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AB-543 Sales and Use Tax Law: exemptions: petroleum products: water common carriers. (2023-2024)

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Assembly Bill No. 543

CHAPTER 442

An act to amend Section 6385 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 543, Gipson. Sales and Use Tax Law: exemptions: petroleum products: water common carriers.

Existing state 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, tangible personal property purchased from a retailer for storage, use, or other consumption in this state. The Sales and Use Tax Law provides various exemptions from those taxes, including an exemption for the sale of fuel and petroleum products sold to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination, as defined. Existing law repeals this exemption on January 1, 2024.

This bill would extend that exemption until January 1, 2029.

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 laws authorize districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are automatically incorporated into the local tax laws.

Existing law requires the state to reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse any local agencies for sales and use tax revenues lost by them pursuant to this bill.

Existing law requires a bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives that the tax expenditure will achieve, detailed performance indicators, and data collection requirements.

This bill would make findings to comply with that provision.

This bill would take effect immediately as a tax levy.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6385 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 293 of the Statutes of 2012, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the department. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the department requests the seller to submit the certificate to the department, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination. To qualify for the exemption the common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and petroleum products claimed as exempt which is to be consumed after reaching the first out-of-state destination. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the department. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

(d) "First out-of-state destination," as used in this section, means the first point reached outside this state by a common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is transferred, or docking fees are charged. "First out-of-state destination," as used in this section, also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

(e) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(f) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(g) "Immediate shipment," as used in this section, means that the delivery of the fuel and petroleum products by the seller is directly into a ship for transportation outside this state and not for storage by the purchaser or any third party.

(h) A common carrier claiming exemption under subdivision (c) who is not required to hold a valid seller's permit shall be required to register with the department and obtain a fuel exemption registration number and shall be required to file returns as the department may prescribe if either the department notifies the carrier that returns must be filed or the carrier is liable for taxes based upon consumption of fuel erroneously claimed as exempt under this section. A common carrier required to hold a fuel exemption registration number shall be subject to all applicable provisions of this part, Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251).

(i) A common carrier claiming an exemption under subdivision (c), upon request, shall make available to the department records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt. If the carrier fails to provide these records upon request, the department may revoke the carrier's fuel exemption registration number.

(j) The department may require any carrier claiming an exemption under this section and required to obtain a fuel exemption registration number to place with it that security as the department may determine pursuant to Section 6701.

(k) Pursuant to subdivisions (a), (b), and (c), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to the first out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the

property to the first out-of-state destination, 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.

(l) For the purpose of complying with Section 41, the Legislature finds and declares all of the following with respect to the exemption extended by the act adding this subdivision:

(1) The specific goal that the exemption will continue to achieve is to ensure fueling will continue to be a robust economic activity in the state and adhere to tax policy and rationale of first substantial use occurring out of state.

(2) Detailed performance indicators measuring whether the exemption meets the goal described in paragraph (1) are the following:

(A) The average monthly maritime fuel price at all domestic and international Pacific seaports.

(B) The average monthly maritime fuel price at California seaports.

(C) Maritime fuel deliveries at California seaports.

(3) On or before January 1, 2026, the Legislative Analyst's Office shall analyze the performance indicators described in paragraph (2) and shall report its findings, pursuant to Section 9795 of the Government Code, to the Legislature.

(m) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

SEC. 2. Section 6385 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 293 of the Statutes of 2012, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the department. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the department requests the seller to submit the certificate to the department, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, 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.

(f) This section shall become operative on January 1, 2029.

SEC. 3. 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. 4. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.