

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE MARCH 27, 2012

**SENATE BILL**

**No. 1243**

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**Introduced by Senator Lowenthal**  
(Coauthor: Assembly Member Bonnie Lowenthal)

February 23, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, as amended, Lowenthal. Sales and use taxes: exemptions: marine or maritime fuel.

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, 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 exempts, until January 1, 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, as defined, if specified conditions are met.

This bill would revise the definition of "first out-of-state destination" and would extend that exemption to apply ~~indefinitely~~ *until January 1, 2026*.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with

the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws. 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 counties and cities for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

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. Section 6385 of the Revenue and Taxation Code,  
 2 as added by Section 3 of Chapter 712 of the Statutes of 2003, is  
 3 amended to read:  
 4 6385. (a) There are exempted from the computation of the  
 5 amount of the sales tax the gross receipts from the sale of tangible  
 6 personal property, other than fuel and petroleum products, to a  
 7 common carrier, shipped by the seller via the purchasing carrier's  
 8 facilities under a bill of lading whether the freight is paid in  
 9 advance, or the shipment is made freight charges collect, to a point  
 10 outside this state and the property is actually transported to the  
 11 out-of-state destination for use by the carrier in the conduct of its  
 12 business as a common carrier.  
 13 (b) There are exempted from the computation of the amount of  
 14 the sales tax the gross receipts from the sale of tangible personal  
 15 property, other than aircraft fuel and petroleum products, purchased  
 16 by a foreign air carrier and transported by the foreign air carrier's  
 17 facilities to a foreign destination for use by the air carrier in the  
 18 conduct of its business as a common carrier by air of persons or  
 19 property. To qualify for this exemption, the foreign air carrier shall  
 20 furnish to the seller a certificate in writing that the property shall  
 21 be transported and used in the manner required in this subdivision.  
 22 The certificate shall be substantially in the form prescribed by the  
 23 board. A seller is not liable for the sales tax if the seller accepts  
 24 the certificate in good faith. If the seller does not have the  
 25 certificate at the time the board requests the seller to submit the

1 certificate to the board, the seller shall be given a reasonable time  
2 to request the foreign air carrier to provide the seller with the  
3 certificate. The foreign air carrier shall maintain records in this  
4 state, such as a copy of a bill of lading, an air waybill, or cargo  
5 manifest, documenting its transportation of the tangible personal  
6 property to a foreign destination.

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

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

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

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

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

39 (h) Any common carrier claiming exemption under subdivision  
40 (c) who is not required to hold a valid seller's permit shall be

1 required to register with the board and obtain a fuel exemption  
2 registration number and shall be required to file returns as the  
3 board may prescribe if either the board notifies the carrier that  
4 returns must be filed or the carrier is liable for taxes based upon  
5 consumption of fuel erroneously claimed as exempt under this  
6 section. A 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 (i) A common carrier claiming an exemption under subdivision  
11 (c), upon request, shall make available to the board records,  
12 including, but not limited to, a copy of a log abstract or a cargo  
13 manifest, documenting its transportation of the fuel or petroleum  
14 product to an out-of-state destination and the amount claimed as  
15 exempt. If the carrier fails to provide these records upon request,  
16 the board may revoke the carrier's fuel exemption registration  
17 number.

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

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

33 (l) *This section shall remain in effect only until January 1, 2026,*  
34 *and as of that date is repealed.*

35 ~~SEC. 2. Section 6385 of the Revenue and Taxation Code, as~~  
36 ~~added by Section 4 of Chapter 712 of the Statutes of 2003, is~~  
37 ~~repealed.~~

38 *SEC. 2. Section 6385 of the Revenue and Taxation Code, as*  
39 *added by Section 4 of Chapter 712 of the Statutes of 2003, is*  
40 *amended to read:*

1 6385. (a) There are exempted from the computation of the  
2 amount of the sales tax the gross receipts from the sale of tangible  
3 personal property, other than fuel and petroleum products, to a  
4 common carrier, shipped by the seller via the purchasing carrier's  
5 facilities under a bill of lading whether the freight is paid in  
6 advance, or the shipment is made freight charges collect, to a point  
7 outside this state and the property is actually transported to the  
8 out-of-state destination for use by the carrier in the conduct of its  
9 business as a common carrier.

10 (b) There are exempted from the computation of the amount of  
11 the sales tax the gross receipts from the sale of tangible personal  
12 property, other than aircraft fuel and petroleum products, purchased  
13 by a foreign air carrier and transported by the foreign air carrier's  
14 facilities to a foreign destination for use by the air carrier in the  
15 conduct of its business as a common carrier by air of persons or  
16 property. To qualify for this exemption, the foreign air carrier shall  
17 furnish to the seller a certificate in writing that the property shall  
18 be transported and used in the manner required in this subdivision.  
19 The certificate shall be substantially in the form prescribed by the  
20 board. A seller is not liable for the sales tax if the seller accepts  
21 the certificate in good faith. If the seller does not have the  
22 certificate at the time the board requests the seller to submit the  
23 certificate to the board, the seller shall be given a reasonable time  
24 to request the foreign air carrier to provide the seller with the  
25 certificate. The foreign air carrier shall maintain records in this  
26 state, such as a copy of a bill of lading, an air waybill, or cargo  
27 manifest, documenting its transportation of the tangible personal  
28 property to a foreign destination.

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

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

36 (e) Pursuant to subdivisions (a) and (b), any use of the property  
37 by the purchasing carrier, other than that incident to the delivery  
38 of the property to the carrier and the transportation of the property  
39 by the carrier to an out-of-state destination and subsequent use in  
40 the conduct of its business as a common carrier, or a failure of the

1 carrier to document its transporting the property to an out-of-state  
2 destination, shall subject the carrier to liability for payment of sales  
3 tax as if it were a retailer making a retail sale of the property at  
4 the time of that use or failure, and the sales price of the property  
5 to it shall be deemed to be the gross receipts from the retail sale.

6 (f) This section shall become operative on January 1, ~~2014~~ 2026.

7 SEC. 3. Notwithstanding Section 2230 of the Revenue and  
8 Taxation Code, no appropriation is made by this act and the state  
9 shall not reimburse any local agency for any sales and use tax  
10 revenues lost by it under this act.

11 SEC. 4. This act provides for a tax levy within the meaning of  
12 Article IV of the Constitution and shall go into immediate effect.