

Senate Bill No. 1243

Passed the Senate May 30, 2012

Secretary of the Senate

Passed the Assembly August 21, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL’S DIGEST

SB 1243, 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 the application of that exemption until January 1, 2024.

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.

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

SECTION 1. Section 6385 of the Revenue and Taxation Code, as added by Section 3 of Chapter 712 of the Statutes of 2003, is amended to read:

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

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

(c) There are exempted from the computation of the amount of the sales tax 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. To qualify for the exemption the common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and

petroleum products claimed as exempt which is to be consumed after reaching the first out-of-state destination. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

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

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

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

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

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

(i) A common carrier claiming an exemption under subdivision (c), upon request, shall make available to the board records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum

product to an out-of-state destination and the amount claimed as exempt. If the carrier fails to provide these records upon request, the board may revoke the carrier's fuel exemption registration number.

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

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

(l) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

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

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

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall

furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

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

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

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(f) This section shall become operative on January 1, 2024.

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

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

Approved _____, 2012

Governor