

Date of Hearing: May 18, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

AB 2989 (Arambula) – As Amended May 11, 2020

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Sales and use taxes: exemptions: blood screening testing

SUMMARY: Establishes a complete exemption under the Sales and Use Tax (SUT) Law for specified tangible personal property (TPP) used by a "licensed blood bank" to perform "blood screening tests" on "donated human blood". Specifically, **this bill:**

- 1) Establishes a SUT exemption, on and after January 1, 2021, and before January 1, 2026, for both of the following:
 - a) "Reagents or chemicals" used by a "licensed blood bank" to perform "blood screening tests" on "donated human blood"; and,
 - b) "Lab equipment and supplies" used by a "licensed blood bank" to perform "blood screening tests" on "donated human blood".
- 2) Defines a "licensed blood bank" as any Food and Drug Administration (FDA)-licensed or FDA-registered facility that recruits, collects, processes, and distributes human blood for transfusion purposes.
- 3) Defines "blood screening tests" as screening tests mandated by the FDA or the State of California to assure the safety of voluntary blood, platelets, and plasma donations, including, but not limited to, tests for basic red blood cell-type antigens (ABO), basic red blood cell antigens (Rh), antibodies, Syphilis, Hepatitis B and C, human immunodeficiency virus (HIV), human T-cell leukemia virus (HTLV), Chagas disease, West Nile virus, Zika virus, and any future-required donor screening test by whatever is the currently required methodology.
- 4) Defines "donated human blood" as human blood that is given to an FDA-licensed or registered blood facility, by a medically eligible individual, after being properly consented.
- 5) Defines "reagents or chemicals" as only those reagents, quality control materials, assay kits, diluents, and calibrators that are specifically required in order to perform blood screening tests.
- 6) Defines "lab equipment and supplies" as any FDA-approved instruments, devices, and related data processing devices that are specifically required in order to perform blood screening tests.
- 7) Specifies that these provisions shall remain in effect only until December 31, 2026, and as of that date, are repealed.

- 8) Provides that, for purposes of complying with Revenue and Taxation Code (R&TC) Section 41, the Legislature finds and declares all of the following:
 - a) The specific goals, purposes, and objectives that this bill will achieve are:
 - i) To provide a tax incentive for blood banks to test their own blood donations and to motivate testing facilities to locate in California; and,
 - ii) To ensure that, in the event of a disaster or homeland security event, California is able to test blood donations without transferring many of those blood samples out of state for testing.
 - b) Detailed performance indicators for the Legislature to use in determining whether this bill meets the goals, purposes, and objectives listed above are:
 - i) The number of blood banks that initiate testing of blood donations in their own facilities; and,
 - ii) Whether any new facilities are established in California to test blood donations.
 - c) The Central California Blood Center and the Stanford Blood Center shall annually provide to the California Department of Tax and Fee Administration (CDTFA) the information described above and shall report the information to the Legislature in any year in which the SUT exemption is operative.
- 9) Provides that, notwithstanding existing law, the state shall not reimburse any local agency for any SUT revenues lost as a result of this exemption.
- 10) Takes immediate effect as a tax levy.

EXISTING LAW:

- 1) Imposes a sales tax on retailers for the privilege of selling TPP, absent a specific exemption. The tax is based upon the retailer's gross receipts from TPP sales in this state.
- 2) Imposes a complimentary use tax on the storage, use, or other consumption of TPP generally purchased out-of-state and brought into California. The use tax is imposed on the purchaser; and unless the purchaser pays the use tax to an entity registered to collect California's use tax, the purchaser remains liable for the tax. The use tax is set at the same rate as the state's sales tax and must generally be remitted to the CDTFA.
- 3) Provides that human whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, are exempt from taxation for any purpose. (R&TC Section 33).
- 4) Exempts from SUT any container used to collect or store human whole blood, plasma, blood products, or blood derivatives that are exempt from taxation under R&TC Section 33, including blood collection units and blood pack units. (R&TC Section 6364.5).

