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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**04/23/13**	Bill No:	**Senate Bill 808**
Tax Program:	**Sales and Use**	Author:	**de León**
		Code Sections:	**RTC 6357.5, 6357.6**
Related Bills:		Effective Date:	**Upon enactment**

BILL SUMMARY

This bill provides that an air common carrier's fuel and petroleum products sales and use tax exemption shall not apply to its purchases if the carrier fails to send specified health care coverage documentation.

ANALYSIS

CURRENT LAW

Except where specifically exempted by statute, California's Sales and Use Tax Law[1] imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer.

Existing law[2] provides a sales and use tax exemption for fuel and petroleum products sold to carriers when the final destination is a point outside of the United States. To qualify, the fuel and petroleum products must be for immediate consumption or shipment in the conduct of the carrier's business, and the carrier must provide the seller an exemption certificate in writing stating the quantity of fuel claimed as exempt. If a carrier's final destination were France, for example, current law exempts the California fuel purchased, even if that carrier had stops in Los Angeles and New York before reaching its final destination. On the other hand, if the carrier's final destination was within the United States, sales tax applies to the carrier's entire fuel purchases.

The law provides carriers other sales and use tax exemptions for certain purchases. For example, existing law[3] provides a sales tax exemption for the sale of tangible personal property, *other than fuel and petroleum products*, sold to carriers when that property is shipped to a point outside this state under specified conditions.

Existing law[4] also exempts from the sales and use tax, aircraft sold or leased to persons using the aircraft as a common carrier. Also, any such aircraft component parts purchased for maintenance, repair, overhaul, or improvement to comply with Federal Aviation Administration requirements are exempt from sales and use tax, as are any charges made for the labor and services rendered with respect to that maintenance, repair, overhaul, or improvement.

PROPOSED LAW

This bill amends RTC Section 6357.5 and adds RTC Section 6357.6 to specify that the sales and use tax exemption for a carrier's purchases of fuel and petroleum products

[1] Part 1, Division 2 (commencing with Section 6001) of the Revenue and Taxation Code (RTC).
[2] RTC Section 6357.5.
[3] RTC Section 6385.
[4] RTC Sections 6366 and 6366.1.

shall not apply to purchases made during a calendar year following a year that the carrier fails to send the BOE documentation that demonstrates that contractors and subcontractors performing labor or services on the carrier's behalf provide health care coverage for their employees and dependents.

The bill requires the carrier to submit the documentation by June 30, 2014 and on or before June 30 annually thereafter.

The bill specifies that, if the BOE fails to receive the documentation required, the BOE shall, by December 1, 2014, and by every December 1 thereafter, notify the carrier that the exemption shall not apply to fuel and petroleum product purchases the following calendar year, or any subsequent calendar year, unless the documentation is submitted.

The bill specifies that the carrier is liable for sales tax as if it were the retailer if the carrier claims an exemption when the exemption is not applicable under these provisions.

COMMENTS

1. **Sponsor and purpose**. Sponsored by United Service Workers West and the Service Employees International Union California State Council, this bill intends to incentivize expanded health care coverage for airline workers. According to the author's office, at the Los Angeles International Airport, restructuring over the last 20 years has led to the contracting out of jobs that were previously held by airline employees. The outsourcing of "airside" jobs, such as cabin cleaning, baggage handling, ramp operations and cargo services, has resulted in a growing income disparity. According to the author, contractors' workers typically earn $10,000 a year less than airline employees. Airlines are eligible to receive a fuel tax subsidy through an exemption, and the sponsors believe that this form of "double dipping" should be prohibited.
2. **Department of Insurance (DOI) is more knowledgeable regarding insurance matters.** The BOE has no expertise in reviewing insurance coverage documentation for completeness or legitimacy. Perhaps the bill should include a provision that requires the DOI to be responsible for the documentation review process. This would more appropriately ensure that the information that carriers submit to the responsible agency adequately demonstrates that contractors or subcontractors provide health care coverage for employees and their dependents.
3. **"Labor or services" should be clarified.** This bill requires carriers to submit health care documentation pertaining to persons with whom the carrier contracts for labor or services, but does not restrict this requirement to labor or services performed in this state. Under the language, it appears carriers must provide documentation about contractors they use in other states and countries. Also, if a carrier contracts with any sort of product supplier, it appears the carrier will not be required to submit the product supplier's insurance documentation under this bill.
4. **The bill imposes requirements on foreign carriers as well as domestic carriers.** The sales and use tax exemption for a carrier's fuel purchases applies to both domestic and foreign air carriers on international flights. Under this bill, foreign air carriers that claim the sales and use tax exemption must submit insurance documentation for domestic and foreign contractors and subcontractors in the same manner as domestic carriers. Would a domestic or foreign carrier's exemption be

disallowed in situations where the foreign country does not have employer-provided health care coverage?

5. **The bill does not specify for which period the carriers must submit information to the BOE on or before June 30 each year.** The bill does not specify which period the insurance documentation should represent. Carriers should be given sufficient notice before the new requirements take effect in order for them to be able to change their contracting policies, if desired. Perhaps for the first year, the bill should specify that carriers must submit documentation for contracts commencing on or after January 1, 2014 through May 31, 2014, and each 12-month period ending May 31 thereafter.

6. **Use of part time employees may be a loophole.** A contractor or subcontractor may have employer-based coverage for its full-time workers. However, they may also employ part-time or seasonal employees that are not included in that coverage. Under the bill, it appears that, as long as the carrier provides the BOE with the required documentation for the full-time employees, the sales and use tax exemption will apply. This appears to be true whether or not the contractor or subcontractor uses uninsured employees to perform the labor or services on behalf of the carrier.

COST ESTIMATE

If enacted, the BOE will incur annual ongoing costs to review potentially substantial health care coverage documentation, audit carriers for compliance, notify affected air common carriers, and respond to taxpayer, media, and public inquiries. An estimate is pending.

REVENUE ESTIMATE

We do not know the impact this bill will have on state and local revenues if enacted. However, as an order of magnitude, an estimate of the sales and use tax revenue impact associated with this sales and use tax exemption is provided below.

In 2012, sales of jet fuel to end users amounted to 6,128,000 gallons per day, or 2.237 billion gallons annually (6.128 million x 365 days).

Approximately 10 percent or 224 million gallons of jet fuel sold in California is for military use. Therefore, in 2012, California jet fuel sales to commercial air carriers amounted to approximately 2.0 billion gallons (2.237 billion gallons – 224 million gallons = 2.0 billion). According to previous BOE analyses, and based on Bureau of Transportation Statistics, carrier fuel consumption on international flights averages about 30 percent of the total end user jet fuel sales, or 600 million gallons (2 billion gallons x 30 percent = 600 million).

The spot price for jet fuel sales is volatile. However, if we assume an average price of $3.00 per gallon, then annual jet fuel sales exempted by Section 6357.5 amounts to $1.8 billion in California (600 million gallons x $3.00 per gallon = $1.8 billion).

Using California's statewide average sales and use tax rate of 8.38 percent, the sales and use tax associated with the exemption amounts to $150.8 million ($1.8 million x 8.38% = $150.8 million).

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