AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL No. 1243

Introduced by Senator Lowenthal
(Coauthor: Assembly Member Bonnie Lowenthal)

February 23, 2012

An act to amend ~~and repeal~~ Section 6385 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, as amended, Lowenthal. Sales and use taxes: exemptions: marine or maritime fuel.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law exempts, until January 1, 2014, the gross receipts from the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination, as defined, if specified conditions are met.

This bill would revise the definition of "first out-of-state destination" and would extend that exemption to apply ~~indefinitely~~ *until January 1, 2026*.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse counties and cities for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 6385 of the Revenue and Taxation Code, as added by Section 3 of Chapter 712 of the Statutes of 2003, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of fuel and petroleum products to a water common carrier, for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination. To qualify for the exemption the common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and petroleum products claimed as exempt which is to be consumed after reaching the first out-of-state destination. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

(d) "First out-of-state destination," as used in this section, means the first point reached outside this state by a common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is transferred, or docking fees are charged. "First out-of-state destination," as used in this section, also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

(e) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(f) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(g) "Immediate shipment," as used in this section, means that the delivery of the fuel and petroleum products by the seller is directly into a ship for transportation outside this state and not for storage by the purchaser or any third party.

(h) Any common carrier claiming exemption under subdivision (c) who is not required to hold a valid seller's permit shall be required to register with the board and obtain a fuel exemption registration number and shall be required to file returns as the board may prescribe if either the board notifies the carrier that returns must be filed or the carrier is liable for taxes based upon consumption of fuel erroneously claimed as exempt under this section. A common carrier required to hold a fuel exemption registration number shall be subject to all applicable provisions of this part, Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251).

(i) A common carrier claiming an exemption under subdivision (c), upon request, shall make available to the board records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt. If the carrier fails to provide these records upon request, the board may revoke the carrier's fuel exemption registration number.

(j) The board may require any carrier claiming an exemption under this section and required to obtain a fuel exemption registration number to place with it that security as the board may determine pursuant to Section 6701.

(k) Pursuant to subdivisions (a), (b), and (c), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to the first out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to the first out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(l) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

~~SEC. 2. Section 6385 of the Revenue and Taxation Code, as added by Section 4 of Chapter 712 of the Statutes of 2003, is repealed.~~

SEC. 2. Section 6385 of the Revenue and Taxation Code, as added by Section 4 of Chapter 712 of the Statutes of 2003, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(f) This section shall become operative on January 1, ~~2014~~ *2026*.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

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

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BILL ANALYSIS

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: SB 1243 HEARING: 5/9/12
AUTHOR: Lowenthal FISCAL: Yes
VERSION: 3/27/12 TAX LEVY: Yes
CONSULTANT: Miller

SALES AND USE TAX: BUNKER FUEL EXEMPTION

Repeals the sunset on sales and use tax exemption for maritime fuels.

Background and Existing Law

I. State Sales Tax: The state's current sales tax structure is as follows:

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds
1.0625%	State (Local Revenue Fund 2011)	Counties to fund public safety programs
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services)
1.00%	Local (City/County)	City and county general operations;
	0.75% City and County	Dedicated to county transportation purposes
	0.25% County	
7.25%	Total Statewide Rate	

In addition, local jurisdictions may impose their own optional, voter-approved sales taxes, with rates that vary from jurisdiction to jurisdiction, but on average equal 0.86 percent. This local "transactions and use tax" may be no greater than 2% in any county. For example, if the city of Eagle Rock were to impose a 1% sales tax, other cities can impose a 1% tax, but a county-wide tax may not exceed the 2% allowance.

II. Maritime Fuels. Under existing state law, sales of fuel and petroleum products to water common carriers, for immediate shipment outside this state, are exempt from tax for activities after the first out-of-state destination. The exemption requires a water common carrier to only pay tax on the fuel needed to get from California to its first out-of-state destination. The law defines "first out-of-state destination" as the first point reached outside this state by a common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is bunkered, or docking fees are charged. The water common carrier is required to furnish the seller of fuel or petroleum products an exemption certificate in writing, specifying the quantity of fuel or petroleum products exempt from sales and use taxation. This exemption is scheduled to sunset on January 1, 2014.

