



*California State Board of Equalization,
Legislative Division*

LEGISLATIVE BULLETIN



State Capitol Building (from the East) c.1945
Photo courtesy of California State Archives

SPECIAL TAXES LEGISLATION

2003

SPECIAL TAXES LEGISLATION
TABLE OF CONTENTS

CHAPTERED LEGISLATION ANALYSES	PAGE
<u>Assembly Bill 71 (J. Horton) Chapter 890</u>	1
<i>Cigarette and Tobacco Products Licensing Act of 2003</i>	
<i>Licensure Program</i>	2
<i>Sales to Minors</i>	9
<i>Outstanding Debt to Cigarette Distributor</i>	13
<i>Engraved Pictures or Photographs from DMV</i>	14
<i>Limited Peace Officer Status</i>	16
<i>Master Settlement Agreement Compliance</i>	19
<i>Report to the Legislature – Cost of Stamping</i>	25
<i>Tax, Interest, and Penalty Immediately Due and Payable</i>	27
<i>Possession of Fraudulent Tax Stamps or Meter Impressions</i>	30
<i>Sales of Untaxed Cigarettes</i>	31
<i>Sale or Possession for Sale of Counterfeit Cigarettes</i>	32
<i>Extension of Time to Prosecute Penal Provisions</i>	35
<i>Recoupment of Costs of Criminal Investigations</i>	37
<u>Assembly Bill 433 (Nation) Chapter 491</u>	39
<i>Marine Invasive Species Fee</i>	
<u>Assembly Bill 986 (J. Horton) Chapter 569</u>	42
<i>Study to Consolidate Tax Agencies' Functions</i>	
<u>Assembly Bill 1666 (Cogdill) Chapter 867</u>	45
<i>Cigarette and Tobacco Products: Reporting Requirements</i>	
<u>Assembly Bill 1744 (Committee on Revenue and Taxation) Chapter 316</u>	50
<i>Diesel Fuel Tax Refund Documentation</i>	
<u>Senate Bill 20 (Sher) Chapter 526</u>	52
<i>Covered Electronic Waste Recycling Fee</i>	
<u>Senate Bill 1016 (Bowen) Chapter 603</u>	58
<i>Face-to-Face Sales of Cigarettes</i>	

<u>Senate Bill 1049 (Committee on Budget) Chapter 741</u>	63
<i>Water Rights Fee</i>	
<u>Senate Bill 1060 (Committee on Revenue and Taxation) Chapter 605</u>	68
<i>Board Sponsored Measure</i>	
<i>Settlement Record Retention</i>	68
<i>Motor Vehicle Fuel Tax Definition</i>	70
<i>Fuel Tax Refund Filing Period</i>	71
<i>Drafting Error Correction - Diesel Fuel Tax Law</i>	72
<i>Diesel Fuel Tax Law Terms</i>	73
TABLE OF SECTIONS AFFECTED	74

Assembly Bill 71 (J. Horton) Chapter 890
Cigarette and Tobacco Products Licensing Act of 2003

Effective January 1, 2004. Adds and repeals Division 8.6 (commencing with Section 22970) of the Business and Professions Code, adds Section 15618.5 to the Government Code, amends Section 104557 of the Health and Safety Code, amends, repeals, and adds Section 830.11 of the Penal Code, and amends Sections 30436, 30449, 30471, 30473.5, 30474, and 30481 of, adds Sections 30019, 30165.1, 30166.1, 30177.5, and 30482 to, adds and repeals Sections 30435 and 30474.1 of, adds and repeals Article 2.5 (commencing with Section 30210) of Chapter 4 of Part 13 of Division 2 of, and adds and repeals Article 5 (commencing with Section 30355) of Chapter 5 of Part 13 of Division 2 of, the Revenue and Taxation Code.

