



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	06/16/10	Bill No:	<a href="#">AB 2788</a>
Tax:	Sales and Use	Author:	Portantino
Related Bills:			

### BILL SUMMARY

This bill would broaden the sales and use tax exemption related to sales of trailers and semitrailers delivered in this state to a purchaser for use exclusively in interstate, out-of-state, or foreign commerce, to include new or remanufactured trucks, truck tractors, new or remanufactured trailer coaches and new or remanufactured auxiliary dollies manufactured outside this state. The bill would also increase the time – from 30 to 75 days – in which the purchaser must remove the item from the state to qualify for the exemption.

### SUMMARY OF AMENDMENTS

The previous version of this bill was a Board-sponsored housekeeping measure to update references to other state agencies involved with some Special Taxes and Fees programs. Those provisions were removed from this bill.

### ANALYSIS

#### CURRENT LAW

Under the law, sales tax generally does not apply to a transaction when a California retailer sells an item and ships it directly to the purchaser at an out-of-state location for use outside California (Revenue and Taxation Code Section 6396). The sale is regarded under the law as a sale in interstate commerce. In general, the sale is not taxable if the retailer:

- Ships the product directly to the purchaser, in another state or in a foreign country, using the retailer's own delivery vehicle or another means of transport that the retailer owns; or
- Ships the product to another state or to a foreign country by delivering it to a common carrier, contract carrier, customs broker, export packer, or forwarding agent.

Sections 6388 and 6388.5 of the Sales and Use Tax Law, and as promulgated by the Board's Regulation 1620.1, *Sales of Certain Vehicles and Trailers for Use in Interstate or Out-of-state Commerce*, provide specific exemptions from sales and use tax for sales and purchases of specified trucks and trailers delivered to purchasers in this state.

**Section 6388** applies to certain "vehicles" purchased from a dealer located *outside this state* and delivered in California to the purchaser *who is not a California resident*.

Under this section and Regulation 1620.1, tax does not apply to the sale or purchase of a new or remanufactured truck, truck tractor, semitrailer, or trailer with an unladen weight of 6,000 pounds or more; or a new or remanufactured trailer coach, or auxiliary dolly, manufactured or remanufactured in this state and purchased from an out-of-state

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dealer for delivery in this state to a purchaser who is *not* a resident of California for use *exclusively in out-of-state or foreign commerce* where the purchaser:

1. Purchases the item from a dealer located *outside* this state,
2. Removes the item from this state within *30 days* from and after the date of delivery,
3. Provides a valid affidavit to the manufacturer or remanufacturer that contains specified information, and
4. Provides evidence of out-of-state vehicle registration.

**Section 6388.5** applies to new or remanufactured trailers and semitrailers (trailer) delivered in this state to the purchaser for use exclusively in interstate, out-of-state, or foreign commerce.

Under this section, tax does not apply to the sale or purchase of a trailer delivered in this state by the manufacturer, remanufacturer or dealer to a purchaser *for use exclusively in interstate, out-of-state, or foreign commerce* where all the following criteria are met:

1. The trailer is manufactured or remanufactured *outside* California and is removed from this state within 30 days from the date of delivery; or the trailer is manufactured or remanufactured *within* California and is removed from the state within 75 days from the date of delivery,
2. If the trailer is registered outside the state, the purchaser provides the delivering manufacturer, remanufacturer, or dealer a copy of the current out-of-state license and registration for the trailer; or, if the trailer is registered in California under the "Permanent Trailer Identification" program, the purchaser provides the delivering manufacturer, remanufacturer, or dealer a copy of the federal document assigning or confirming specified information,
3. The purchaser provides a valid affidavit to the manufacturer, remanufacturer, or dealer, that contains specified information.

#### PROPOSED LAW

This bill would amend Revenue and Taxation Code Section 6388.5 to do the following:

1. Increase the number of days from 30 to 75 in which a purchaser must remove from California a new or remanufactured trailer or semitrailer manufactured outside this state and delivered to the purchaser in this state.
2. Expand the exemption and the 75-day removal period to new or remanufactured trucks, truck tractors, new or remanufactured trailer coaches, and new or remanufactured auxiliary dollies manufactured outside this state.
3. Delete the existing exemption for new or remanufactured trailers and semitrailers that are manufactured *in this state* and delivered to the purchaser in this state.
4. Clarify that written evidence of an out-of-state license and registration for the item must be provided when required by another state, or an affidavit indicating that registration is not required must be provided.

As a tax levy, the bill would become effective immediately.

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### BACKGROUND

Section 6388 was added to law in 1959 to exempt sales of new trailer coaches by out-of-state dealers when an out-of-state resident took delivery in California, provided the trailer was to be used exclusively outside the state, delivery was by the California manufacturer at the manufacturer's California's place of business, and the trailer was removed from California within 30 days. The reason for this exemption was to attract out-of-state purchasers of California-built trailer coaches. Proponents of the bill also noted that an incidental benefit would also accrue to businesses catering to the tourist trade, since qualified purchasers would be permitted to use their trailers within California without incurring a tax liability for a period of 30 days after accepting delivery. Proponents also noted that there was no real tax loss because people were not making any purchases at the time because they did not want to pay the tax.

