

AMENDED IN ASSEMBLY APRIL 30, 2014

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~~ *renter* 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~~ *pay and remit the tax*, 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 (A) Increase the total amount of ad valorem property tax revenue
7 that is otherwise required to be allocated among the county and
8 each city and special district in the county by the qualified heavy
9 equipment reimbursement amount. The qualified heavy equipment
10 reimbursement amount shall be allocated among the county, cities,
11 and special districts in proportion to the amounts of ad valorem
12 property tax revenue otherwise allocated among those local
13 agencies.
14 (B) Decrease the total amount of ad valorem property tax
15 revenue that is otherwise required to be allocated to the county’s
16 Educational Revenue Augmentation Fund by the qualified heavy
17 equipment reimbursement amount.
18 (2) (A) In the event that the county’s Educational Revenue
19 Augmentation Fund does not have sufficient funds to offset the
20 qualified heavy equipment reimbursement amount, the auditor
21 shall, to the extent that those funds are insufficient, decrease the
22 total amount of ad valorem property tax that is allocated to local
23 school districts providing instruction for kindergarten and grades

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

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

20 (b) For purposes of this section, “qualified heavy equipment
 21 reimbursement amount” means the total amount of ad valorem
 22 property tax revenue received by the county and each city and
 23 special district in the county in the 2013–14 fiscal year from renters
 24 of qualified heavy equipment, as defined in Part 11 (commencing
 25 with Section 5500) of Division 2.

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

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

33
 34 PART 11. TAXATION OF QUALIFIED HEAVY EQUIPMENT

35
 36 5500. For purposes of this part, all of the following definitions
 37 shall apply:

38 (a) “Rental price” means the total amount of the charge for
 39 renting the qualified ~~rental~~ heavy equipment, excluding any
 40 separately stated charges that are not rental charges, including, but

1 not limited to, separately stated charges for delivery and pickup
2 fees, damage waivers, environmental mitigation fees, or use taxes.

3 ~~(b) “Local entity” means a city, county, and special district.~~

4 ~~(e)~~

5 (b) (1) “Qualified heavy equipment” means *any* construction,
6 earthmoving, or industrial equipment that is mobile *rented by a*
7 *qualified renter*, including attachments for the equipment *or other*
8 *ancillary equipment*, including, but not limited to, all of the
9 following:

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

12 (B) Industrial electrical generation equipment.

13 (C) Industrial lift equipment.

14 (D) Industrial material equipment.

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

16 (F) *Equipment or vehicles not subject to the fee imposed*
17 *pursuant to the Vehicle License Fee Law (Part 5 (commencing*
18 *with Section 10701) of Division 2).*

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

24 ~~(d) “Qualified rentee” means a rentee that rents qualified heavy~~
25 ~~equipment from a qualified renter. “Qualified rentee” does not~~
26 ~~include a qualified renter who rents from another qualified renter.~~

27 ~~(e)~~

28 (c) “Qualified renter” means a renter that satisfies all of the
29 following:

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

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

36 ~~(f)~~

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

39 5501. (a) ~~There~~ *On and after July 1, 2015, there* is hereby
40 imposed a tax on every qualified ~~rentee of qualified heavy~~

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

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

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

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

24 ~~(b) The qualified renter shall pay and remit the tax to the board~~
25 ~~as required by this part.~~

26 ~~(d)~~

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

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

1 application for an account shall be authenticated in a form or
2 pursuant to methods as may be prescribed by the board.

3 5503. The board may prescribe, adopt, and enforce regulations
4 relating to the administration and enforcement of this part,
5 including, but not limited to, collections, reporting, refunds, and
6 appeals.

7 5504. The taxes imposed by this part are due and payable to
8 the board quarterly on or before the last day of the month next
9 succeeding each quarterly period.

10 5505. (a) On or before the last day of the month following
11 each quarterly period of three months, a return for the preceding
12 quarterly period shall be filed using electronic media with the
13 board.

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

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

18 5506. All revenues, interest, penalties, and other amounts
19 collected pursuant to this part, less refunds and the board's costs
20 of administration, shall be deposited in the General Fund.

21 5507. (a) For the 2015–16 fiscal year and for each fiscal year
22 thereafter, the tax imposed pursuant to this part shall be in lieu of
23 any property tax on qualified heavy equipment subject to taxation
24 pursuant to this part.

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

27 ~~5508. This part shall not apply to any rental contract for~~
28 ~~qualified heavy equipment that was entered into before the~~
29 ~~operative date of the act adding this section.~~

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

39 However, if the Commission on State Mandates determines that
40 this act contains other costs mandated by the state, reimbursement

1 to local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code.

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

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