California State

Board *of* Equalization

Legislative Bill Analysis

Legislative and Research Division

Assembly Bill 945 (Ting)
Date: 05/20/15
Program: Sales and Use Tax
Sponsor: Author
Revenue and Taxation Code Section 6377
Effective: Upon enactment, but operative January 1, 2016

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Summary: Exempts from the sales and use tax (3.9375%) the greater of the following:

(1) the sum of a specified Internal Revenue Code (IRC) tax credit and any specified state incentive program amount allowed on the purchase of a qualified motor vehicle; or

(2) the trade-in value of a vehicle for the purchase of a qualified motor vehicle.

Summary of Amendments: Since the previous analysis, the bill was amended to extend the exemption an additional year and correct a typo.

Purpose: To provide a financial incentive to purchase low emission vehicles.

Fiscal Impact Summary: State General Fund revenue loss of $16.8 million annually.

Existing Law: Except where the law provides a specific exemption or exclusion, 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. Currently, the Sales and Use Tax Law does not provide any exemption or exclusion for sales and purchases of zero-emission or low-emission vehicles, or for any related tax credit or rebate amount on these vehicles.

California's sales and use tax rates. Since January 1, 2013, a statewide 7.5% sales and use tax rate applies to tangible personal property sales and purchases. The table shows California's various sales and use tax rate components (the table excludes voter-approved city and county district taxes, which range from 0.1% to 2.5%):

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes (RTC Sections 6051, 6051.3, 6201, 6201.3)
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds (RTC Sections 6051.5 and 6201.5, operative 7/1/04)
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)
0.25%	State (Education Protection Account)	Until 01/01/17, schools and community college funding (Section 36, Article XIII, State Constitution)
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
1.0625%	Local Revenue Fund 2011	Realignment of local public safety services (RTC Sections 6051.15 and 6201.15)

[1] Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code (RTC).

Rate	Jurisdiction	Purpose/Authority
1.00%	Local (City/County) 0.75% City and County 0.25% County	(RTC Section 7203.1, operative 7/1/04) General city and county operations County transportation purposes
7.50%	**Total Statewide Rate**	

Federal incentives. Existing IRC Section 30D provides a federal income tax incentive of up to $7,500 for purchases of electric and plug-in hybrid electric vehicles, which include passenger vehicles and light trucks. The credit amount varies based on the capacity of the battery used to fuel the vehicle. Small neighborhood electric vehicles do not qualify.

State incentives. The *California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007*[2] created the California Air Resources Board's (ARB) Air Quality Improvement Program (AQIP), to fund clean vehicle and equipment projects. Two programs administered under the AQIP are the Clean Vehicle Rebate Project (CVRP) and the California Hybrid and Zero-Emission Truck and Bus Voucher Inventive Project (HVIP).

Under the **CVRP**, rebates of up to $2,500[3] are issued to partially offset the higher cost of zero-emission vehicles (ZEV) and plug-in hybrid electric vehicles. The rebates are available for light-duty cars and trucks, low-speed neighborhood electric cars, and zero-emission motorcycles. The CVRP is administered statewide by the California Center for Sustainable Energy.

The **HVIP** offers vouchers from $8,000 to $45,000, on a first-come, first served basis, to offset approximately half of the additional cost of eligible new hybrid and electric trucks and buses. The ARB identifies eligible truck and bus models, with pre-set amounts offered for each eligible vehicle.

A third program, the **Carl Moyer Program - On-Road Heavy-Duty Voucher Incentive Program** (VIP) is designed to provide funding for 10 or fewer vehicle fleets to quickly replace or retrofit older heavy-duty diesel vehicles. Vouchers range from $10,000 to $45,000, depending on such factors as the miles traveled per year, the weight class of the old truck, and emission standard of the new replacement truck. Other VIP eligibility requirements are: (1) vehicle is owned and operated in California for each of the previous two years, (2) gross vehicle weight rating is greater than 19,500 pounds, and (3) vehicle's in state usage is at least 75% of the miles traveled or fuel consumed over the last two years. Trucks must be purchased through a participating dealership.

Proposed Law:

This bill exempts from the state (3.9375%) sales and use tax the greater of either:

(1) the sum of any credit allowed under IRC Section 30D, relating to new qualified plug-in electric drive vehicles, and any amount received, awarded, or allowed pursuant to a state incentive program for the purchase of a qualified motor vehicle; or

(2) the trade-in value of a vehicle that is traded in for the qualified motor vehicle if the trade-in vehicle's value is separately stated on the invoice or bill of sale or similar document provided to the purchaser.

