

AMENDED IN ASSEMBLY MAY 7, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 846

Introduced by Assembly Member Blakeslee
(Coauthor: Assembly Member Karnette)
(Coauthor: Senator Maldonado)

February 22, 2007

An act to amend and repeal Section 6385 of, and to add and repeal Sections 6357.7, 6357.8 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 846, as amended, Blakeslee. Sales and use taxes: exemptions: Clean Marine Fuels Tax Incentive Act.

(1) 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.

This bill would exempt, ~~until specified State Board of Equalization determinations occur or specified federal actions occur,~~ from those state taxes the gross receipts derived from the sale in this state of, and the storage, use, or other consumption in this state of, low-sulfur fuel products for use in a vessel's auxiliary or main engine sold to a water common carrier for use in California's territorial or internal waters, as provided. *This exemption would continue until January 1, 2014, with respect to the exemption for products used in a vessel's auxiliary engine. With respect to exemption for products used in a vessel's main engine,*

the exemption would continue until January 1, 2014, or for 6 months following the publication of a specified finding, whichever occurs first.

(2) The Sales and Use tax law exempts, until 2014, the gross receipts from the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination, if specified conditions are met.

This bill would instead provide that the exemption is repealed when a federal exemption for similar sales to vessel and aircraft is repealed, and specified State Board of Equalization actions are taken, upon any notification of the repeal of the federal exemption.

(3) Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Clean Marine Fuels Tax Incentive Act.
- 3 SEC. 2. Section 6357.7 is added to the Revenue and Taxation
- 4 Code, to read:
- 5 6357.7. (a) There are exempted from the taxes imposed by
- 6 this part, the gross receipts from the sale in this state of, and the
- 7 storage, use, or other consumption in this state of, low-sulfur fuel
- 8 products for use in a vessel’s auxiliary engine, sold to a water
- 9 common carrier inside this state for immediate consumption ~~or~~
- 10 ~~shipment~~ in the conduct of its business as a water common carrier
- 11 in California’s territorial or internal waters.

1 (b) To qualify for the exemption, the water common carrier
2 shall furnish to the seller an exemption certificate, in the form
3 prescribed by the board, stating the quantity of low-sulfur fuel
4 products for use in a vessel’s auxiliary engines claimed as exempt
5 that are to be consumed within California’s territorial or internal
6 waters. The certificate shall bear the purchaser’s valid seller’s
7 permit number or valid fuel exemption registration number.
8 Acceptance in good faith of that certificate shall relieve the seller
9 from liability for the sales tax exempted under this section.

10 (c) For purposes of this section:

11 (1) ~~“Immediate consumption or shipment”~~ *consumption*” means
12 that the delivery of the low-sulfur fuel products for use in a vessel’s
13 auxiliary engine by the seller is directly into a vessel for
14 consumption by that vessel while in California’s territorial or
15 internal waters, and is not used for storage by the purchaser or any
16 third party.

17 (2) ~~“Low-sulfur fuel products for use in a vessel’s auxiliary
18 engine”~~ *products*” means any fuel, including heavy fuel oil, marine
19 distillate fuels, marine gas oil, marine diesel oil, or any other diesel
20 fuel, with a sulfur content of no greater than 0.05 percent, or 500
21 parts per million, ~~that is purchased for use in the operation of an
22 engine, on a vessel, that provides power for a use other than
23 propulsion.~~ *per million.*

24 (3) *“Auxiliary engine” means an engine on a vessel that
25 provides power for a use other than propulsion.*

26 (3)

27 (4) *“Territorial or internal waters” means waters within a
28 seaward boundary three geographical miles into the Pacific Ocean
29 measured from the mean low-water mark of the California coast,
30 all interior navigable waterways, and the Monterey Bay, subject
31 to definitions of the United Nations Convention on the Law of the
32 Sea.*

33 (4)

34 (5) *“Water common carrier” has the same meaning as “common
35 carrier” as set forth in Section 6385.*

36 (d) (1) Any water common carrier claiming exemption under
37 this section that is not required to hold a valid seller’s permit, shall
38 be required to register with the board and obtain a fuel exemption
39 registration number, and shall be required to file returns as the
40 board may prescribe, either if the board notifies the carrier that

1 returns must be filed or if the carrier is liable for taxes based upon
2 consumption of fuel products erroneously claimed as exempt under
3 this section.

4 (2) A water common carrier required to hold a fuel exemption
5 registration number shall be subject to all applicable provisions of
6 this part, Part 1.5 (commencing with Section 7200), and Part 1.6
7 (commencing with Section 7251).

