STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	**08/17/05**	Bill No:	**AB 451**
Tax:	**Local Sales and Use**	Author:	**Yee, et al.**
Related Bills:	**AB 1282 (Mullin & Ruskin)**		

BILL SUMMARY

This bill would, operative January 1, 2008, modify the way the 1 percent Bradley-Burns Uniform local tax would be allocated on sales of jet fuel, so that the place of sale for sales of jet fuel would be the place in which the fuel is delivered into the aircraft, regardless if the retailer has only one or more than one place of business in this state, or whether the sales are negotiated in this state, except as specified.

Summary of Amendments

The amendments to this bill since the previous analysis delete the requirement that the Legislative Analyst's Office conduct a study and prepare a report on or before October 1, 2006 on the state sales and use tax system.

ANALYSIS

Current Law

Under existing law, the Board administers the Bradley-Burns Uniform Local Sales and Use Tax Law which authorizes counties to impose a local sales and use tax of 1 percent on 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 percent local tax.

Under current law, cities are authorized to impose a sales and use tax rate of up to 3/4 percent. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1 percent. (Most cities' ordinances provide for a city tax rate equaling 3/4 percent; however, there are several cities that have ordinances providing for a small fraction less than 3/4 percent).

Of the 1 percent Bradley-Burns local tax rate, the 1/4 percent portion is allocated to the county in which the sale or use of the property occurred for purposes of funding county transportation projects.

Section 7205 of this Bradley-Burns law specifies the "place of sale" for purposes of the local sales tax. Under this section, in general, all retail sales in California are consummated at the place of business of the retailer. **If a retailer has *only one* place of business** in California, the local sales tax derived from sales consummated at that place of business is transmitted by the Board to the city, county, or city and county in which the retailer's place of business is located. If title to the property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place

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outside the city, county, or city and county in which the retailer's place of business is located, or that the property sold is never within the city, county, or city and county in which the retailer's place of business is located. Therefore, if a jet fuel dealer in California has only one place of business, and that place of business is at an airport, under current law, the local tax derived from the sale of jet fuel by that dealer would be transmitted to the city, county, or city and county in which the airport is located. If that place of business is somewhere other than an airport, the local tax derived from the sale of jet fuel would be transmitted to the city, county, or city and county in which the dealer's place of business is located, regardless of the fact that the purchaser takes title to the fuel at an airport.

If a jet fuel retailer has **more than one place of business in the State**, the place or places at which the retail sales are consummated for purposes of allocating the local tax is generally the local jurisdiction in which the jet fuel is delivered into the aircraft. The law contains specific provisions with respect to the allocation of local tax on sales of jet fuel delivered to aircraft at San Francisco and Ontario international airports and at airports that are located in a different local jurisdiction than the jurisdiction that owns or operates the airport – referred to as "multijurisdictional airports" in the law. For jet fuel sales at the San Francisco airport, the tax is split evenly between the city and county of San Francisco and the county of San Mateo. For Ontario, the city of Ontario receives the tax at the city-imposed rate of 3/4 percent, and the County of San Bernardino receives ¼ percent.

If a jet fuel retailer negotiates its sales outside California, local tax is allocated as follows:

1. Generally, the local tax is allocated through the countywide pools depending on the counties in which the fuel is delivered into the aircraft. Each jurisdiction within the county receives a proportionate share of that revenue, based on its proportionate share of the total local tax allocated to that jurisdiction.
2. If the oil company has no other activities or locations in this state, and if it has a stock of goods, the local tax would be allocated to the city or county where the stocks of goods are located.

For multijurisdictional airports, the tax is split between the jurisdiction in which the airport is located and the jurisdiction that owns or operates the airport, as further specified in law.

Proposed Law

This bill would amend Sections 7204.03 and 7205 of the Bradley-Burns Uniform Local Sales and Use Tax Law, operative January 1, 2008, to specify that, for purposes of allocating the local sales and use tax on sales of jet fuel, the place at which the retail sale of that jet fuel is consummated for purposes of allocating that local tax is the point of delivery of the fuel into the aircraft, except as specified.

Background

Up until July 29, 1991, sales of fuel and petroleum products to aircraft common carriers were exempt from 80 percent of the Bradley-Burns Uniform Local Tax when the fuel was used outside the county in which the sale was made. This exemption had traced back to the days when the local tax rates were not uniform. At that time, the common carriers and public utilities contended that the various local tax rates produced

competitive disadvantages and disruptions of trade because of the varying rates among local jurisdictions. This exemption was repealed by SB 180 (Stats. 1991, Ch. 236) as part of the budget compromise.

With respect to jet fuel transactions, airlines generally negotiate their purchases at the headquarters of the fuel supplier. Usually, airlines offer a bid with the oil companies. When a bid is awarded, the contract is generally executed at the headquarters of the oil company. Thus, prior to the enactment of AB 66 (Stats. 1998, Ch. 1027) the local tax was allocated to the taxing jurisdiction in which those negotiations occurred.

