



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

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Date Amended:	As Proposed	Bill No:	AB 2239
Tax:	Sales and Use	Author:	Emmerson
Related Bills:	AB 1809 (Stats. 2006, Ch. 49)		

BILL SUMMARY

This bill would provide that, for purposes of the rebuttable presumption applicable to vehicles, vessels and aircraft purchased outside this state and brought into California within 12 months from the date of purchase, a vehicle brought into this state within 12 months of its purchase for the exclusive purpose of warranty or repair services, shall not be deemed to be purchased for use in California, as specified.

Summary of Amendments

The proposed amendments add the proposed amendments to Section 6248 and delete the former provisions of AB 2239 that would have required the Department of Motor Vehicles (DMV) to provide information to a person applying for registration of a vehicle purchased outside the state and brought into the state within the first 12 months of the purchase date, that the applicant may not be liable for the tax on the purchase and use of a vehicle pursuant to the Revenue and Taxation Code.

ANALYSIS

Current Law

Under existing law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code, a use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is required to be remitted to the Board, or in the case of a vehicle or undocumented vessel, to the DMV.

Under the law, the California sales tax generally does not apply to a transaction when a California retailer sells an item and ships it directly to the purchaser at an out-of-state location for use outside California. The sale is regarded under the law as a sale in interstate commerce. In general, the sale is not taxable if the retailer:

- Ships the product directly to the purchaser, in another state or in a foreign country, using the retailer’s own delivery vehicle or another means of transport that the retailer owns; or
- Ships the product to another state or to a foreign country by delivering it to a common carrier, contract carrier, customs broker, export packer, or forwarding agent.

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.

Section 6248 of the Sales and Use Tax Law, as amended by SB 1100 (Stats. 2004, Ch. 226), and extended by AB 1809 (Stats. 2006, Ch. 49), provides that, for the period October 2, 2004, through and including June 30, 2007, it shall be rebuttably presumed that a vehicle, vessel, or aircraft bought outside this state and brought into this state during the first 12 months of the date of purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

(a) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code.

(b) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(c) In the case of a vessel or aircraft, the vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(d) The vehicle, vessel, or aircraft was used or stored in this state more than one-half of the time during the first 12 months of ownership.

This section further provides that this presumption may be controverted by documentary evidence, that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. Such evidence includes, but is not limited to, proof of registration of that vehicle, vessel, or aircraft with the proper authority outside of this state. In addition, the law specifies that these provisions do not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the Board.

And, finally, Section 6248 specifies that an aircraft or vessel shall not be deemed to be purchased for use in this state if that aircraft or vessel is brought into this state for the purpose of repair, retrofit, or modification of the aircraft or vessel, provided that no more than 25 hours of airtime or sailing time are logged for that purpose, as specified. This section has no similar exception for repairs, retrofitting, or modifications of a vehicle.

Proposed Law

This bill would amend Section 6248 of the Sales and Use Tax Law to specify that a vehicle purchased outside this state and brought into this state within 12 months of its purchase for the exclusive purpose of warranty or repair service shall not be deemed to be acquired for storage, use, or other consumption in this state, provided the vehicle is not used or stored in this state for that purpose for more than 30 days, as specified.

The bill further provides that if the vehicle is used or stored in this state for more than 30 days, there shall be a rebuttable presumption that the vehicle was purchased for use in this state. The bill provides that this presumption may be controverted by documentary evidence that demonstrates the vehicle was in the physical possession of the facility performing the repair or warranty services which caused the vehicle to be used or stored in this state for more than 30 days.

The bill would become operative January 1, 2007.

Background

Section 6248 was added to the Sales and Use Tax Law in 1963 and provided a rebuttable presumption that a vehicle bought outside this state that is brought into California within 90 days from the purchase date was purchased for use in this state, and therefore, subject to California's use tax. The amendments to Section 6248 that occurred by Stats. 2004, Ch. 226 (SB 1100), were part of the tax-related provisions of the 2004-05 budget package. These provisions were extended by an additional year as part of the tax-related provisions of the 2006-07 budget package. These amendments to Section 6248 were prompted by a perceived tax loophole with respect to the "90-day" law.

Under the "90-day" law, there were instances in which, for example, California purchasers of yachts from California yacht retailers were arranging delivery of the yachts outside the territorial waters of California, leaving them in Mexico for the 90-day period, and bringing them into California and escaping the California sales or use tax.

The 12-month provisions incorporated into Section 6248 were intended to reduce the frequency of these sorts of arrangements.

COMMENTS

- 1. Sponsor and Purpose.** The author is sponsoring this bill to provide a reasonable exception to the strict 12-month rule for vehicles, in a manner similar to the exception provided to vessels and aircraft, by allowing purchasers of automobiles, RVs and other vehicles to bring the vehicle into California within 12 months of the date of purchase for no more than 30 days in order to service their vehicles without incurring a use tax liability. The author is the sponsor of this measure.
- 2. The proposed amendments** delete the former provisions that would have required the DMV to provide information to a person applying for registration of a vehicle purchased outside the state and brought into the state within the first 12 months of the purchase date, that the applicant may not be liable for the tax on the purchase and use of a vehicle pursuant to the Revenue and Taxation Code. **The April 4, 2006 amendments** incorporated the provisions requiring DMV to provide the information to vehicle registration applicants. The introduced version of this measure was a spot bill, making a nonsubstantive change to Section 6248.
- 3. Provisions wouldn't appear to significantly impact administration of Section 6248.** Since October 2, 2004, the Board has been administering the exception provided in Section 6248 for the repair, retrofit and modification to vessels and aircraft brought into this state within the first 12 months of purchase. Thus far, staff has not observed instances in which purchasers are attempting to use this exception as a way to bring their vessel or aircraft into California under a repair "sham" just to maintain the exemption. Therefore, staff doesn't anticipate any significant administrative problems with the provisions of this measure.

COST ESTIMATE

Some costs would be incurred in notifying affected retailers and answering inquiries. These costs are expected to be insignificant (less than \$10,000).

REVENUE ESTIMATE

Enactment of this measure would not materially affect the state's sales and use tax revenues.

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