The bill defines "qualified motor vehicle" to mean a motor vehicle that receives, or is awarded or allowed, either or both of the following:

- A credit for a Qualified Plug-in Electric Drive Motor Vehicle under IRC Section 30D.
- A state incentive amount under the Clean Vehicle Rebate Project, the California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project, or the On-Road Heavy-Duty Voucher Incentive Program within the Carl Moyer Program.

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2 AB 118, Stats. 2007, Ch. 750
3 Fuel-cell electric vehicles may receive a rebate of up to $5,000.

Exempt vehicles would be subject to the 0.25% State Education Protection Account, 0.25% State Fiscal Recovery Fund, 0.5% Local Revenue Fund, 0.5% Local Public Safety Fund, 1.0625% Local Revenue Fund 2011, and any tax levied pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law.

As a tax levy, the bill takes effect immediately, but becomes operative on January 1, 2016 until January 1, 2021.

Background: In March 2012, Governor Brown issued the Executive Order B-16-2012 directing state government to help accelerate the market for ZEVs in California. The *2013 ZEV Action Plan* was developed by the Governor's Interagency Working Group on ZEVs, and identifies specific strategies and actions that state agencies will take to meet the executive order's goals. For the purposes of this executive order and action plan, ZEVs include hydrogen fuel cell electric vehicles and plug-in electric vehicles, which include both pure battery electric vehicles and plug-in hybrid electric vehicles. The action plan addresses light-duty passenger vehicles and heavier vehicles such as freight trucks and public buses.

Legislative History: During the 1989-90 Legislative Session, SB 1006 (Ch. 990, Leonard, Stats. 1990) was enacted to encourage the development and popularization of low-emission vehicles capable of using alternative fuels. Among other things, this measure added RTC Section 6356.5 to provide, until January 1, 1995, a sales and use tax exemption for the incremental costs of the sale or use of new low-emission vehicles as identified by the ARB. Although this section was repealed by its own terms on January 1, 1995, the Legislature considered two bills to extend the sunset date: SB 381 (Hayden, 1993) which failed passage in the Senate, and SB 1883 (Campbell, 1994) which died on the Senate Appropriations Committee suspense file.

Other proposed exemptions for zero-emission or low-emission vehicles include:

Year	Bill	Summary
2013	AB 220 (Ting)	Proposed either a state 4.4375% sales tax exemption or a state 5.4375% sales tax exclusion on purchases of specified low-emission vehicles.
2013	AB 1077 (Muratsuchi)	Exempted from the state portion (5.5%) of the sales and use tax the greater of the following: (1) the sum of a specified IRC tax credit and any specified state incentive program amount allowed on the purchase of a qualified motor vehicle, or (2) the trade-in value of a vehicle for the purchase of a qualified motor vehicle.
2013	SB 221 (Pavley)	Excluded from the state sale and use tax (6.5%) a specified IRC tax credit, and any state incentive program amounts allowed on the purchase of a new alternative fuel vehicle.
2009	AB 1309 (Saldana)	State and local tax exemption, until January 1, 2015, for the sale and purchase of electric vehicles, as defined. The exemption would be limited to 100 electric vehicles per manufacturer.
2001	AB 554 (Campbell)	*State* sales and use tax exemption for a specific percentage of the gross receipts from sales of ultra-low emission vehicles, super ultra-low emission vehicles, partially zero emission vehicles, zero emission vehicles, and advanced technology partial zero emission vehicles.
1998	AB 2085 (Ortiz)	Among its provisions, provides a state and local tax exemption for the sale of a new low-emission vehicle, as defined.
1997	SB 1096 (Brulte)	Among its provisions, provides a state and local tax exemption for the incremental costs of purchasing certain heavy motor vehicles whose engines meet specific requirements for certification by the CARB.
1996	AB 3162 (Burton)	State and local tax exemption for the incremental costs of purchasing a new low-emission vehicle or for the full cost of purchasing a retrofit device to convert a conventional vehicle into a low-emission vehicle.

Year	Bill	Summary
1995	SB 780 (Leonard)	State and local tax exemption for the incremental costs of purchasing a low-emission vehicle or for the full cost of purchasing a retrofit device to make a vehicle low-emission in its operation.

Commentary:

1. **The May 20, 2015 amendments** (1) extend the sunset date an additional year from January 1, 2020 to January 1, 2021, and (2) correct a typo.

2. **Identifying eligible vehicles appears uncomplicated.** The IRS identifies and maintains on their website a list of vehicles qualifying for the IRC 30D federal tax incentives, including the incentive amount. Vehicles qualifying for a state incentive program are identified by the ARB. A current list of these eligible cars, trucks, and buses are available on the program's website, including information on the incentive amount.