In 1963, this exemption was expanded to include trucks, truck tractors, semitrailers, trailers and auxiliary dollies.

In 1970, the exemption was further expanded by relaxing the requirements for truck trailers. The requirement of out-of-state use was loosened to allow in-state use, if exclusively in interstate commerce. Also, delivery to purchasers by dealers within California was permitted, provided the dealership was owned by the manufacturer.

Section 6388.5 was added to law in 1974 to extend and expand the Section 6388 exemption so that a purchaser may purchase a trailer or semitrailer from a California dealer – provided the manufacturer delivered the item directly to the purchaser, and the purchaser removed the item out of California within 30 days for use exclusively in interstate commerce or exclusively outside of California.

In 1982, this exemption was further expanded to allow the trailers or semitrailers to be removed to a point outside of California within 75 days from delivery if the item was manufactured in California. Also, any dealer could make the delivery to the purchaser (not just the manufacturer as previously required). The reason behind the 75-days was that one manufacturer (Utility Trailer Manufacturing Company located in Los Angeles) had intended to sell 400 trailers to a purchaser who planned on using them outside California. The purchaser was concerned that it would not be possible to meet the conditions of the exemption at the time which required removal from California within 30 days from the date of delivery, given the large number of trailers involved. The transaction therefore fell through.

Also in 1982, the exemption was further expanded by allowing the exemption if the item is used exclusively in foreign commerce and the other requirements of the exemption are met. This amendment was sponsored by Freuhauf Corporation which manufactured container chassis in California. Its sales to a Korean steamship company for use in foreign commerce did not qualify for the exemption, as the law required the use to be in interstate commerce (not foreign commerce).

**COMMENTS**

- 1. Sponsor and purpose.** The sponsor of this bill is Hyundai. According to a fact sheet provided by Hyundai, "In today's environment, traditional warehousing of goods has declined dramatically. Accordingly, businesses are moving toward Just in Time delivery of many goods and services and can modify their business practices to take advantage of the most favorable business conditions. The trailers, semitrailers and dollies referenced in section 6388.5 are used exclusively in interstate or foreign commerce. Thus, the ability to move the vehicles may not always occur in the very tight timeframes currently outlined in section 6388.5 of the Revenue and Taxation Code requiring that the vehicles move out of state within 30 days.

"Creating parity - allowing all such vehicles purchased in California and moved outside of California in 75 days - will result in increased sales. The State would benefit from the incidence of increased revenues for California based businesses generating increased sales. Increased sales in turn will reflect more revenue to the state as a result in higher sales figures and give those companies located in California the ability to higher more employees to support the increased sales."

- 2. Language would remove the exemption entirely for trailers and semitrailers manufactured in California.** Currently, for trailers and semitrailers manufactured in California and delivered to the purchaser in this state, Section 6388.5 provides an exemption when the purchaser removes the trailer outside of California within 75 days of delivery, and uses the trailer exclusively out-of-state, or in interstate or foreign commerce. This bill would delete that provision, and would instead, only allow an exemption for items manufactured outside of California. According to the bill sponsors, this was not intentional, and further amendments will be incorporated into the bill to address this issue.
- 3. Which item must have an unladen weight of 6,000 pounds or more?** It appears the only items that must meet this weight criteria would be the trailers or semitrailers. All other items listed do not appear to have a weight requirement. It would therefore appear that even a pick-up truck purchased from a California dealer would qualify for this exemption, as long as the truck was manufactured outside this state, and the purchaser removed the truck from California within 75 days for use outside California or in interstate or foreign commerce. This appears to be quite broad, and a significant deviation from the intent of this exemption. (Note, that the exemption in Section 6388 for similar items purchased by out-of-state residents all must have an unladen weight of 6,000 pounds or more).

**COST ESTIMATE**

Some administrative costs would be incurred in notifying taxpayers, revising Regulation 1620.1, and related Board publications and manuals. A cost estimate is pending.

**REVENUE ESTIMATE**

Currently, if a manufacturer, remanufacturer or dealer that sold the item to the purchaser delivered the item directly to an out-of-state point pursuant to the contract of sale, the sale would qualify for an exemption under existing Section 6396. Enactment of this bill would simply allow for delivery of these items to the purchaser in California as long as the purchaser removes the item within 75 days of delivery, and uses the item exclusively out-of-state or in interstate or foreign commerce. Presumably, purchasers are currently either arranging for out-of-state delivery to avoid the tax, or acquiring these items from out-of-state manufacturers, remanufacturers, or dealers to avoid the California sales tax. As such, we believe any sales and use tax revenue loss would be minimal.

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