8 (3) Upon approval of the board, a water common carrier may
9 utilize a single fuel exemption registration number for all
10 exemptions claimed under this ~~chapter~~ *article*.

11 (e) (1) A water common carrier claiming an exemption under
12 this section, upon request, shall make available to the board
13 records, ~~including, but not limited to, a copy of a log abstract, or~~
14 ~~a cargo manifest,~~ documenting its consumption of low-sulfur fuel
15 products for use in a vessel's auxiliary engine while in California's
16 territorial and internal waters ~~and~~, the amount claimed as exempt,
17 *and any additional information related to a vessel's engines, fuel*
18 *tanks, and sailing schedules*. If the carrier fails to provide ~~these~~
19 *the* records upon request, the board may revoke the carrier's fuel
20 exemption registration number.

21 (2) *Records required by the board pursuant to this subdivision*
22 *may include, but are not limited to:*

23 (A) *A description of the types of low-sulfur fuel products that*
24 *meet the requirements of this section and that are used in each*
25 *auxiliary engine.*

26 (B) *A description of the use of the low-sulfur fuel products.*

27 (C) *A description of the vessel that used the low-sulfur fuel*
28 *product, including the type of vessel, whether the vessel is*
29 *mono-fueled or dual-fueled, and the number of auxiliary engines*
30 *used by the vessel.*

31 (D) *A description of the vessel's locations and destinations for*
32 *the period the vessel was in California's territorial or internal*
33 *waters.*

34 (3) *A supplier or retailer, upon request by the board, shall*
35 *confirm the sulfur content of fuels sold to a water common carrier*
36 *and claimed as exempt under this section.*

37 (f) The board may require any water common carrier claiming
38 an exemption under this section and required to obtain a fuel
39 exemption registration number, to place with it such security as
40 the board may determine pursuant to Section 6701.

1 (g) Pursuant to this section, any use of the fuel products by the
2 purchasing carrier, other than that incident to the delivery of the
3 fuel products to the carrier and the immediate consumption ~~or~~
4 ~~transportation~~ of the fuel products by the carrier for use *in an*
5 *auxiliary engine in California's territorial or internal waters* in
6 the conduct of its business as a water common carrier, or a failure
7 of the carrier to document its consumption of the fuel products in
8 *an auxiliary engine in California's territorial or internal waters*,
9 shall subject the carrier to liability for payment of sales tax as if
10 it were a retailer making a retail sale of the property at the time of
11 that use or failure, and the sales price of the property to it shall be
12 deemed to be the gross receipts from the retail sale.

13 (h) No exemption may be claimed under this section for which
14 an exemption under Section 6357.8 may be claimed.

15 ~~(i) In the event the board finds that sales of low-sulfur fuel~~
16 ~~products for use in a vessel's auxiliary engine sold to water~~
17 ~~common carriers inside this state accounts for greater than 95~~
18 ~~percent of all sales of marine fuels to water common carriers for~~
19 ~~use in a vessel's auxiliary engine, this section is hereby repealed~~
20 ~~six months from the date such finding is submitted to the~~
21 ~~Legislature and the Office of Administrative Law for publication~~
22 ~~in the state register.~~

23 *(i) On or before January 1, 2013, the Legislative Analyst's*
24 *Office, in consultation with the Department of Finance, the board,*
25 *and the State Air Resources Board, shall submit a report to the*
26 *Legislature on the economic and health impacts of the exemption*
27 *authorized under this section. The report shall include, but is not*
28 *limited to, a recommendation as to whether the exemption should*
29 *be extended, and if so, any recommended modifications of the*
30 *exemption.*

31 *(j) This section shall remain in effect only until January 1, 2014,*
32 *and as of that date is repealed, unless a later enacted statute, which*
33 *is enacted before January 1, 2014, deletes or extends that date.*

34 SEC. 3. Section 6357.8 is added to the Revenue and Taxation
35 Code, to read:

36 6357.8. (a) There are exempted from the taxes imposed by
37 this part, the gross receipts from the sale in this state of, and the
38 storage, use, or other consumption of, low-sulfur fuel products for
39 use in a vessel's main engine, sold to a water common carrier for
40 immediate consumption ~~or shipment~~ in the conduct of its business

1 as a water common carrier until the first out-of-state destination
2 or 500 nautical miles beyond California's territorial waters,
3 whichever is less.

4 (b) To qualify for the exemption, the water common carrier
5 shall furnish to the seller an exemption certificate, in the form
6 prescribed by the board, stating the quantity of low-sulfur fuel
7 products for use in a vessel's main engines claimed as exempt.
8 The certificate shall bear the purchaser's valid seller's permit
9 number or valid fuel exemption registration number. Acceptance
10 in good faith of that certificate shall relieve the seller from liability
11 for the sales tax exempted under this section.

