

AMENDED IN SENATE APRIL 11, 2013

SENATE BILL

No. 808

Introduced by Senator De León

February 22, 2013

An act to amend Section ~~18872~~ of 6357.5 of, and to add Section 6357.6 to, the Revenue and Taxation Code, to amend Section 322 of, and to add Section 337 to, the Unemployment Insurance Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 808, as amended, De León. ~~Personal income taxes: voluntary contributions. Sales and use taxes: air common carrier: employing Medi-Cal recipients.~~

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for the gross receipts from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for immediate consumption or shipment use in the conduct of its business as an air common carrier on an international flight.

This bill would prohibit the exemption for the sale of fuel and petroleum products to an air common carrier during a calendar year following a year in which the air common carrier fails to send specified information to the Employment Development Department, or a year in which the State Board of Equalization provides notification that the air common carrier employs people enrolled in Medi-Cal or a contractor or subcontractor of the air common carrier employs people enrolled in Medi-Cal, as specified. This bill would subject the carrier to liability

for payment of sales tax as if it were a retailer making a retail sale of the tangible personal property at the time of the purchase, as prescribed. This bill would require the Employment Development Department, in coordination and consultation with the State Department of Health Care Services, to collect and identify specified information relating to the air common carriers, and would require the Employment Development Department and the State Board of Equalization to provide specified notifications related to air common carriers and the status of the exemption, as prescribed.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

~~Existing law states that it is the intent of the Legislature to encourage persons who prepare tax returns, as specified, to inform their clients, in writing, that they may make a voluntary contribution to specified funds or programs as provided on the state income tax return.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~yes. State-mandated local program: no.

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

1 SECTION 1. Section 6357.5 of the Revenue and Taxation Code
2 is amended to read:

3 6357.5. (a) There are exempted from the taxes imposed by
4 this part the gross receipts from the sale of, and the storage, use,
5 or other consumption of, fuel and petroleum products sold to an
6 air common carrier for immediate consumption or shipment in the
7 conduct of its business as an air common carrier, on an international
8 flight.

9 (b) To qualify for the exemption, the air common carrier shall
10 furnish to the seller an exemption certificate in writing stating the
11 quantity of fuel and petroleum products claimed as exempt. That
12 certificate shall bear the purchaser's valid seller's permit number
13 or valid fuel exemption registration number and shall be
14 substantially in the form prescribed by the board. Acceptance in

1 good faith of that certificate shall relieve the seller from liability
2 for the sales tax.

3 (c) “Immediate consumption or shipment,” as used in this
4 section, means that the delivery of the fuel and petroleum products
5 by the seller is directly into an aircraft for consumption or
6 transportation on an international flight and not for storage by the
7 purchaser or any third party.

8 (d) “International flight,” as used in this section, is a flight whose
9 final destination is a point outside of the United States.

10 (e) Any air common carrier claiming exemption under this
11 section who is not required to hold a valid seller’s permit, shall be
12 required to register with the board and obtain a fuel exemption
13 registration number, and shall be required to file returns as the
14 board may prescribe, either if the board notifies the carrier that
15 returns must be filed or if the carrier is liable for taxes based upon
16 consumption or transportation of fuel or petroleum products
17 erroneously claimed as exempt under this section. A common
18 carrier required to hold a fuel exemption registration number shall
19 be subject to all applicable provisions of this part, Part 1.5
20 (commencing with Section 7200), and Part 1.6 (commencing with
21 Section 7251).

22 (f) An air common carrier claiming an exemption under this
23 section upon request, shall make available to the board records,
24 including, but not limited to, a copy of a log abstract, an air waybill,
25 or a cargo manifest, documenting its consumption or transportation
26 of the fuel or petroleum products on an international flight and the
27 amount claimed as exempt. If the carrier fails to provide these
28 records upon request, the board may revoke the carrier’s fuel
29 exemption registration number.

30 (g) The board may require any air common carrier claiming an
31 exemption under this section and required to obtain a fuel
32 exemption registration number, to place with it such security as
33 the board may determine pursuant to Section 6701.

34 (h) Pursuant to this section, any use of the fuel and petroleum
35 products by the purchasing carrier, other than that incident to the
36 delivery of the fuel and petroleum products to the carrier and the
37 consumption or transportation of the fuel and petroleum products
38 by the carrier on an international flight for use in the conduct of
39 its business as a common carrier, or a failure of the carrier to
40 document its consumption or transportation of the fuel and

1 petroleum products on an international flight, shall subject the
2 carrier to liability for payment of sales tax as if it were a retailer
3 making a retail sale of the property at the time of that use or failure,
4 and the sales price of the property to it shall be deemed to be the
5 gross receipts from the retail sale.

6 (i) In the event that the federal exemption provided in Section
7 1309 of Title 19 of the United States Code, relating to supplies for
8 certain vessels and aircraft, is repealed, this section is repealed as
9 of that date.