BILL SUMMARY

This bill:

- Establishes a statewide licensure program to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products to be administered by the State Board of Equalization (Board); (*BPC §§22970; RTC §30019*)
- Requires the Board to take action, as specified, against a retailer convicted of a violation of either the Stop Tobacco Access to Kids Enforcement (STAKE) Act (Division 8.5 (commencing with Section 22950) of the Business and Professions Code) or Section 308 of the Penal Code; (*BPC §22974.8*)
- Requires the Board to determine the debt status, as specified, of a suspended retailer licensee 25 days prior to the reinstatement of the license; (*BPC §22980.1 and 22980.3*)
- Authorizes the Board's staff, as specified, to receive engraved pictures or photographs from the Department of Motor Vehicles (DMV); (*GC §15618.5*)
- Authorizes the Board's Investigations Division staff, whose primary duty is the enforcement of laws administered by the Board, to exercise the powers of arrest of a peace officer and the power to serve warrants, as specified; (*PC §830.11*)
- Prohibits any cigarette tax stamp or meter impression to be affixed to a package of cigarettes, or tax be paid on a tobacco product defined as a cigarette, unless the tobacco manufacturer and brand family is included on the Master Settlement Agreement compliance list posted by the Attorney General, as specified; (*RTC §§30165.1, 30177.5, 30435, 30436, 30449, and 30471; H&SC §104557*)
- Requires the Board to submit a report to the Legislature that, among other things, evaluates the average actual costs for applying cigarette tax indicia or impressions, bonding, warehousing, and leasing stamping equipment; (*RTC §30166.1*)

- Requires the tax, interest and penalties to become immediately due and payable on all unlicensed cigarette and tobacco products distributors, and to facilitate the seizure and sale of assets to satisfy liens, as specified; (*RTC §§30210 and 30355*)
- Increases penalties for the possession of fraudulent tax stamps or meter impressions with intent to evade the taxes; (*RTC §30473.5*)
- Clarifies that penalties relating to the possession of unstamped cigarettes do not apply to licensed distributors; (*RTC §30474*)
- Revamps the penalty for any person who possesses, sells, or offers to sell, or buys or offers to buy, any false or fraudulent stamps or meter impressions; (*RTC §30474.1*)
- Extends the time in which the prosecution for violating the penal provisions may be instituted; (*RTC §30481*) and
- Allows for the recoupment of costs incurred in criminal investigations. (*RTC §30482*)

Sponsor: Assembly Member Jerome Horton

Licensure Program

*Business and Professions Code Division 8.6 (commencing with Section 22970)
Revenue and Taxation Code Section 30019*

LAW PRIOR TO AMENDMENT

Section 30140 of the Cigarette and Tobacco Products Tax Law generally provides that every person desiring to engage in the sale of cigarettes or tobacco products as a distributor shall file with the Board an application, in such a form as the Board may prescribe, for a distributor's license. A distributor shall apply and obtain a license for each place of business at which he or she engages in the business of distributing cigarettes or tobacco products.

Section 30155 of the Cigarette and Tobacco Products Tax Law requires that every person desiring to engage in the sale of cigarettes or tobacco products as a wholesaler shall file with the Board an application, in that form as the Board may prescribe, for a wholesaler's license. A wholesaler shall apply for and obtain a license for each place of business at which he or she engages in the business of selling cigarettes or tobacco products as a wholesaler.

Currently, the Cigarette and Tobacco Products Tax Law does not require manufacturers and retailers of cigarettes and tobacco products to be licensed with the Board.

AMENDMENT

This bill adds Division 8.6 (commencing with Section 22970) to the Business and Professions Code as the Cigarette and Tobacco Products Licensing Act of 2003. Among its principal provisions, this bill requires the Board to administer a statewide cigarette and tobacco products license program to regulate the sale of cigarettes and tobacco products in the state.

RETAILERS

Commencing June 30, 2004, a retailer who sells cigarette and tobacco products in this state is required to have in place a license to engage in the sale of cigarettes and tobacco products and conspicuously display the license at each retail location in a manner visible to the public. A retailer that owns or controls more than one retail location where cigarette and tobacco products are sold is required to obtain a separate license for each retail location. A "retail location" is defined to mean any building from which cigarettes or tobacco products are sold at retail, or a vending machine.

A license is not assignable or transferable. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, is required to immediately surrender the license to the Board.

A retailer of cigarette or tobacco products is required to file an application to obtain a license on or before April 15, 2004. The Board may investigate the truthfulness and completeness of the information provided in the application. The Board may issue a license to an applicant for a retail location if that applicant holds a valid license from the Department of Alcoholic Beverage Control (ABC) for that same location. A license is valid for a 12-month period, and required to be renewed annually.

This bill requires each retailer to submit a one-time license fee of one hundred dollars (\$100) with each application. An applicant which owns or controls more than one location where cigarette or tobacco products are sold is required to obtain a separate license for each location, but may submit a single application for those licenses with a license fee of one hundred dollars (\$100) per location. However, the one-time license fee does not apply to an application for renewal of a license for a retail location for which the one-time license fee has already been paid.

