conclude that purchases of green ties for use on tracks in and out of the state are occurring in the state.

The bill is general in nature, affecting all railroads in the state, and the Department of Revenue indicates that audits show that railroads have made significant purchases of green and black rail ties in state on which tax has been paid or assessed, although the dollar values suggested by audit data are less than \$500,000, and the amounts attributable solely to green ties is not available. In addition, the Department indicates that LA has two large sellers of black railroad ties and numerous sellers of green ties. It seems likely that affected purchases are currently taking place. This bill will exempt those purchases from taxation and will reduce state general fund revenue. With no specific information available regarding these purchases, the dollar loss of state revenue can not be estimated, although it appears to be less than \$500,000 per year.

It is expected that aggregate local sales tax would be impacted at a comparable level to the state, depending on the relevant local rate. It appears that the legislation intends to exempt ties purchased by railroads for installation outside the state from local sales tax but this language may be interpreted to exempt local sales tax if the ties are installed outside the local taxing authority boundaries but still within the state.

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