

Date: July 3, 2012
To: Honorable Mayor and City Council
From: Councilmember Patrick O'Donnell, Chair, State Legislation Committee
Subject: **SENATE BILL 1243 (LOWENTHAL) REGARDING BUNKER FUEL**

The State Legislation Committee, at its meeting held Monday, June 11, 2012, considered communications relative to the above subject.

It is the recommendation of the State Legislation Committee that the City Council concur in the recommendations of the Committee to support Senate Bill 1243 (Lowenthal), a bill to exempt bunker fuel from sales tax.

Respectfully submitted,

STATE LEGISLATION COMMITTEE


Councilmember Patrick O'Donnell, Chair

Prepared by:
Carolyn Harris



Date: June 25, 2012

To: Mayor and Members of the City Council

From: Councilmember Patrick O'Donnell, Chair of the State Legislation Committee 

Subject: **Recommendation to respectfully request the City Council to support SB 1243: Bunker Fuel as recommended by the State Legislative Committee on June 11, 2012**

A meeting of the State Legislation Committee was called and held on June 11, 2012. The Committee discussed SB 1243: Bunker Fuel (Lowenthal) and forwards to the City Council a recommendation to support the bill.

SB 1243: Bunker Fuel

Senate Bill 1243 (Lowenthal) would extend the sunset date for a bunker fuel tax exemption, until January 1, 2024. Existing law allows for a partial sales tax exemption on bunker fuel in California ports. This exemption is scheduled to sunset January 1, 2014.

The Committee engaged in discussion on this item, reviewed the bill and discussed the benefits and drawbacks to the extension. The Committee believes the jobs benefit associated with extending the partial bunker fuel tax outweighs potential revenues. The Legislative Analyst has opined that approximately 1,000 to 2,000 jobs are associated with the bunker fuel industry, and that the majority of the bunker fuel industry is located in the Long Beach / Los Angeles area. The market for bunker fuel is very price sensitive, with increases as little as 25 cents to 50 cents per ton driving purchasing behavior. Additionally, ships can hold up to 70 days of bunker fuel, so have a wide range of options on where they purchase fuel. In 2003, when the full tax was briefly reinstated, bunker fuel sales in the Los Angeles / Long Beach area dropped 30 percent. In 1991, the institution of the full tax resulted in a 45 percent drop in bunker fuel deliveries. While there was an accompanying increase in revenue of \$20 to \$30 million statewide in 1991 and \$30 to \$40 million in 2003, it resulted in severe economic harm to the industry of 100 to 200 job positions on each occasion. In two separate reviews, the independent Legislative Analysts Office has recommended the extension of the partial exemption after reviewing this tax policy in great detail. Given these reasons, the Committee voted to support the bill, and forwards that recommendation to City Council for adoption.

Fiscal Impact: There is no fiscal impact to taking positions on these bills, as State advocacy is budgeted in the City Manager's Office. The amount of direct revenue loss to the City is unknown as, as is the positive economic impact from retaining the jobs in the bunker fuel industry

Recommendation: **Respectfully request the City Council to support SB 1243: Bunker Fuel as recommended by the State Legislative Committee on June 11, 2012.**

AMENDED IN SENATE MAY 25, 2012
AMENDED IN SENATE MAY 15, 2012
AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1243

Introduced by Senator Lowenthal
(Coauthor: Assembly Member Bonnie Lowenthal)

February 23, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, as amended, Lowenthal. Sales and use taxes: exemptions: marine or maritime fuel.

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 exempts, until January 1, 2014, 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, as defined, if specified conditions are met.

This bill would revise the definition of "first out-of-state destination" and would extend *the application of* that exemption ~~to apply~~ until January 1, ~~2026~~ 2024.

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. Section 2230 of the Revenue and Taxation Code provides that the state will 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 counties and cities for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

Vote: majority. 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 6385 of the Revenue and Taxation Code,
2 as added by Section 3 of Chapter 712 of the Statutes of 2003, is
3 amended to read:

4 6385. (a) There are exempted from the computation of the
5 amount of the sales tax the gross receipts from the sale of tangible
6 personal property, other than fuel and petroleum products, to a
7 common carrier, shipped by the seller via the purchasing carrier's
8 facilities under a bill of lading whether the freight is paid in
9 advance, or the shipment is made freight charges collect, to a point
10 outside this state and the property is actually transported to the
11 out-of-state destination for use by the carrier in the conduct of its
12 business as a common carrier.