The Board is required to issue a license to a retailer upon receipt of a completed application and payment of the fees, unless otherwise specified. Any person or retailer convicted of a felony under the Cigarette and Tobacco Products Tax Law will not be issued a license, or if that person holds a license, that license will be revoked. Any retailer who is denied a license may petition for a redetermination of the Board's denial within 30 days after service upon that retailer of the notice of the denial.

A retailer is required to retain purchase invoices, as specified, for all cigarette and tobacco products for a period of four years. Invoices must be made available upon request during normal business hours for review, inspection and copying by the Board or by a law enforcement agency.

DISTRIBUTORS AND WHOLESALERS

This bill also requires, commencing June 30, 2004, every distributor and every wholesaler to annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products. The license is valid for a calendar year period upon payment of the fee, unless surrendered, suspended, or revoked prior to the end of the calendar year, and may be renewed each year upon payment of such fee. A license is not assignable or transferable. A person who obtains a license as a distributor or wholesaler who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, is required to immediately surrender the license to the Board.

A distributor or wholesaler of cigarette or tobacco products is required to file an application to obtain a license on or before April 15, 2004, unless otherwise specified. Each application must be accompanied by a fee of one thousand dollars (\$1,000) for each location. The fee is for a calendar year and can not be prorated.

For calendar years beginning on and after January 1, 2005, every distributor and every wholesaler is required to file an application for renewal of the license, accompanied with a fee of one thousand dollars (\$1,000) for each location where cigarettes and tobacco products are sold.

The Board is required to issue a license to a distributor or wholesaler upon receipt of a completed application and payment of the fees, unless otherwise specified. The Board may issue a license without further investigation if a distributor or wholesaler, at the time of application, holds a valid license by the Board issued pursuant to the Cigarette and Tobacco Products Tax Law. Any person or licensee convicted of a felony under the Cigarette and Tobacco Products Tax Law will not be issued a license, or if that person holds a license, that license will be revoked. Any distributor or wholesaler who is denied a license may petition for a redetermination of the Board's denial within 30 days after service upon that distributor or wholesaler of the notice of the denial.

All distributors and all wholesalers are required to retain purchase records, as specified, for all cigarette and tobacco products purchased. The records are required to be maintained for a period of one year from the date of purchase on the distributor's or the wholesaler's premises identified in the license, and thereafter, the records must be made available for inspection by the Board or a law enforcement agency for a period of four years.

MANUFACTURERS AND IMPORTERS

Commencing January 1, 2004, every manufacturer and every importer is required to obtain and maintain a license to engage in the sale of cigarettes. In order to be eligible for obtaining and maintaining a license, a manufacturer or importer is required to do all of the following:

- Submit to the Board a list of all brand families that they manufacture or import.
- Update the list of all brand families that they manufacture or import whenever a new or additional brand is manufactured or imported, or a listed brand is no longer manufactured or imported.

- Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the Board.

In order to be eligible to obtain and maintain a license, a manufacturer or importer that is a "tobacco product manufacturer" as defined in the Model Statute (Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code), is required to do all of the following in the manner specified by the Board:

- Certify to the Board that it is a "participating manufacturer" as defined in subsection 11(jj) of the "Master Settlement Agreement" (MSA), or is in full compliance with paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code.
- Submit to the Board a list of all brand families that fit under the category applicable to the manufacturer or importer, as specified.

A license may not be granted, or be permitted to be maintained, by any manufacturer or importer of cigarettes that does not affirmatively certify, both at the time the license is granted and annually thereafter, that all packages of cigarettes manufactured or imported by that person and distributed in this state fully comply with subdivision (b) of Section 30163 of the Revenue and Taxation Code, and that the cigarettes contained in those packages are the subject of filed reports that fully comply with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13355a et seq.) for the reporting of ingredients added to cigarettes.

Any manufacturer or any importer who is denied a license may petition for a redetermination of the Board's denial within 30 days after service upon that manufacturer or that importer of the notice of the denial.

Every manufacturer and every importer is required to pay to the Board an administration fee on or before January 1, 2004. The amount of the administration fee is one cent (\$0.01) per package of cigarettes:

- Manufactured or imported by the manufacturer or the importer, and
- Shipped into this state during the 2001 calendar year as reported to the Board.