After the partial local tax jet fuel exemption was repealed in 1991, but before AB 66 became law, one jet fuel vendor began erroneously allocating the local tax on its sales of jet fuel to the location of the tank farms located at each airport. In most cases, the tank farms and airports are located in the same local jurisdiction. However, at the San Francisco International Airport, the airport itself (where the fuel is delivered into the aircraft) is located in an unincorporated area of San Mateo County, and the tank farms are located in the City of South San Francisco. The vendor was erroneously allocating the tax to the jurisdiction where they believed the tanks were located - the County of San Mateo. A local tax consultant filed a request for reallocation for the local tax, claiming that the local tax should be allocated to the City of South San Francisco, since that is the jurisdiction where the tanks are located. When the Board reviewed the local tax consultant's claim, the Board concluded that, in fact, the tax should have actually been allocated to the jurisdiction in which the principal negotiations took place - the City and County of San Francisco. The Board then reallocated the local tax in accordance with the law.

Consequently, AB 66 was enacted to amend the Bradley-Burns Uniform Local Sales and Use Tax Law to modify the allocation of the local tax on sales of jet fuel by retailers having more than one place of business in California and where the principal negotiations for those sales occur in California. In essence, the local tax is generally allocated to the local jurisdiction in which the jet fuel is delivered into the aircraft, with the exceptions described in the previous paragraphs.

A similar local tax allocation measure was considered last session, AB 2466 (Yee, as amended August 23, 2004). The bill passed the Legislature, but was vetoed by the Governor. The Governor's veto message stated, "The policy issue contained in this bill, while important, does not require waving an opportunity for the public to be involved in the process. Recognizing the importance of a policy discussion on this issue, this bill requires that the State Auditor conduct an audit to examine certain aspects of the state sales and use tax system. The report issued by the State Auditor should be part of the discussion before enacting new changes in the Bradley-Burns Uniform Local Sales and Use Tax Law. I would encourage the Legislature to revisit this issue next session."

COMMENTS

1. **Sponsor and purpose.** The bill is sponsored by the City and County of San Francisco. According to the author's office, it is intended to "ensure that local governments that host airports receive the benefit of sales tax on jet fuel sales, as envisioned by the Legislature when it passed AB 66 in 1998. AB 451 will close the loophole and restore the Legislature's intent when it passed AB 66."

2. **The August 17, 2005 amendments** delete the requirement that the Legislative Analyst's Office conduct a study and prepare a report on or before October 1, 2006 on the state sales and use tax system. **The June 27, 2005 amendments** incorporate the provisions that require the LAO to conduct a study and prepare a report. The proposed amendments would, in addition, delay the operative date with respect to the proposed changes to the allocation of local tax on specified jet fuel transactions, to January 1, 2008.
3. **What would these proposed allocation changes do?** Operative January 1, 2008, the bill would only change the way local tax on jet fuel sales is currently allocated with respect to sales of jet fuel where the principal negotiations for the sale occur outside California, and with respect to sales by retailers with only one place of business. With these changes, regardless of whether a retailer negotiates the sale in-state or out-of-state, or whether a retailer has only one business location, or multiple, the local tax would be allocated to the place in which the fuel is delivered into the aircraft. The exceptions for multijurisdictional airports, San Francisco and Ontario would remain in law, however.
4. **These amendments could to a small degree impact some fixed base operators' local tax allocation.** There are over 100 airports in California that sell jet fuel. At many of these airports, purchasers of jet fuel maintain a fuel purchasing account with fixed base operators operating out of the airport. If any of these fixed base operators who have only one place of business in California negotiate these sales in a jurisdiction outside the jurisdiction in which the airport is located, the local tax allocations on these transactions would shift – from the jurisdiction where the negotiations took place to the jurisdiction where the airport is located. We do not expect a significant number of fixed base operators to fall into this category.
5. **Bill would not be problematic to administer.** Enactment of this measure would not materially increase the Board's workload, as enactment of this measure would not appear to affect a significant number of jet fuel providers.
6. **Related legislation.** A similar jet fuel local tax allocation measure, AB 1282 (Mullin & Ruskin), would delete the provisions related to "multijurisdictional airports" and provide that the place of sale for all jet fuel sales is the point of delivery of the fuel into the aircraft whether or not the retailer has more than one place of business in this state, and whether or not the sales are negotiated inside or outside California. This measure died in the Assembly Revenue and Taxation Committee.

COST ESTIMATE

Administrative costs would be incurred in notifying affected retailers, changing the regulation, reviewing schedules for proper allocation, and answering inquiries. These costs would be insignificant (less than $10,000).

REVENUE ESTIMATE

Enactment of this bill would result in the shifting of local tax from one local jurisdiction to another beginning January 1, 2008. However, the law prohibits the Board from divulging confidential information regarding taxpayers' accounts that report tax to the Board. Since there are a limited number of jet fuel providers outside California and with only one place of business in this state, divulging the actual dollar amount of the shifting could provide a means to calculate confidential tax information about specific taxpayers. Consequently, we cannot divulge the dollar amounts by jurisdiction that would reflect the extent of this shifting.

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