



*California State Board of Equalization,
Legislative Division*

LEGISLATIVE BULLETIN



SALES AND USE TAX LEGISLATION 1997

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Assembly Bill 258 (Floyd & Lewis) Chapter 621
Conventions and trade shows - retailers engaged in business in this state

Tax levy; effective October 3, 1997; operative April 1, 1998. Amends Section 6203 of the Revenue and Taxation Code.

This bill provides that a retailer is not a “retailer engaged in business in this state” if that retailer’s sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 7 days in this state during any 12-month period and does not derive more than \$10,000 in gross income from those activities in this state during the prior calendar year.

The bill specifies, however, that a retailer engaging in business in convention and trade show activities is a “retailer engaged in business in this state” and is liable for collection of use tax with respect to any sale of tangible personal property occurring at the convention and trade show and with respect to any sale made pursuant to an order taken at or during those convention and trade show activities.

Sponsor: Industry Council for Tangible Assets

Law Prior to Amendment:

Existing law, Section 6051 of the Sales and Use Tax Law, provides that retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California. Although the purchaser owes the use tax, Section 6203 currently provides that a retailer engaged in business in this state is required to collect the use tax from the purchaser and pay it to the state. Section 6203 defines “retailer engaged in business in this state” for purposes of the Sales and Use Tax Law to include, among other activities, any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

In General:

The Board has interpreted current subdivision (b) of Section 6203 to mean that a retailer would be deemed to be engaged in business in this state, and therefore required to collect tax on all California sales, if the retailer or his or her agent or representative attended even a single trade show and even if the representative made no actual sales but just demonstrated the retailer's products. The retailer would be required to collect tax on all its retail sales to California purchasers whether the property is delivered to the purchasers at the trade show, by mail after the trade show pursuant to orders taken at the trade show, or by mail unrelated to sales made or orders taken at the trade show. If a retailer's only presence in California relating to selling activities is a single trade show, the Board generally regards that retailer as engaged in business in California through the following reporting period. For example, if a retailer attended a single trade show in California in April, 1997, the Board generally would require him or her to report the tax on all sales to California customers through September, 1997.

If a retailer is engaged in selling activities in this state at more than one trade show or convention in a year, or continuously at an annual trade show or convention, the Board would generally regard that retailer as continuously engaged in business in this state and would require the retailer to remit tax on all sales to California consumers.

Background:

A similar measure, AB 3010, was considered in the 1996 Legislative Session. That measure, which contained the 15-day maximum for considering a retailer not engaged in business in this state, was supported by the Board. Its last amended version, which contained a 7-day maximum for considering a retailer not engaged in business in this state, was held in the Senate Appropriations Suspense file.

Another measure which was enacted in the 1996 Legislative Session (SB 1550, Lewis, Ch. 286) also addresses this issue for purposes of the Bank and Corporation Tax Law. That measure provided that any corporation that is not incorporated in California and whose sole activity in this state is engaging in similar convention and trade show activities in this state for 7 or fewer days during the year and that does not derive more than \$10,000 of reportable gross income to this state from those activities is not a corporation doing business in this state for purposes of the franchise tax (the franchise tax is not a tax on income, but rather, it is measured by net income for the privilege of doing business in this state. The tax rate is currently 9.3 percent of net income, or the minimum franchise tax of \$800, whichever is greater). The corporation is still, however, subject to corporation income tax, also set at 9.3 percent.

Comments:

1. **Purpose.** This bill is sponsored by the Industry Council for Tangible Assets who assert that California is losing additional business activity, as it is uneconomical for exhibitors to participate in a trade show when the tax burden is excessive.
2. **Bill would ease some of the tax burden and reporting requirements imposed on out-of-state trade show participants who have minimal selling activities in California.** The bill would, however, require tax to be collected by these participants on any sales made either at the show, or pursuant to orders taken at the show.

Assembly Bill 366 (Havice, et al.) Chapter 615
Fuel and petroleum products exemption - water common carriers

Tax levy; effective October 3, 1997. Amends Section 6385 of the Revenue and Taxation Code.

This bill extends the sales tax exemption for fuel sold to water common carriers to January 1, 2003.

Sponsor: Assembly Member Havice

Law Prior to Amendment:

Among other things, Section 6385 of the Sales and Use Tax Law, as amended by Section 1.5 of Chapter 905 of the Statutes of 1992, exempts from the sales and use 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 conduct of its business as a common carrier after the first out-of-state destination. This 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. This section contains a January 1, 1998 sunset date and will be replaced by a new Section 6385 which does not contain the sales tax on fuel exemption for water common carriers.

Background:

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 by AB 2181 (Ch. 85, 1991) and SB 179 (Ch. 88, 1991).

As a result of the loss of the exemption, the Pacific Merchant Shipping Association sponsored AB 2396 (Ch. 905, 1992) to combat what they claimed was a disastrous tax law change. They argued that the repeal of the exemption for water common carriers resulted in a decline in the number of ships which bunker in California ports. The re-establishment of the exemption was designed to increase bunker activity in California.

Beginning January 1, 1993, as amended by Section 1.5 of Chapter 905 of 1992, Section 6385 once again granted an exemption for bunker fuel for certain uses. That measure, however, contained a sunset provision which will repeal the exemption on January 1, 1998. The sunset provision was apparently amended into the original bill in order to allow time to study the effect that the exemption would have on the sale of bunker fuel in California.

Comments:

1. **Purpose.** This bill is intended to maintain the competitiveness of California's bunker fuel industry with existing world markets. The sponsor believes the re-imposition of the sales tax will cause California bunker fuel sales to fall 50 percent, resulting in the loss of jobs and businesses that provide support to the bunker industry.
2. **LAO would be required to study the effects of the bunker fuel exemption.** This bill would require the Legislative Analyst's Office (LAO) to issue a report on or before January 1, 2000, comparing bunkering activity in California after January 1, 1993 with the period July 1, 1991 to December 31, 1992, when there was no sales tax exemption for bunker fuel. Though the Board may have to provide the LAO with sales tax information for their report, this amendment would not create any additional, recurring tasks for the Board.
3. **Sales tax law for air and rail common carriers.** Section 6357.5 of the Sales and Use Tax Law contains an exemption for fuel sold to an air common carrier for immediate consumption or shipment in the conduct of its business on an international flight. Fuel purchased for domestic flights is not included in the exemption.

Fuel sold to rail common carriers remains subject to the sales tax.

4. **The Board does not foresee any administrative problems with this measure.** The continuation of the current exemption as proposed by this measure could be easily administered by the Board.
5. **Related bill.** Assembly Bill 120 (Kuykendall, et al.) proposes the identical extension of the current bunker fuel exemption. That bill is sponsored by the Pacific Merchant Shipping Association. The Board members voted to also support that proposal. That bill was held in Assembly Appropriations Committee and Assembly Member Kuykendall was added as a co-author of this bill.

Assembly Bill 595 (Brown, et al.) Chapter 878
Authorization for excise tax on gasoline

Effective January 1, 1998. Adds Chapter 12 (commencing with Section 8500) to Part 2 of Division 2 of the Revenue and Taxation Code

This bill allows the members of the nine county Metropolitan Transportation Commission to impose an additional excise tax on gasoline of up to 10 cents per gallon. The nine Bay Area members include the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma.