The Board is required to notify each manufacturer and each importer of the amount due. All manufacturers and all importers that become eligible for licensure on or after December 1, 2003 are required to pay that fee within 90 days of notification.

All manufacturers and all importers that begin operations in the state after enactment of the Cigarette and Tobacco Products Licensing Act of 2003 will be charged an administrative fee, as specified, commensurate with their respective marketshare of:

- Cigarettes manufactured or imported by the manufacturer, and
- Sold in this state during the next calendar year as estimated by the Board.

The Board will administer this fee in accordance with the Fee Collection Procedures Law, Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

All manufacturers and importers are required to retain purchase records, as specified, for all cigarette and tobacco products purchased. The records are required to be maintained for a period of one year from the date of purchase on the manufacturer's or importer's premises identified in the license, and thereafter, the records must be made available for inspection by the Board or a law enforcement agency for a period of four years.

Each manufacturer and each importer of cigarette and tobacco products subject to licensing is also required to maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the Board, during the past four years with invoices for the past year to be maintained on the premises for which the license was issued, and required to make these records available upon request by a representative of the Board or a law enforcement agency.

ADDITIONAL BOARD RESPONSIBILITIES

The Board is required to, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the Board's database of licenses issued for locations within the jurisdiction of that agency or law enforcement agency. The agencies authorized to access the Board's database are authorized to only access and use the database for purposes of enforcing tobacco control laws and would be required to adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

In addition, the Board is required to provide electronic means for applicants to download and submit applications and to notify all licensed distributors, wholesalers, manufacturers, and importers by fax and e-mail within 48 hours upon suspending or revoking the license of a retailer.

PENALTIES

This bill creates a misdemeanor subjecting violators to, among other things, a fine of not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in the county jail, or both the fine and imprisonment for any of the following:

- Possession, storing, owning, or has made sales of an unstamped package of cigarettes bearing a counterfeit California tax stamp.
- Possession, storing, owning, or has made sales of tobacco products on which tax is due but has not been paid.
- Sales of cigarettes to any distributor, wholesaler, importer, retailer, or any other person who is not licensed or whose license has been suspended or revoked.

- Sales of tobacco products to any retailer, wholesaler, distributor, or any other person who is not licensed or whose license has been suspended or revoked.
- Purchases of cigarette and/or tobacco products from a manufacturer or any other person not required to be licensed or whose license has been suspended or revoked.
- Failure to maintain records or make such records available to the Board and law enforcement agency, as specified.
- A person or entity that engages in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked, and each officer of any corporation which so engages in business. Each day after notification by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed offers cigarettes and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale constitutes a separate violation.
- Failure to allow an inspection.

Any cigarettes or tobacco products forfeited to the state pursuant to the Cigarette and Tobacco Products Licensing Act of 2003 will be destroyed.

This bill also provides that any person who signs a statement that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

SUSPENSIONS AND REVOCATIONS

The Board may revoke or suspend the license or licenses of a retailer, wholesaler, distributor, importer or manufacturer, as specified, upon a finding that the licensee has violated any provision of the California Cigarette and Tobacco Products Licensing Act of 2003.

The Board is required to revoke a license for a second violation within five years involving seizure of unstamped packages of cigarettes. The Board is also required to revoke the license of any licensee convicted of a felony pursuant to the Cigarette and Tobacco Products Tax Law, or had any permit or license revoked under any provision of the Revenue and Taxation Code.

MISCELLANEOUS

All moneys collected pursuant to the provisions of this bill are to be deposited in the Cigarette and Tobacco Products Compliance Fund (Fund), which this bill creates in the State Treasury. All moneys in the Fund are available for expenditure, upon appropriation by the Legislature, solely for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003.

An amount of eleven million dollars (\$11,000,000) will be appropriated from the Cigarette and Tobacco Products Compliance Fund during the 2003-04 fiscal year to the Board for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003, subject to the following provisions:

- Spending under the appropriation made by this subdivision is limited solely to revenues in the fund that are derived from fees imposed on cigarette and tobacco product manufacturers, wholesalers, distributors, importers, and retailers.
- Of the total amount appropriated, five million four hundred thousand dollars (\$5,400,000) is available for reimbursement to the Department of Justice through an interagency agreement with the Board for investigation and enforcement assistance.
- The expenditure of any funds from the appropriation requires the prior approval of the Director of Finance. The amounts appropriated must be approved for expenditure on an allotment basis and limited to the amounts necessary to carry out the operating and staffing plans for the implementation of the California Cigarette and Tobacco Products Licensing Act of 2003 as approved by the Department of Finance. The Department of Finance is required to notify the Joint Legislative Budget Committee of its approval of any expenditure authorization within 30 days prior to that approval.

