STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**02/19/02**	Bill No:	**SB 1510**
Tax:	**Sales and Use**	Author:	**Knight**
Board Position:		Related Bills:	**AB 2897 (Wiggins)**

BILL SUMMARY

This bill would exempt from the sales tax that portion of fuel and petroleum products sold to an air common carrier that remains on board after the air common carrier reaches its first out-of-state destination.

ANALYSIS

Current Law

Under existing law, 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 remains on board after the water common carrier reaches its first out-of-state destination. This section additionally provides a sales tax exemption for tangible personal property, other than fuel and petroleum products, sold to air, water, and rail common carriers when that property is shipped to a point outside this state under specified conditions.

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. Therefore, if an air common carrier's final destination were France, for example, current law would exempt the entire sale of fuel purchased in California, even if that carrier had stops in Los Angeles and New York before reaching its final destination. On the other hand, if the air carrier's final destination was somewhere in the United States, current law would impose tax on the entire sale of the fuel in California.

Proposed Law

This bill would add Section 6385.5 to the Sales and Use Tax Law to provide a sales tax exemption for the sale of fuel and petroleum products to air common carriers for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination. If enacted, only that portion of fuel used to reach the air common carrier's first out-of-state destination would be subject to tax provided the carrier purchased fuel in California for use in its business as a common carrier for immediate use outside this state. The remaining portion would be exempted by the provisions of this bill (unless, however, the air common carrier is on an international flight, in which case, the sale of fuel would be entirely exempt under current law).

The provisions of the bill would become operative on the first day of the calendar quarter commencing more than 90 days after the bill is enacted.

Background

Until July 15, 1991, sales of fuel and petroleum products to air, water, and rail common carriers were exempt from sales tax when used in the conduct of the carriers' common carrier activities after the first out-of-state destination. The rationale for this exemption was that it made California ports and airports more competitive, and it established consistency in the Sales and Use Tax Law for interstate and foreign commerce sales by exempting that portion of the fuel which was actually transported outside this state prior to any use. However, because of the budget crisis in 1991, this exemption was repealed by AB 2181 (Stats. 1991, Ch. 85) and SB 179 (Stats. 1991, Ch. 88).

In 1992, however, AB 2396 (Ch. 905) restored this exemption for fuel and petroleum products, but only with respect to water common carriers, and only until January 1, 1998. The sponsors of that measure, Pacific Merchant Shipping Association, successfully argued before the Legislature that the July 1991 repeal of the exemption had been directly responsible for a decline in the number of ships which bunker in California ports, and that reinstating the exemption would increase bunker activity in California. The sunset date of January 1, 1998 was extended until January 1, 2003 by AB 366 (Stats. 1997, Ch. 615).

Two bills to restore the exemption for air and rail common carriers were introduced in the 1996 Legislative Session. Assembly Bill 3375 (Olberg) would have restored the exemption for rail common carriers. Assembly Bill 566 (Kaloogian) would have restored the exemption for air common carriers. According to a Department of Finance analysis of AB 566, "Governor Wilson has proposed a different form of tax relief for the aircraft industry. Under the Governor's proposal, a sales tax exemption would be extended to property that becomes a component part of an exempt aircraft as a result of maintenance, repair, overhaul, or improvement of the aircraft in compliance with FAA requirements." The Governor's proposal was actually enacted in the 1996 Legislative Session by SB 38 (Lockyer, et al., Stats. 1996, Ch. 954) which, among other things, included the sales tax exemption for the component parts.

Two bills similar to this bill have been introduced in the past. Assembly Bill 1800 (Machado), introduced during the 1998 Legislative Session, failed to pass the Assembly Appropriations Committee. Assembly Bill 2470 (Wiggins), introduced during the 2000 Legislative Session, failed to pass the Assembly Revenue and Taxation Committee. The Board was neutral on both Assembly Bill 1800 and Assembly Bill 2470.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author. The purpose of this bill is for air common carriers to recapture the exemption that had been available to them prior to its repeal in 1991.
2. **Reinstatement of the exemption would not be problematic for the Board.** Since the Board has previously administered this measure's proposed exemption, we do not anticipate any administrative problems with its reinstatement.
3. **Technical amendment suggested.** Since Section 6357.5 of the Sales and Use Tax Law provides that the entire sale of fuel is exempted if sold to an air common carrier on an international flight, it is recommended that "and except as provided in Section 6357.5" be added after "Section 6385," on page 2, line 3, in order to avoid any conflict.
4. **Related Legislation.** Assembly Bill 2897 (Wiggins) would provide a sales and use tax exemption for the sale or purchase of fuel and petroleum products sold to air common carriers to the extent the sales price exceeds $0.50 per gallon. The Board has not yet taken a position on AB 2897. Senate Bill 145 (Perata) would extend the January 1, 2003 sunset date for sales of fuel and petroleum products sold to water common carriers to January 1, 2013. The Board has voted to support SB 145.

COST ESTIMATE

Some costs would be incurred in notifying taxpayers, revising regulations and pamphlets, and answering inquiries from the public. These costs would be absorbable.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

According to the Energy Information Administration, total sales of jet fuel in California for the year 2001 amounted to 3.2 billion gallons. According to the Bureau of Transportation Statistics, it is estimated that 27 percent of all fuel is consumed by air common carriers with foreign destinations. Fuel consumed by air common carriers whose final destination is a foreign country is currently exempt from the sales and used tax. Therefore, the total gallonage used by air common carriers for domestic flights is 2.3 billion gallons (3.2 billion gallons X 0.73).

Based upon the figures provided by the Air Transport Association, the total fuel consumption attributable to usage after the first out-of-state destination that would qualify under this proposal is 345.0 million gallons, or 15% of total consumption.

According to the Energy Information Administration, the current price of jet fuel sold in California as of February 18, 2002 was $0.583. The total expenditures that qualify under this proposal are $201.1 million (345.0 million gallons X 0.583).

Revenue Summary

The revenue loss from exempting $201.1 million in fuel sales from the sales and use tax is as follows:

	Revenue Loss
State loss (5%)	$ 10.1 million
Local loss (2.25%)	$ 4.5 million
Special district loss (0.67%)	$ 1.3 million
Total	$ 15.9 million

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