The funds raised would be earmarked for road maintenance, public transit systems, rail extensions, road safety improvements, and other transportation related projects.

Sponsor: Metropolitan Transportation Commission

Law Prior to Amendment:

Under current law, Parts 1, 1.5, and 1.6 of Division 2 of the Revenue and Taxation Code impose state, local, and transactions sales and use taxes on all tangible personal property, including gasoline and diesel fuel, sold at retail. The rates in the different cities and counties throughout the state range from 7.25% to 8.50% depending upon the jurisdiction in which the tangible personal property is purchased.

Under current law, Parts 3 and 31 of the Revenue and Taxation Code impose an excise tax of \$0.18 per gallon on gasoline and diesel fuel, respectively. The excise tax on gasoline is imposed upon the distribution of gasoline in this state, while the excise tax on diesel fuel is imposed on the removal of undyed diesel fuel from a terminal rack.

Further, under existing law, the Local Motor Vehicle License Tax Law, as contained in Part 4 (commencing with Section 9501) of Division 2 of the Revenue and Taxation Code, authorizes counties to impose countywide excise taxes on motor vehicle fuel at increments of one cent per gallon provided a majority of the voters approve the proposition. The funds collected must be used only for purposes authorized by Article XIX of the California Constitution, such as transportation planning and construction. To date, however, no county imposes a local fuel tax under this authority.

Background:

Senate Bill 325 (Ch. 1400, 1971) increased the Uniform Local Bradley-Burns Sales and Use Tax from 1% to 1.25% and at the same time reduced the overall state tax rate from 4% to 3.75%. This rate shift without a corresponding loss in state revenue was made possible by the imposition of state sales and use tax on previously exempt sales of gasoline. The additional .25% tax was to be used by the counties to develop and plan local transportation.

Last year's SB 877 (Alquist) contained provisions identical to this measure. That measure made it as far as the Assembly Revenue and Taxation Committee before the author requested the scheduled hearing be canceled.

Other attempts to pass similar measures were introduced in 1988 (Assembly Bill 3975) and 1989 (Assembly Bill 1520) by Assemblyman Cortese and in 1993 (Senate Bill 1080) by Senator Alquist. None of these bills, however, passed out of their first policy committee.

Comments:

1. **Purpose.** This bill is intended to provide funding for transportation projects specific to the nine Bay Area counties which the local excise tax provisions under the Local Motor Vehicle License Tax Law may not authorize due to constitutional restrictions.
2. **This bill does not specify the level of imposition of the tax.** This bill allows the possibility of imposing a per-gallon tax at any level at which gasoline is sold within the region, including distribution of gasoline from a refinery, wholesale distribution, or retail sales level. The language provides the commission greater flexibility in crafting the tax increase proposal which would require voter approval.
3. **This bill could set a precedent for establishing multiple excise tax rates on other commodities.** The Board currently administers excise taxes on a range of products including fuels, cigarettes and tobacco products, and the different alcoholic beverages. Additionally, the Board collects taxes on energy and telephone use, gross insurance premiums, and a variety of hazardous and solid wastes. By imposing a local excise tax on the sales of a specific commodity, as this bill would do, the administration of the tax would become complicated and place additional record keeping and reporting requirements on retailers. This could eventually set a precedent which could lead to a proliferation of different local excise tax rates for other commodities and services, which would further complicate the tax system.

4. **This bill presents a dramatic tax increase for those regions.** A potential 10 cents per gallon tax increase would give many customers incentive to purchase their fuel in neighboring counties, resulting in a potentially substantial economic hardship for businesses located on the perimeter of the higher tax rate counties.
5. **The tax increase could increase tax evasion.** Current law requires the prepayment of approximately 80% of the sales tax that would be collected on the retail sale of fuels. Retailers are thereby required to report their sales of gasoline and diesel in order to recoup those prepaid taxes. The prepayment statute was added in 1986 to curb the increasing incidences of sales tax evasion on gasoline sales.

Since the current excise tax on gasoline is collected at the refinery, built into the purchase price of the fuel by the retailer, there has not been rampant evasion of the gasoline tax at the retail sales level. It is important that the adopted method of imposing this proposed tax mitigates the opportunity for increased tax evasion within the region.

6. **This bill excludes other counties.** This new law would apply only to the San Francisco Bay region and excludes other areas of the state from adopting a similar tax. Other transportation commissions may seek authorization to also impose a tax on fuels.

Assembly Bill 993 (Perata) Chapter 773
Exemption for blood collection and blood pack units

Tax levy; effective October 8, 1997; operative April 1, 1998. Adds Section 6364.5 to the Revenue and Taxation Code.

This bill 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.

The bill defines those terms to include all items that form an integral, interconnected package that, when sold to plasmapheresis centers and blood banks, are used to collect blood or blood components, which are then sold together with the bags and tubing in which they are contained. Further, blood pack units consist of a plastic bag or bags, tubing, and a needle. Blood collection units are either a manual system that includes a needle, multiple bags, a bag containing saline solution, tubing, filters, grommets, and a pooling bag or an automated system that consists of a needle, a bag of anticoagulant, tubing, a plastic bowl containing a stainless steel centrifuge and a pooling bag. Blood collection units and blood pack units also include plastic bags and tubing sold to plasmapheresis centers when those centers use them to collect blood plasma or platelets and then sell the plasma or platelets together with the bags and tubing in which they are contained.

Sponsor: Blood Centers of California

Law Prior to Amendment:

Under existing law, Section 6364 of the Sales and Use Tax Law exempts nonreturnable containers when sold without their contents to persons who place the contents in the container and sell the contents together with the container.

Section 33 of the Revenue and Taxation Code provides a general exemption from taxation for any purpose for human whole blood, plasma, blood products, and blood derivatives, held in a bank for medical purposes.

Current law does not provide a specific exemption for bags used to collect blood or plasma. Blood bags used to collect blood or plasma which are sold along with the blood by blood banks and plasmapheresis centers do qualify as exempt containers under Section 6364. However, a portion of the blood collection units and blood pack units, such as tubing, needles, clamps and filters, may be subject to the sales and use tax if they are discarded and not sold together with the blood.

Comments:

1. **Purpose.** This bill is intended to clarify that blood collection units and blood pack units are exempt from the sales tax when used in the manner described in the bill. The definitions in the bill are intended to clarify that the entire unit is so integrated and interconnected to preclude the taxation of any portion of the units. Also according to the sponsor, until recently, very few blood banks had been paying tax on these types of kits. However, due to a recent audit, they claim some retailers have begun to charge tax on their sales to blood banks. They have introduced this measure to provide a specific exemption in the law for their blood and plasma bags and kits.
2. **Compliance appears to be inconsistent.** It is Board staff's understanding that blood banks may not currently be paying sales tax reimbursement on any portion of blood collection kits. Therefore, in regards to the revenue loss estimate, the figures represent the potential revenue loss if taxpayers are currently reporting tax on all their sales of the various blood collection kits.
3. **The proposed language is based on a Board annotation.** Sales and Use Tax Annotation 195.0080 provides an exemption similar to the statutory change in this bill. The annotation provides an identical description of the blood collection units and blood pack units.
4. **Taxpayers would not be entitled to a refund.** The bill does not state this new law section would be retroactive or declaratory of existing law. This bill would not allow a taxpayer to claim a refund for sales or use tax previously collected on any portion of the collection units or collection packs before the operative date of this measure.