The Cigarette and Tobacco Products Licensing Act of 2003 remains in effect until January 1, 2010, and as of that date is repealed.

IN GENERAL

During the 2001-02 Legislative Session, three measures would have established a statewide licensure program to be administered by the Board. Those bills include SB 1700 (Peace), AB 1666 (Horton), and SB 1843 (Committee on Budget and Fiscal Review). Senate Bill 1700 died in the Assembly Committee on Governmental Organization, Assembly Bill 1666 was placed on the Assembly inactive file while waiting for concurrence in the Senate amendments, and SB 1843 passed the Assembly with no further action.

COMMENTS

1. **Purpose.** These provisions of the bill are intended to provide comprehensive regulation of cigarette and tobacco product sales.
2. **This measure would require the Board to administer a new cigarette and tobacco products licensure program.** The Board currently licenses distributor and wholesalers of cigarette and tobacco products for purposes of collecting, and ensuring the collection of, the excise tax pursuant to the Cigarette and Tobacco Products Tax Law. As such, this bill would require a distributor and wholesaler to hold an additional license with the Board for the distribution and sale of cigarette and tobacco products in this state pursuant to the provisions of this bill. The

Board would also license manufacturers and importers engaged in the sale of cigarettes, as well as retailers engaged in the sale of cigarettes and tobacco products. The Board would also be required to enforce the licensure program through actions such as license suspension and revocation, verifying the licensure of persons selling or distributing cigarettes and tobacco products in this state, and verifying that licensees are selling or distributing such products to licensed persons.

Sales to Minors

Business and Professions Code Section 22974.8

LAW PRIOR TO AMENDMENT

STAKE ACT

The STAKE Act (Division 8.5 (commencing with Section 22950)) of the Business and Professions Code established a statewide enforcement program to take action against businesses that illegally sell tobacco to minors. In general, the Act requires the Department of Health Services (DHS) to:

- Implement an enforcement program to reduce the illegal sale of tobacco products to minors and to conduct sting operations using 15 and 16 year old minors granted immunity;
- Operate a toll-free number for the public to report illegal tobacco sales to minors;
- Assure that tobacco retailers post warning signs which include the toll-free number to report violations;
- Assure clerks check the identification of youthful-appearing persons prior to a sale;
- Assess civil penalties ranging from \$200 to \$6,000 against the store owner for violations; and
- Comply with the Synar Amendment (Section 1926 of Title XIX of the federal Public Health Service Act) and prepare an annual report regarding enforcement activities and their effectiveness for the federal government, Legislature, and Governor.

Furthermore, the STAKE Act:

- Requires all persons engaging in the retail sale of tobacco products to check the identification of tobacco purchasers if the purchaser reasonably appears to be under 18 years of age.
- Prohibits any person, firm, or corporation from selling, giving, or in any way furnishing to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance.

- Prohibits the selling, offering for sale, or distributing tobacco products from a cigarette or tobacco products vending machine unless such vending machines or appliances are located at least 15 feet away from the entrance of a premise issued an on-sale public premise license, as defined.
- Prohibits advertising of any tobacco product on any outdoor billboard, as specified.
- Prohibits the distributing or selling of tobacco products directly or indirectly to any person under the age of 18 years through the United State Postal Service or through any other public or private postal or package delivery service, as described.

Penal Code Section 308

Penal Code Section 308 prohibits every person, firm, or corporation which knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, from selling, giving, or in any way furnishing to another person who is under the age of 18 years:

- Any tobacco, cigarette, or cigarette papers, or
- Any other preparation of tobacco, or
- Any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or
- Any controlled substance.

Any person failing to comply is subject to criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Section 308 also requires every person, firm, or corporation which sells, or deals in tobacco or any preparation thereof, to post conspicuously and keep posted at each point of purchase a notice that states, in part, selling tobacco products to anyone under 18 years of age is illegal. Any person failing to do so is punished, upon conviction, by a fine of ten dollars (\$10) for the first offense and fifty dollars (\$50) for each succeeding violation, or by imprisonment for not more than 30 days.

