



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

Date Amended	<b>03/27/01</b>	Bill No:	<b>AB 984</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Papan</b>
Board Position:		Related Bills:	

**BILL SUMMARY**

This bill would provide a sales and use tax exemption for the sale and leaseback of public passenger transportation vehicles when sold or leased by a transit authority, special district, or governmental entity.

**ANALYSIS**

**Current Law**

Under the existing sales and use tax law, sales or use tax applies to the sale or use of all tangible personal property, unless specifically exempted. Generally, a sale includes any lease of tangible personal property for a consideration. However, leases of mobile transportation equipment are specifically excluded from the definition of a “sale.” Mobile transportation equipment (MTE) includes equipment such as railroad cars, buses, trucks, tractors, aircraft and ships. The lessor of MTE is regarded as the consumer of the property and tax applies to the retail sale to the lessor, unless the lessor makes a timely election to report tax on the fair rental value.

**Proposed Law**

This bill would add Section 6368.8 to the Sales and Use Tax Law to provide an exemption from the sales and use tax for the sale in this state of, or the storage, use, or other consumption in this state of, public passenger transportation vehicles sold or leased by a transit authority, special district, or governmental entity and leased or subleased back to that authority, district, or entity.

This bill provides that “public passenger transportation vehicles” would include, but not be limited to, rail passenger cars, locomotives, other rail vehicles, bus and van fleets, and ferry boats used in the provision of public transportation services.

This bill also provides that the proposed exemption would not apply to the first or initial acquisition or use of a public transportation vehicle by a transit authority, special district, or governmental agency.

This bill would become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date.

*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.*

### In General

Since 1990, a number of California transit agencies have sought to generate additional revenues by entering into transactions which transfer the depreciation attributes of an asset, such as passenger rail cars or buses, to a private taxable entity. Such arrangements are described as a “sale and leaseback.” The transaction allows the private firm to take federal income tax deductions, while permitting the equipment to be used by the transit agency for its intended public purpose of providing transit services. In exchange for participating in the transaction, the transit agency receives an up-front payment from the private firm. The up-front payment from the private firm is enough to cover the lease payments over the term of the lease, plus a premium of 6-8 percent of the equipment cost. This 6-8 percent premium is revenue the transit agency can use to meet future transit capital or operating needs.

The transit agency pays sales or use tax on the initial purchase of the equipment. However, if a transit agency were to enter into a sale and leaseback under current law, the sale by the transit agency to the purchaser/lessor would also be subject to sales or use tax. This additional sales or use tax expense would offset the 6-8 percent premium that the transit agency would have received. Due to the imposition of the sales and use tax, there is no financial benefit for either party to enter into such a transaction.

### Background

Assembly Bill 3382 (Ch. 558, Stats. 1990) provided that a “sale” and “purchase” does not include any transfer of title to, nor any lease of, tangible personal property pursuant to an acquisition sales and leaseback. To qualify as an acquisition sale and leaseback, the person must have paid sales tax reimbursement or use tax on the purchase price of the property and the acquisition sale and leaseback must be consummated within 90 days of the person’s first functional use of the property. In practice, many of the assets held by a transit agency have been functionally used for more than 90 days, so the acquisition sale and leaseback provisions would not apply.

### COMMENTS

- 1. Sponsor and purpose.** The sponsor of this bill is the California Transit Association. This measure is intended to provide a means for transit agencies to enter into sale and leaseback transactions without the penalty of paying the sales or use tax twice.
- 2. Income tax benefit is not available to transit agencies.** Since transit agencies do not pay income taxes, they have no way to depreciate their assets for income tax purposes. This bill would allow the transit agency to transfer the income tax benefit to another entity in exchange for a share of the benefit.
- 3. Suggested amendments.** Current law provides for an exclusion, in contrast to an exemption, from the sales and use tax for acquisition sale and leaseback transactions. It is recommended that the proposed exemption in this bill for the sale and leaseback of public transportation vehicles be amended to instead provide an exclusion from the definition of sale and purchase for the sale and leaseback of public transportation vehicles so that it is consistent with the current sales and use tax exclusion. Board staff is willing to work with the author’s office in drafting appropriate amendments.

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- 4. This bill would not be problematic to administer.** If amended, the provisions of this bill would apply to a limited number of transactions and would not be difficult for the Board to administer.

**COST ESTIMATE**

Some costs would be incurred in revising returns, regulations and publications. These costs are expected to be absorbable.

**REVENUE ESTIMATE**

**Background, Methodology, and Assumptions**

This bill specifies that the proposed exemption does not apply to the first or initial acquisition or use of a public transportation vehicle. This proposal would exempt the sale/leaseback or lease/leaseback transactions that transit agencies might enter into. Under these types of arrangements, the transit district would either sell or lease vehicles, for which the sales or use tax has already been paid on the original acquisition, to a private entity. The private entity would then lease the vehicles back to the transit authority. The transaction in effect transfers the tax depreciation attributes of the vehicles to the private entity. The transit authority uses the vehicles for public transit services and receives an up-front payment from the private entity.

These types of transactions are currently exempt, if the sale/leaseback transaction occurs within 90 days of the first functional use of the vehicles by the transit agency. This proposal would extend the exemption for these transactions to all public transportation vehicles rather than to only newly purchased vehicles.

The California Transit Association states that no such sale/leaseback arrangements for older vehicles currently exist and unless this proposal is adopted, it would not be cost effective for transit agencies to enter into such sale/leaseback arrangements.

**Revenue Summary**

There would not be any current revenue impact from exempting from the sales and use tax sale/leaseback or lease/leaseback agreements concerning public passenger transportation vehicles as no such agreements exist now or would be entered into without this exemption.

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