STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**07/15/10**	Bill No:	**AB 2788**
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, by (1) including new or remanufactured trucks, truck tractors, new or remanufactured trailer coaches and new or remanufactured auxiliary dollies, (2) allowing the exemption for these items whether or not the purchaser is a California resident and whether or not the item was purchased from a dealer located outside this state, and (3) increasing 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 amendments to this bill from the previous analysis, repeal Section 6388 and fold those provisions into Section 6388.5, which, among other things, increases the time within which a purchaser must remove the vehicles from California in order to take advantage of the sales or use tax exemption applicable to vehicles intended for use in interstate or foreign commerce.

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.

If a purchaser brings the property back into California, use tax does not apply if the purchaser purchased the property for use in interstate or foreign commerce and used the property in interstate or foreign commerce prior to its entry into this state, and thereafter, continuously used the property in interstate or foreign commerce both inside and outside California and not exclusively in California.

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 any of which has 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 dealer for delivery in this state to a purchaser who is *not* a resident of California for use *exclusively outside this state* 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 add Section 6388.3, consolidate Section 6388 into Section 6388.5, and further amend Section 6388.5 of the Revenue and Taxation Code. These changes would accomplish 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 to California residents and extend the removal period from 30 to 75 days for new or remanufactured trucks, truck tractors, new or remanufactured trailer coaches, and new or remanufactured auxiliary dollies whether manufactured inside or outside this state.
3. Expand the exemption so that any purchase of new or remanufactured trucks, truck tractors, new or remanufactured trailer coaches and new or remanufactured auxiliary dollies will qualify for the exemption – even if the item is returned to California for use in interstate or foreign commerce.
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.
5. Require the Board to prepare and distribute a standard form or forms for the purchaser affidavit.

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

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 hire more employees to support the increased sales."

2. **The July 15, 2010 amendments** repeal Section 6388 and fold those provisions into Section 6388.5, which, among other things, increases the time within which a purchaser must remove the vehicles from California in order to take advantage of the sales or use tax exemption applicable to vehicles intended for use in interstate or foreign commerce. **The June 16, 2010 amendments** deleted the former provisions of the bill that contained Board-sponsored housekeeping provisions that updated references to other state agencies involved with some Special Taxes and Fees programs, and instead, added provisions that broadened 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. These amendments, among other things, increased the time – from 30 to 75 days – in which the purchaser must remove the item from the state to qualify for the exemption.

3. **Language would broaden the exemption.** Unlike Section 6388.5 which only applies to trailers and semitrailers, Section 6388 (which this bill is repealing and folded into Section 6388.5) currently applies to additional vehicles (trucks, truck tractors, trailer coaches, and auxiliary dollies all of which have a weight of 6,000 pounds or more) and *only* to purchasers who are *not* California residents who purchase from *out-of-state* dealers, but take delivery of the item in California from the manufacturer and remove the vehicle within 30 days for use *exclusively out-of-*

state. This bill is consolidating that section into Section 6388.5. By doing so, it would enable both California residents and out-of-state residents to accept delivery in California of a wider range of items (those just specifically mentioned) and enable them to use the items in California for a longer period from the purchase date than the law currently allows (from 30 to 75 days). It also enables them to bring them back into California for interstate or foreign commerce purposes, which generally would not be allowed under current law.

4. **Which items must have an unladen weight of 6,000 pounds or more?** For purposes of clarity, it is suggested that on page 3, line 11, "with" be replaced with "any of which has" to make it perfectly clear that the specified vehicles mentioned must meet the unladen weight criteria of 6,000 pounds or more (this is language currently in Section 6388 and provides no uncertainty that trucks, truck tractors, semitrailers and trailers must meet that weight criteria).

5. **Provisions would become effective immediately.** In order for the Board to properly identify and notify affected retailers, it is suggested that the bill have a delayed operative date – preferably 60 days from enactment.

COST ESTIMATE

Some administrative costs would be incurred in immediately identifying and 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 an 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 from sales tax under existing Section 6396. If a purchaser that took delivery of the item outside the state purchased the item for use in interstate or foreign commerce prior to its entry back into California, and continuously used the property in interstate or foreign commerce both within and outside California and not exclusively in California, the property would be also exempt from use tax under current law.

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 sales tax, or acquiring these items from out-of-state manufacturers, remanufacturers, or dealers to avoid the California sales tax and continuously using the items in interstate or foreign commerce prior to their re-entry into California to avoid the imposition of use tax. As such, we believe any sales or use tax revenue loss would be minimal.

Analysis prepared by:	Sheila T. Waters	916-445-6579	08/05/10
Revenue estimate by:	Bill Benson	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	

ls 2788-3sw.doc