

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY MARCH 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2114

Introduced by Assembly Member Pan

February 20, 2014

An act to add Section 97.83 to, and to add Part 11 (commencing with Section 5500) to Division 1 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2114, as amended, Pan. Taxation: qualified heavy equipment.

The California Constitution authorizes the Legislature to classify personal property for differential taxation or for exemption by means of a statute approved by a $\frac{2}{3}$ vote of the membership of each house.

This bill would, pursuant to this constitutional authorization, impose a tax on every qualified rentee of qualified heavy equipment for the privilege of renting qualified heavy equipment in this state at the rate of .75% of the gross receipts of the rental price from the renting of qualified heavy equipment. This bill would require a qualified renter to collect the tax from the qualified rentee at the time of rental, as provided. This bill would provide that this tax shall be in lieu of any personal property tax on qualified heavy equipment. This bill would require the tax to be administered by the State Board of Equalization and to be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. This bill would require all revenues, interest, penalties, and other amounts, less refunds and the board's costs of

administration, derived from the imposition of the tax to be deposited in the General Fund.

Existing property tax law requires the county auditor, in each fiscal year, to allocate property tax revenue to local jurisdictions in accordance with specified formulas and procedures, and generally requires that each jurisdiction be allocated an amount equal to the total of the amount of revenue allocated to that jurisdiction in the prior fiscal year, subject to certain modifications, and that jurisdiction's portion of the annual tax increment, as defined. Existing property tax law also reduces the amounts of ad valorem property tax revenue that would otherwise be annually allocated to the county, cities, and special districts pursuant to these general allocation requirements by requiring, for purposes of determining property tax revenue allocations in each county for the 1992–93 and 1993–94 fiscal years, that the amounts of property tax revenue deemed allocated in the prior fiscal year to the county, cities, and special districts be reduced in accordance with certain formulas. It requires that the revenues not allocated to the county, cities, and special districts as a result of these reductions be transferred to the Educational Revenue Augmentation Fund in that county for allocation to school districts, community college districts, and the county office of education.

This bill would, for the 2015–16 fiscal year and for each fiscal year thereafter, require the county auditor to increase the total amount of ad valorem property tax revenue that is otherwise required to be allocated among the county and each city and special district in the county by the qualified heavy equipment reimbursement amount, as defined, and to commensurately decrease the amount of ad valorem property tax revenue that is otherwise required to be allocated to the county Educational Revenue Augmentation Fund *and, if necessary, the amount of those revenue otherwise required to be allocated to school districts, as specified*, by the qualified heavy equipment reimbursement amount.

By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, and by imposing new duties upon local officials in the allocation of ad valorem property tax revenues, 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.

Vote: $\frac{2}{3}$. 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 97.83 is added to the Revenue and
2 Taxation Code, to read:

3 97.83. (a) (1) Notwithstanding any other law, for the 2015–16
4 fiscal year and for each fiscal year thereafter, the auditor of each
5 county shall do both of the following:

6 ~~(1)~~

7 (A) Increase the total amount of ad valorem property tax revenue
8 that is otherwise required to be allocated among the county and
9 each city and special district in the county by the qualified heavy
10 equipment reimbursement amount. The qualified heavy equipment
11 reimbursement amount shall be allocated among the county, cities,
12 and special districts in proportion to the amounts of ad valorem
13 property tax revenue otherwise allocated among those local
14 agencies.

15 ~~(2)~~

16 (B) Decrease the total amount of ad valorem property tax
17 revenue that is otherwise required to be allocated to the county's
18 Educational Revenue Augmentation Fund by the qualified heavy
19 equipment reimbursement amount.