Assembly Bill 1472 (Thomson) Chapter 712
City of Woodland - transactions and use tax authorization

Effective January 1, 1998. Adds Chapter 2.93 (commencing with Section 7286.52) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

This bill authorizes the City of Woodland to impose a transactions and use tax of 1/4 or 1/2 percent, upon voter approval, for general revenue purposes.

Sponsor: City of Woodland

Law Prior to Amendment:

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 1/4 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1 1/4 percent local tax.

Under this Bradley-Burns Uniform Local Sales and Use Tax Law, cities are authorized to impose a sales and use tax rate of up to 1 percent. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1 1/4 percent.

Under the existing Transactions and Use Tax Law, counties are additionally authorized to impose a transactions and use tax rate of 1/4 percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under this law, the maximum allowable rate of transactions and use taxes levied by any district may not exceed 1 1/2 percent, with the exception of San Francisco and San Mateo, whose combined rates may not exceed 1 3/4 and 2 percent, respectively.

The Transactions and Use Tax Law also allows counties to impose a transactions and use tax for purposes of funding drug abuse prevention, crime prevention, health care services, and public education at a rate of 1/4 percent or 1/2 percent, upon voter approval.

Currently, neither the City of Woodland nor the County of Yolo imposes a transactions and use tax. Therefore, the current state and local tax rate within this area is 7 1/4 percent.

In addition to county authorization to levy a tax, through specific legislation, some cities have received authorization to impose a transactions and use tax. The

following cities are so authorized: Avalon, Calexico, Clearlake, Fort Bragg, Fresno (and its sphere of influence), Lakeport, and Truckee. The cities of Clearlake and Calexico are the only two currently imposing a tax. Fresno had imposed a tax for the period 7/1/93 through 3/21/96, however, this tax ceased to be operative, as it was declared unconstitutional.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

In General:

Many special districts in California impose an additional tax that is administered by the Board. These taxes are commonly referred to as transactions and use taxes. In Sacramento County, for example, a transactions and use tax of 1/2 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. Today, there are 34 special taxing districts in the state. The tax rate in these special taxing districts varies from district to district. Currently, the County of Stanislaus imposes the lowest transactions and use tax rate of 1/8 of one percent. San Francisco City and County has the highest transactions and use tax rate of 1 1/4 percent. The remaining districts impose rates in between these ranges.

Listed below are the various combined state and local tax rates and number of taxing jurisdictions levying those rates:

<u>Rate</u>	<u>Counties</u>	<u>Cities</u>
7 1/4 percent	35	0
7 3/8 percent	1	0
7 1/2 percent	1	0
7 3/4 percent	14	1*
8 1/4 percent	6	1**
8 1/2 percent	1	0

* Clearlake (CLPS) which is in the County of Lake

** Calexico (CXHD) which is in the County of Imperial

Comments:

1. **Purpose.** The purpose of the bill is to enable the City of Woodland to raise additional revenues for general purposes.
2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. The retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, the retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, seven cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

3. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Uniform Local Tax Law.** There are 470 cities within California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes severely complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Uniform Local Sales and Use Tax Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered. This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.

Senate Bill 13 (Mountjoy) Chapter 184
Replacement contact lenses - pharmacists now consumers

Tax levy; effective August 4, 1997; operative January 1, 1998. Amends Section 6018 of the Revenue and Taxation Code.

This bill provides that licensed pharmacists dispensing replacement contact lenses pursuant to Section 4124 of the Business and Professions Code shall be regarded as consumers, rather than retailers, with respect to those lenses.

Sponsor: California Retailers Association

Law Prior to Amendment:

Under existing law, except where specifically exempted by statute, sales or use tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. Existing law (Section 6018 of the Revenue and Taxation Code) provides that a licensed optometrist, physician and surgeon, or registered dispensing optician is a consumer of, and shall not be considered a retailer of, ophthalmic materials used or furnished in the performance of his or her professional services in the diagnosis, treatment, or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof.

As a consumer, tax applies with respect to the sale of those materials to physicians and surgeons, optometrists and opticians. The subsequent sale of these items by the physicians and surgeons, optometrists, and opticians to the patient are exempt from tax.

Under the Board's Regulation 1592, "Eyeglasses and other Ophthalmic Materials," which interprets and clarifies Section 6018, a physician and surgeon, or optometrist or optician is also the consumer of lenses and frames furnished to patients as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed for the patient pursuant to an eye examination. As a consumer, tax applies to the physician and surgeon's, optometrist's or optician's purchase price of the items.

Since pharmacists are not "physicians and surgeons, optometrists or opticians," sales of any replacement contact lenses to customers are currently subject to tax, based on the selling price to the customer. However, the pharmacists' purchase of those items would be exempt from tax, since the purchase of the items would be regarded as exempt sales for resale.

Background:

During the 1995 Legislative Session, AB 1107 (Ch. 719, effective January 1, 1996) added provisions in the Business and Professions Code which authorize pharmacists to dispense replacement soft contact lenses pursuant to a valid prescription of a physician and surgeon or optometrist that meets all applicable state and federal requirements. That measure was sponsored by Professional Contacts on Call, a firm supplying soft contact lenses to pharmacies and others. The proponents indicated that due to improvements in soft lenses and related manufacturing processes, replacement lenses are virtually identical to the original lenses, thus eliminating the need for examination and fitting by an eye care professional if the patient has no other problems.

Two measures similar to this bill were considered in the 1996 Legislative Session: AB 1253 and SB 710. AB 1253 was amended to incorporate the similar provisions on August 31, 1996 (the last day of the 1996 Legislative Session) and died in the Senate third reading file. SB 710, on which the Board had a neutral position, failed passage in the Senate Revenue and Taxation Committee.

Comments:

1. **Purpose.** The purpose of this measure is to provide the same tax treatment to the sale and purchase of replacement lenses, regardless of whether a consumer acquires them through an optometrist or a pharmacist.
2. **Pharmacists are currently considered retailers, rather than consumers, on all other property they sell in the regular course of their business.** This bill would, in essence, require pharmacists to pay tax on their cost of the replacement lenses when they acquire them. When they sell the lenses, no tax would be required to be collected from the customer or reported to the Board. This method of taxation would provide a deviation from pharmacists' normal operating procedures, since pharmacists may currently purchase all pharmacy items they resell without payment of tax. Although pharmacists are currently required to make distinctions in their records between exempt items they dispense and taxable items (since sales of prescription medicines are exempt pursuant to Section 6369 of the Revenue and Taxation Code), this deviation may pose an additional record-keeping burden. In addition, the tax that would be required to be paid on the cost of these items by the pharmacist would likely be passed on in the selling price to the consumer.
3. **This bill would not impose any significant administrative concerns.** The items for which the bill is proposing to exempt appear to be clearly defined, and the proposed exemption should not result in any uncertainties or ambiguities in relation to administering it.

Senate Bill 110 (Dills) Chapter 702*Use tax payment permits; local tax bill of rights*

Effective January 1, 1998. Amends Section 7056 of, adds Section 7051.3 to, adds a chapter heading to, and adds Chapter 2 (commencing with Section 7221) to, Part 1.5 of Division 2 of the Revenue and Taxation Code.

