



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	06/18/12	Bill No:	Assembly Bill 2688
Tax Program:	Property Sales and Use Special Taxes & Fees	Author:	Committee on Revenue and Taxation
Sponsor:	BOE (Sec. 2-18) CAA (Sec. 1)	Code Sections:	See below
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

This bill, among other things, contains **Board of Equalization (BOE)-sponsored provisions** for the sales and use tax and special taxes and fees programs, to do all the following:

- Amend Revenue and Taxation Code Sections 6055 and 6203.5 to remove the requirement that retailers and lenders prepare and retain an election form *prior* to claiming a bad debt in the case of accounts held by a lender that have been found worthless and written off by the lender;
- Amend Section 6355 to change the date by which the BOE is required to calculate the bulk sales threshold for coins and bullion;
- Amend Sections 7261 and 7262 to change the transactions and use tax rate to 0.125 percent, or a multiple thereof (formerly 0.25 percent or a multiple thereof) to make it consistent with specified sections recently amended in the Revenue and Taxation Code; and
- Amend Sections 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1 to allow a taxpayer or feepayer (together, taxpayer) to file a claim for reimbursement of bank charges and third-party check charge fees incurred by the taxpayer as the direct result of an erroneous processing action or erroneous collection action by the BOE under the various special taxes and fees programs the BOE administers, and, in addition, amend these sections and Section 7096 to waive for reasonable cause the requirement that a taxpayer file a claim for reimbursement within 90 days.

In addition to the BOE-sponsored provisions, this bill also contains a **California Assessors’ Association (CAA)-sponsored provision** related to the property tax that updates the definition of “air taxi.”

Summary of Amendments

Since the previous analysis, this bill was amended to add provisions to revise the definition of “air taxi.”

ANALYSIS**“Air Taxi” Definition**
*Revenue and Taxation Code Section 1154***CURRENT LAW**

Article 6 of Part 2 of the Revenue and Taxation Code (beginning with Section 1150), specifies the provisions of law for allocating the value of certificated aircraft and scheduled air taxis to California taxing agencies. The allocation formula, set forth in Section 1152, is a means of allocating the full cash value of the aircraft of a carrier controlled on the lien date by measuring the planes' activities within a California taxing agency during a specified period in relation to their total activity during this specified period. The formula is composed of two factors: (1) flight and ground time and (2) arrivals and departures. The flight and ground time factor is weighted 75 percent, and the arrivals and departures factor is weighted 25 percent. Because aircraft used by air carriers regularly fly into and out of California and between the various California counties, the property taxation of the aircraft must be fairly apportioned. Article 6 was designed to provide a uniform formula for apportioning taxation of these aircraft among different taxing jurisdictions.

Air Taxis. Section 1154 defines "air taxi" as aircraft used by an air carrier which does not use aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds in air transportation and which does not hold a certificate of public convenience and necessity or other economic authority issued by the Federal Aviation Administration, or its successor.

Scheduled Air Taxi Operations – Allocation Formula. Section 1154(b) provides that air taxis operated in scheduled air taxi operations are not to be taxed under Part 10 of the Revenue and Taxation Code (beginning with Section 5301), which relate to the provisions of law for the assessment and taxation of general aircraft. Section 1154(b) expressly provides that they are to be assessed using the allocation formula of Section 1152. Part 10 does not have an allocation formula, instead it provides for value allocation to the county where the aircraft is habitually situated. Section 5303 excludes from the definition of "aircraft" an air taxi as defined in subdivision (a) of Section 1154.

Other Air Taxis – Assessed where Habitually Situated. Section 1154(c) provides that all other air taxis are to be assessed in the county where the aircraft is habitually situated. Section 5362 similarly provides that an aircraft, as defined in Section 5303, is to be assessed where it is habitually situated.

PROPOSED LAW

This bill would revise the definition of "air taxi" as used in Section 1154 to mean aircraft used by an air carrier that does not use aircraft in air transportation with a maximum passenger capacity of 60 seats or a maximum payload capacity of more than 18,000 pounds, and which holds a certificate of public convenience and necessity or other economic authority used by the United States Department of Transportation, or its successor.

BACKGROUND

In 1968, Assembly Bill 1257 (Chapter 1306) added Article 6 to Chapter 5 of Part 2 of the Revenue and Taxation Code to outline the procedures for allocating the value of certificated aircraft and air taxis to California taxing agencies.