- 5) Provides no general SUT exemption merely because the retailer or purchaser is engaged in charitable activities, is a nonprofit organization, or enjoys certain privileges under applicable property or income tax laws.
- 6) Requires any bill introduced on or after January 1, 2020, that authorizes a SUT exemption, to contain all of the following:
 - a) Specific goals, purposes, and objectives that the tax expenditure will achieve;
 - b) Detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets the goals, purposes, and objectives stated in the bill; and,
 - c) Specified data collection requirements to enable the Legislature to determine whether the tax expenditure is meeting, failing to meet, or exceeding those specific goals, purposes, and objectives.

FISCAL EFFECT: The proposed exemption would result in estimated SUT losses of \$11.7 million in fiscal year (FY) 2021-22 (reflecting a half-year fiscal impact given the bill's January 1, 2021 operative date). In FY 2021-22, the estimated revenue loss is \$23.5 million.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

Community blood banking is one of the "behind the scenes" pillars of first response. Yet, in California, in-state blood donor testing laboratory assets have declined over the last two decades, with nearly all the state's blood banks outsourcing donor testing out-of-state, primarily due to the cost of doing business in California. California is the only state that imposes sales tax on blood donor testing reagents, equipment, or supplies. AB 2989 would exempt sales and use tax on laboratory equipment and chemical reagents used by a licensed blood bank to test voluntarily donated human blood. This bill aims to exempt equipment, chemicals and reagents, and quality control materials that are specifically required to perform FDA and California mandated screening tests to assure the safety of voluntary blood, platelets, and plasma donations for transfusion.

- 2) This bill is supported by Stanford Healthcare, which notes the following:

Only California imposes sales tax on licensed, non-profit blood banks that perform this vital blood donor screening testing on blood donations made in the state. It has been one of the considerations that has led to most other state blood banks outsourcing their testing to other states. The proposed sales tax exemption would lower the cost of operation for the two blood centers which would in turn, allow them to hold down the cost of blood fees to hospitals. Currently, SBC performs approximately 45,000 tests a year and starting in January 2021, SBC will begin testing for another blood center with an estimated annual volume of 25,000.

- 3) This bill is opposed by the California Tax Reform Association, which notes the following:

Tax incentives, including an exemption such as this, are intended to incentivize behavior that would not otherwise occur. Given the enormous motivation of blood banks to

perform appropriate due diligence, and the public health implications, it is unlikely that AB 2989 will result in activities that would not only otherwise occur, but that is necessary to ensure the public health.

To the extent that relief is necessary to support some of California's blood banks in meeting the additional testing demands to ensure public health and safety due specifically to COVID-19, the author might consider a grant program narrowly tailored to ensure that appropriate testing and vetting can occur.

4) Committee Staff Comments:

- a) *What is a "tax expenditure"?* Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, U.S. Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each (in the form of foregone revenues).

As the Department of Finance notes in its annual Tax Expenditure Report, there are several key differences between tax expenditures and direct expenditures. First, tax expenditures are reviewed less frequently than direct expenditures. Second, there is generally no control over the amount of revenue losses associated with any given tax expenditure. Finally, it should also be noted that, once enacted, it takes a two-thirds vote to rescind an existing tax expenditure absent a sunset date. This effectively results in a "one-way ratchet" whereby tax expenditures can be conferred by majority vote, but cannot be rescinded, irrespective of their efficacy or cost, without a supermajority vote.

