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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**06/20/06**	Bill No:	**AB 3075**
Tax:	**Sales and Use**	Author:	**Klehs**
Related Bills:	**AB 2442 (Klehs)**		

BILL SUMMARY

This bill would provide an offset amount, as defined, from the sale and use tax upon the sale or use of each gallon of motor vehicle fuel, as defined. The offset amount would be the amount necessary to reduce the sales and use tax revenues upon each gallon of motor vehicle sold by an amount equal to the increase in revenues derived from the proposed five percent income tax on specified entities engaged in business activities in the petroleum industry, as provided by this bill.

Summary of Amendments

The amendments to this bill since the previous analysis delete the entire contents of the previous version, which had contained California Assessors' Association-sponsored provisions related to the property tax.

ANALYSIS

Current Law

Under existing law, the Sales and Use Tax Law imposes a sales or use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted by statute. Under existing law, sales of motor vehicle fuel, including gasoline, are subject to sales or use tax.

Existing law expressly includes within the definition of "gross receipts" and "sales price" the amount of any tax imposed by the United States upon producers and importers, and the amount of any tax imposed by the state under the Motor Vehicle Fuel Tax Law. The law expressly *excludes* from the definition of "gross receipts" and "sales price" the amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

Under the Motor Vehicle Fuel Tax Law (Part 2, Division 2 of the Revenue and Taxation Code, commencing with Section 7301), the state imposes an excise tax of $.018 per gallon on the removal of motor vehicle fuel (gasoline) at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

Under the Diesel Fuel Tax Law (Part 31, Division 2 of the Revenue and Taxation Code, commencing with Section 60001) the state imposes an excise tax of $0.18 per gallon on the removal of diesel fuel at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

Federal law imposes an additional per gallon tax on gasoline and diesel fuel of 18.4 cents and 24.4 cents, respectively.

Therefore, under the existing Sales and Use Tax Law, the computation of sales tax on the sale of gasoline includes the 18.4 cents per gallon imposed at the federal level and the 18 cents per gallon imposed by the State. With respect to sales of diesel fuel, the computation of sales and use tax includes only the 24.4 cents per gallon imposed at the federal level.

As shown below, the sales tax rate is applied to the price of gasoline *after* the federal and state excise taxes have been added.

A tax-included price for gasoline is computed as follows:

Price per gallon of gasoline before tax	$2.75
Federal excise tax	.184
Motor Vehicle Fuel Tax	.18
Amount subject to sales tax	$3.114
Sales tax ($3.114 x 7.25%)	.23
Tax-included selling price	$3.34

Under existing law, Article XIX of the California Constitution protects and reserves gas taxes for transportation purposes. The Constitution requires that the revenue from motor vehicle fuel taxes be used for public streets and highways, public mass transit guide ways, the mitigation of the environmental effects of such highways, streets, and guide ways, and the planning, construction, improvement, and maintenance of those facilities. The operation of highways and streets may also be paid from the fuel tax revenues under Article XIX, but the maintenance and operating costs of mass transit systems and non-guide way facilities may not be paid from these revenues.

Proposed Law

This bill would add Section 6353.6 to the Sales and Use Tax Law to specify that, for the period January 1, 2007 through December 31, 2010, the state General fund portion of the sales and use tax imposed on the sale or use of each gallon of motor vehicle fuel, as defined, shall be reduced by an "offset amount."

The bill would define "offset amount" to mean the amount necessary to reduce the sales and use tax revenues derived from the sale or use of each gallon of motor vehicle fuel, as defined, by an amount equal to the increase in revenues derived pursuant to the tax imposed by specified provisions of the personal income tax and the corporations tax laws, as added by this measure.

The bill would define "motor vehicle fuel" by reference to Section 7326 of the Motor Vehicle Fuel Tax Law.

The bill would impose a five percent tax under the Personal Income Tax Law and the Corporations Tax Law on the taxable income of specified taxpayers engaged in business activities in the petroleum industry, which would be administered by the Franchise Tax Board (FTB).

The bill would require the FTB to cooperate with the Board in providing estimates of revenues necessary to implement these provisions, as specified.