AMENDMENT

This provision requires the Board to take action against a retailer convicted of a violation of either the STAKE Act or Section 308 of the Penal Code, according to the following schedule:

- Upon the first conviction of a violation, the retailer will receive a warning letter from the Board that delineates the circumstances under which a retailer's license may be suspended or revoked and the amount of time the license may be suspended or revoked. The retailer and its employees will be required to receive

training on tobacco control laws from the Department of Health Services upon a first conviction.

- Upon the second conviction of a violation within 12 months, the retailer will be subject to a fine of five hundred dollars (\$500).
- Upon the third conviction of a violation within 12 months, the retailer will be subject to a fine of one thousand dollars (\$1,000).
- Upon the fourth to the seventh conviction of a violation within 12 months, the Board will be required to suspend the retailer's license to sell cigarette and tobacco products for 90 days.
- Upon the eighth conviction of a violation within 24 months, the Board will be required to revoke the retailer's license to sell cigarette and tobacco products.

Convictions of violations by a retailer at one retail location are not to be accumulated against other locations of that same retailer. Furthermore, convictions of violations accumulated against a prior retail owner at a licensed location are not to be accumulated against a new retail owner at the same retail location.

This provision will become operative on the date results from the Youth Tobacco Survey are released if the survey finds that 13 percent or more of youth were able to purchase cigarettes. The Board's authority to take action under this provision will become inoperative on or after the date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes.

BACKGROUND

In 1992, Congress passed Section 1926 of Title XIX of the federal Public Health Service Act, commonly called the "Synar Amendment." The Synar Amendment requires each state to:

- Have in effect a law prohibiting any manufacturer, retailer or distributor of tobacco products from selling or distributing such products to any individual under the age of 18.
- Enforce such laws in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.
- Conduct annual random, unannounced inspections to ensure compliance with the law. These inspections are to be conducted in such a way as to provide a valid sample of outlets accessible to youth.
- Develop a strategy and timeframe for achieving an inspection failure rate of less than 20% of outlets accessible to youth.

Failure to meet the terms and conditions of the Synar Amendment could result in reductions (up to 40 percent) in the amount of Substance Abuse Prevention and Treatment (SAPT) block grant funds allocated to California for alcohol and other drug prevention and treatment programs.

To comply with the Synar Amendment, the Legislature passed Senate Bill 1927 (Stats. 1994, Ch. 1009) which established the Stop Tobacco Access to Kids Enforcement (STAKE) Act. The STAKE Act created a new statewide enforcement program to take regulating action against businesses that illegally sell tobacco products to minors. Authority for enforcement and responsibility for implementation of the program was delegated to the DHS, Food and Drug Branch.

COMMENTS

1. **Purpose.** This provision is intended to link violations of underage sales prohibitions to a retailer's license to engage in the sale of cigarettes or tobacco products.
2. **STAKE Act and Penal Code Section 308 violations.** This provision would impose specified actions against a retailer based on the number of convictions of a violation of either the STAKE Act or Penal Code Section 308. However, it is not clear whether violation convictions would accumulate while this provision is inoperative. For example, ABC retailer is convicted of four violations during the period of December 2003 and July 2004. A Youth Tobacco Survey is released in August 2004 that shows that 16 percent of youth were able to purchase cigarettes. As such, this provision would become operative on the date of the release of the results of the survey. Would ABC retailer's license be immediately suspended based on violation convictions that accumulated while the provision was inoperative? Or would only violation convictions that occur while this provision is operative determine the action the Board is required to take?
3. **What retailers does this provision affect?** This provision would become operative or inoperative based on the results of the Youth Tobacco Survey, which measures the percentage of youth that were able to purchase cigarettes. A sale of cigarettes to a minor constitutes violation of the STAKE Act and/or Penal Code 308, however such violation may not be against a retailer.

Typically, retailers hire clerks to make sales of products, such as in retail grocery stores. In such a case, it would be the clerk subject to the violation conviction, not the retailer, for making a sale of cigarettes to a minor. Violation convictions against a clerk would not be considered "a retailer" convicted of either the STAKE Act or Penal Code Section 308 for purposes of Board authorized actions pursuant to proposed Section 22974.8.

4. **How would the Board be notified of a conviction?** This provision does not provide how or when the Board would receive information regarding a retailer conviction of either the STAKE Act or Penal Code Section 308 violations. As such, it is suggested that this provision be amended to specify the agency responsible for notifying the Board of retailer convictions and to specify the number of days after a conviction that the agency is required to notify the Board.