This bill does all the following:

- 1. Amends Section 7056 of the Sales and Use Tax Law to authorize local jurisdictions or any person designated by these local jurisdictions by resolution to examine all local sales and use or district tax records of the Board pertaining to the ascertainment of those taxes to be collected for the local jurisdictions.**
- 2. Allows every person seeking to pay use taxes directly to the Board to file an application for a “use tax direct payment permit.” The applicant can either be a local jurisdiction or any person who made purchases of, or who leased, tangible personal property at a cost of \$500,000 or more during the calendar year immediately preceding the application. This bill also requires the Board to allocate the local use tax in the countywide pools based on each local jurisdiction’s proportionate share of local use tax directly allocated.**
- 3. Enacts the “Bradley-Burns Bill of Rights” to establish certain rights of local jurisdictions.**
- 4. Specifies that the Board shall charge local jurisdictions for the costs of the Board’s services as required by the bill. Any amount so charged shall be deducted from the revenues collected by the Board on behalf of local jurisdictions.**

Sponsor: City of Long Beach

Law Prior to Amendment:

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 1/4 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1 1/4 percent local tax.

Under current law, cities are authorized to impose a sales and use tax rate of up to 1 percent. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1 1/4 percent.

The revenue from the local sales tax is generally allocated directly to the local jurisdiction (i.e. the unincorporated area of the county, city, city and county, or redevelopment agency) where the sale took place. The Board collects these taxes primarily from remittances by retailers, and relies on retailers to segregate taxable sales by location in order to determine the correct local sales tax allocation.

Under current law, when goods are shipped by the retailer from an out-of-state location directly to the purchaser in this state and title passes out of state, the transaction is subject to state, local, and (if applicable) district use tax. Current law requires out-of-state retailers who are registered with the Board to collect California use tax on sales of property to California consumers and remit it to the Board. The local use tax revenue is allocated to the jurisdiction in which the use of the property occurs based on schedules submitted by these out-of-state retailers. To the extent that the use tax cannot be distributed to the jurisdiction of use directly, it is distributed through the medium of “pools” (Sales and Use Tax Regulation 1802(c)).

Section 7056 of the Sales and Use Tax Law specifies that divulging information by the Board about taxpayers is forbidden except for the limited information set forth on seller’s permits, certificates of registration, certain settlement agreements and except upon a general or special order by the Governor under certain circumstances. Also, this section currently allows local jurisdictions or their representatives, upon resolution, to examine the tax records of the Board pertaining to sales or transactions or use taxes collected for the county, city and county, city or district by the Board.

Under existing law, Section 7209 provides a time limitation with respect to reallocations of tax. Under this section, the Board may reallocate the local sales and use tax distributed to a county or city when it is determined that a misallocation occurred no earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper allocation. The law currently does not provide a formalized means with which local jurisdictions or their representatives may file an appeal for reallocation.

In General:

Pooling. Through administrative action, the Board has had a long-standing policy of generally distributing a portion of local tax revenues through countywide pools and statewide pools for transactions that cannot be easily identified to a specific location. However, through both administrative and legislative action, these pools have begun to “drain.” The pooling process uses 57 countywide pools and one statewide pool. The countywide pools prorate local tax in the pool to each city in the county and the unincorporated portion of the county, in the same relation that each jurisdictions’ retail sales bear to the total of all retail sales in the county. The statewide pool prorates local tax to all cities and counties in the state in the same

relation that each city and county's retail sales bear to all of the cities and counties in the state. The actual allocations from the pools are computed on a quarterly basis.

Typical transactions assigned to countywide pools include use tax from private party sales of vehicles, vessels and aircraft (which is the largest component), use tax on long term leases (other than new cars), materials and fixtures used in construction contracts, and property shipped to consumers in this state from out-of-state vendors pursuant to orders taken from local sales offices. Minor amounts of local sales tax from itinerant merchants and vending machine operators are also in the countywide pools. The statewide pool is used primarily to allocate the local use tax from out-of-state mail order firms, many of which report the tax voluntarily. This pooling method has been used for years by the Board and has been validated by the courts. In the City of San Joaquin v. State Board of Equalization, the court said the pooling system is a valid technique that "suberves the interest of all cities and counties."

Local districts are becoming increasingly reliant on the sales and use tax as a significant revenue source and some have expressed concern over the pooling concept. In response to their concerns, through its adoption of amendments to Regulation 1802, the Board has made the following changes that specifically assist in draining these countywide pools, as follows:

- The regulation specifies that, beginning July 1, 1996, with respect to auctioneers, the local tax shall be reported directly to the city, county, or city and county in which the auction is held for events that result in taxable sales in an aggregate amount of \$500,000 or more. (Previously, this tax would have been allocated to the countywide pool in which the auction was held.)
- For transactions of \$500,000 or more, beginning July 1, 1996, the regulation specifies that when the order for property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the seller is required to report the local use tax revenues from that sale directly to the city, county, or city and county where the first functional use of the property is made (as opposed to the countywide pool).
- The regulation specifies that, operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax to the city, county, or city and county in which the first functional use of the property is made.

With respect to legislative action, during the 1995 Legislative Session, SB 602 (Ch. 676, Wright), changed the way the local use tax on certain automobile leases is distributed. Instead of the revenue going to the county pool in which the purchaser of the vehicle resided, SB 602 requires the local use tax be allocated directly to the local jurisdiction in which the car dealer is located.

Local Tax Allocation Disputes. Through administrative action also, the Board last year adopted procedures which provide for an appeals process for resolving local tax allocation disputes. These procedures allow the local jurisdiction, in cases where Board management staff has denied a local jurisdictions' appeal for a reallocation, to request a Member of the Board to bring its request for a reallocation to the full Board's attention. If any of the Board Members agree to do so, they may request that the Board hear the matter. Such a request must be approved by a majority vote of the Board Members.

Background:

A bill similar to SB 110's introduced version was considered in the 1996 Legislative Session (SB 1909, Dills, as amended August 8, 1996). The bill was approved by the Legislature, but vetoed by the Governor. In his veto message, Governor Wilson expressed his support for eliminating the county pools as a way of allocating use taxes at the local level, however, he indicated that he would support legislation or administrative action by the Board that would allocate the use tax based on the location of the facility instead of the location of the sales office, thereby giving "greater accountability and an incentive for local jurisdictions to attract manufacturing and other use tax paying businesses."

Comments:

1. **Purpose.** The purpose of this bill is to promote fair, equitable and responsive administration for the state's administration of local sales and use taxes and to create an appeal process to facilitate disputes and other issues between the Board and local jurisdictions.
2. **"Use tax direct payment permit" provisions raise significant concerns.** A "use tax direct payment permit" in concept, would provide an avenue to drain the countywide pools and provide for a direct allocation of local use tax by the purchaser to the taxing jurisdiction in which the first functional use of the property occurs. By allowing purchasers to self-assess and pay use tax directly to the Board, out-of-state retailers would not be burdened with the responsibility to allocate to the various taxing jurisdictions, as was proposed in the previous version of this measure. However, the provisions contain a number of technical deficiencies that should be addressed so that the "use tax direct payment permit" concept could be administered consistent with current practice, efficiently, and without ambiguity. Listed below are the concerns with these provisions:
 - (a) **Only large, active purchasers should have permits.** The bill provides that any individual or firm that made purchases or leased tangible personal property at a cost of \$500,000 or more during the calendar year preceding the application for the proposed permit would qualify to self-assess use tax.