10 (j) *The exemption provided by this section shall not apply if the*
11 *fuel and petroleum products are sold to an air common carrier*
12 *during a calendar year following a year in which the air common*
13 *carrier fails to send the information required under subdivision*
14 *(a) of Section 6357.6 to the Employment Development Department*
15 *or a year in which the board provided notification pursuant to*
16 *paragraph (1) of subdivision (c) of Section 6357.6. Any exemption*
17 *claimed for that purchase shall subject the carrier to liability for*
18 *payment of sales tax as if it were a retailer making a retail sale of*
19 *the tangible personal property at the time of the purchase, and the*
20 *sales price of the property to it shall be deemed to be the gross*
21 *receipts from the retail sale.*

22 SEC. 2. Section 6357.6 is added to the Revenue and Taxation
23 Code, to read:

24 6357.6. (a) *On or before June 30, 2014, and on or before every*
25 *June 30 thereafter, an air common carrier that furnishes or intends*
26 *to furnish an exemption certificate under Section 6357.5 for fuel*
27 *purchased during the next calendar year shall send the following*
28 *information to the Employment Development Department:*

29 (1) *A list of the names, addresses, and telephone numbers of*
30 *persons with which the air common carrier has entered into a*
31 *contract or agreement for labor or services in the state.*

32 (2) *A list of the names, addresses, and telephone numbers of*
33 *persons with which the persons listed in paragraph (1) have*
34 *entered into a contract or agreement for labor or services*
35 *performed in the state for or on behalf of the air common carrier,*
36 *regardless of whether the person has a direct contractual*
37 *relationship with the air common carrier.*

38 (b) *On or before November 1, 2014, and on or before every*
39 *November 1 thereafter, the Employment Development Department*
40 *shall send a notification to the board of an air common carrier,*

1 or person listed in paragraph (1) or (2), that employs a person
2 enrolled in the Medi-Cal program.

3 (c) (1) Upon receipt of the notification in subdivision (b), the
4 board shall, on or before December 1, 2014, and on or before
5 every December 1 thereafter, provide notification to an air common
6 carrier to inform the carrier that the exemption under Section
7 6357.5 shall not apply to a purchase of fuel and petroleum products
8 during the following calendar year, and any subsequent calendar
9 year, unless a subsequent notification described in paragraph (2)
10 is provided.

11 (2) If the Employment Development Department sends a
12 notification pursuant to subdivision (b) to the board that does not
13 contain an air common carrier to which the board provided
14 notification in paragraph (1), the board shall, on or before
15 December 1 of the calendar year in which the air common carrier
16 was not allowed the exemption, send a subsequent notification to
17 the air common carrier informing that carrier that the exemption
18 under Section 6357.5 shall apply during the following calendar
19 year.

20 SEC. 3. Section 322 of the Unemployment Insurance Code is
21 amended to read:

22 322. The department may exchange information with other
23 governmental departments and agencies, both federal and state,
24 which are concerned with the administration of unemployment
25 insurance, or the collection of taxes which may be used to finance
26 the administration of unemployment insurance, or the relief of
27 unemployed or destitute individuals, or legislation concerning,
28 regulating, or in any manner affecting the obligations arising out
29 of an employer-employee relation, with the board and the State
30 Department of Health Care Services for the administration of
31 Section 6357.6 of the Revenue and Taxation Code, and with other
32 departments or agencies of government as the department deems
33 necessary or desirable for the proper administration of this division
34 in accordance with authorized regulations.

35 SEC. 4. Section 337 is added to the Unemployment Insurance
36 Code, to read:

37 337. The department, in consultation and coordination with
38 the State Department of Health Care Services, shall do all the
39 following:

1 (a) Collect the names of air common carriers and persons
2 described under paragraph (1) or (2) of subdivision (a) of Section
3 6357.6 of the Revenue and Taxation Code.

4 (b) Identify the names of any air common carrier that employs
5 a person enrolled in the Medi-Cal program, or the name of any
6 air common carrier that contracts or subcontracts with a person
7 for labor or services for or on behalf of the air common carrier
8 in the state that employs a person enrolled in the Medi-Cal
9 program.

10 SEC. 5. This act provides for a tax levy within the meaning of
11 Article IV of the Constitution and shall go into immediate effect.

12 SECTION 1. ~~Section 18872 of the Revenue and Taxation Code~~
13 ~~is amended to read:~~

14 ~~18872. The Legislature finds and declares that it is important~~
15 ~~to inform taxpayers of their ability to make voluntary contributions~~
16 ~~to certain funds or programs, as provided on the state income tax~~
17 ~~return. The Legislature further finds and declares that many~~
18 ~~taxpayers remain unaware of the voluntary contribution check-offs~~
19 ~~on the state income tax return. Therefore, it is the intent of the~~
20 ~~Legislature to encourage all persons who prepare state income tax~~
21 ~~returns to inform their clients in writing, prior to the completion~~
22 ~~of any tax return, that they may make a contribution to any~~
23 ~~voluntary contribution check-off on the state income tax return if~~
24 ~~they so choose.~~