



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	08/06/12	Bill No:	<u>Assembly Bill 2688</u>
Tax Program:	Property Sales and Use	Author:	Committee on Revenue and Taxation
Sponsor:	BOE (Sec. 2) CAA (Sec. 1)	Code Sections:	RTC 1154, 6055, and 6203.5
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

This bill contains **Board of Equalization (BOE)-sponsored provisions** for the sales and use tax program to remove the requirement that retailers and lenders prepare and retain an election form *prior* to claiming a bad debt in the case of accounts held by a lender that have been found worthless and written off by the lender;

In addition to the BOE-sponsored provisions, this bill also contains a **California Assessors' Association (CAA)-sponsored provision** related to the property tax that updates the definition of "air taxi."

Summary of Amendments

Since the previous analysis, this bill was amended to delete the BOE-sponsored provision to change the transactions and use tax rate to 0.125 percent, or a multiple thereof (formerly 0.25 percent or a multiple thereof), to make it consistent with specified sections recently amended in the Revenue and Taxation Code.

ANALYSIS

"Air Taxi" Definition
Revenue and Taxation Code Section 1154

CURRENT LAW

Article 6 of Part 2 of the Revenue and Taxation Code (beginning with Section 1150), specifies the provisions of law for allocating the value of certificated aircraft and scheduled air taxis to California taxing agencies. The allocation formula, set forth in Section 1152, is a means of allocating the full cash value of the aircraft of a carrier controlled on the lien date by measuring the planes' activities within a California taxing agency during a specified period in relation to their total activity during this specified period. The formula is composed of two factors: (1) flight and ground time and (2) arrivals and departures. The flight and ground time factor is weighted 75 percent, and the arrivals and departures factor is weighted 25 percent. Because aircraft used by air carriers regularly fly into and out of California and between the various California counties, the property taxation of the aircraft must be fairly apportioned. Article 6 was designed to provide a uniform formula for apportioning taxation of these aircraft among different taxing jurisdictions.

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Air Taxis. Section 1154 defines "air taxi" as aircraft used by an air carrier which does not use aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds in air transportation and which does not hold a certificate of public convenience and necessity or other economic authority issued by the Federal Aviation Administration, or its successor.

Scheduled Air Taxi Operations – Allocation Formula. Section 1154(b) provides that air taxis operated in scheduled air taxi operations are not to be taxed under Part 10 of the Revenue and Taxation Code (beginning with Section 5301), which relate to the provisions of law for the assessment and taxation of general aircraft. Section 1154(b) expressly provides that they are to be assessed using the allocation formula of Section 1152. Part 10 does not have an allocation formula, instead it provides for value allocation to the county where the aircraft is habitually situated. Section 5303 excludes from the definition of "aircraft" an air taxi as defined in subdivision (a) of Section 1154.

Other Air Taxis – Assessed where Habitually Situated. Section 1154(c) provides that all other air taxis are to be assessed in the county where the aircraft is habitually situated. Section 5362 similarly provides that an aircraft, as defined in Section 5303, is to be assessed where it is habitually situated.

PROPOSED LAW

This bill would revise the definition of "air taxi" as used in Section 1154 to mean aircraft used by an air carrier that does not use aircraft in air transportation with a maximum passenger capacity of 60 seats or a maximum payload capacity of more than 18,000 pounds, and which holds a certificate of public convenience and necessity or other economic authority used by the United States Department of Transportation, or its successor.

BACKGROUND

In 1968, Assembly Bill 1257 (Chapter 1306) added Article 6 to Chapter 5 of Part 2 of the Revenue and Taxation Code to outline the procedures for allocating the value of certificated aircraft and air taxis to California taxing agencies.

Section 1154 was subsequently amended the following year by Senate Bill 322 (Chapter 732) to add "which are operated in scheduled air taxi operations" in subdivision (b) and add subdivision (c) to exclude nonscheduled air taxis from the allocation formula.

In 1977, AB 878 (Chapter 921) amended Section 1154 to substitute "having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds" for "whose maximum certificated takeoff weight is greater than 12,500 pounds" in subdivision (a). Section 1154 (a) was again amended in 2011 by SB 947 (Chapter 351) to update the referenced federal agency from the Civil Aeronautics Board of the United States to the Federal Aviation Administration and delete the reference to the California Public Utilities Commission.