3. **Currently eligible vehicles.** Vehicles eligible for the federal tax incentive include plug-in hybrid electric vehicles and ZEVs driven only by an electric motor, which include battery and fuel cell electric vehicles. The ZEV or plug-in hybrid electric vehicle must have a battery with a minimum capacity of 4 kilowatt-hours. Small neighborhood electric vehicles do not qualify for this federal incentive. Plug-in hybrid electric vehicles include the Chevrolet Volt and Ford Fusion Energi. Electric-only vehicles include the Nissan Leaf and Smart Fortwo vehicle. A list of qualified vehicles is maintained on the IRS website.

   The three state incentive programs are CVRP, HVIP, and VIP. The CVRP qualifying vehicles are ZEVs and plug-in hybrid electric vehicles. ZEVs include: (1) battery and fuel cell electric light duty cars and trucks, (2) neighborhood electric vehicles that are categorized as low-speed vehicles with four wheels and a weight of 3,000 pounds or less, and (3) two- to three- wheeled motorcycles as defined in Vehicle Code Section 400.

   For the HVIP, medium-duty and heavy-duty hybrid and electric buses or trucks, including an aerial boom truck equipped with zero-emission power take-off, are eligible.

   Lastly, for the VIP, new 2010 model year or later heavy-duty truck with a California certified engine purchased through a participating dealership.

4. **Amount of the incentives.** The bill provides a partial exemption (3.9375%) from the sales and use tax for specified federal and state tax incentive program amounts:

   Federal tax incentive amount. Eligible electric and plug-in hybrid electric vehicles qualify for a maximum $7,500. The incentive amount varies based on the capacity of the battery used to fuel the vehicle. Vehicles such as the Nissan LEAF, with a 24 kWh capacity battery, are eligible for the maximum $7,500 credit; whereas the 2012-13 Toyota Prius plug-in hybrid, only qualifies for a $2,500 credit.

   California CVRP. The incentive amount is capped at $2,500. ZEVs powered by batteries or fuel cell[4] generally qualify for the maximum incentive. Vehicles such as the Nissan LEAF and Ford Focus Electric qualify for the maximum $2,500 incentive. Zero-emission motorcycles and low speed neighborhood electric vehicles qualify for incentives up to a $900. For plug-in hybrid electric vehicles, the incentive amount is capped at $1,500. These vehicle incentives can be reserved on the date of, and not prior to, vehicle purchase.

   California HVIP. The HVIP voucher incentives range from $8,000 to $45,000 for eligible buses or trucks depending upon the bus or truck's gross vehicle weight rating. However, with additional

[4] Fuel-cell electric vehicles may receive a rebate of up to $5,000.

incentives, HVIP voucher amounts can reach $65,000 per bus or truck. The heavier the vehicle's gross vehicle weight rating, the greater the voucher incentive. For example, a plug-in hybrid truck with a gross vehicle weight of 10,000 pounds would receive a base voucher of $15,000. If that same truck demonstrates at least a 40% fuel economy, it may receive an additional $5,000 to $10,000 incentive.

California VIP. For new truck replacements, voucher incentives range from $10,000 to $45,000 and depend on factors such as miles traveled per year, the weight class of the old truck, the emission standard of the replacement truck.

5. **How would the proposed exemption work?** The bill exempts the greater of (1) any applicable federal and state incentive amounts, or (2) a vehicle's trade-in value on the purchase price of a qualified motor vehicle. For example, a Nissan Leaf, which has a manufacturer's suggested retail price (MSRP) of $38,800, would qualify for a $7,500 federal tax credit and a $2,500 state Clean Vehicle Rebate Project incentive. The total federal and state incentive amount would therefore be $10,000.

   The value of the trade-in is a key factor in the amount of the exemption. The following table illustrates the net taxable amount depending upon the trade-in value.

Determining Net Taxable Amount				
Selling Price (MSRP)	Trade-in Value	Federal and State Credits	[5]Greater Amount: Trade-in or Credit(s)?	Taxable Amount Net of Trade-in or Credit
$38,800	$7,000	$10,000	$10,000	$28,800
$38,800	$12,000	$10,000	$12,000	$26,800

6. **Vehicle dealers' record keeping responsibilities.** Vehicle dealers would be required to keep records to verify the incentive amounts. The vehicle sale or lease contract must separately state the amount of federal and/or state incentives received by the customer.

7. **Partial exemptions complicate tax administration.** Currently, most sales and use tax exemptions and exclusions apply to the total applicable sales and use tax. However, several partial exemptions exist in which only the state tax portion (5.5%) of the sales and use tax rate are exempted, such as the farm equipment and machinery exemption. These partial exemptions are difficult for both retailers and the BOE. They complicate both return preparation and processing. Moreover, errors attributable to these partial exemptions occur frequently. This results in an additional return processing workload for the BOE.