Outstanding Debt to Cigarette Distributor
Business and Professions Code Sections 22980.1 and 22980.3

LAW PRIOR TO AMENDMENT

Existing law imposes an excise tax upon every distributor for his or her distributions of cigarettes. A surcharge is also imposed upon every distributor upon the distribution of tobacco products. The term "distribution" includes:

- The sale of untaxed cigarettes or tobacco products in this state
- The use or consumption of untaxed cigarettes or tobacco products in this state
- The placing in this state of untaxed cigarettes or tobacco products in a vending machine or in retail stock for the purpose of selling the cigarettes or tobacco products to consumers.

AMENDMENT

As part of the proposed Cigarette and Tobacco Products Licensing Act of 2003, this bill adds Section 22980.1(f) to the Business and Professions Code to provide that no manufacturer, distributor, wholesaler, or importer sell cigarette or tobacco products to any retailer or wholesaler whose license has been suspended or revoked unless:

- All outstanding debts of that retailer or wholesaler owed to a wholesaler or distributor for cigarette or tobacco products are paid, and
- The license of that retailer or wholesaler has been reinstated by the Board.

Any payment received from a retailer or wholesaler must be credited first to the outstanding debt for cigarettes or tobacco products and must be immediately reported to the Board. The Board is required to determine the debt status of a suspended retailer licensee 25 days prior to the reinstatement of the license.

This bill also adds Section 22980.3(d) to provide that upon completion of a suspension period, a license will be reinstated by the Board upon certification that all existing cigarette or tobacco tax debts of the retailer for the purchase of cigarette and tobacco products have been cleared, and all outstanding debts owed to a manufacturer, wholesaler, or distributor for cigarette products are paid.

IN GENERAL

During the 2001-02 Legislative Session, two measures would have required the Board to determine the debt status of a suspended retailer licensee prior to the reinstatement of the license. Those bills include AB 1666 (Horton) and SB 1843 (Committee on Budget and Fiscal Review). Assembly Bill 1666 was placed on the Assembly inactive file while waiting for concurrence in the Senate amendments and SB 1843 passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to keep retailers who do not pay their cigarette and tobacco products debt from being in the business of selling such products.
2. **Should the Board be in the position of a collection agent for the distributors, wholesalers and manufacturers?** Section 22980.3(d) generally provides that a suspended license would be reinstated by the Board "upon certification that all existing cigarette or tobacco tax debts of the retailer for the purchase of cigarette and tobacco products have been cleared, and all outstanding debts owned to a manufacturer, wholesaler, or distributor for cigarette products are paid." Board staff is concerned that this provision puts the Board, a taxing agency, into the position of a collection agent for the distributors, wholesalers and manufacturers. In addition, staff is concerned that if there is a legal dispute between the retailer and the distributor, wholesaler, or manufacturer over an account, who would decide whether or not these accounts are paid in full?
3. **This provision could set precedent.** Reinstating a license based on a condition that all debts between third parties have been cleared would complicate administration and could set a precedent for other programs administered by the Board. This would result in increasing administrative costs to the Board.

Engraved Pictures or Photographs from DMV <i>Government Code Section 15618.5</i>
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LAW PRIOR TO AMENDMENT

Under existing law, Section 15604 of the Government Code requires the Board to enforce the tax laws of the State of California. Specific tax law enforcement authority is contained throughout the Revenue and Taxation Code, including but not limited to, the Cigarette and Tobacco Products Tax Law, the Diesel Fuel Tax Law, and the Sales and Use Tax Law.

Currently, all criminal tax fraud investigations are conducted by investigators in the Board's Investigations Division (ID). ID staff investigate suspected criminal violations in all the tax programs administered by the Board and identify criminal suspects for prosecution.

ID fraud investigators are not peace officers and therefore have limitations as to what they can do. To help overcome these limitations, the Board contracts with the Department of Justice (DOJ) for four full time peace officers. The DOJ contract provides the Board with a multitude of services including moving surveillance, obtaining background criminal history information, and the execution of search warrants. All services are procured to assist Board tax fraud investigators in the performance of their duties.

AMENDMENT

This provision grants Board tax fraud investigators the statutory authority to obtain engraved pictures or photographs directly from the DMV in order to more effectively and efficiently conduct their investigative duties.

