California State
Board *of* Equalization

Legislative Bill Analysis

Legislative and Research Division

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Assembly Bill 2673 (Harper, et al)
Date: 03/28/16
Program: Sales and Use Tax
Sponsor: First Element Fuel
Revenue and Taxation Code Section 6377.5
Effective: Upon enactment but operative January 1, 2017 to January 1, 2030

This analysis is limited to the bill's effect on the BOE-related tax programs

Summary: Provide a sales and use tax exemption on the sale or use of hydrogen refueling station equipment purchased by qualified grant recipients[1] from January 1, 2017, to January 1, 2030.

Summary of Amendments: Since the previous analysis the bill was amended to add two additional co-authors.

Purpose: According to the author's office, this bill would enable state grant recipients to use 100% of their granted funds towards building hydrogen refueling stations rather than a portion of the funds being reabsorbed back into the state through sales and use taxes.

Fiscal Impact Summary: Average annual revenue losses of $59,769.

Existing Law: California's Sales and Use Tax Law[2] 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, unless the law provides a specific exemption or exclusion from the sales or use tax.

California's sales and use tax rates: Effective January 1, 2017, California's statewide sales and use tax rate will be 7.25%.[3] The table below shows California's various sales and use tax rate components that apply as of January 1, 2017 (the table excludes voter-approved city and county district taxes):

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes (Revenue and Taxation Code (RTC) Sections 6051, 6051.3, 6201, and 6201.3)
1.0625%	Local Revenue Fund 2011	Realignment of local public safety services (RTC Sections 6051.15 and 6201.15)
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)
1.25%	Local (City/County) 1.00% City and County 0.25% County	(RTC Sections 7202 and 7203); City and county general operations Dedicated to county transportation purposes
7.25%	Total Statewide Rate	

Construction contracts. Under the Sales and Use Tax Law, specific rules apply to the furnishing and installing of tangible personal property pursuant to a construction contract. Contracts for improvements

[1] "Qualified grant recipient" means a person who has received a grant pursuant to Health and Safety Code Section 44272 for the development of hydrogen refueling stations within this state.
[2] Part 1 of Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).
[3] The .25% tax imposed under Section 36 of Article XIII of the State Constitution (Proposition 30, The Schools and Local Public Safety Protection Act of 2012) will sunset December 31, 2016.

to real property constitute construction contracts, and the person who performs the construction contract is a construction contractor. Generally, a construction contractor is the consumer of materials, such as electrical wiring, concrete, and other items, furnished and installed in the performance of a construction contract. Therefore, tax generally applies to the sale of materials to the construction contractor. In contrast, a construction contractor is generally regarded as the retailer of fixtures (items that are accessory to a structure and don't lose their identity as accessories when installed), and the sales tax applies to the contractor's sale of the fixture.

Currently, the Sales and Use Tax Law does not provide any exclusion or exemption for the sale or of zero-emission refueling station equipment, or any related tax credit or rebate amount on these types of equipment.

Proposed Law: The bill exempts from sales and use tax hydrogen refueling station equipment when sold to or stored, used or otherwise consumed by the State Energy Resources Conservation and Development Commission's (Commission) qualified grant recipients in this state from January 1, 2017 to January 1, 2030.

Definitions. This bill defines several key terms, as follows:

"**Qualified grant recipient**" means a person who has received a grant pursuant to Section 44272 of the Health and Safety Code for the development of hydrogen refueling stations within this state.

"**Hydrogen refueling station**" means any motor vehicle fueling station which provides hydrogen fuel, either exclusively or concurrently with other motor vehicle fuels, for use by fuel cell electric vehicles.

"**Fuel cell**" means a device that directly or indirectly creates electricity through an electrochemical process using hydrogen, or hydrogen-rich, fuel and oxygen or another oxidizing agent

The bill defines "**Hydrogen refueling stations equipment**" to include any of the following:

- Equipment, including, but not limited to, machinery, devices, contrivances, and components, repair, or replacement parts, whether purchased separately or in conjunction with a complete machine and regardless of whether the equipment or component parts are assembled by the grant recipient or another party, to be located at a hydrogen refueling station within this state and used exclusively for the distribution, dispensing, storage, or production of hydrogen fuel for fuel cell electric vehicles, including, but not limited to, pressurized storage, compression, pre-cooling, and pumping of hydrogen fuel.
- Personal property that is software or software services, regardless of location, and computer, computer-type, or data processing hardware or hardware services, regardless of location, that is used exclusively for the distribution, dispensing, storage, or production of hydrogen fuel at a hydrogen refueling station for fuel cell electric vehicles.
- Any other personal property required to operate, control, regulate, or maintain the hydrogen refueling station equipment.