12 (c) For purposes of this section:

13 (1) ~~“Immediate consumption or shipment”~~ *consumption*” means
14 that the delivery of the low-sulfur fuel products for use in a vessel's
15 main engine by the seller is directly into a vessel for consumption
16 by that vessel alone until the first out-of-state destination or 500
17 miles beyond California's territorial waters and not used for storage
18 by the purchaser or any third party.

19 (2) “First out-of-state destination” has the same meaning as set
20 forth in Section 6385.

21 (3) ~~“Low-sulfur fuel products for use in a vessel's main engine”~~
22 *products*” means any fuel, including heavy fuel oil, marine
23 distillate fuels, marine gas oil, marine diesel oil, or any other diesel
24 fuel, with a sulfur content of no greater than 1.5 percent, or 15,000
25 parts per million, ~~which is purchased for use in the operation of~~
26 ~~an engine, on a vessel, that provides power for propulsion.~~ *million.*

27 (4) “Main engine” means any propulsion engine, including, but
28 not limited to, an engine whose main purpose is to provide power
29 for propulsion, regardless of other uses, including a diesel-electric
30 engine.

31 (5) “Territorial waters” means waters within a seaward boundary
32 three geographical miles into the Pacific Ocean measured from
33 the mean low-water mark of the California coast, and the Monterey
34 Bay, subject to definitions of the United Nations Convention on
35 the Law of the Sea.

36 (6) “Water common carrier” has the same meaning as “common
37 carrier” as set forth in Section 6385.

38 (d) (1) Any water common carrier claiming exemption under
39 this section that is not required to hold a valid seller's permit, shall
40 be required to register with the board and obtain a fuel exemption

1 registration number, and shall be required to file returns as the
2 board may prescribe, either if the board notifies the carrier that
3 returns must be filed or if the carrier is liable for taxes based upon
4 consumption of fuel products erroneously claimed as exempt under
5 this section.

6 (2) A water common carrier required to hold a fuel exemption
7 registration number shall be subject to all applicable provisions of
8 this part, Part 1.5 (commencing with Section 7200), and Part 1.6
9 (commencing with Section 7251).

10 (3) Upon approval of the board, a water common carrier may
11 utilize a single fuel exemption registration number for all
12 exemptions claimed under this ~~chapter~~ *article*.

13 (e) *(1) A water common carrier claiming an exemption under*
14 *this section, upon request, shall make available to the board*
15 *records, including, but not limited to, a copy of a log abstract, or*
16 *a cargo manifest, documenting its consumption of low-sulfur fuel*
17 *products for use in a vessel's auxiliary engine while in California's*
18 *territorial and internal waters and the amount claimed as exempt.*
19 *If the carrier documenting its consumption of low-sulfur fuel*
20 *products for use in a vessel's main engine, the amount claimed as*
21 *exempt, and any additional information related to a vessel's*
22 *engines, fuel tanks, and sailing schedules. If the carrier fails to*
23 *provide these the records upon request, the board may revoke the*
24 *carrier's fuel exemption registration number.*

25 (2) *Records required by the board pursuant to this subdivision*
26 *may include, but are not limited to:*

27 (A) *A description of the types of low-sulfur fuel products that*
28 *meet the requirements of this section and that are used in each*
29 *main engine.*

30 (B) *A description of the use of the low-sulfur fuel products.*

31 (C) *A description of the vessel that used the low-sulfur fuel*
32 *product, including the type of vessel, whether the vessel is*
33 *mono-fueled or dual-fueled, and the number of auxiliary engines*
34 *used by the vessel.*

35 (D) *A description of the vessel's locations and destinations for*
36 *the period the vessel was in California's territorial or internal*
37 *waters.*

38 (3) *A supplier or retailer, upon request by the board, shall*
39 *confirm the sulfur content of fuels sold to a water common carrier*
40 *and claimed as exempt under this section.*

1 (f) The board may require any water common carrier claiming
2 an exemption under this section and required to obtain a fuel
3 exemption registration number, to place with it such security as
4 the board may determine pursuant to Section 6701.

