

AMENDED IN SENATE MAY 16, 2002

SENATE BILL

No. 1901

Introduced by Senator Machado

February 22, 2002

An act to add Section 6480.3 to the Revenue and Taxation Code, relating to taxation, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1901, as amended, Machado. Sales and use tax: resale certificates.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for the sale or use of diesel fuel used in farming activities and food processing. That law requires the tax to be prepaid when purchasing the diesel fuel from the seller, unless the purchaser presents a resale certificate.

This bill would authorize a qualified person, as defined, to issue a resale certificate with respect to diesel fuel that qualifies for that exemption, as provided. By creating a new crime in connection with this authority, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute, but would become operative 30 days after its effective date.

Vote: ~~majority~~ ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6480.3 is added to the Revenue and
2 Taxation Code, to read:

3 6480.3. (a) A person qualified under subdivision (b) may
4 issue a certificate to a seller with respect to the amount of sales tax
5 required to be prepaid pursuant to Section 6480.1 when purchasing
6 diesel fuel from the seller. The certificate shall be completed in
7 accordance with any instructions or regulations as the board may
8 prescribe, and shall clearly specify that the person will purchase
9 the volume of diesel fuel that the person reasonably expects he or
10 she will sell that qualifies for the exemption under Section 6357.1.
11 A seller that receives a properly completed certificate from a
12 person qualified under subdivision (b) shall not be required to
13 collect the prepayment of the retail sales tax otherwise required in
14 Section 6480.1 on that volume of the diesel fuel sold pursuant to
15 the certificate.

16 (b) A person is qualified for purposes of this section if both of
17 the following conditions are met:

18 (1) The person sold diesel fuel that was used by the consumer
19 in a manner that qualified, or would have qualified for an
20 exemption under Section 6357.1, and in the prior year, those sales
21 totaled more than 25 percent of the person's total taxable sales.

22 (2) The person's sales consist primarily of either bulk
23 deliveries of fuel or of fuel sales through a cardlock, keylock, or
24 other unattended mechanism, or both. For purposes of the
25 preceding sentence, "bulk deliveries" means transfers of fuel into
26 storage tanks of 500 gallons or more.

27 (c) A person issuing a certificate pursuant to this section is
28 liable for sales tax that is imposed under the Bradley-Burns
29 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
30 with Section 7200)) or in accordance with the Transactions and
31 Use Tax Law (Part 1.6 (commencing with Section 7251)) and sales



1 tax that is imposed under Section 6051.2 or 6201.2, or under
2 Section 35 of Article XIII of the California Constitution.

3 (d) A person issuing a certificate pursuant to this section shall
4 be liable for sales tax on any portion of the gross receipts derived
5 from the sale of fuel that is not sold in a manner that qualifies for
6 an exemption under Section 6357.1.

7 (e) A person liable for the sales tax under subdivision (c) or (d)
8 of this section shall report and pay that sales tax with the return for
9 the reporting period in which the person sells the fuel.

10 (f) Any person who gives a certificate pursuant to this section
11 for purchases of diesel fuel that he or she knows at the time of
12 purchase do not qualify for the exemption from the prepayment
13 pursuant to this section for the purpose of evading payment of the
14 prepayment of the retail sales tax is guilty of a misdemeanor
15 punishable as provided in Section 7153. In addition, the person
16 shall be liable to the state for a penalty of one thousand dollars
17 (\$1,000) for each certificate issued for personal gain or to evade
18 the payment of taxes.

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.

28 SEC. 3. *This act shall become operative 30 days after the*
29 *effective date of this act.*

30 SEC. 4. *This act is an urgency statute necessary for the*
31 *immediate preservation of the public peace, health, or safety*
32 *within the meaning of Article IV of the Constitution and shall go*
33 *into immediate effect. The facts constituting the necessity are:*

34 *In order to provide assistance to diesel fuel sellers who are*
35 *incurring a severe negative cash flow due to current law's*
36 *prepayment requirements at the earliest time, it is necessary for*
37 *this act to go into immediate effect.*