- b) *An overview of the SUT Law:* The SUT represents the state's second largest source of General Fund (GF) revenues. Nevertheless, the past 70 years have seen a dramatic reduction in the state's reliance on the SUT and a corresponding increase in its reliance on personal income tax revenues. In FY 2020-21, SUT revenues are estimated to comprise only 18.4% of the state's GF revenues, down from nearly 60% in FY 1950-51.
- c) *What accounts for the state's reduced reliance on SUT revenues?* The SUT Law was enacted in a very different era. In the 1930s, California's economy was largely dominated by manufacturing, and residents mostly bought and sold tangible goods. Thus, in establishing the base for a new consumption tax, it made sense to impose the tax on sales of TPP, defined as personal property that may be "seen, weighed, measured, felt, or touched." Over the past 80 years, however, California's economy has seen dramatic growth in the service and information sectors, resulting in a significant erosion of the SUT base. For example, the Commission on the 21st Century Economy noted that spending on taxable goods represented 34.6% of personal income in 2008, down from 55.4% in 1980. As a result, tax experts and economists from across the political spectrum argue that California should expand its SUT base.

It could be argued that, while well-intentioned, additional SUT exemptions further erode an already shrinking SUT base. This, in turn, increases fiscal pressures to maintain or even increase California's relatively high SUT rate. High rates arguably promote non-compliance and encourage out-of-state purchases, placing California retailers at a

competitive disadvantage. High rates also risk impacting consumer decision-making, which runs counter to widely accepted principles of sound tax policy.

- d) *What would this bill do?* This bill provides a complete SUT exemption for specified TPP used by a licensed blood bank to perform blood screening tests on donated human blood. Specifically, the exemption would apply to both reagents or chemicals and to lab equipment and supplies, as defined.

According to the author, California is the only state that imposes SUT on blood testing reagents, equipment, and supplies. The author also notes that only two donor testing laboratories remain operational in California and that all other labs now send their samples to out-of-state facilities for testing partly due to the increased costs of the SUT. This, in turn, has arguably left California vulnerable to blood shortages in times of emergencies.

- e) *Scope of the exemption:* In one sense, the scope of this bill's proposed exemption is quite limited. Specifically, the exemption would only apply to specified TPP used by licensed blood banks. According to the author, there are only two currently testing facilities in California – the Central California Blood Center in Fresno and the Stanford Blood Center in Palo Alto. In another sense, however, the scope of the exemption could be read as rather broad and wide-ranging. Specifically, the exemption applies to "lab equipment and supplies", defined as any FDA-approved instruments, devices, and related data processing devices. Committee staff is unaware of how many devices this would potentially capture and additional definitional guidance may be helpful to properly administer this exemption.
- f) *Policy on tax expenditures:* Both R&TC Section 41 and Committee policy require any tax expenditure bill to outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. A tax expenditure bill will not be eligible for a Committee vote unless it has complied with these requirements. This bill, in turn, has been amended to comply with R&TC Section 41.

In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote. According to the new policy, an "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean ten years. This bill has been amended to include a five-year sunset provision.

- g) *Prior legislation:* SB 898 (Nguyen), of the 2015-16 Legislative Session, would have established a SUT exemption for animal blood sold by a nonprofit animal blood banking business for use in the cure or treatment of disease in animals. Governor Brown vetoed the measure, noting the following:

I am returning the following seven bills without my signature:

Assembly Bill 717
Assembly Bill 724

Assembly Bill 1561
Assembly Bill 2127
Assembly Bill 2728
Senate Bill 898
Senate Bill 907

Each of these bills creates a new tax break or expands an existing tax break. In total, these bills would reduce revenues by about \$300 million through 2017-18.

As I said last year, tax breaks are the same as new spending -- they both cost the General Fund money. As such, they must be considered during budget deliberations so that all spending proposals are weighed against each other at the same time. This is even more important when the state's budget remains precariously balanced.

Therefore, I cannot sign these measures.

REGISTERED SUPPORT / OPPOSITION:

Support

Fresno Business Council
Houchin Community Blood Bank
Kaweah Delta Health Care District
San Diego Blood Bank
Stanford Blood Center
Stanford Health Care
TibaRay, Inc.

Opposition

California Tax Reform Association

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