COMMENTS

1. **Sponsor and intent.** This provision is sponsored by the CAA and intended to define "air taxi" in accordance with the definition used by the Department of Transportation (DOT) for an air taxi operator. The DOT defines an air taxi operator as a company which operates aircraft originally designed to have no more than 60 passenger seats or a cargo payload of 18,000 pounds and carries cargo or mail on a

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scheduled or charter basis, and/or carriers passengers on an on-demand or limited schedule basis only.

- 2. Increases passenger and payload capacity.** This bill would amend Section 1154 to increase the maximum passenger capacity from 30 seats to 60 seats and increase the maximum payload capacity from 7,500 pounds to 18,000 pounds. The bill would also update the reference to the Federal Aviation Administration to the United States Department of Transportation which is the agency charged with issuing economic authority for air carriers. Additionally, a certificate of public convenience and necessity for scheduled or charter operations are a type of economic authority issued by the DOT.

Bad Debt Election Form Requirement Repeal
Revenue and Taxation Code Sections 6055 and 6203.5

CURRENT LAW

Under existing law, Revenue and Taxation Code Sections 6055 and 6203.5 of the Sales and Use Tax Law allow a retailer to be relieved of the liability for the sale or use tax when the measure of tax is represented by amounts that have been found to be worthless and charged off for income tax purposes. These sections also allow retailers who sell their accounts receivables or lenders who purchase them to claim a refund or claim a deduction on sales and use tax returns for the portion of the accounts receivable which is written off as worthless. In such circumstances, existing law requires the retailer and the lender to prepare and retain an election, signed by both parties, designating which party is entitled to claim the bad debt loss *prior to claiming a deduction or refund*.

PROPOSED LAW

This bill would amend Sections 6055 and 6203.5 to delete the requirement that an election be prepared and retained by the lender and the retailer *prior* to claiming a deduction or refund. Instead, this bill would specify that a proper election for purposes of these provisions shall be established when the retailer who reported the tax and lender prepare and retain the election form, signed by both parties, designating which party is entitled to claim the deduction or refund.

BACKGROUND

In 2000, [AB 599](#) (Ch. 600, Lowenthal) enabled retailers who sell their accounts receivables or lenders who purchase them to claim a refund or claim a deduction on sales and use tax returns for the portion of the accounts receivable which is written off as worthless. In such circumstances, the retailer and the lender had to file an election form with the BOE signed by both parties designating which party is entitled to claim the bad debt loss prior to claiming a deduction or refund.

During the 2011 Legislative Session, [AB 242](#) (Ch. 727, Committee on Revenue and Taxation) removed the requirement that the election form be filed with the BOE. Instead, the election form must simply be prepared and retained by both the retailer and the lender prior to claiming the deduction or refund.

COMMENT

What is the process to claim deduction or refund? Prior to January 1, 2012, the effective date of AB 242, the BOE allowed a claimant to file a proper election form *after* the claim for deduction or refund was filed but would not consider the claim valid until such time as the election form was filed. The date the election form was prepared was not relevant: only the date the form was filed with the BOE.

Beginning January 1, 2012, the election form must be prepared and retained (rather than filed) by both the retailer and lender prior to claiming any deduction or refund. However, verifying that an election form was prepared and retained by both the retailer and lender prior to a claim is problematic and provides no valuable benefit to the validity of a claim that otherwise meets all of the conditions of a proper election by a retailer or lender.

Accordingly, this bill would simply delete the unnecessary requirement that the election form be prepared and retained *prior* to claiming a deduction or refund, thereby establishing a “proper election” when the signed election form is prepared, regardless of whether that election was established after a deduction or refund is claimed.

COST ESTIMATE

The provisions of the bill involve tasks and costs which are absorbable.

REVENUE ESTIMATE

This measure would have a negligible impact on state and local revenues, which would be due to some additional refunds or deductions that are not currently allowable where retailers and lenders fail to prepare and retain an election form prior to claiming a bad debt (RTC Sections 6055 & 6203.5).

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