The bill would further provide that an amount equal to the reduction in state tax revenues attributable to the proposed sales and use tax provisions, as estimated by the Board, upon appropriation by the Legislature, shall be allocated in accordance with subdivision (c) of Section 1 of Article XIXB of the California Constitution.

As a tax levy, the bill would go into effect immediately.

COMMENTS

1. **Sponsor and purpose.** According to the author's office, who is also the sponsor of the bill, the purpose of this bill is to redistribute historically large petroleum business profits for the benefit of California citizens by providing gasoline sales tax relief at the pump.

2. **The June 20, 2006 amendments** delete the entire contents of the previous version, which had contained California Assessors' Association-sponsored provisions related to the property tax. These property tax provisions were amended into AB 3076 (Assembly Revenue and Taxation Committee) on June 19, 2006.

3. **Would the small offset amount change the price at the pump?** This bill would result in approximately a two cent to three cent offset amount per gallon of gas (see revenue estimate on the last page of this analysis). Gasoline is generally sold at a "tax included" price. Therefore, when a retailer sells gasoline for, as an example, $3.00 per gallon, that price includes the sales tax. Gas stations use various factors when determining the amount they will charge for gas, including their own profit margin. The gas station will decide whether or not to pass these savings on based at the time, and it is likely that a one cent reduction would not provide sufficient incentive to reprogram registers, change signs, or pass that savings on to the consumer (especially considering the required programming effort identified in the next comment). It could very well happen that excess sales tax reimbursement would be collected by retailers.

4. **The offset could result in an increase in errors in computing sales tax reimbursement and remitting to the Board.** Sales tax is imposed on a percentage basis, not on a per gallon basis, and retailers' cash registers compute sales tax accordingly. Consequently, in order for a retailer to properly calculate the offset, the retailer would be required to develop a programming change to reduce the applicable sales tax (computed on a percentage basis) by the offset amount (computed on per gallon basis). For example, if the offset amount were $.02 per gallon, and the sales price of a gallon (including excise taxes and excluding sales tax) is $3.00 per gallon, either a programming effort to compute sales tax at a reduced percentage to account for the offset amount would be required (the applicable percentage to apply using the statewide rate of 7.25 percent to account for the $.02 offset amount equates to 7.2 percent [$2.98/$3.00 = x/.0725]), or a mechanism would need to be developed to subtract a penny for each gallon sold from the amount of sales tax reimbursement computed. This would likely increase errors in computing applicable sales tax and reporting the proper amount to the Board.

5. **The bill would only apply to gasoline (both for motor vehicles and smaller aircraft that use aviation gasoline), but not diesel fuel.** Section 7326, to which the bill refers for purposes of defining "motor vehicle fuel," defines that term to mean gasoline and aviation gasoline, and specifically excludes from the definition, jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel.

6. **Related legislation.** A similar measure, AB 2442 (Klehs), as amended May 26, 2006 is currently in the Assembly Third Reading file. That measure is substantially similar to AB 3065, except AB 2442 would have imposed a two percent surtax.

COST ESTIMATE

Administrative costs would be incurred in modifying gasoline retailers' returns, notifying affected retailers, staff time in auditing and verifying reported amounts, and answering inquiries. A detailed estimate of the workload is pending.

REVENUE ESTIMATE

The bill would require the Board to determine the offset amount equal to the revenue increase attributable to the petroleum surtax based on estimates provided by FTB.

According to FTB, the petroleum surtax provisions of the bill would result in the following revenue gains, assuming enactment of the measure occurs after June 30, 2006 (in millions):

2006/07	2007/08	2008/09
+ $300	+$375	+ $475

Accordingly, the offset amount for each gallon of gasoline sold would amount to the following amounts, based on estimated annual sales of gasoline of 15 billion gallons:

01/01/07	2007/08	2008/09
-$.02	-$.025	-$.03

Analysis prepared by: Sheila T. Waters 916-445-6579 06/21/06
Contact: Margaret S. Shedd 916-322-2376
ls 3075-2sw