13 (b) There are exempted from the computation of the amount of
14 the sales tax the gross receipts from the sale of tangible personal
15 property, other than aircraft fuel and petroleum products, purchased
16 by a foreign air carrier and transported by the foreign air carrier's
17 facilities to a foreign destination for use by the air carrier in the
18 conduct of its business as a common carrier by air of persons or
19 property. To qualify for this exemption, the foreign air carrier shall
20 furnish to the seller a certificate in writing that the property shall
21 be transported and used in the manner required in this subdivision.
22 The certificate shall be substantially in the form prescribed by the
23 board. A seller is not liable for the sales tax if the seller accepts

1 the certificate in good faith. If the seller does not have the
2 certificate at the time the board requests the seller to submit the
3 certificate to the board, the seller shall be given a reasonable time
4 to request the foreign air carrier to provide the seller with the
5 certificate. The foreign air carrier shall maintain records in this
6 state, such as a copy of a bill of lading, an air waybill, or cargo
7 manifest, documenting its transportation of the tangible personal
8 property to a foreign destination.

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

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

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

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

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

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

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

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

24 (k) Pursuant to subdivisions (a), (b), and (c), any use of the
25 property by the purchasing carrier, other than that incident to the
26 delivery of the property to the carrier and the transportation of the
27 property by the carrier to the first out-of-state destination and
28 subsequent use in the conduct of its business as a common carrier,
29 or a failure of the carrier to document its transporting the property
30 to the first out-of-state destination, shall subject the carrier to
31 liability for payment of sales tax as if it were a retailer making a
32 retail sale of the property at the time of that use or failure, and the
33 sales price of the property to it shall be deemed to be the gross
34 receipts from the retail sale.

35 (l) This section shall remain in effect only until January 1, ~~2026~~
36 ~~2024~~, and as of that date is repealed.

37 SEC. 2. Section 6385 of the Revenue and Taxation Code, as
38 added by Section 4 of Chapter 712 of the Statutes of 2003, is
39 amended to read:

1 6385. (a) There are exempted from the computation of the
2 amount of the sales tax the gross receipts from the sale of tangible
3 personal property, other than fuel and petroleum products, to a
4 common carrier, shipped by the seller via the purchasing carrier's
5 facilities under a bill of lading whether the freight is paid in
6 advance, or the shipment is made freight charges collect, to a point
7 outside this state and the property is actually transported to the
8 out-of-state destination for use by the carrier in the conduct of its
9 business as a common carrier.

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

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

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

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

1 carrier to document its transporting the property to an out-of-state
2 destination, shall subject the carrier to liability for payment of sales
3 tax as if it were a retailer making a retail sale of the property at
4 the time of that use or failure, and the sales price of the property
5 to it shall be deemed to be the gross receipts from the retail sale.

6 (f) This section shall become operative on January 1, ~~2026~~ 2024.

7 SEC. 3. Notwithstanding Section 2230 of the Revenue and
8 Taxation Code, no appropriation is made by this act and the state
9 shall not reimburse any local agency for any sales and use tax
10 revenues lost by it under this act.

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

BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1243
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

THIRD READING

Bill No: SB 1243
 Author: Lowenthal (D)
 Amended: 5/25/12
 Vote: 21

SENATE GOVERNANCE & FINANCE COMMITTEE : 9-0, 5/9/12
 AYES: Wolk, Dutton, DeSaulnier, Fuller, Hancock,
 Hernandez, Kehoe, La Malfa, Liu

SENATE APPROPRIATIONS COMMITTEE : 7-0, 5/24/12
 AYES: Kehoe, Walters, Alquist, Dutton, Lieu, Price,
 Steinberg

SUBJECT : Sales and use taxes: exemptions: marine or
 maritime fuel

SOURCE : Author

DIGEST : This bill extends the sunset, until January 1,
 2024, on sales and use tax exemption for the purchase of
 maritime fuels.

ANALYSIS : Under existing state law, sales of fuel and
 petroleum products to water common carriers, for immediate
 shipment outside this state, are exempt from tax for
 activities after the first out-of-state destination. The
 exemption requires a water common carrier to only pay tax
 on the fuel needed to get from California to its first
 out-of-state destination. The law defines "first
 out-of-state destination" as the first point reached

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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 bunkered, or docking fees are charged. The water common carrier is required to furnish the seller of fuel or petroleum products an exemption certificate in writing, specifying the quantity of fuel or petroleum products exempt from sales and use taxation. This exemption is scheduled to sunset on January 1, 2014.

