



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

Date Introduced:	12/04/00	Bill No:	AB 37
Tax:	Sales and Use	Author:	Strickland
Board Position:		Related Bills:	AB 19X (Briggs)

BILL SUMMARY:

This bill would provide a sales and use tax exemption for sales of gasoline and diesel fuel.

ANALYSIS:

Current Law:

Existing law imposes a sales or use tax on the gross receipts from the sale of, or the storage, use, or other consumption of, tangible personal property, unless specifically exempted by statute. Under existing law, sales of gasoline and diesel fuel are subject to sales or use tax.

Section 6385 of the Revenue and Taxation Code provides a sales tax exemption for that portion of fuel and petroleum products sold to a water common carrier that is left on board after the water common carrier reaches its first out-of-state destination. With respect to air common carriers, Section 6357.5 provides an exemption for the sale or purchase of fuel and petroleum products sold to air common carriers when the fuel and petroleum products are for immediate consumption or shipment in the conduct of the air carrier's business on an international flight.

Proposed Law:

This bill would add Section 6389 to the Revenue and Taxation Code to provide a sales and use tax exemption for sales of motor vehicle fuel as defined by Section 7304, and sales of diesel fuel, as defined by Section 60022 of the Revenue and Taxation Code.

This bill would also provide that local agencies shall be reimbursed in the annual Budget Act for any sales and use tax revenues lost by them under this act.

The provisions of the bill would become operative immediately.

Background:

Senate Bill 325 (Ch. 1400, 1971) made possible the imposition of state sales and use tax on sales of gasoline, in exchange for a reduction in the basic state tax rate, from 4 percent to 3 ¾ percent, without a corresponding loss in revenue. In addition to taxing gasoline, SB 325 also provided that the federal and state imposed excise taxes on gasoline are subject to the sales and use tax.

Three bills were introduced last year to provide varying exemptions on sales of gasoline and diesel fuel. Assembly Bill 1706 (Strickland, et al.) would have provided a sales and use tax exemption for sales of gasoline and diesel fuel. AB 1706 was amended in the

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Assembly Revenue and Taxation Committee to remove the tax exemption language from the bill. Assembly Bill 43 (Villaraigosa) would have provided a 5 percent state sales and use tax exemption for sales of gasoline and diesel fuel for the period June 1, 2000 through September 30, 2000. AB 43 was never heard in a policy committee. Senate Bill 1777 (Burton) would have provided a 5 percent state sales and use tax exemption for sales of gasoline and diesel fuel, and also would have created a Petroleum Windfall Profits Tax that would have been imposed on refineries for failing to pass on the tax exemption savings to consumers. SB 1777 was never heard in a policy committee. The Board was *neutral* on AB 1706, *neutral, point out problems* on AB 43 and voted to *support* SB 1777.

One measure that was successful last year earmarked the sales tax on gasoline for transportation purposes. Assembly Bill 2928 (Ch. 91, Stats. 2000) requires certain sales and use tax revenues generated from the sale of gasoline and diesel fuel to be transferred to Traffic Congestion Relief Fund and the Transportation Investment Fund for the purpose of funding transportation projects in the state.

COMMENTS:

- 1. Sponsor and Purpose.** According to Assembly Member Strickland's office, who is also the sponsor of the bill, this measure is intended to help lower gasoline prices by eliminating the sales tax on gasoline and diesel fuel sales.
- 2. Proposed immediate operative date would be burdensome.** A new sales and use tax exemption would require the Board of Equalization to notify affected retailers of the law change. This is typically accomplished by publishing an article in the Board of Equalization quarterly Tax Information Bulletin mailed to taxpayers and/or mailing a special notice to affected taxpayers. Once taxpayers are notified of the change, they would be required to re-program their registers and pumps so that tax would not be collected on exempt transactions. For these reasons, the immediate operative date of the proposed statute would place a burden on retailers and the Board of Equalization.
- 3. Transportation funding would be reduced.** The provisions enacted last year by AB 2928 provide that the sales tax revenue on sales of gasoline be transferred to the Traffic Congestion Relief Fund and the Transportation Investment Fund. The revenue transferred to these funds are used to pay for various transportation projects in the state, such as road improvements, road maintenance, and mass transit projects. Creating an exemption for sales of gasoline and diesel fuel would eliminate the revenues that would normally be appropriated to these funds.
- 4. Suggested technical amendment.** On January 1, 2002, the provisions of Assembly Bill 2114 (Ch. 1053, Stats. 2000) will become operative. This bill eliminates the current Motor Vehicle Fuel License Tax Law and replaces it with the new Motor Vehicle Fuel Tax Law. The appropriate section in the new law that defines motor vehicle fuel will be Section 7326, not the section 7304 referenced in this bill.