This means that, not only could currently registered sellers and retailers with the Board obtain permits, but virtually anyone who meets that threshold, i.e., doctors who make large medical equipment purchases, farmers who purchased agricultural equipment, even individuals who may have purchased a piece of art for \$500,000 could qualify for a permit - and use it indefinitely (there's no basis for the Board to revoke it). This would lead to a potentially large number of new accounts which the Board would have to monitor at a significant expense. To address this concern, it was recommended that the bill allow only purchasers who, subsequent to applying for the permit, continue to meet a minimum measure of use tax liability, such as those whose average annual purchases on which use tax is self-assessed meet or exceed \$500,000 annually. In addition, the law should contain provisions that would allow the Board to revoke a permit when persons fail to comply, or in cases where purchasers are no longer actively self-assessing and reporting the use tax.

- (b) **Permits should only enable purchasers to self-assess use tax.** The bill provides that a use tax direct payment certificate will relieve a person selling property from the duty of collecting use tax only if taken in good faith. The proposed amendments further state, however, that a purchaser who issues that certificate shall be the person solely liable for any *sales* tax on the transaction if the Board determines that the transaction was subject to sales tax and not use tax. By implication, this provision would appear to indicate that the good faith requirement would be met even when California retailers accept the certificates on *sales* tax transactions. In essence, it appears the bill would enable any direct payment permit holder to issue the proposed certificate on any transaction - sales or use. This could jeopardize California's sales and use tax base as it would shift the liability for the tax away from sellers and onto purchasers. In addition, this could provide some significant shifting of local tax allocations to local jurisdictions, which could seriously disrupt some local agencies' budgets. To address this concern, the language should limit the issuance of a permit to purchases in which the order for the property is placed directly with an office of the retailer located outside this state and the property is shipped directly to the purchaser in this state from a point outside this state. This would target the use tax transactions consistent with the author's intent. In addition, additional language should be added stating that in the case the Board finds that any local sales tax has been paid by the permit holder, the tax would be reallocated to the city, county, city and county, or redevelopment agency to which the tax would have been allocated if it had been reported and paid by the retailer.

- (c) **Proposed change in allocation of pooled revenues should have a delayed operative date and the Board should be allowed to make estimates.** The bill would require the Board to allocate the pooled revenues in a way that is significantly different than how the pooled revenues are currently distributed, which could seriously impact some local communities' budgets. It would require that the pooled revenues be allocated based on the local communities share of local use tax directly allocated to that local jurisdiction. These pooled revenues are derived from a variety of sources. A portion is generated from the use tax reported by out-of-state retailers on sales to California consumers. However, the largest component of the use tax revenues in the pooled amounts actually stems from use tax collected by the Department of Motor Vehicles on private party sales of vehicles, vessels and aircraft. The allocation of the pooled revenues to local jurisdictions would provide a disproportionate distribution of these pooled revenues to those jurisdictions who have large use-tax accruing businesses. Many jurisdictions who are currently receiving these amounts through the mechanism of the pooling process could realistically no longer receive amounts through SB 110's provisions. Local governments have made long range plans based on anticipated local tax revenues. This bill could have a major impact on many cities and counties which have budgeted their expenses in anticipation of the local tax revenue they receive from the pooled amounts.

In addition, in order to comply with the bill's subdivision (f), the Board would have to redesign its automated system which would take a considerable amount of time at a significant expense. This effort could not even be achieved by the bill's effective date of January 1, 1998. The Board's automated system currently treats the sales and use tax as one program. It does not separately account for or track use tax revenues, as this bill would require. In addition, the Board is currently rewriting its sales and use tax automated processes and migrating them to the Teale Data Center. This has been an ongoing effort for several years and expected to be implemented in September of 1998. To rewrite the existing automated system to accommodate the SB 110 requirements would not only take over a year to implement, it could also move the date of implementation of the new automated system which could result in significant costs - costs which would be borne by local governments. Also, to comply with this subdivision, retailers would be required to complete another schedule to account for the use tax, thereby increasing their burden of reporting the tax. To address these concerns, it was recommended that the operative date of this provision be delayed, and the Board be allowed to make estimates with the concurrence of the Department of Finance.

- (d) **Use tax should be allocated to the jurisdiction of first *functional* use, not first use.** SB 110 would require the local use tax that is self-assessed to be allocated to the local jurisdiction based on the place of use, as defined in Section 6009. Section 6009 defines “use” to mean the exercising of any right or power over the property incident to the ownership of that property. This definition is separate and distinct from what is currently used for purposes of allocating the local use tax directly to the local jurisdictions, which is based on the first “functional” use. As an example, if property is delivered from an out-of-state point directly to a port of entry which houses a warehouse of the purchaser’s, SB 110 would require the local use tax to be allocated to the local jurisdiction in which the warehouse is located, regardless of where the property is actually first functionally used. Since the use tax is currently allocated based on the place of the first “functional” use of the property, for consistency purposes, it is recommended that the use tax self-assessed be allocated to the taxing jurisdiction in which the first “functional” use of the property occurs. Without this change, a strong incentive would be made for use tax direct pay permit holders to set up storage sites in counties with lower tax rates so as to avoid paying a higher rate (due to transactions and use taxes levied by some local jurisdictions within California, the combined state, local and district sales and use tax rates range among local communities from 7.25 percent to 8.5 percent).
3. **The bill would appear to broaden the scope of confidential taxpayer records of the Board which would be open to examination by local taxing jurisdictions and their representatives.** The bill would provide that a local taxing jurisdiction or its representative may examine all of the Board records pertaining to the ascertainment of taxes to be collected for the local taxing jurisdiction. Although this verbiage is somewhat unclear, it appears it would result in local taxing jurisdictions and their designees having the right to examine confidential records of taxpayers who are not within the local jurisdiction’s boundaries, but are within the boundaries of the county, e.g., the City of Long Beach could examine Board records of the entire County of Los Angeles. Currently, a local jurisdiction may only examine records of taxpayers who report tax directly to that jurisdiction. With this expanded authority for local jurisdictions or their representatives to examine all the tax records pertaining to those revenues, together with the proposed use tax direct payment permit provisions, an increase in local tax appeals would be expected.

Senate Bill 154 (Thompson, et al.) Chapter 88
County authorization to impose 1/8 or 1/4% transactions and use tax rate

Effective January 1, 1998. Adds Chapter 2.98 (commencing with Section 7286.59) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

This bill authorizes counties to levy a transactions and use tax under the following provisions:

- **The proposed tax may be imposed in lieu of, and not in addition to, a tax imposed for purposes of funding public libraries under Section 7285.5.**
- **The proposed tax must be approved by 2/3 vote of the voters of the county.**
- **The proposed tax must be imposed at a rate of 1/8 or 1/4 percent for a period not to exceed 16 years.**
- **The ordinance must include an expenditure plan, as specified.**
- **The revenues collected are to be used only for funding library construction, acquisition, programs, and operations within the county.**
- **The transactions and use tax must conform to Part 1.6.**

Sponsor: Senator Thompson

Law Prior to Amendment:

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 1/4 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1 1/4 percent local tax.