This bill extends the current partial sales and use tax on maritime fuels sold to water common carriers until January 1, 2024. The exemption only applies to fuels sold for use after the first out-of-state destination in the conduct of business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are either added or removed, fuel is transferred, or docking fees are charged.

Background

Until July 15, 1991, sales of fuel and petroleum products to water, air, and rail common carriers were exempt from tax when used in the conduct of the carrier's common carrier activities after the first out-of-state destination. The exemption for bunker fuel purchased by qualified waterborne vessels was dependent upon the amount of bunker fuel on board the vessel prior to refueling. If the quantity of bunker fuel on board the vessel on arrival at the California port was sufficient to enable the vessel to reach its first out-of-state destination, then the bunker fuel loaded at the California port would have been entirely exempt from tax. However, if the quantity of bunker fuel needed on the voyage from the California port to the first out-of-state destination and the amount used while in port exceeded the quantity of fuel on board the vessel on arrival at the California port, the amount of that excess was subject to tax. The exemption was repealed in 1991 and from July 15, 1991 through December 31, 1992, sales of bunker fuel were subject to tax.

Beginning January 1, 1993 through 2003, bunker fuel was exempted for certain uses through various bills (AB 2396, 1992 and AB 366, 1997). The LAO issued their report

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www.lao.ca.gov/2001/bunker_fuel/012501_bunker_fuel.pdf in 2001 on the effect of the bunker fuel exemption, and concluded "On this tax policy basis, we recommend that the Legislature remove the existing sunset for the current partial (sales and use tax) exemption for bunker fuel sales, and make the exemption permanent. This would result in the (sales and use tax) being levied in the future only on the portion of the fuel purchased in California which is consumed between California and the first out-of-state destination. This action would result in treating bunker fuel sales similarly to other export sales and place California ports on par with other U.S. out-of-state ports."

SB 145 (Perata, 2002) was vetoed and bunker fuel was subjected to the sales tax from January 1, 2003 through March 31, 2004. SB 808 (Karnette, 2003) exempted the sales and use taxes consistent with the previous law.

The LAO released an updated report in November 2007, and found that the effects of the exemption had not changed since their 2001 report. The LAO concluded "On this tax policy basis, we recommend that the Legislature remove the existing sunset for the current partial (sales and use tax) exemption for bunker fuel sales, and make the exemption permanent. This will result in the (sales and use tax) on fuel purchased in California being levied in the future only on the portion which is consumed between California and a ship's arrival at its first out-of-state destination. This action will permanently result in treating bunker fuel sales similarly to other export sales and place California ports on par with other out-of-state ports in the nation."

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

According to the Senate Appropriations Committee, the Board of Equalization (BOE) estimates sales and use tax revenue losses of \$91.7 million to \$137.5 million annually, beginning in 2014, as follows:

\$41.3 million to \$61.9 million in General Fund losses.

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\$2.6 million to \$3.9 million in losses to the Fiscal Recovery Fund (ERB repayment).

\$11.1 million to \$16.7 million in losses to the Local Revenue Fund of 2011 (dedicated to local realignment purposes).

\$21 million to \$31.4 million in local revenue losses.

\$15.7 million to \$23.6 million in district revenue losses.

SUPPORT : (Verified 5/25/12)

Alaska Tanker Company, LLC
American President Lines
American Waterways Operators
California Association of Port Authorities
California Taxpayers Association
California Trade Coalition
City of Carson Mayor, Jim Dear
CMA CGM America, LLC
Cruise Lines International Association
General Steamship Agencies
General Steamship Corporation

Harbor Association of Industry & Commerce
Horizon Lines
ILWU - Northern CA District Council
ILWU - Southern CA District Council
Inlandboatman's Union of the Pacific International
International Longshore and Warehouse Union
Maersk, Inc.
Masters, Mates and Pilots Union
Matson Navigation Company, Inc.
Mitchell and Mitchell Insurance Agency
MOL (America) Inc.
OOCL Inc.
Pacific Merchant Shipping Association
Port of Long Beach
Sailor's Union of the Pacific
Seafarers International Union
The Jankovich Company
Western Ocean Services
Yang Ming Corporation

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15 members of the Inlandboatmen's Union -Southern CA Region

AGB:do 5/25/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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