5 (g) Pursuant to this section, any use of the fuel products by the
6 purchasing carrier, other than that incident to the delivery of the
7 fuel products to the carrier and the immediate consumption—~~or~~
8 ~~transportation~~ of the fuel products by the carrier for use in the
9 conduct of its business as a water common carrier, or a failure of
10 the carrier to document its consumption of the fuel products in
11 ~~California's territorial or internal~~ *a main engine until the first*
12 *out-of-state destination or 500 nautical miles beyond California's*
13 *territorial* waters, shall subject the carrier to liability for payment
14 of sales tax as if it were a retailer making a retail sale of the
15 property at the time of that use or failure, and the sales price of
16 the property to it shall be deemed to be the gross receipts from the
17 retail sale.

18 ~~(h) In the event the United States Environmental Protection~~
19 ~~Agency establishes a Sulfur Emission Control Area under the~~
20 ~~provisions of Annex VI of the International Convention for the~~
21 ~~Prevention of Pollution from Ships, 1973, as amended at London~~
22 ~~in February 1978, provided in Section 1309 of Title 19 of the~~
23 ~~United States Code, or otherwise defines and sets standards for~~
24 ~~the regulation for the prevention of sulfur emissions from ships~~
25 ~~regardless of their country of origin, relating to California's~~
26 ~~territorial waters, this section is hereby repealed six months from~~
27 ~~the date the board, upon any notification of this action, submits~~
28 ~~this information to the Legislature and the Office of Administrative~~
29 ~~law for publication in the state register.~~

30 *(h) On or before January 1, 2013, the Legislative Analyst's*
31 *Office, in consultation with the Department of Finance, the board,*
32 *and the State Air Resources Board, shall submit a report to the*
33 *Legislature on the economic and health impacts of the exemption*
34 *authorized under this section. The report shall include, but is not*
35 *limited to, a recommendation as to whether the exemption should*
36 *be extended, and if so, any recommended modifications of the*
37 *exemption.*

38 *(i) This section is repealed on the earlier of any of the following:*

39 *(1) Six months from the date the board submits a finding to the*
40 *Legislature and the Office of Administrative Law, for publication*

1 *in the state register, that the United States Environmental*
2 *Protection Agency established a Sulfur Emission Control Area*
3 *under the provisions of Annex VI of the International Convention*
4 *for the Prevention of Pollution from Ships, 1973, as amended at*
5 *London in February 1978.*

6 (2) *Six months from the date the board submits a finding to the*
7 *Legislature and the Office of Administrative Law, for publication*
8 *in the state register, that the United States Environmental*
9 *Protection Agency established vessel air emissions standards*
10 *consistent with any amendments made by the International*
11 *Maritime Organization to Annex VI of the International Convention*
12 *for the Prevention of Pollution from Ships after the enactment date*
13 *of the act that added this section, provided that the air quality*
14 *benefits in California are at least as great as those from a Sulfur*
15 *Emission Control Area and the standards are not applied*
16 *exclusively to United States flagged vessels.*

17 (3) *January 1, 2014.*

18 SEC. 4. Section 6385 of the Revenue and Taxation Code, as
19 added by Section 3 of Chapter 712 of the Statutes of 2003, is
20 amended to read:

21 6385. (a) There are exempted from the computation of the
22 amount of the sales tax the gross receipts from the sale of tangible
23 personal property, other than fuel and petroleum products, to a
24 common carrier, shipped by the seller via the purchasing carrier's
25 facilities under a bill of lading whether the freight is paid in
26 advance, or the shipment is made freight charges collect, to a point
27 outside this state and the property is actually transported to the
28 out-of-state destination for use by the carrier in the conduct of its
29 business as a common carrier.

30 (b) There are exempted from the computation of the amount of
31 the sales tax the gross receipts from the sale of tangible personal
32 property, other than aircraft fuel and petroleum products, purchased
33 by a foreign air carrier and transported by the foreign air carrier's
34 facilities to a foreign destination for use by the air carrier in the
35 conduct of its business as a common carrier by air of persons or
36 property. To qualify for this exemption, the foreign air carrier shall
37 furnish to the seller a certificate in writing that the property shall
38 be transported and used in the manner required in this subdivision.
39 The certificate shall be substantially in the form prescribed by the
40 board. A seller is not liable for the sales tax if the seller accepts

1 the certificate in good faith. If the seller does not have the
2 certificate at the time the board requests the seller to submit the
3 certificate to the board, the seller shall be given a reasonable time
4 to request the foreign air carrier to provide the seller with the
5 certificate. The foreign air carrier shall maintain records in this
6 state, such as a copy of a bill of lading, an air waybill, or cargo
7 manifest, documenting its transportation of the tangible personal
8 property to a foreign destination.