Under this Bradley-Burns Uniform Local Sales and Use Tax Law, cities are authorized to impose a sales and use tax rate of up to 1 percent. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1 1/4 percent.

Under the existing Transactions and Use Tax Law, counties are additionally authorized to impose a transactions and use tax rate of 1/4 percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under this law, the maximum allowable rate of transactions and use taxes levied by any district may not exceed 1 1/2 percent, with the exception of San Francisco and San Mateo, whose combined rates may not exceed 1 3/4 percent and 2 percent, respectively.

The Transactions and Use Tax Law also allows counties to impose a transactions and use tax for purposes of funding drug abuse prevention, crime prevention, health care services and public education at a rate of 1/4 percent or 1/2 percent, upon voter approval.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

In General:

Many special districts in California impose a transactions and use tax that is administered by the Board. In Sacramento County, for example, a transactions and use tax of 1/2 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. Beginning April 1, 1997, there will be 34 special taxing districts in the state. The tax rate in these special taxing districts varies from district to district. Currently, the County of Stanislaus imposes the lowest transactions and use tax rate of 1/8 of one percent. San Francisco City and County has the highest transactions and use tax rate of 1 1/4 percent. The remaining districts impose rates in between these ranges. Listed below, and as shown on the attached schedule, are the various combined state and local tax rates and number of taxing jurisdictions levying those rates:

<u>Rate</u>	<u>Counties</u>	<u>Cities</u>
7 1/4 percent	35	0
7 3/8 percent	1	0
7 1/2 percent	1	0
7 3/4 percent	14	1*
8 1/4 percent	6	1**
8 1/2 percent	1	0

* Clearlake (CLPS) which is in the County of Lake

** Calexico (CXHD) which is in the County of Imperial

Background:

Local jurisdictions are increasingly reliant on the sales and use tax as a significant revenue source. As a result, numerous bills to authorize local districts to levy additional voter-approved local taxes have been introduced in the past. Recent measures include:

SB 1366 (Beverly, Ch. 1069, Stats. 1996) authorized the City of Avalon to levy a 1/2 percent tax to help fund the Avalon Municipal Hospital and Clinic.

SB 1958 (Mello) of the 1995-96 Session, which is substantially similar to this measure, died in a Senate Conference Committee.

AB 2158 (Burton) of the 1995-96 Session would have allowed any city or county to levy an unspecified rate of tax for purposes of funding breast cancer and prostate cancer treatment and prevention. This measure died in the Assembly Revenue and Taxation Committee.

AB 2951 (Hannigan, et al.) of the 1995-96 Session would have authorized the Solano County Board of Supervisors to levy a 1/8 percent tax for purposes of funding library programs and operations. This measure failed passage in the Assembly Revenue and Taxation Committee.

AB 3239 (Sher) of the 1995-96 Session would have authorized the County of San Mateo to levy a 1/2 percent tax for education, parks, recreation, and libraries. This measure died in the Assembly Revenue and Taxation Committee.

Comments:

1. **Purpose.** The purpose of the bill is to enable counties to raise additional revenues for purposes of funding library programs and operations at smaller incremental rates (1/8 percent) than is currently allowable.
2. **Proliferation of tax rates complicates administration and compliance of tax laws.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law not only created a very difficult situation for retailers but also created fiscal problems for the cities and counties. The retailer was faced with many situations which complicated tax collection, reporting, auditing and accounting. Because of the differences in taxes between areas, the retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming similarly complicated, and we are again experiencing the confusion caused by the various rates prior to the Bradley-Burns Uniform Local Tax Law. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, with a larger incidence of error. The authorization proposed in this bill for counties to impose a 1/8 percent rate will contribute greatly to these problems.

In addition, our prior experience indicates some retailers will have difficulty reprogramming cash registers and accounting programs with the rate proposed in this bill, since a 1/8 percent rate will result in a factor with five digits after the decimal point (in Sacramento County, for example, an additional 1/8 percent rate would result in a tax rate of 7 7/8 percent, for a factor of 0.07875).

3. **It is unclear why the bill restricts counties to levying the proposed tax only in lieu of a tax imposed under Section 7285.5.** Section 7285.5 currently authorizes counties to establish an authority to levy an additional tax for *specific* purposes. This bill would authorize counties to levy an additional tax in lieu of, and not in addition to, a tax imposed by a county for purposes of funding library programs under Section 7285.5. It would therefore appear that any county currently levying a tax for the funding of libraries pursuant to Section 7285.5 would not be authorized to levy the tax proposed in this bill. Currently, the counties of Madera, Sonoma, and, beginning April 1, 1997, Santa Cruz levy taxes under Section 7285.5. However, only the upcoming Santa Cruz County tax will be imposed specifically for funding library programs. It therefore appears that this limitation would only be currently extended to, possibly, Santa Cruz County. However, the rationale for adding this limitation within the provisions is unclear.

Senate Bill 355 (Monteith & House) Chapter 409
City of Madera - transactions and use tax authorization

Effective January 1, 1998. Adds Chapter 2.96 (commencing with Section 7286.65) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

This bill provides the following:

- **The City of Madera may levy a transactions and use tax at a rate of 1/4 percent, if approved by 2/3 vote of the voters.**
- **The transactions and use tax shall conform to Part 1.6.**
- **The net revenues shall be expended only for public safety services, as defined.**

Sponsor: Senator Monteith

Law Prior to Amendment:

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 1/4 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1 1/4 percent local tax.

Under this Bradley-Burns Uniform Local Sales and Use Tax Law, cities are authorized to impose a sales and use tax rate of up to 1 percent. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1 1/4 percent.

Under the existing Transactions and Use Tax Law, counties are additionally authorized to impose a transactions and use tax rate of 1/4 percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under this law, the maximum allowable rate of transactions and use taxes levied by any district may not exceed 1 1/2 percent, with the exception of San Francisco and San Mateo, whose combined rates may not exceed 1 3/4 percent and 2 percent, respectively.

The Transactions and Use Tax Law also allows counties to impose a transactions and use tax for purposes of funding drug abuse prevention, crime prevention, health care services and public education at a rate of 1/4 percent or 1/2 percent, upon voter approval.

Currently, the *County* of Madera levies a transactions and use tax of 1/2 percent for transportation purposes.