Administrative Costs: An estimate is pending to determine costs to reprogram for the partial exemption, revise and process returns, notify affected retailers, audit claimed exemptions, and answer inquiries from taxpayers' and the general public.

Revenue Impact:

Background, Methodology, and Assumptions. According to data from *The California Center for Sustainable Energy* (CCSE), there were 39,994 qualifying electric vehicles (EVs) sold during FY 2013-14. This bill allows for several different types of qualifying EVs. According to the CCSE, the maximum state rebate possible, weighted by type and number sold, is $2,030. According to the U.S. Department of

[5]The greater amount of the trade-in or credit would be partially subject to tax at the rate of 3.5625%, plus any applicable district taxes (0.25% State Education Protection Account, 0.25% State Fiscal Recovery Fund, 0.5% Local Revenue Fund, 0.5% Local Public Safety Fund, 1.0625% Local Revenue Fund 2011, and 1.0% Bradley-Burns local sales tax = 3.5625%). The net taxable amount would be subject to tax at the full state and local tax rate of 7.5%, plus any applicable district taxes.

Energy, Alternative Fuels Data Center (AFDC) and pluginamerica.org, the average U.S. incentives, weighted for number and type of vehicles sold in California, is $7,481. Thus, the combined state and federal incentives average about $9,511 per vehicle ($2,030 state rebates + $7,481 federal incentives = $9,511).

According to *National Auto Dealers Association* (NADA), the average used car selling price is $18,111. The industry trade-in value is the wholesale price, which is 62% of the selling price, resulting in an average trade-in value of $11,229 ($18,111 x 62% = $11,229). Since this bill states the greater of either the rebate amount or the trade-in value must be used, the trade-in value of $11,229 is used for EV purchases accompanied by trade-ins.

According to NADA, 57% of new car sales are accompanied by trade-ins. Of the 39,994 qualifying EVs sold in California, 22,797 would be accompanied by trade-ins. This number would be exempted from the 3.9375% General Fund portion of the sales tax rate. Thus the amount subject to the proposed exemption would be $10.1 million ($11,229 trade-in value x 22,797 trade-ins x 3.9375% = $10.1 million).

Staff assumes the remainder of new, qualifying EV purchases will utilize available rebates. Of the 39,994 qualifying EVs sold in California, 17,197 will utilize available rebates (39,994 EVs - 22,797 with trade-ins = 17,197). This would be exempt from the General Fund portion of the sales tax rate. Thus the amount subject to the proposed exemption is $6.4 million (17,197 rebates x $9,511 incentives x 3.9375% = $6.4 million).

According to Calstart, 292 qualifying commercial vehicles were purchased during FY 2013-14. The average delivered price was $114,896, and the average rebate was $25,383.

According to commercialtrucktrader.com, the average used commercial vehicle selling price is $40,625. Using the same 62% as above to calculate the trade-in value yields $25,187. Since this bill states the greater of either the rebate amount or the trade-in value must be used, the rebate value of $25,383 is used for qualifying commercial vehicles accompanied by trade-ins.

Using the same trade-in percentage as above, 57% of the 292 qualifying commercial vehicles sold in California were accompanied by a trade-in, which equates to 166. Subtracting 166 from 292 amounts to 126 qualifying commercial vehicle sales without trade-ins. This number without trade-ins would be exempted from the 3.9375% General Fund portion of the SUT rate. Thus the amount subject to the exemption is $125,494 (126 without trade-ins x $25,383 rebate x 3.9375% = $125,494).

Assuming the remainder of new, qualifying commercial vehicle purchases will utilize the exemption for trade-in value, 166 trade-in values will be exempted from the General Fund sales tax rate. This yields a total exemption of $165,066 (166 trade-ins x $25,187 trade-in value x 3.9375% = $165,066).

This bill exempts only the 3.9375% General Fund portion of the total sales tax rate on the purchase of qualifying vehicles. Thus total revenue losses from qualifying personal and commercial rebates would be $16.8 million [($10.1 million + $6.4 million) private + ($125,494 + $165,066) commercial = $16.8 million].

Revenue Summary. The annual General Fund revenue loss from this bill is $16.8 million.

Qualifying Remarks. Due to the nature of the commercial vehicle market, dealers and manufacturers are reluctant to broadcast the price of their product. Since staff used typical list prices, and these prices may be high, revenue losses would be greater than they would be if actual selling prices were available for review.

Other assumptions include:

- A 100 percent participation in the rebate program.
- The maximum possible rebate will be awarded.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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 BOE's formal position.