20 (2) (A) *In the event that the county's Educational Revenue*
21 *Augmentation Fund does not have sufficient funds to offset the*
22 *qualified heavy equipment reimbursement amount, the auditor*
23 *shall, to the extent that those funds are insufficient, decrease the*

1 *total amount of ad valorem property tax that is allocated to local*
 2 *school districts providing instruction for kindergarten and grades*
 3 *1 to 12, inclusive, that are excess tax school entities, in proportion*
 4 *to their allocations of ad valorem property tax revenue allocated*
 5 *to school districts providing instruction for kindergarten and*
 6 *grades 1 to 12, inclusive, in the county, and allocate that amount*
 7 *among the county, cities, and special districts in proportion to the*
 8 *amounts of ad valorem property tax revenues otherwise allocated*
 9 *among those local agencies.*

10 (B) *In the event that the amount of ad valorem property tax*
 11 *revenues allocated to the Educational Revenue Augmentation*
 12 *Fund, together with the allocations to those school districts*
 13 *providing instruction for kindergarten and grades 1 to 12,*
 14 *inclusive, that are basic aid school districts, is insufficient to offset*
 15 *the qualified heavy equipment reimbursement amount, the auditor*
 16 *may also decrease the amount of ad valorem property tax revenues*
 17 *allocated to school districts providing instruction for kindergarten*
 18 *and grades 1 to 12, inclusive, that are not excess tax school entities,*
 19 *and allocate that amount among the county, cities, and special*
 20 *districts in proportion to the amounts of ad valorem property tax*
 21 *revenue otherwise allocated among those local agencies.*

22 (b) For purposes of this section, “qualified heavy equipment
 23 reimbursement amount” means the total amount of ad valorem
 24 property tax revenue ~~lost~~ *received* by the county and each city and
 25 special district in the county ~~as a result of the in-lieu tax imposed~~
 26 ~~upon qualified heavy equipment pursuant to Part 11 (commencing~~
 27 ~~with Section 5500).~~ *in the 2013–14 fiscal year from renters of*
 28 *qualified heavy equipment, as defined in Part 11 (commencing*
 29 *with Section 5500) of Division 2.*

30 (c) For the 2016–17 fiscal year and for each fiscal year
 31 thereafter, ad valorem property tax revenue allocations made
 32 pursuant to Sections 96.1 and 96.5, or any successor to either of
 33 those provisions, shall not incorporate the allocation adjustments
 34 made by this section.

35 SEC. 2. Part 11 (commencing with Section 5500) is added to
 36 Division 1 of the Revenue and Taxation Code, to read:

1 PART 11. TAXATION OF QUALIFIED HEAVY EQUIPMENT

2

3 5500. For purposes of this part, all of the following definitions
4 shall apply:

5 (a) "Rental price" means the total amount of the charge for
6 renting the qualified rental equipment, excluding any separately
7 stated charges that are not rental charges, ~~including~~ *including*, but
8 not limited to, separately stated charges for delivery and pickup
9 fees, damage waivers, environmental mitigation fees, or use taxes.

10 (b) "Local entity" means a city, county, and special district.

11 (c) (1) "Qualified heavy equipment" means construction,
12 earthmoving, or industrial equipment that is mobile, including
13 attachments for the equipment, including, but not limited to, all of
14 the following:

15 (A) A self-propelled vehicle that is not designed to be driven
16 on the highway.

17 (B) Industrial electrical generation equipment.

18 (C) Industrial lift equipment.

19 (D) Industrial material equipment.

20 (E) Equipment used in shoring, shielding, and ground trenching.

21 (2) Qualified heavy equipment is mobile if the qualified heavy
22 equipment is not intended to be permanently affixed to real
23 property for the purpose of using the qualified heavy equipment
24 for its intended use. Qualified heavy equipment is mobile if it is
25 intended to be moved among worksites as needed.

26 (d) "Qualified rentee" means a rentee that rents qualified heavy
27 equipment from a qualified renter. *"Qualified rentee" does not*
28 *include a qualified renter who rents from another qualified renter.*

29 (e) "Qualified renter" means a renter that satisfies all of the
30 following:

31 (1) The principal business of the renter is the short-term rental
32 of qualified heavy equipment.

33 (2) Is engaged in a line of business described in Code 532412
34 of the North American Industry Classification System published
35 by the United States Office of Management and Budget, 2012
36 edition.

37 (f) "Renting" or "rent" means a rental for a period of less than
38 365 days or for an undefined period.