In addition to county authorization to levy a tax, through specific legislation, some cities have received authorization to impose a transactions and use tax. The following cities are so authorized: Avalon, Calexico, Clearlake, Fort Bragg, Fresno (and its sphere of influence), Lakeport, and Truckee. The cities of Clearlake and Calexico are the only two currently imposing a tax. Fresno had imposed a tax for the period 7/1/93 through 3/21/96, however, this tax ceased to be operative, as it was declared unconstitutional.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

In General:

Many special districts in California impose a transactions and use tax that is administered by the Board. In Sacramento County, for example, a transactions and use tax of 1/2 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. Beginning April 1, 1997, there will be 34 special taxing districts in the state. The tax rate in these special taxing districts varies from district to district. Currently, the County of Stanislaus imposes the lowest transactions and use tax rate of 1/8 of one percent. San Francisco City and County has the highest transactions and use tax rate of 1 1/4 percent. The remaining districts impose rates in between these ranges. Listed below are the various combined state and local tax rates and number of taxing jurisdictions levying those rates:

<u>Rate</u>	<u>Counties</u>	<u>Cities</u>
7 1/4 percent	35	0
7 3/8 percent	1	0
7 1/2 percent	1	0
7 3/4 percent	14	1*
8 1/4 percent	6	1**
8 1/2 percent	1	0

* Clearlake (CLPS) which is in the County of Lake

** Calexico (CXHD) which is in the County of Imperial

Comments:

1. **Purpose.** The purpose of this bill is to give the City of Madera and its citizens more control in raising additional funds for public safety purposes. The author's office points out that the City of Madera is currently experiencing a drain of qualified police officers to surrounding areas that offer higher compensation. Between 1993 to 1997, Madera had a 53 percent turnover in its police department primarily due to the ability of surrounding areas to pay salaries well in excess of the median market rate for peace officers. Without additional funds, the City of Madera will experience a shortfall of qualified police officers with a disproportionately high law enforcement workload.
2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law not only created a very difficult situation for retailers but also created fiscal problems for the cities and counties. The retailer was faced with many situations which complicated tax collection, reporting, auditing and accounting. Because of the differences in taxes between areas, the retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Uniform Local Tax Law in 1955, and we are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Since then, several more cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increases in the Board's administrative costs.

3. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Uniform Local Tax Law.** There are 470 cities within California. As more and more cities gain authorization to levy their own local taxes, the administration of these taxes will become more and more severely complicated. Considering the increase since 1991 in measures approved by the Legislature which authorize cities to impose transactions and use taxes (as indicated above, 7 cities now have authorization), strong consideration should be given to revising

the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Uniform Local Sales and Use Tax Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered. This would minimize the problems associated with districts which are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively, as they are now.

4. **Proposition 172 revenues are apparently not enough.** Proposition 172, approved by the voters in November, 1993, authorized a 1/2 percent sales and use tax increase for purposes of funding local public safety services. The revenues derived from this tax are allocated by the Controller's office to counties based on each county's proportionate share of the total taxable sales. The counties, in turn, allocate a portion of the revenues by formula to each city within the county. According to Madera County, the city of Madera has accrued the following revenues as a result of this 1/2 percent tax:

1993-94	\$60,918
1994-95	63,626
1995-96	72,387

Senate Bill 1101 (Alpert) Chapter 733
Exemption for ground control stations

Tax levy; effective October 7, 1997; operative April 1, 1998. Amends Section 6366 of the Revenue and Taxation Code.

This bill exempts ground control stations from the sales and use tax when sold to any foreign government for use by that government outside of this state or sold to any person who is not a resident of this state and who will not use that ground control station in this state otherwise than in the removal of the ground control station from this state. The bill defines “ground control station” to mean a portable facility used to operate aircraft in the air without a pilot on-board and includes controls, video equipment, computers, generators and communications equipment sold as an integral part of the station, and antennas used to operate the aircraft. The term does not include trucks, or tractor-trailers, or other devices solely used to transport the ground control stations.

This bill also includes language stating that it is the intent of the Legislature that the Board administer this exemption in a manner that is consistent with the existing regulations administering the exemption for the sale and use of aircraft sold to a foreign government or non-resident for use outside this state.

Sponsor: General Atomics

Law Prior to Amendment:

Under current law, sales tax is imposed on retailers for the privilege of selling tangible personal property in this state. The use tax is imposed on the storage, use, or other consumption of tangible personal property purchased for use in this state. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless that property is specifically exempted.

Sales of any tangible personal property to the United States, its unincorporated agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, and the American National Red Cross, its chapters and branches are exempt from the sales tax.

With respect to sales of aircraft, Section 6366 of the Revenue and Taxation Code provides an exemption from the sale in this state of, and the storage, use, or other consumption in this state of aircraft sold to any person using the aircraft as a common carrier, or sold to the United States government, or any foreign government for use by that government outside of this state, or sold to any person who is not a resident of this state and who will not use that aircraft in this state

except for removing the aircraft from this state. This exemption also extends to purchases of any tangible personal property that becomes a component part of an exempt aircraft as a result of the maintenance, repair, overhaul, or improvements of that aircraft, as specified.

Sales and Use Tax regulations define aircraft as any contrivance designed for powered navigation in the air, except a rocket or missile, and including an airframe or a fuselage even without an engine. The exemption is not affected if prior to or after delivery, the aircraft is operated in this state for the purpose of testing or pilot training, if the training period is no longer than is reasonably required for that purpose.

Background:

Unmanned air vehicles (UAVs) are aircraft that are piloted through ground control stations and are used for reconnaissance and surveillance, as targets, and for scientific and environmental research. Pilot training is also conducted using ground control stations and flight simulators. Under current law, all sales of ground control stations delivered or installed in California are subject to sales or use tax unless the sale is to the United States.

Comments:

1. **Purpose.** General Atomic Aeronautical Systems Inc. (ASI), an affiliate of General Atomics (GA), designs, manufactures, and sells UAVs. They believe that the concept of a UAV, where the pilot and the controls (the “cockpit”) are on the ground, was not anticipated when Section 6366 and related regulations were enacted.
2. **The Board’s administration of the Sales and Use Tax Law would not be materially affected.** The exemption proposed by this measure would not materially affect the Board’s administration of the Sales and Use Tax Law. Under current law, sales of UAVs and ground control stations to the U.S. government are already exempt. This bill would not result in new registrations or audits since additional purchases of these exempt items would not require taxpayer registrations and would be made by large corporations that are already subject to scheduled audits.

Senate Bill 1102 (Alpert, et al.) Chapter 620***Board-sponsored measure:******Unconstitutional provisions relating to "engaged in business in this state"******Allocation of sales tax collected on diesel fuel******Napa County and cities therein offset provisions (not Board-sponsored)***

Effective January 1, 1998. Among other things, amends Sections 6203 and 7102 of, and adds Section 7204.5 to, the Revenue and Taxation Code.

This bill deletes current subdivisions (e) and (h) of Section 6203 which the Court of Appeals has recently determined to be unconstitutional.

In addition, this bill adds the correct reference to diesel fuel in Section 7102 as contained in the pertinent law sections.

Also, this bill allows the County of Napa and any cities located in Napa County to take up to three years to repay the Board for refunds of the local tax on oak barrels purchased for making wine, provided those quarterly refunds exceed \$50,000.

Senate Bill 1104 (Alpert, et al.) Chapter 686
Managed audit program

Effective January 1, 1998. Adds and repeals Article 2.5 (commencing with Section 7076.1) of Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code.

