

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 11, 2013

SENATE BILL

No. 808

Introduced by Senator De León

February 22, 2013

An act to amend Section 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. Sales and use taxes: air common carrier: employing Medi-Cal recipients.

~~The Sales and Use Tax Law imposes~~

Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state of, or on the storage, use, or other consumption in this state of, of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law The Sales and Use Tax Law provides various exemptions from that tax those taxes, 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~~ *exclude from the exemption for the sole 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~~

State Board of Equalization, 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.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: 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
2 Code 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
15 good faith of that certificate shall relieve the seller from liability
16 for the sales tax.

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

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

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

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

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

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

1 making a retail sale of the property at the time of that use or failure,
2 and the sales price of the property to it shall be deemed to be the
3 gross receipts from the retail sale.

4 (i) In the event that the federal exemption provided in Section
5 1309 of Title 19 of the United States Code, relating to supplies for
6 certain vessels and aircraft, is repealed, this section is repealed as
7 of that date.

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

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

23 6357.6. (a) On or before June 30, 2014, and on or before every
24 June 30 thereafter, an air common carrier that furnishes or intends
25 to furnish an exemption certificate under Section 6357.5 for fuel
26 purchased during the next calendar year shall send ~~the following~~
27 ~~information to the Employment Development Department:~~
28 *documentation to the board that demonstrates that contractors*
29 *and subcontractors performing labor or services on behalf of the*
30 *air common carrier are providing employer-provided health care*
31 *coverage for employees and their dependents.*

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

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

1 ~~(b) On or before November 1, 2014, and on or before every~~
2 ~~November 1 thereafter, the Employment Development Department~~
3 ~~shall send a notification to the board of an air common carrier, or~~
4 ~~person listed in paragraph (1) or (2), that employs a person enrolled~~
5 ~~in the Medi-Cal program.~~

6 ~~(e) (1) Upon receipt of the notification in subdivision (b),~~

7 ~~(b) If the board fails to receive the documentation required in~~
8 ~~subdivision (a), the board shall, on or before December 1, 2014,~~
9 ~~and on or before every December 1 thereafter, provide notification~~
10 ~~to an air common carrier to inform the carrier that the exemption~~
11 ~~under Section 6357.5 shall not apply to a purchase of fuel and~~
12 ~~petroleum products during the following calendar year, and any~~
13 ~~subsequent calendar year, unless a subsequent notification~~
14 ~~described in paragraph (2) is provided. *the documentation is*~~
15 ~~*subsequently submitted.*~~

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

25 ~~(c) *The documentation required by this section shall be*~~
26 ~~*submitted in a format and manner prescribed by the board.*~~

27 ~~SEC. 3. Section 322 of the Unemployment Insurance Code is~~
28 ~~amended to read:~~

29 ~~322. The department may exchange information with other~~
30 ~~governmental departments and agencies, both federal and state,~~
31 ~~which are concerned with the administration of unemployment~~
32 ~~insurance, or the collection of taxes which may be used to finance~~
33 ~~the administration of unemployment insurance, or the relief of~~
34 ~~unemployed or destitute individuals, or legislation concerning,~~
35 ~~regulating, or in any manner affecting the obligations arising out~~
36 ~~of an employer-employee relation, with the board and the State~~
37 ~~Department of Health Care Services for the administration of~~
38 ~~Section 6357.6 of the Revenue and Taxation Code, and with other~~
39 ~~departments or agencies of government as the department deems~~

1 necessary or desirable for the proper administration of this division
2 in accordance with authorized regulations.

3 ~~SEC. 4. Section 337 is added to the Unemployment Insurance~~
4 ~~Code, to read:~~

5 ~~337. The department, in consultation and coordination with~~
6 ~~the State Department of Health Care Services, shall do all the~~
7 ~~following:~~

8 ~~(a) Collect the names of air common carriers and persons~~
9 ~~described under paragraph (1) or (2) of subdivision (a) of Section~~
10 ~~6357.6 of the Revenue and Taxation Code.~~

11 ~~(b) Identify the names of any air common carrier that employs~~
12 ~~a person enrolled in the Medi-Cal program, or the name of any air~~
13 ~~common carrier that contracts or subcontracts with a person for~~
14 ~~labor or services for or on behalf of the air common carrier in the~~
15 ~~state that employs a person enrolled in the Medi-Cal program.~~

16 ~~SEC. 5.~~

17 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
18 ~~Article IV of the Constitution and shall go into immediate effect.~~