This bill also adds an income tax credit that would be administered by the Franchise Tax Board.

Background: Enacted in 2013, Assembly Bill 8 (CH. 401, Perea) established $20 million annual funding for hydrogen refueling stations through grants administered by the Commission. The funding is available until there are at least 100 operational and publicly available hydrogen refueling stations in California, or until January 1, 2024.

Also in 2013, California joined Connecticut, Maryland, Massachusetts, New York, Oregon, Rhode Island, and Vermont in signing a memorandum of understanding (MOU)[4] to support the deployment of Zero Emission Vehicle's (ZEV) through involvement in a ZEV Program Implementation Task Force (Task Force).

[4] State Zero-Emission Vehicle Programs – Memorandum of Understanding (http://www.nescaum.org/documents/zev-mou-8-governors-signed-20131024.pdf/)

In May 2014, the Task Force published a ZEV Action Plan[5] identifying 11 priority actions to accomplish the goals of the MOU, including deploying at least 3.3 million ZEVs and adequate fueling infrastructure within the signatory states by 2025.

Commentary:

1. **Effect of the bill**. This bill would enable qualified grant recipients to purchase, use, or consume hydrogen refueling stations equipment, as defined, without paying sales or use tax from January 1, 2017 to January 1, 2030.
2. **The April 26, 2016 amendments** make non-substantive changes and add 2 coauthors.
3. **The Commission's grant program has a different sunset date than the sales and use tax exemption**. The sunset date for the grant program is January 1, 2024, while the sunset date for this bill is January 1, 2030. The later sales tax exemption sunset date allows grant recipients additional time to utilize the sales and use tax exemption to build hydrogen refueling stations.
4. **Exemption also applies to local and district taxes.** The proposed sales and use tax exemption for recipients of the Commission's grant program includes all taxes imposed at the place of sale. The total sales and use tax rate includes local taxes and voter-approved city and county district taxes. This exemption applies to the entire sales and use tax rate resulting in revenue loss for cities and counties.
5. **The exemption is not transferable to construction contractor.** The proposed law exempts the sale of, and storage, use, or other consumption in this state of, hydrogen refueling station equipment, as defined, to qualified grant recipients, as defined. The exemption in the proposed law only applies when title to the materials and fixtures transfers to the "qualified grant recipients." Construction contractors hired to work on behalf of a qualified grant recipient would not benefit from the exemption with regards to materials and fixtures they consume.
6. **List of qualified participants.** In order to properly identify taxpayers qualified to use this new exemption, a report or publicly available list of "qualified grant recipients" should be provided to the BOE.

Costs: BOE will incur absorbable administrative cost to update the BOE's website, notify retailers, revise the BOE's publications and forms, and answer inquiries from taxpayers.

Revenue Impact:

Background, Methodology, and Assumptions. According to the California Air Resources Board (ARB), there were 44 hydrogen fueling stations in operation in 2015, and 51 to be operational by the end of 2016. The ARB projects 65 stations operating by 2018, and 86 by 2021. This is an average of 7 new stations constructed per fiscal year under the grant program.

According to the National Renewable Energy Laboratory (NREL) the average total cost of construction per station is $400,000. Since labor is not taxed, this portion of the cost is removed from the calculation. According to the US Census Bureau, 26% of industrial construction cost is for material. This yields a taxable amount of $104,000 per station ($400,000/station x 26% = $104,000/station).

Applicable sales tax beginning in 2017 will be 8.21%. Thus the average sales tax per fiscal year (FY) is $59,769 (7 stations/FY x $104,000/station x 8.21% sales tax = $59,769/FY)

[5] http://www.nescaum.org/documents/multi-state-zev-action-plan.pdf/

Revenue Summary. Annual sales tax revenue loss from this bill will amount to $59,769.

Jurisdiction	Rate	**FY 2017-18**
State (General Fund)	3.9375%	$28,665
Local Revenue Fund 2011	1.0625%	$7,735
Local Revenue 1991	0.50%	$3,640
Public Safety Fund	0.50%	$3,640
Bradley Burns	1.25%	$9,100
Special District	0.96%	$6,989
Statewide Average Rate	8.21%	$59,769

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