This bill authorizes the Board to institute a managed audit program. At the discretion of the Board, and consistent with the efficient use of audit resources, taxpayers who meet the following criteria could be considered candidates for a managed audit:

- (1) Persons not required to make tax prepayments (less than \$17,000 in monthly taxable sales);**
- (2) Persons whose business involves few or no statutory exemptions;**
- (3) Persons whose business involves a single or small number of clearly defined taxability issues;**
- (4) Persons who agree to participate in the managed audit program; and**
- (5) Persons who have the resources to comply with the managed audit instructions provided by the Board.**

Those taxpayers the Board selects and who agree to participate in a managed audit will be required to examine books, records, and equipment to determine unreported tax for the audit period, and make all computations and records available to Board staff for review and verification. Specifically, a managed audit agreement will include:

- (1) the audit period;**
- (2) the types of transactions covered;**
- (3) the specific procedures the person is to follow in determining liability;**
- (4) the records to be reviewed by the person;**
- (5) the manner in which the types of transactions are to be scheduled for review;**
- (6) the time period for completion of the managed audit;**
- (7) the time period for the payment of the liability and interest; and**
- (8) such other criteria as the Board may require for completion of the managed audit.**

As an incentive to participate in a managed audit, upon completion of the work and verification by the Board, the bill provides that any tax liability discovered would be subject to only one-half the rate of interest that would otherwise be due. However, failure to pay the liability and interest in a timely manner could result in a complete examination of a taxpayer's records.

The provisions of this bill will remain in effect until all managed audits commenced before January 1, 2001 were completed.

Sponsor: Board of Equalization

Law Prior to Amendment:

Under existing law, Section 7054 of the Revenue and Taxation Code, the Board is authorized to examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax. The authority is granted in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

Under various sections of the law, the payment of interest is required for failure to pay a sales or use tax liability within the time periods established by law. The only relief granted from the payment of interest is if a person's failure to pay the tax was due to a disaster.

Background:

In an effort to more efficiently and effectively reach a larger segment of taxpayers required to report and pay sales and use tax liabilities, it has become the practice of other states, including Ohio and South Dakota, to develop a managed audit program in which the bulk of the audit work can be performed by the taxpayer. In this era of increased demands for government streamlining and productivity, the Board also seeks new methods to improve the efficiency of examining tax compliance by businesses without severely compromising the work product. The managed audit program is one such approach.

Comments:

1. **Purpose.** Standard Board audits require an investment of both the taxpayer's and the Board's time in order to be reasonably assured that a taxpayer is complying with the sales and use tax laws. Because of the cost/benefit ratio of performing a standard Board audit, some smaller or middle-sized businesses are not always audited. Even if a taxpayer is not fully complying with the tax laws due to a simple misunderstanding of the tax laws, it is not always a prudent use of the state's resources for the Board to conduct the traditional sales and use tax audit. This bill would decrease the cost of performing a cursory review of the records of smaller businesses which are not currently being audited.

2. **Managed audits could also be an option for accounts routinely audited.** At the Board's discretion, the managed audit program could be an option for businesses with few or no statutory exemptions or involved with a single or small number of clearly defined taxability issues. A managed audit program would reduce the time spent on some companies which are currently subject to periodic reviews.

This measure would not, however, automatically allow taxpayers to participate in a managed audit program for procedures which they are currently expected to perform. For example, in order to verify claimed resale deductions for which a taxpayer failed to obtain the proper resale certificates, they often prepare and send resale verification letters to their customers on behalf of the Board. This and other efforts by taxpayers to support claimed exempt sales would not fall under the criteria of a managed audit.

3. **Managed audits would be more convenient for taxpayers.** Under a managed audit program, with a limited amount of guidance from the Board, a taxpayer could critically examine, within the time frame specified by the Board, the internal controls and accounting records of its business enterprise in which significant tax error could occur in order to determine their correct measure of tax. They could also perform these tasks during hours convenient to their business operations.

4. **Advantages of a managed audit to a taxpayer include:**

Reduced interest rate imposed on some tax liabilities;

Education of the tax laws through increased Board contact with smaller businesses;

Increased accuracy of future tax reporting through a better understanding of the tax laws;

Decreased disruption of the business operations from reduced auditor presence;

Establishment of an on-going, cooperative relationship with the Board; and

Resolution of tax issues within the audit period.

5. **Advantages of managed audits to the state include:**

Reduction of audit costs from taxpayers conducting testing procedures;

Expansion of the audit program to smaller businesses;

Reduction in the number of audits subject to resolution through the administrative appeals process;

Reduction in the number of audits subject to litigation; and

Resolution of taxability issues as a condition of a managed audit.

6. **A managed audit would not necessarily be considered a validation of a taxpayers reporting methods.** Section 6596 generally provides that a person may be relieved of a tax liability if they relied on written advice from the Board. If a prior audit report of a person requesting tax relief contains written evidence which demonstrates that the issue in question was discussed with that person, the prior audit would be considered written advice from the Board.

Section 7076.6 of this bill specifically provides that a managed audit would not be considered written advice for the purposes of tax relief under Section 6596. Because a managed audit would not be a thorough examination of a taxpayer's records, a managed audit would not be considered a tax opinion rendered by Board staff for the purposes of Section 6596.

TABLE OF SECTIONS AFFECTED

SECTIONS	BILL NUMBER	SUBJECT
Revenue & Taxation Code		
§6018 - Amend	SB 13; Ch. 184	Replacement contact lenses
§6203 - Amend	SB 1102; Ch. 620	Unconstitutional provisions
	AB 258; Ch. 621	Conventions and trade shows
§6364.5 - Added	AB 993; Ch. 773	Blood collection and pack units
§6366 - Amended	SB 1101; Ch. 733	Ground control stations
§6385 - Amended	AB 366; Ch. 615	Water common carriers
§7051.3 - Added	SB 110; Ch. 702	Use tax direct payment permits
§7056 - Amended	SB 110; Ch. 702	Examination of records - local jurisdictions
§7076.1 - Added	SB 1104; Ch. 686	Managed audit program; Legislative findings and declarations
§7076.2 - Added	SB 1104; Ch. 689	Managed audit program; ; eligibility
§7076.3 - Added	SB 1104; Ch. 686	Managed audit program; information to be provided to person for audit
§7076.4 - Added	SB 1104; Ch. 686	Managed audit program; Board's authority to examine books
§7076.5 - Added	SB 1104; Ch. 686	Managed audit program; interest

TABLE OF SECTIONS AFFECTED (CONTINUED)

§7076.6 - Added	SB 1104; Ch. 686	Managed audit program; exception for Section 6596
§7076.7 - Added	SB 1104; Ch. 686	Managed audit program; effective date of article
§7102 - Amended	SB 1102; Ch. 620	Sales tax allocation - diesel fuel
§7204.5 - Added	SB 1102; Ch. 620	Napa County offset - oak barrels
§7221 - Added	SB 110; Ch. 702	Bradley-Burns Bill of Rights
§7222 - Added	SB 110; Ch. 702	Bradley-Burns Bill of Rights - Definitions
§7223 - Added	SB 110; Ch. 702	Bradley-Burns Bill of Rights - Legislative findings
§7224 - Added	SB 110; Ch. 702	Bradley-Burns Bill of Rights - uniform administration of law
§7225 - Added	SB 110; Ch. 702	Bradley-Burns Bill of Rights - reliance of Board's written information
§7226 - Added	SB 110; Ch. 702	Bradley-Burns Bill of Rights - charge for costs of Board's services
§7286.52 - Added	AB 1472; Ch. 712	Transactions and use tax - Woodland
§7286.65 - Added	SB 355; Ch. 409	Transactions and use tax - Madera
§7286.59 - Added	SB 154; Ch. 88	Transactions and use tax - county authorization for library funding
Chapter 12 (commencing with Section 8500) - Added	AB 595; Ch. 878	Metropolitan Transportation Commission tax on motor vehicle fuel