Section 1154 was subsequently amended the following year by Senate Bill 322 (Chapter 732) to add “which are operated in scheduled air taxi operations” in subdivision (b) and add subdivision (c) to exclude nonscheduled air taxis from the allocation formula.

In 1977, AB 878 (Chapter 921) amended Section 1154 to substitute "having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds" for "whose maximum certificated takeoff weight is greater than 12,500 pounds" in subdivision (a). Section 1154 (a) was again amended in 2011 by SB 947 (Chapter 351) to update the referenced federal agency from the Civil Aeronautics Board of the United States to the Federal Aviation Administration and delete the reference to the California Public Utilities Commission.

COMMENTS

1. **Sponsor and intent.** This provision is sponsored by the CAA and intended to define “air taxi” in accordance with the definition used by the Department of Transportation (DOT) for an air taxi operator. The DOT defines an air taxi operator as a company which operates aircraft originally designed to have no more than 60 passenger seats or a cargo payload of 18,000 pounds and carries cargo or mail on a scheduled or charter basis, and/or carriers passengers on an on-demand or limited schedule basis only.
2. **Increases passenger and payload capacity.** This bill would amend Section 1154 to increase the maximum passenger capacity from 30 seats to 60 seats and increase the maximum payload capacity from 7,500 pounds to 18,000 pounds. The bill would also update the reference to the Federal Aviation Administration to the United States Department of Transportation which is the agency charged with issuing economic authority for air carriers. Additionally, a certificate of public convenience and necessity for scheduled or charter operations are a type of economic authority issued by the DOT.

Bad Debt Election Form Requirement Repeal
Revenue and Taxation Code Sections 6055 and 6203.5

CURRENT LAW

Under existing law, Revenue and Taxation Code Sections 6055 and 6203.5 of the Sales and Use Tax Law allow a retailer to be relieved of the liability for the sale or use tax when the measure of tax is represented by amounts that have been found to be worthless and charged off for income tax purposes. These sections also allow retailers who sell their accounts receivables or lenders who purchase them to claim a refund or claim a deduction on sales and use tax returns for the portion of the accounts receivable which is written off as worthless. In such circumstances, existing law requires the retailer and the lender to prepare and retain an election, signed by both parties, designating which party is entitled to claim the bad debt loss *prior to claiming a deduction or refund*.

PROPOSED LAW

This bill would amend Sections 6055 and 6203.5 to delete the requirement that an election be prepared and retained by the lender and the retailer *prior* to claiming a deduction or refund. Instead, this bill would specify that a proper election for purposes of these provisions shall be established when the retailer who reported the tax and lender prepare and retain the election form, signed by both parties, designating which party is entitled to claim the deduction or refund.

BACKGROUND

In 2000, [AB 599](#) (Ch. 600, Lowenthal) enabled retailers who sell their accounts receivables or lenders who purchase them to claim a refund or claim a deduction on sales and use tax returns for the portion of the accounts receivable which is written off as worthless. In such circumstances, the retailer and the lender had to file an election form with the BOE signed by both parties designating which party is entitled to claim the bad debt loss prior to claiming a deduction or refund.

During the 2011 Legislative Session, [AB 242](#) (Ch. 727, Committee on Revenue and Taxation) removed the requirement that the election form be filed with the BOE. Instead, the election form must simply be prepared and retained by both the retailer and the lender prior to claiming the deduction or refund.

COMMENT

What is the process to claim deduction or refund? Prior to January 1, 2012, the effective date of AB 242, the BOE allowed a claimant to file a proper election form *after* the claim for deduction or refund was filed but would not consider the claim valid until such time as the election form was filed. The date the election form was prepared was not relevant: only the date the form was filed with the BOE.

Beginning January 1, 2012, the election form must be prepared and retained (rather than filed) by both the retailer and lender prior to claiming any deduction or refund. However, verifying that an election form was prepared and retained by both the retailer and lender *prior* to a claim is problematic and provides no valuable benefit to the validity of a claim that otherwise meets all of the conditions of a proper election by a retailer or lender.

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.

Accordingly, this bill would simply delete the unnecessary requirement that the election form be prepared and retained *prior* to claiming a deduction or refund, thereby establishing a “proper election” when the signed election form is prepared, regardless of whether that election was established after a deduction or refund is claimed.

