

AMENDED IN ASSEMBLY JUNE 15, 2012

SENATE BILL

No. 234

Introduced by ~~Senator~~ *Senators Hancock and Pavley*
(Principal coauthor: *Senator Rubio*)
(Principal coauthor: *Assembly Member Ma*)

February 9, 2011

An act to amend Section ~~6203~~ of the Revenue and Taxation Code, relating to taxation ~~39625.5~~ of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 234, as amended, Hancock. ~~State Board of Equalization: administration: use tax: Goods Movement Emission Reduction Program.~~

Existing law, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B at the November 7, 2006, statewide general election, authorizes the issuance of general obligation bonds for various transportation-related purposes, including reducing emissions and improving air quality in trade corridors. The State Air Resources Board is required to allocate the funds to be used for air quality purposes pursuant to specified requirements. Projects for the provision of on-shore electrical power for ocean freight carriers calling at the state's seaports to reduce the use of auxiliary and main engine ship power are authorized for funding.

This bill would require the state board to disburse funds appropriated and allocated for these on-shore electrical power projects upon the port entering into a design or construction contract, or both, for the project. This bill would require the state board to revise specified guidelines and procedures to also consider a project fully operational

if the facility providing on-shore electrical power has completed a building and safety inspection, and load bank testing.

~~The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state of, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law defines a “retailer engaged in business in this state” to include specified entities and provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, that engages in specified activity in this state shall, at the time of sale or at the time the storage, use, or other consumption becomes taxable, collect use tax from the purchaser and remit it to the State Board of Equalization.~~

~~This bill would further define a retailer engaged in business in this state as a retailer that has substantial nexus with this state and a retailer upon whom federal law permits the state to impose a use tax collection duty. The bill would also include specified retailers as retailers engaged in business in this state and would eliminate an exclusion.~~

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

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

- 1 SECTION 1. Section 39625.5 of the Health and Safety Code
- 2 is amended to read:
- 3 39625.5. (a) (1) Upon appropriation by the Legislature from
- 4 the funds made available by paragraph (2) of subdivision (c) of
- 5 Section 8879.23 of the Government Code, the state board shall
- 6 allocate funds on a competitive basis for projects that are shown
- 7 to achieve the greatest emission reductions from each emission
- 8 source identified in subdivision (c) of Section 39625.1, not
- 9 otherwise required by law or regulation, from activities related to
- 10 the movement of freight along California’s trade corridors,
- 11 commencing at the state’s airports, seaports, and land ports of
- 12 entry.
- 13 (2) Projects eligible for funding pursuant to paragraph (1) shall
- 14 include, but are not limited to, the following:
- 15 (A) The replacement, repower, or retrofit of heavy-duty diesel
- 16 trucks.

1 (B) The replacement, repower, or retrofit of diesel locomotive
2 engines, with priority given to switching locomotive engines,
3 provided that before any project is authorized for a locomotive
4 engine operated and controlled by a railroad company that has
5 entered into a memorandum of understanding or any other
6 agreement with a state or federal agency, a local air quality
7 management district, or a local air pollution control district,
8 including, but not limited to, the ARB/Railroad Statewide
9 Agreement Particulate Emissions Reductions Program at California
10 Rail Yards, dated June 2005, the state board shall determine that
11 the emission reductions that would be achieved by the locomotive
12 engine are not necessary to satisfy any mandated emission
13 reduction requirement under any such agreement.

14 (C) The replacement, repower, or retrofit of harbor craft that
15 operates at the state's seaports.

16 (D) The provision of on-shore electrical power for ocean freight
17 carriers calling at the state's seaports to reduce the use of auxiliary
18 and main engine ship power.

19 (E) Mobile or portable shoreside distributed power generation
20 projects that eliminate the need to use the electricity grid.

21 (F) The replacement, repower, or retrofit of cargo handling
22 equipment that operates at the state's seaports and rail yards.

23 (G) Electrification infrastructure to reduce engine idling and
24 use of internal combustion auxiliary power systems at truck stops,
25 intermodal facilities, distribution centers, and other places where
26 trucks congregate.

27 (b) (1) The state board shall allocate funds in a manner that
28 gives priority to emission reduction projects that achieve the
29 earliest possible reduction of health risk in communities with the
30 highest health risks from goods movement facilities.

31 (2) In evaluating which projects to fund, the state board shall,
32 at a minimum, consider all of the following criteria:

33 (A) The magnitude of the emission reduction.

34 (B) The public health benefits of the emission reduction.

35 (C) The cost-effectiveness and sustainability of the emissions
36 reductions.

37 (D) The severity and magnitude of the emission source's
38 contributions to emissions.

39 (E) Regulatory and State Implementation Plan requirements,
40 and the degree of surplus emissions to be reduced.

1 (F) The reduction in greenhouse gases, consistent with and
 2 supportive of emission reduction goals, consistent with existing
 3 law.

4 (G) The extent to which advanced emission reduction
 5 technologies are to be used.

6 (H) The degree to which funds are leveraged from other sources.

7 (I) The degree to which the project reduces air pollutants or air
 8 contaminants in furtherance of achieving state and federal ambient
 9 air quality standards and reducing toxic air contaminants.