Until July 15, 1991, sales of fuel and petroleum products

to water, air, and rail common carriers were exempt from tax when used in the conduct of the carrier's common carrier activities after the first out-of-state destination. The exemption for bunker fuel purchased by qualified waterborne vessels was dependent upon the amount of bunker fuel on board the vessel prior to refueling. If the quantity of bunker fuel on board the vessel on arrival at the California port was sufficient to enable the vessel to reach its first out-of-state destination, then the bunker fuel loaded at the California port would have been entirely exempt from tax. However, if the quantity of bunker fuel needed on the voyage from the California port to the first out-of-state destination and the amount used while in port exceeded the quantity of fuel on board the vessel on arrival at the California port, the amount of that excess was subject to tax. The exemption was repealed in 1991 and from July 15, 1991 through December 31, 1992, sales of bunker fuel were subject to tax.

Beginning January 1, 1993 through 2003, bunker fuel was exempted for certain uses through various bills (AB 2396, 1992 and AB 366, 1997). The LAO issued their report www.lao.ca.gov/2001/bunker_fuel/012501_bunker_fuel.pdf in 2001 on the effect of the bunker fuel exemption, and concluded "On this tax policy basis, we recommend that the Legislature remove the existing sunset for the current partial (sales and use tax) exemption for bunker fuel sales, and make the exemption permanent. This would result in the (sales and use tax) being levied in the future only on the portion of the fuel purchased in California which is consumed between California and the first out-of-state destination. This action would result in treating bunker fuel sales similarly to other export sales and place California ports on par with other U.S. out-of-state ports."

SB 145 (Perata, 2002) was vetoed and bunker fuel was subjected to the sales tax from January 1, 2003 through March 31, 2004. SB 808 (Karnette, 2003) exempted the sales and use taxes consistent with the previous law.

The LAO released an updated report in November 2007, and found that the effects of the exemption had not changed since their 2001 report. www.lao.ca.gov/2007/tax_expenditures/tax_ The LAO concluded "On this tax policy basis, we recommend that the

Legislature remove the existing sunset for the current partial (sales and use tax) exemption for bunker fuel sales, and make the exemption permanent. This would result in the (sales and use tax) on fuel purchased in California being levied in the future only on the portion which is consumed between California and a ship's arrival at its first out-of-state destination. This action would permanently result in treating bunker fuel sales similarly to other export sales and place California ports on par with other out-of-state ports in the nation."

Proposed Law

Senate Bill 1243 eliminates the January 1, 2014 sunset date on the existing sales and use tax exemption for fuel and petroleum products (such as bunker fuel) sold to water common carriers.

The bill would take effect immediately as a tax levy.

State Revenue Impact

The BOE estimates that this bill will result in a revenue loss of between $91.7 to $137.5 million to the state.

Comments

1. Purpose of the bill . The author introduced this bill to protect port related jobs by maintaining a partial sales tax exemption for maritime fuel, which is set to expire.

2. Sunset . This issue has been studied by the LAO twice with similar results: a revocation of this exemption will result in a job loss to the state because refueling at ports outside the state is relatively easy given the size and capacity of large ships. The results of the LAO study are one of the most conclusive on a sales and use tax exemption. This credit and exemption is continually reviewed and improved and therefore the Committee may wish to consider a 10-year sunset to review this exemption again.

Support and Opposition (5/3/12)

Support : American President Lines; American Waterways Operators; California Taxpayers Association; City of Carson Mayor, Jim Dear; CMA CGM America, LLC; Cruise Lines International Association; Futureports; General Steamship Agencies; General Steamship Corporation; Harbor Association of Industry & Commerce; Horizon Lines; Inlandboatman's Union of the Pacific; International; International Longshore & Warehouse Union (ILWU); ILWU - Northern CA District Council; ILWU - Southern CA District Council; Maersk, Inc.; Masters, Mates and Pilots Union; Matson Navigation Company, Inc.; Mitchell and Mitchell Insurance Agency; MOL (America) Inc.; OOCL Inc.; Pacific Merchant Shipping Association; Sailor's Union of the Pacific; Seafarers International Union; Western Ocean Services; Yang Ming Corporation; 15 members of the Inlandboatmen's Union - Southern CA Region;

Opposition : Unknown.