STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**05/26/05**	Bill No:	**AB 68**
Tax:	**Sales and Use**	Author:	**Montanez**
Related Bills:			

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

This bill would enact the Car Buyer's Bill of Rights to, among other things, require car dealers to offer a 3-day contract cancellation option agreement, not to exceed $250, on used vehicles with a purchase price of under $40,000. For sales tax purposes, the $250 contract cancellation option would not be part of taxable gross receipts.

Summary of Amendments

The May 26, 2005 amendments make technical, nonsubstantive changes to the bill.

ANALYSIS

Current Law

The Sales and Use Tax Law imposes a sales or a use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted or excluded by statute. Sections 6011 and 6012 of the Sales and Use Tax Law, define "sales price" and "gross receipts" as the total amount of the sale, lease or rental price, without any deduction on account of the cost of materials used, labor or service costs, interest charged, losses, or any other expenses related to the sale of the property. However, the law expressly excludes from the definition of "gross receipts" and "sales price" property that is returned by the customer when the entire amount is refunded either in cash or credit. A refund or credit of the entire amount is deemed to be given when the purchase price and sales tax, less rehandling and restocking costs, if any, are refunded or credited to the customer. Therefore, unless the entire purchase price is returned to the customer, the entire amount of sales tax is due on the original sales price.

Regulation 1655, *Returns, Defects and Replacements*, interprets and makes specific the laws governing returned merchandise. Regulation 1655 specifies the conditions that must be met to claim a deduction for returned merchandise. Those requirements are:

- The original sale must have been reported as part of total taxable sales.
- The full sales price, including sales tax, has been refunded either in cash or credit.
- The customer in order to obtain the refund or credit was not required to purchase other property at a price greater than the amount charged for the property returned.

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A refund or credit of the entire amount is deemed to be given when the purchase price and sales tax, less rehandling and restocking costs, are refunded or credited to the customer. The amount withheld for rehandling and restocking may not exceed the actual cost of rehandling and restocking the returned merchandise. However, in lieu of using the actual cost for each transaction, the amount withheld for rehandling and restocking may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle (generally one year).

Proposed Law

This bill would enact the Car Buyer's Bill of Rights. Among other things, this bill would add Section 11713.21 to the Vehicle Code to require a car dealer to offer a 3-day contract cancellation option agreement on used vehicles with a purchase price of less than $40,000. The purchase price for the contract cancellation option agreement would not exceed $250, and would allow the purchaser to return the used vehicle without cause, provided that specified conditions are met. The contract cancellation option applies only to used vehicles sold for personal, family, or household use. Among other things, the contract cancellation option agreement would include the following information:

1) A statement specifying the time within which the buyer must exercise the right to cancel the purchase and return the vehicle to the dealer. The time period specified in the contract shall not be earlier than three days from the day on which the dealer delivers the vehicle to the buyer.
2) A statement specifying the dollar amount of any restocking fee the buyer must pay to the dealer to exercise the right to cancel the purchase under the contract cancellation option agreement. The restocking fee would not exceed $350 for a vehicle with a purchase price of less than $10,000, and would not exceed $500 for a vehicle with a purchase price of $10,000 or more. The dealer must apply toward the restocking fee the price paid by the buyer for the contract cancellation option (i.e., $250).
3) A statement specifying the maximum number of miles that the vehicle may be driven during the specified time period in order for the buyer to remain eligible for cancellation under the contract cancellation option agreement. A dealer will not specify fewer than 250 miles in the contract cancellation option agreement.
4) A statement that the right to cancel will apply only if, within the time period specified in the contract (i.e., minimum of a 3-day period), the buyer provides the dealer with the following:
   a) a written notice exercising the right to cancel the purchase signed by the buyer;
   b) any restocking fee specified in the contract cancellation option agreement minus the purchase price of $250 for the contract cancellation option;
   c) the original contract cancellation option agreement and vehicle purchase contract and related documents;
   d) all original vehicle titling and registration documents;
   e) the vehicle which must be returned in the same condition as when it was delivered by the dealer to the buyer, excluding reasonable wear and tear;

f) the vehicle must not have been driven beyond the mileage limit specified in the contract cancellation agreement (i.e., dealer must allow at least 250 miles).

5) Provide that no later than the second day following the day on which the buyer exercises the right to cancel the purchase in accordance with the contract cancellation option agreement, the dealer will cancel the contract and make a full refund, including that portion of the sales tax attributable to amounts excluded pursuant to Section 6012.3 of the Sales and Use Tax Law. The full refund will include any vehicle the buyer left with the dealer as downpayment or trade-in.