Coins and Bullion: Calculation Date for Bulk Sales Threshold*Revenue and Taxation Code Sections 6355***CURRENT LAW**

Revenue and Taxation Code Section 6355 provides a sales and use tax exemption for monetized bullion, nonmonetized gold or silver bullion, and numismatic coins when the sale is “in bulk” and is substantially equivalent to a transaction in securities or commodities through a national securities or commodities exchange. Section 6355 provides that the initial bulk threshold amount is \$1,000. Since 1993, the statute has also required the BOE to adjust the \$1,000 bulk threshold amount on an annual basis. This adjustment requires the BOE to multiply the current bulk threshold amount by the inflation factor adjustment on or before September 1 of each year. When the result of this calculation is \$500 greater than the existing threshold, the threshold is adjusted and rounded to the nearest \$500 increment. For example, if the bulk sale threshold amount is currently \$1,500, and multiplying this amount by the inflation factor adjustment results in a new threshold of \$1,700, the bulk sale threshold does not become operative since it does not exceed the \$500 increment (it must equal or exceed \$2,000 to become operative). The next year, the \$1,700 threshold must be multiplied by the inflation factor adjustment to determine the new threshold. (Currently, based on the cumulative inflation factor adjustment, the operative bulk sale exemption threshold is \$1,500, and has been so since January 1, 2009.)

The inflation factor adjustment is based on a comparison of the California Consumer Price Index (CCPI) as published by the Department of Industrial Relations for June of each year. Once the calculation is made by BOE staff, the issue is placed on the BOE’s consent agenda for the August BOE meeting to officially adopt the new threshold. However, the CCPI for June is generally not available until late August of each year. Since items placed on the BOE Meeting agenda are subject to public notice and require management review prior to being placed on the agenda, this calculation must be done by staff by the end of July. Since the CCPI is generally not available, staff has had to track down “preliminary numbers” for the purposes of performing the calculation. It is often difficult to obtain the preliminary numbers in a timely manner in order to have this item on the August agenda.

PROPOSED LAW

This bill would amend Section 6355 to change the date from September 1 to October 1 of each year by which the BOE must determine the bulk sale threshold.

COMMENT

Changing the date from September 1 to October 1 will allow staff sufficient time to obtain the June CCPI, prepare the necessary calculation, and place the item on the BOE meeting agenda. An October 1 date will still provide for adequate lead time in amending Regulation 1599 and notifying the public in the event the calculation results in a new operative threshold.

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.

Transaction and Use Tax: Rate Consistency
Revenue and Taxation Code Sections 7261 and 7262

CURRENT LAW

Assembly Bill 686 (Chapter 176, Huffman, Stats. 2011), amended Sections 7285, 7285.5, 7285.9 and 7285.91 of the Revenue and Taxation Code to change the rate at which a city or county may levy, increase, or extend a transactions and use tax to a rate of 0.125 percent, or a multiple thereof (formerly 0.25 percent or a multiple thereof).

Under existing law, Section 7285 authorizes a county to impose a transactions and use tax (also known as a district tax) for general purposes at a rate of 0.125 percent, or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. Section 7285.5 authorizes a county to impose a district tax for special purposes at a rate of 0.125 percent, or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

With respect to cities, Section 7285.9 authorizes a city to impose a district tax for general purposes at a rate of 0.125 percent or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all members of the governing body and a majority vote of the qualified voters of the city. Section 7285.91 authorizes a city to impose a district tax for special purposes at a rate of 0.125 percent or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all members of the governing body and a two-thirds vote of the qualified voters of the county.

Under existing law, Section 7261 provides that a transactions (sales) tax is imposed on retailers for the privilege of selling tangible personal property in a district. Section 7262 provides that a district use tax is imposed upon the storage, use, or other consumption of tangible personal property stored, used, or consumed in a district. The transactions (sales) and use taxes imposed pursuant to these statutes are imposed at a rate of 0.25 percent or a multiple thereof on the gross receipts from the sales within the district of tangible personal property sold at retail or of the sales price of tangible personal property whose use, storage, or consumption within the district is subject to tax. In order to make Sections 7261 and 7262 consistent with the newly amended Sections 7285, 7285.5, 7285.9, and 7285.91, the relevant sections should be amended to change the 0.25 percent rate to a rate of 0.125 percent, or a multiple thereof.

PROPOSED LAW

This bill would change the rate in Sections 7261 and 7262 to make the rate in those sections consistent with the rate contained in Sections 7285, 7285.5, 7285.9, and 7285.91 of the Revenue and Taxation Code.

