AMENDED IN ASSEMBLY FEBRUARY 16, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 81

Introduced by Assembly Member Beall

January 4, 2011

~~An act to amend Section 7392 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~ *An act to add and repeal Section 6357.8 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 81, as amended, Beall. ~~Fuel taxes: aircraft jet fuel dealers: rate.~~ *Sales and use taxes: exemptions: fuel and petroleum products: air common carriers.*

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 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 in the conduct of its business on an international flight.

This bill would, on or after January 1, 2012, and before January 1, 2020, exempt from those state taxes, gross receipts in excess of $2.22 per gallon derived from the sale in this state of, and the storage, use, or other consumption in this state of, fuel and petroleum products sold *to or purchased by an air common carrier for consumption or shipment in the conduct of its business on a domestic flight, as specified.*

This bill would also require the State Board of Equalization, beginning on January 1, 2013, and annually thereafter, to submit a report to the Legislature setting forth the state fiscal impact of the exemption.

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.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes, unless the governing body of the taxing county, city, or district authorizes an exemption and provides notice to the board on or before December 1, 2011.

This bill would take effect immediately as a tax levy.

~~Existing law imposes a tax for the privilege of using or selling aircraft jet fuel upon each aircraft jet fuel dealer at a rate of $0.02 for each gallon of that fuel sold to an aircraft jet fuel user or used by the dealer as an aircraft jet fuel user.~~

~~This bill would reduce the rate of the jet fuel tax to $0.01 for each gallon of fuel sold.~~

~~This bill would take effect immediately as a tax levy.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 6357.8 is added to the Revenue and Taxation Code, to read:

6357.8. (a) On and after January 1, 2012, and before December 31, 2019, there are exempted from the taxes imposed by this part, gross receipts in excess of two dollars and twenty-two cents ($2.22) per gallon derived from the sale in this state of, or the storage, use, or other consumption in this state of, fuel and petroleum products sold to or purchased by an air common carrier for consumption or shipment in the conduct of its business as an air common carrier, on a domestic flight.

(b) To qualify for the exemption, the air common carrier shall furnish to the seller an exemption certificate in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for that portion of the sales tax exempted under this section.

(c) For purposes of this section, the following definitions apply:

(1) "Air common carrier" has the same meaning as that set forth in Section 23046 of the Business and Professions Code.

(2) "Domestic flight" means a flight whose final destination is a point inside of the United States, including its territories.

(d) Any air common carrier claiming exemption under this section that 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, either if the board notifies the carrier that returns must be filed or if the carrier is liable for taxes based upon consumption or transportation of fuel or petroleum products erroneously claimed as exempt under this section.

(e) An air common carrier claiming an exemption under this section upon request, shall make available to the board records, including, but not limited to, a copy of a log abstract, an air waybill, or a cargo manifest, documenting its consumption or transportation of the fuel or petroleum products on a domestic flight 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.

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

(g) Pursuant to this section, any use of the fuel and petroleum products by the purchasing carrier, other than that incident to the delivery of the fuel and petroleum products to the carrier and the consumption or transportation of the fuel and petroleum products by the carrier on a domestic flight for use in the conduct of its business as a common carrier, or a failure of the carrier to document its consumption or transportation of the fuel and petroleum products on a domestic flight, 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.

(h) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws, unless approved by the local government that would otherwise receive the revenues derived from the taxes imposed under those laws.

(2) The governing body of any county, city, or district may enact an ordinance to authorize the exemption as described in subdivision (a) with respect to taxes levied by that entity, and shall notify the State Board of Equalization of this action on or before December 1, 2011.

(i) (1) On January 1, 2013, and annually thereafter, the State Board of Equalization shall submit a report to the Legislature setting forth the state fiscal impact of the exemption allowed under this section.

(2) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(j) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 2. 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. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

~~SECTION 1. Section 7392 of the Revenue and Taxation Code is amended to read:~~

~~7392. For the privilege of using or selling aircraft jet fuel a tax is imposed upon every aircraft jet fuel dealer at the rate of one cent ($0.01) for each gallon of that fuel sold to an aircraft jet fuel user or used by the dealer as an aircraft jet fuel user.~~

~~SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.~~

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