This bill would also add Section 6012.3 to the Sales and Use Tax Law to provide that "gross receipts" and "sales price" do not include that portion of the sales price returned to the buyer of a used vehicle or the purchase price of $250 or less for the purchase of the contract cancellation option agreement, pursuant to Section 11713.21 of the Vehicle Code.

This bill would become operative July 1, 2006.

Background

Current law requires motor vehicle dealers to make certain disclosures to buyers, including that California law does not provide for a "cooling off" period or other cancellation period for vehicle sales. Under the California Lemon Law (Civil Code section 1793.2), a manufacturer is required to provide restitution or a replacement to the buyer of a new vehicle when the vehicle is a "lemon."

Some vehicle dealers are already providing buyers with a right to return period. General Motors offers a 3-day or 150 mile "Satisfaction Guarantee" on their GM Certified used vehicles. CarMax offers a 5-day Money-Back Guarantee with every purchase of a used car or truck. Rydell's Automotive Group in San Fernando Valley also provides a 7-day return policy.

Last year, the author of this bill introduced an identical bill, AB 1839. Supporters of AB 1839 argued that the 3-day cooling off period would alleviate many of the problems associated with used car sales, such as misrepresentations regarding the vehicle's condition and being charged a price in excess of a fair market price. Opponents argued that the cooling off period represented an unwarranted intrusion into private contracts and that the reimbursement amounts would not adequately compensate the dealer for the costs of unwinding a transaction (i.e., paperwork, cancellation of financing arrangements, and inspection and/or reconditioning of the vehicle).

Though the 3-day cooling off period was amended out of the bill before being sent to the Governor, he vetoed the bill. The Governor's veto message states, in part:

> "The terms contained in the bill need to be further addressed and refined. If the goal is consumer protection, then there needs to be a level playing field with standards and terms based on objectivity and clarity, which will provide true benefit to the consumer.

My concerns with this bill include the vague definitions of certified used cars, qualified technician and the new definitions it places into law of sellers and dealers. These terms will likely cause the Department of Motor Vehicles to be involved in costly investigations over unenforceable and conflicting definitions."

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Consumers for Auto Reliability and Safety in an effort to provide a collection of consumer protections with respect to sales of motor vehicles.
2. **The May 26, 2005** amendments make technical, nonsubstantive changes to the bill, including the renumbering of certain subdivisions that had been incorrectly numbered. **The May 5, 2005 amendments** do the following: (1) require a car dealer to offer a 3-day contract cancellation option on used vehicles with a purchase price of under $40,000; (2) provide that the contract cancellation option agreement cannot exceed $250, and would allow a purchaser of a used vehicle to return the vehicle within the 3-day period without cause, as specified; (3) provide that the $250 charge for the contract cancellation option agreement is not part of taxable gross receipts; (4) specify that the restocking fee will not exceed $350 for vehicles with a purchase price of $10,000 and $500 for vehicles with a purchase price of $10,000 or more; and (5) add an operative date of July 1, 2006.
3. **Charge for contract cancellation option agreement and restocking fee.** This bill would add Section 6012.3 to the Sales and Use Tax Law to provide that "gross receipts" and "sales price" <u>do not include</u> that portion of the sales price returned to the buyer of a used motor vehicle or the purchase price for the purchase of a contract cancellation option agreement. The purchase price for the contract cancellation option agreement cannot exceed $250. The restocking fee cannot exceed $350 for a vehicle with a purchase price of less than $10,000 and $500 for a vehicle with a purchase price of $10,000 or more. The dealer is required to reduce the restocking fee by the charge for the contract cancellation option agreement (i.e., $350 or $500 restocking fee minus $250 charge for contract cancellation option).

   As previously stated, Section 6012.3 provides that "gross receipts" does not include the purchase price for the purchase of a contract cancellation option. Therefore, the purchase price for the contract cancellation option agreement is not part of gross receipts and is <u>not</u> subject to tax.

   Regarding the restocking fees, in general, these fees are <u>not</u> included in gross receipts if the restocking fee does not exceed the actual cost to restock the returned item. However, if the restocking fee exceeds the actual costs of restocking the returned item, than any excess amount would be part of gross receipts and subject to tax.

COST ESTIMATE

Administrative costs would be incurred in preparing and mailing a special notice to motor vehicle dealers, revising publications, and answering potentially numerous inquiries. A detailed cost estimate is pending.

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REVENUE ESTIMATE

A formal revenue estimate is pending. However, since the length of time to cancel the sales contract and return the vehicle to the dealer is only three days, this bill may have only minimal impact on revenue, if any. In many cases, the sale of the vehicle will not have been reported to the Board. Since the return of the vehicle would cancel the original transaction, the additional amount of sales tax collected on certain charges made by the dealer (i.e., restocking fee) would be insignificant.

Revenue Summary

This bill may have only minimal impact on revenue, if any.

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