10 (J) The total emission reductions a project would achieve over
 11 its lifetime per state dollar invested.

12 (K) Whether an emissions reduction is likely to occur in a
 13 location where emissions sources in the area expose individuals
 14 and population groups to elevated emissions that result in adverse
 15 health effects and contribute to cumulative human exposures to
 16 pollution.

17 (c) The state board shall ensure that state bond funds are
 18 supplemented and matched with funds from federal, local, and
 19 private sources to the maximum extent feasible.

20 *(d) For a project described in subparagraph (D) of paragraph*
 21 *(2) of subdivision (a), all of the following apply:*

22 *(1) The state board shall disburse funds appropriated and*
 23 *allocated for a project upon the port entering into a design or*
 24 *construction contract, or both, for the project.*

25 *(2) The state board shall revise the Proposition 1B: Goods*
 26 *Movement Emission Reduction Program Final 2010 Guidelines*
 27 *for Implementation and Supplemental Procedures for Ships at*
 28 *Berth and Cargo Handling Equipment Projects to also consider*
 29 *a project fully operational if the facility providing on-shore*
 30 *electrical power has completed a building and safety inspection,*
 31 *and load bank testing.*

32 ~~SECTION 1. Section 6203 of the Revenue and Taxation Code~~
 33 ~~is amended to read:~~

34 ~~6203. (a) Except as provided by Sections 6292 and 6293, every~~
 35 ~~retailer engaged in business in this state and making sales of~~
 36 ~~tangible personal property for storage, use, or other consumption~~
 37 ~~in this state, not exempted under Chapter 3.5 (commencing with~~
 38 ~~Section 6271) or Chapter 4 (commencing with Section 6351),~~
 39 ~~shall, at the time of making the sales or, if the storage, use, or other~~
 40 ~~consumption of the tangible personal property is not then taxable~~

1 hereunder, at the time the storage, use, or other consumption
2 becomes taxable, collect the tax from the purchaser and give to
3 the purchaser a receipt therefor in the manner and form prescribed
4 by the board.

5 (b) ~~As respects leases constituting sales of tangible personal~~
6 ~~property, the tax shall be collected from the lessee at the time~~
7 ~~amounts are paid by the lessee under the lease.~~

8 (e) ~~“Retailer engaged in business in this state” as used in this~~
9 ~~section and Section 6202 means any retailer that has substantial~~
10 ~~nexus with this state for purposes of the commerce clause of the~~
11 ~~United States Constitution and any retailer upon whom federal~~
12 ~~law permits this state to impose a use tax collection duty. “Retailer~~
13 ~~engaged in business in this state” specifically includes, but is not~~
14 ~~limited to, any of the following:~~

15 (1) ~~Any retailer maintaining, occupying, or using, permanently~~
16 ~~or temporarily, directly or indirectly, or through a subsidiary, or~~
17 ~~agent, by whatever name called, an office, place of distribution,~~
18 ~~sales or sample room or place, warehouse or storage place, or other~~
19 ~~place of business.~~

20 (2) ~~Any retailer having any representative, agent, salesperson,~~
21 ~~canvasser, independent contractor, or solicitor operating in this~~
22 ~~state under the authority of the retailer or its subsidiary for the~~
23 ~~purpose of selling, delivering, installing, assembling, or the taking~~
24 ~~of orders for any tangible personal property.~~

25 (3) ~~As respects a lease, any retailer deriving rentals from a lease~~
26 ~~of tangible personal property situated in this state.~~

27 (d) ~~Except as provided in this subdivision, a retailer is not a~~
28 ~~“retailer engaged in business in this state” under paragraph (2) of~~
29 ~~subdivision (c) if that retailer’s sole physical presence in this state~~
30 ~~is to engage in convention and trade show activities as described~~
31 ~~in Section 513(d)(3)(A) of the Internal Revenue Code, and if the~~
32 ~~retailer, including any of his or her representatives, agents,~~
33 ~~salespersons, canvassers, independent contractors, or solicitors,~~
34 ~~does not engage in those convention and trade show activities for~~
35 ~~more than 15 days, in whole or in part, in this state during any~~
36 ~~12-month period and did not derive more than one hundred~~
37 ~~thousand dollars (\$100,000) of net income from those activities~~
38 ~~in this state during the prior calendar year. Notwithstanding the~~
39 ~~preceding sentence, a retailer engaging in convention and trade~~
40 ~~show activities, as described in Section 513(d)(3)(A) of the Internal~~

1 Revenue Code, is a “retailer engaged in business in this state,” and
2 is liable for collection of the applicable use tax, with respect to
3 any sale of tangible personal property occurring at the convention
4 and trade show activities and with respect to any sale of tangible
5 personal property made pursuant to an order taken at or during
6 those convention and trade show activities.
7 (e) Any limitations created by this section upon the definition
8 of “retailer engaged in business in this state” shall only apply for
9 purposes of tax liability under this code. Nothing in this section is
10 intended to affect or limit, in any way, civil liability or jurisdiction
11 under Section 410.10 of the Code of Civil Procedure.