39 5501. (a) There is hereby imposed a tax on every qualified
40 rentee of qualified heavy equipment for the privilege of renting

1 qualified heavy equipment in this state at the rate of .75 percent
2 of the rental price from the renting of qualified heavy equipment.

3 (b) (1) The qualified renter shall collect the tax from the
4 qualified rentee at the time of rental and remit the tax to the board
5 as required by this part. Any amount unreturned to the qualified
6 rentee who paid an amount in excess of the tax, but was collected
7 from the qualified rentee under the representation by the qualified
8 renter that it was owed as tax, constitutes debts owed by the
9 qualified renter to this state.

10 (2) Every qualified rentee who rents qualified heavy equipment
11 in this state is liable for the tax until it has been paid to this state,
12 except that payment to a qualified renter relieves the qualified
13 rentee from further liability for the tax. Any tax collected from a
14 qualified rentee that has not been remitted to the board shall be a
15 debt owed to the state by the qualified renter required to collect
16 and remit the tax. This part shall not impose any obligation upon
17 a qualified renter to take any legal action to enforce the collection
18 of the tax imposed by this part.

19 (c) The qualified renter shall separately state the amount of the
20 tax imposed under this section on any contract, receipt, invoice,
21 or other similar document given by the qualified renter to the
22 qualified rentee at the time of rental.

23 (d) The board shall administer and collect the tax imposed by
24 this part pursuant to the Fee Collection Procedures Law (Part 30
25 (commencing with Section 55001) of Division 2). For purposes
26 of this part, the references in the Fee Collection Procedures Law
27 to “fee” shall include the tax imposed by this part, and references
28 to “feepayer” shall include a person liable for the payment of the
29 taxes imposed by this part and collected pursuant to that law.

30 5502. Every qualified renter required to collect the tax imposed
31 under this part shall register with the board. Every application for
32 registration shall be made upon a form prescribed by the board
33 and shall set forth the name under which the applicant transacts
34 or intends to transact business, the location of its place or places
35 of business, and other information as the board may require. An
36 application for an account shall be authenticated in a form or
37 pursuant to methods as may be prescribed by the board.

38 5503. The board may prescribe, adopt, and enforce regulations
39 relating to the administration and enforcement of this part,

1 including, but not limited to, collections, reporting, refunds, and
2 appeals.

3 5504. The taxes imposed by this part are due and payable to
4 the board quarterly on or before the last day of the month next
5 succeeding each quarterly period.

6 5505. (a) On or before the last day of the month following
7 each quarterly period of three months, a return for the preceding
8 quarterly period shall be filed using electronic media with the
9 board.

10 (b) The board may prescribe those forms and reporting
11 requirements as are necessary to implement the tax.

12 (c) Returns shall be authenticated in a form or pursuant to
13 methods as may be prescribed by the board.

14 5506. All revenues, interest, penalties, and other amounts
15 collected pursuant to this part, less refunds and the board's costs
16 of administration, shall be deposited in the General Fund.

17 5507. (a) For the 2015–16 fiscal year and for each fiscal year
18 thereafter, the tax imposed pursuant to this part shall be in lieu of
19 any property tax on qualified heavy equipment subject to taxation
20 pursuant to this part.

21 (b) Qualified heavy equipment of a business that is not for rent
22 shall remain subject to any applicable property taxes.

23 5508. This part shall not apply to any rental contract for
24 qualified heavy equipment that was entered into before the
25 operative date of the act adding this section.

26 SEC. 3. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution for certain
28 costs that may be incurred by a local agency or school district
29 because, in that regard, this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty for a crime
31 or infraction, within the meaning of Section 17556 of the
32 Government Code, or changes the definition of a crime within the
33 meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 However, if the Commission on State Mandates determines that
36 this act contains other costs mandated by the state, reimbursement
37 to local agencies and school districts for those costs shall be made
38 pursuant to Part 7 (commencing with Section 17500) of Division
39 4 of Title 2 of the Government Code.

1 SEC. 4. Notwithstanding Section 2229 of the Revenue and
2 Taxation Code, no appropriation is made by this act and the state
3 shall not reimburse any local agency for any property tax revenues
4 lost by it pursuant to this act.

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