9 (c) There are exempted from the computation of the amount of
10 the sales tax the gross receipts from the sale of fuel and petroleum
11 products to a water common carrier, for immediate shipment
12 outside this state for consumption in the conduct of its business as
13 a common carrier after the first out-of-state destination. To qualify
14 for the exemption the common carrier shall furnish to the seller
15 an exemption certificate in writing stating the quantity of fuel and
16 petroleum products claimed as exempt which is to be consumed
17 after reaching the first out-of-state destination. That certificate
18 shall bear the purchaser's valid seller's permit number or valid
19 fuel exemption registration number and shall be substantially in
20 the form prescribed by the board. Acceptance in good faith of that
21 certificate shall relieve the seller from liability for the sales tax.

22 (d) "First out-of-state destination," as used in this section, means
23 the first point reached outside this state by a common carrier in
24 the conduct of its business as a common carrier at which cargo or
25 passengers are loaded or discharged, cargo containers are added
26 or removed, fuel is bunkered, or docking fees are charged. "First
27 out-of-state destination," as used in this section, also includes the
28 entry point of the Panama Canal when the carrier is only transiting
29 the canal in the conduct of its business as a common carrier.

30 (e) "Common carrier," as used in this section, with respect to
31 water transportation, shall be deemed to include any vessel
32 engaged, for compensation, in transporting persons or property in
33 interstate or foreign commerce.

34 (f) "Foreign air carrier," as used in this section, means a foreign
35 air carrier as defined in Section 40102 of Title 49 of the United
36 States Code.

37 (g) "Immediate shipment," as used in this section, means that
38 the delivery of the fuel and petroleum products by the seller is
39 directly into a ship for transportation outside this state and not for
40 storage by the purchaser or any third party.

1 (h) Any common carrier claiming exemption under subdivision
2 (c) that is not required to hold a valid seller's permit shall be
3 required to register with the board and obtain a fuel exemption
4 registration number and shall be required to file returns as the
5 board may prescribe if either the board notifies the carrier that
6 returns must be filed or the carrier is liable for taxes based upon
7 consumption of fuel erroneously claimed as exempt under this
8 section. A common carrier required to hold a fuel exemption
9 registration number shall be subject to all applicable provisions of
10 this part, Part 1.5 (commencing with Section 7200), and Part 1.6
11 (commencing with Section 7251).

12 (i) A common carrier claiming an exemption under subdivision
13 (c), upon request, shall make available to the board records,
14 including, but not limited to, a copy of a log abstract or a cargo
15 manifest, documenting its transportation of the fuel or petroleum
16 product to an out-of-state destination and the amount claimed as
17 exempt. If the carrier fails to provide these records upon request,
18 the board may revoke the carrier's fuel exemption registration
19 number.

20 (j) The board may require any carrier claiming an exemption
21 under this section and required to obtain a fuel exemption
22 registration number to place with it that security as the board may
23 determine pursuant to Section 6701.

24 (k) Pursuant to subdivisions (a), (b), and (c), any use of the
25 property by the purchasing carrier, other than that incident to the
26 delivery of the property to the carrier and the transportation of the
27 property by the carrier to the first out-of-state destination and
28 subsequent use in the conduct of its business as a common carrier,
29 or a failure of the carrier to document its transporting the property
30 to the first out-of-state destination, shall subject the carrier to
31 liability for payment of sales tax as if it were a retailer making a
32 retail sale of the property at the time of that use or failure, and the
33 sales price of the property to it shall be deemed to be the gross
34 receipts from the retail sale.

35 (l) On December 31, 2005, the Legislative Analyst's Office
36 (LAO) shall submit a report to the Governor and the Legislature
37 that evaluates the economic impact of the partial sales tax
38 exemption regarding bunker fuel.

39 (m) In the event the federal exemption provided by Section
40 1309 of Title 19 of the United States Code, relating to supplies for

1 certain vessels and aircraft, is repealed, this section is repealed six
2 months from the date the board, upon any notification of this
3 action, submits this information to the Legislature and the Office
4 of Administrative Law for publication in the state register.

5 SEC. 5. Section 6385 of the Revenue and Taxation Code, as
6 added by Section 4 of Chapter 712 of the Statutes of 2003, is
7 repealed.

8 SEC. 6. Notwithstanding Section 2230 of the Revenue and
9 Taxation Code, no appropriation is made by this act and the state
10 shall not reimburse any local agency for any sales and use tax
11 revenues lost by it under this act.

12 SEC. 7. This act provides for a tax levy within the meaning of
13 Article IV of the Constitution and shall go into immediate effect.
14 However, the provisions of this act shall become operative on the
15 first day of the first calendar quarter commencing more than 90
16 days after the effective date of this act.