



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

Date Introduced	<b>12/07/98</b>	Bill No:	<b>SB 61</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Perata</b>
Board Position:		Related Bills:	

**BILL SUMMARY:**

This bill would add an uncodified section to the law which would cancel any outstanding and unpaid deficiency determinations attributable to unreported or underreported sales and use tax on blood collection units and blood pack units.

**ANALYSIS:**

Current Law:

Under existing law, operative April 1, 1998, Section 6364.5 of the Revenue and Taxation Code exempts from the sales and use tax the sale, storage, use, or other consumption of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives that are exempt from taxation pursuant to Section 33 of the Revenue and Taxation Code. The exemption includes, but is not limited to, blood collection units and blood pack units.

Proposed Law:

This proposal would provide the necessary statutory authority to make unreported or underreported sales and purchases of blood collection units exempt from the sales and use tax for periods prior to the April 1, 1998 operative date of the current exemption. This bill would prohibit the Board from determining a tax liability against retailers or blood banks who were not properly reporting their tax liability when the blood collection technology changes made the previously exempt items fall outside the parameters of the nonreturnable container exemption that had previously applied. Without such statutory authority, the Board has no legal basis to dismiss or excuse a deficiency determination.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

Background:

As a result of a Board of Equalization audit, it was determined that some blood collection units should no longer be considered exempt nonreturnable containers. Based upon previous Board legal staff written opinions that found that blood collection units were exempt nonreturnable containers when sold without their contents to persons who place the contents in the container and sell the contents together with the container, as provided under Section 6364, taxpayers had not been reporting or collecting the sales and use tax on these items. However, the blood kits examined by the Board auditor appeared to include many items which the legal staff had clearly informed taxpayers would be subject to tax because they were not part of the nonreturnable container when sold with the contents. It appears that due to changes in the design of the blood collection units, the amount of tubing, needles, grommets and other accouterments which are not containers, were now an integral and inseparable part of the nonreturnable containers. Based on the fact the blood collection units contained both taxable and nontaxable components, the Board decided the units were not exempt, nonreturnable containers and that the entire kits were subject to tax.

Though compliance was erratic as a result of the Board's decision, some retailers began to charge sales tax on their sales of blood collection units to blood banks. Assembly Bill 993 (Perata, Ch. 773, 1997), which added Section 6364.5, was sponsored by the Blood Centers of California in order to clarify that containers such as blood collection units and blood pack units are exempt from the sales and use tax when used in the manner described in the section.

In June, 1998 the Board voted to sponsor an identical proposal, however that proposal was never introduced into a bill.

**COMMENTS:**

1. Sponsor and purpose. According to Senator Perata's office, this bill is sponsored by the Blood Centers of California. They are sponsoring this bill in order to clarify that the current exemption for blood packs and blood collection units should excuse any liability proposed against taxpayers prior to the April 1, 1998 operative date of the exemption.
2. This bill would clarify the original legislation. The Board staff analysis of AB 993, which enacted the current exemption, and the analyses prepared by the different committees in the Legislature, stated that the exemption created by Section 6364.5 would not entitle either retailers or purchasers to a refund of taxes previously paid on the items exempted by the new statute. However, the analyses did not address whether retailers and purchasers would be liable for any unreported or underreported sales and purchases made prior to the operative date of the statute. Though the analyses estimated a potential annual revenue loss of up to \$1.4 million, that amount was tempered with the disclaimer that most retailers and blood centers were not reporting or paying the tax on these items due to confusion over

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the proper interpretation in the law. Therefore, by enacting AB 993, and based on the fact that the noncompliance by taxpayers was never debated, it could be argued that the Governor and the Legislature intended to relieve taxpayers of any unreported or underreported liability on blood collection units. In this regard, SB 61 is consistent with this intent to exempt blood collection units from tax in the periods prior to the April 1, 1998 operative date of the exemption.

3. This bill would not provide for refunds to taxpayers who were properly reporting and paying their tax liability. As previously stated, the legislative committee analyses were explicit that AB 993 would not allow taxpayers to file a claim for refund on previously reported amounts. Therefore, this bill is consistent with the intent of the Legislature and the Governor in enacting the current exemption and is intended to clarify, and not overturn or expand, AB 993.

#### **COST ESTIMATE:**

The administrative costs associated with this bill would be absorbable. These costs would include advising and answering inquires from the public, and informing Board staff.

#### **REVENUE ESTIMATE:**

According to the Blood Center of California there are four types of blood collection and storage containers used by California's blood banks:

- Blood bags/packs: These are used for the collection of whole blood. There are 1.1 million of these used in California each year. The average cost is \$8 per bag. The total cost would be \$8.8 million.
- Platelet apheresis kit: These kits have multiple bags and a bag of anticoagulant solution. There are 70,000 used in California annually. The average cost is \$110 per kit. The total cost would be \$7.7 million.
- Plasma kit: About 40,000 of these kits are used. They cost about \$30 per kit. The total cost would be \$1.2 million.
- Transfer bags: About 25,000 of these bags are used. They cost \$4 per bag. The total cost be \$100,000.

The total annual sales of blood collection and storage bags amounts to \$17.8 million. The annual sales and use tax revenue from these sales amounts to \$1.4 million at an effective tax rate of 7.89%.

The Sales and Use Tax Department, based on audit experience, estimates that approximately 25% of these sales have historically not been reported to the Board.

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Therefore, approximately \$350,000 in sales and use tax revenue has not been reported. Since the normal audit period is three years, this proposal could result in the Board canceling audit determinations amounting to an estimated \$1,050,000. (\$350,000 x 3 years = \$1,050,000).

However, it appears that the actual revenue effect would not be this great. The Board, in all probability, would not audit all of the firms engaged in selling these products. Also, recent audit experience has shown that, since the beginning of 1997, most firms have been reporting the proper amount of tax. Therefore, the revenue effect of this proposal is estimated to amount to approximately \$350,000.

### **Revenue Summary**

This proposal would result in a revenue loss of up to \$350,000. The total loss by taxing jurisdiction would be as follows:

	<u>Revenue Effect</u>
State loss (@ 5%)	\$ 222,000
Local government loss (@ 2.25%)	100,000
Special taxing jurisdictions (@ 0.64%)	<u>28,000</u>
Total Revenue Loss	<u>\$ 350,000</u>

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