STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**5/24/01**	Bill No:	**AB 58XX**
Tax:	**Sales and Use**	Author:	**Runner**
Board Position:	**Neutral**	Related Bills:	**SB 1064 (Polanco)** **AB 16XX (Briggs)** **AB 37 (Strickland)** **AB 1636 (Briggs)** **SB 835 (Battin)**

BILL SUMMARY

This bill would provide a sales and use tax exclusion for sales of gasoline to the extent the sales price exceeds $1.40 per gallon.

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 amend Sections 6011 and 6012 of the Revenue and Taxation Code to exclude from the definition of "sales price" and "gross receipts" the cost of gasoline to the extent that it exceeds $1.40 per gallon at the retail level.

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 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**. This bill is sponsored by the author. The purpose of this bill is to provide consumers with some tax savings to help offset the current high retail prices for gasoline.
2. **Consumers may not realize tax savings.** Gasoline is generally sold at a "tax-included" price. Therefore, when a retailer sells gasoline for $1.95 per gallon, that price includes the sales tax. If the proposed exclusion were to become law, the retailer could absorb the tax savings and the prices at the pump paid by consumers may not change.
3. **Proposed immediate operative date would be burdensome**. A new sales and use tax exclusion 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 excluded transactions. For these reasons, the immediate operative date of the proposed statute would place a burden on retailers and the Board of Equalization.
4. **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 is used to pay for various transportation projects in the state, such as road improvements, road maintenance, and mass transit projects. Creating an exclusion for sales of gasoline would reduce the revenues that would normally be appropriated to these funds.

5. **Prepaid tax rate on fuel would need to be adjusted.** Current law requires retailers of gasoline to prepay a portion of the sales tax due on the retail sale of gasoline. Creating an exclusion for sales of gasoline over $1.40 per gallon could result in numerous overpayments made by gasoline retailers due to the prepaid amounts exceeding their total sales tax liability. The Board sets the rate by November 1 of the year prior to the effective date of the new rate and notifies affected sellers by January 1. The new rate takes affect April 1. Section 6480.1 provides that if the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed established rate results or are significantly lower than retailers' sales tax liabilities, the Board may re-adjust the rate. It is recommended that this section be amended to allow the Board to re-adjust the rate due to passage of an exemption or exclusion in addition to the current authority to adjust the rate due to changes in the price of fuel.

6. **Related Legislation.** Other bills providing a sales and use tax exemption for the sale of fuel have been introduced this session. SB 1064 (Polanco) would provide a sales and use tax exclusion for sales of diesel fuel to the extent the price per gallon exceeds $0.75 at the terminal rack. AB 37 (Strickland) would provide a sales and use tax exemption for sales of gasoline and diesel fuel. AB 16XX (Briggs) would provide a partial sales and use tax exemption for sales of diesel fuel used in farming activities for the period of July 1, 2001 through December 31, 2001. AB 1636 (Briggs) would provide a partial sales and use tax exemption for sales of diesel fuel. SB 835 (Battin) would exclude from the sales and use tax any federal and state excise taxes included in the selling price of gasoline and diesel fuel. The Board voted to be neutral on SB 1064, AB 37, AB 16XX, AB 1636, and SB 835.

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.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Under current law, the purchase of gasoline is taxed on the full retail price per gallon. This proposal would exempt from the sales and use tax the amount paid above $1.40 per gallon. Gasoline sales are extremely volatile and can fluctuate significantly. The retail price in the following chart includes federal and state excise tax and excludes state and local sales and use tax. Retail prices during 2000 have ranged from a low of $1.345 per gallon to a high of $1.848 per gallon. Current prices average $1.902 per gallon (as of June 11, 2001). The total gallonage of gasoline consumed in California during 2000 was 14.8 billion gallons. The revenue effect from exempting the amount above $1.40 from the sales and use tax is as follows:

	Low	High	Current
Price per gallon	$1.345	$1.848	$1.902
Proposed Base Rate	$1.400	$1.400	$1.400
Exemption per gallon	0	$0.448	$0.502
Gallonage	14.8 billion	14.8 billion	14.8 billion
Exemption Amount	0	$6.6 billion	$7.4 billion
Average Tax Rate (7.92%)	.0792	.0792	.0792
Revenue Loss	0	$522.7 million	$586.1 million

Revenue Summary

The annual revenue impact from exempting the cost of gasoline over $1.40 per gallon from the sales and use tax using the current retail price of $1.902 per gallon is estimated to be $586.1 million.

	Revenue Loss
State (5.00%)**	$ 370.0 million
Local (2.25%)	$ 166.5 million
Special District (.67%)	$ 49.6 million
Total	$ 586.1 million

** While the state tax rate is 4.75 percent for calendar year 2001, it is assumed the tax rate will return to 5.0 percent in 2002.

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