Claim for Bank Charge Reimbursement

Revenue and Taxation Code Sections 7096, 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1

CURRENT LAW

Under current law, the BOE is authorized, as part of its administrative duties with respect to the collection of taxes, to seize property of a delinquent taxpayer. Existing law authorizes the BOE to issue a levy or notice to withhold to specified financial institutions to withhold and remit credits or personal property of a delinquent taxpayer to satisfy the delinquent tax obligations of that taxpayer.

Under Revenue and Taxation Code Section 7096 of the Sales and Use Tax Law, a taxpayer may file a claim with the BOE for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges that may be reimbursed are those actually paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Claims are required to be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action.

Identical provisions are also contained in the other BOE-administered special tax and fee laws, except that they don't expressly provide that a taxpayer may claim reimbursement for bank and third-party check charge fees due to an "erroneous processing action or erroneous collection action" by the BOE.

PROPOSED LAW

This bill would amend Revenue and Taxation Code Sections 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1 to conform the claim for reimbursement of bank charges provisions in the other tax and fee programs administered by the BOE with the provision in the Sales and Use Tax Law by expressly providing that, in addition to reimbursement of bank or third-party check charge fees incurred by a taxpayer as the direct result of an erroneous levy or notice to withhold, a taxpayer may claim reimbursement for bank and third-party check charge fees due to an erroneous processing action or erroneous collection action by the BOE. The other tax and fee laws to which these provisions would be extended include: Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

The bill would also amend Section 7096 and the above-specified sections of the special tax and fee laws to provide the BOE the authority to approve, for reasonable cause, a claim for reimbursement of bank charges or third-party check charge fees filed later than 90 days from the date of the erroneous BOE levy or action.

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.

COMMENT

Occasionally, an erroneous BOE action has resulted in the imposition of bank or third-party check charge fees and the particular erroneous BOE action was not technically a result of a BOE levy or notice to withhold. Occasionally, due to a BOE error, a taxpayer's account has been double-debited when an electronically-transferred payment made in connection with an installment payment agreement was erroneously applied by the BOE to another taxpayer's account. Due to the double payment, the taxpayer's account had insufficient funds, which resulted in bank fees for overdrafts. While the BOE is able to reverse the erroneous debit, the special tax and fee laws contain no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third-party check charge fees incurred by the taxpayer due to the error.

It is only fair and equitable to reimburse taxpayers for bank and third-party check charge fees when those charges are a direct result of a BOE error and are not due to any fault of the taxpayer. This proposed change is consistent with the Sales and Use Tax Law and the intent of the original legislation that authorized the BOE to reimburse taxpayers for such charges stemming from BOE errors. Also, these proposed amendments are consistent with provisions in Revenue and Taxation Code Section 21018 administered by the Franchise Tax Board (FTB). The FTB sponsored AB 1767 (Ch. 349, Stats. 2005) to specifically allow taxpayers to claim reimbursement for bank charges incurred by taxpayers through similar types of FTB processing and collection errors.

Furthermore, taxpayers are sometimes prevented from filing a claim within 90 days from the date of the erroneous BOE action. In one example where the BOE filed a levy in error, the taxpayer did not receive the BOE's Notice of Levy because it was sent to an incorrect address. The taxpayer's financial institution delayed complying with the levy for nearly three months and notified the taxpayer of the levy at that time. Since that was the taxpayer's first notification of the levy, which resulted in early withdrawal fees and bank processing fees, the taxpayer was unable to meet the 90-day deadline for filing a claim with the BOE for reimbursement of bank charges. The BOE did not then have the statutory authority to grant the claim, even though all other conditions were met. These amendments are also consistent with provisions in Revenue and Taxation Code Section 21018 that allow the FTB to extend the period for filing a claim.

COST ESTIMATE

The provisions of the bill involve tasks and costs which are absorbable.

REVENUE ESTIMATE

This measure would have a negligible impact on state and local revenues, which would be due to some additional taxpayer claims for reimbursement of bank charges and third-party check charge fees and for some claims being allowed beyond the 90-day filing date for reasonable cause (RTC Sections 7096, 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, & 60633.1), and to some additional refunds or deductions that are not currently allowable where retailers and lenders fail to prepare and retain an election form prior to claiming a bad debt (RTC Sections 6055 & 6203.5).

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