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- 5. Definition of motor vehicle fuel.** This bill provides that the exemption will apply to sales of motor vehicle fuel as defined in Section 7304. Section 7304, and on 1/1/02, Section 7326, of the Revenue and Taxation Code provides that "motor vehicle fuel" includes gasoline, natural gasoline, blends of gasoline and alcohol containing more than 15 percent gasoline, and any inflammable liquid, by whatever name the liquid maybe known or sold, which is used or is usable for propelling motor vehicles operated by the explosion type of engine. It does not include kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, ethanol, or methanol. It does not include inflammable liquids specifically manufactured for racing motor vehicles which do not contain gasoline or natural gasoline and which are distributed and used for racing motor vehicles at a racetrack.
- 6. Definition of diesel fuel.** This bill provides that the exemption will apply to sales of diesel fuel as defined in Section 60022. Section 60022 of the Revenue and Taxation Code provides that "diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle. "Diesel fuel" does not include kerosene. "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be known or sold, when the liquid is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the tax imposed in Part 2 (commencing with Section 7301) or Part 3 (commencing with Section 8601).
- 7. Interstate users of diesel fuel would continue to pay an amount equivalent to the sales tax.** Pursuant to Sections 60115 and 60116 of the Diesel Fuel Tax Law, interstate users must pay an excise tax on each gallon of diesel fuel used in this state at a tax rate of 18 cents per gallon plus an amount equivalent to the rate of sales tax imposed on diesel fuel purchased in this state. Interstate users can subsequently claim a credit for the total amount of the tax on each gallon used outside California provided they actually paid the tax to an in-state retailer. These provisions in the law were added by AB 1269 (Ch. 618, 1997) in order to eliminate the incentive for an interstate user to tank up outside California. Without conforming amendments to Sections 60115 and 60116, interstate users would still be required to pay the equivalent sales tax component on their use of diesel fuel in this state, provided this bill were enacted.

COST ESTIMATE:

Some additional administrative workload would be realized as a result of notifying affected retailers and responding to inquiries. A detailed cost estimate of the workload impact is pending.

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REVENUE ESTIMATE:

The average retail price (less sales tax) of motor vehicle fuel (gasoline) in California for fiscal year 1999-2000 was \$1.435 per gallon. Consumption of gasoline in California is estimated to be 14.5 billion gallons annually. Total annual sales of gasoline are estimated to be \$20.8 billion. (14.5 billion gallons x \$1.435 per gallon = \$20.8 billion.)

The average retail price (less sales tax and state excise tax) of diesel fuel in California for fiscal year 1999-2000 was \$1.294 per gallon. Consumption of diesel fuel in California is estimated to be 2.4 billion gallons annually. Total annual sales of diesel fuel are estimated to be \$3.1 billion. (2.4 billion gallons x \$1.294 per gallon = \$3.1 billion.)

The total sales that would be exempted by this proposal would amount to \$23.9 billion annually.

Revenue Summary

The annual revenue impact from exempting motor vehicle fuel and diesel fuel from the sales and use tax would be as follows:

	<u>Revenue Effect</u> (in millions)		
	<u>Gasoline</u>	<u>Diesel</u>	<u>Total</u>
State loss (4.75%)	\$ 988.0	\$ 147.3	\$1,135.3
Local loss (2.25%)	468.0	69.8	537.8
Transit loss (0.67%)	<u>139.4</u>	<u>20.8</u>	<u>160.2</u>
Total	<u>\$1,595.4</u>	<u>\$ 237.9</u>	<u>\$1,833.3</u>

The estimated annual amounts to reimburse local agencies would be as follows:

<u>Fund</u>	<u>Amount</u>
Local Public Safety Fund	\$ 119.5 million
Local Revenue Fund	119.5 million
Local Sales and Use Tax	298.8 million
Transactions and Use Tax	<u>160.2 million</u>
Total	<u>\$ 698.0 million</u>

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