BACKGROUND

In 1997, the Board contracted with the Commission on Peace Officer Standards and Training (POST) to conduct a management review of its investigative programs. The purpose of the study was to assess the organizational structure and operations of the Board's investigative functions to ensure their ability to perform high-quality and effective investigations in the most efficient manner possible.

The POST report concluded that dedicated employees were trying to do a good job but lacked the tools to do the job correctly. The review also found that the current investigation system was inadequate to meet the needs of a proper investigative staff. One tool instrumental in affording Board tax fraud investigators the ability to conduct investigations is the ability to obtain drivers license photographs directly from DMV, thereby limiting the need for outside agency assistance.

The DMV photograph is one of the most pertinent pieces of information to the criminal tax fraud investigator in charge of a case. While felony tax evasion is still considered a white-collar crime, today's perpetrators include individuals who operate anonymously in the underground economy, and traditional organized crime. There are several operational needs that justify the use of DMV photographs. Assisting law enforcement agencies and district attorneys to describe suspects with particular specificity, substantiating and/or collaborating residential address locations, as well as identifying and qualifying witnesses as the state's affiant for felony search warrants all necessitate the use of DMV photographs. While the aforementioned issues are significant, the most important need is to provide Board tax fraud investigators with an essential tool necessary to protect themselves in a potentially hostile environment – the ability to visually identify the person they are investigating.

The Board previously did enjoy the privilege of receiving drivers license photographs from the DMV. However, the DMV reviewed their practices and determined, based on the 1986 California Supreme Court decision, *Perkey v. Department of Motor Vehicles* (1986) 42 Cal. 3d. 185, that the Board could no longer have access to the photographs as it did not have specific authority under the law. Currently, Board staff must request the photographs from the DOJ, who obtains them from the DMV. Inability to obtain the information directly from the DMV can delay a Board tax fraud investigation for up to two weeks, contingent on DOJ's workload. Obtaining the information directly from the DMV can take one day. This delay in obtaining necessary information reduces the ID's effectiveness.

The annual cost associated with DOJ providing the driver's license photograph on behalf of the ID is estimated to be \$23,231 for approximately 620 requests. This amount will increase over time as a result of an increase in the number of ID investigations and contract cost increases. This cost is equivalent to losing one DOJ

agent for two months every year. The money could be better spent on law enforcement services Board investigators cannot currently do.

IN GENERAL

During the 2001-02 Legislative Session, SB 1843 (Committee on Budget and Fiscal Review) would have granted the Board tax fraud investigators the statutory authority to obtain engraved pictures or photographs directly from the DMV. SB 1843 passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to provide Board tax fraud investigators with an essential tool necessary to protect themselves in a potentially hostile environment – the ability to visually identify the person they are investigating.
2. **This provision is identical to a 2002 Board proposal.** As part of its 2001-02 Legislative package, the Board voted to adopt a proposal identical to this provision.
3. **Is the Board's current practice of obtaining photographs authorized?** The DOJ has expressed concern about providing DMV photographs to the Board since the Board does not have specific authority under the law to have DMV photographs. This matter is currently under review.

<p>Limited Peace Officer Status</p>
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<p><i>Penal Code Section 830.11</i></p>

LAW PRIOR TO AMENDMENT

Under existing law, Section 15604 of the Government Code requires the Board to enforce the tax laws of the State of California. Specific tax law enforcement authority is contained throughout the Revenue and Taxation Code, including, but not limited to, the Sales and Use Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, and the Diesel Fuel Tax Law. Existing law provides criminal and civil penalties, including fines and incarceration, for violations of the laws administered by the Board.

Existing law provides limited peace officer authority to specified persons employed by various departments of state government. Such persons may exercise the powers of arrest of a peace officer and the power to serve warrants during the course and within the scope of their employment if they receive a course in the exercise of those powers. Current law includes those employed and authorized by the Department of Financial Institutions, Department of Real Estate, State Lands Commission, Public Utilities Commission and Department of Insurance. Notwithstanding any other provision of law, persons designated with limited peace officer status are prohibited from carrying firearms altogether. (Penal Code Section 830.11)

AMENDMENT

This bill amends Section 830.11 of the Penal Code to allow persons employed by the Board's Investigations Division, who are designated by the executive director, provided that the primary duty of these persons is the enforcement of laws administered by the Board, to exercise the powers of arrest of a peace officer as specified in Section 836, and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of persons employed as investigators by the Board are extended to any place in the state.

This bill specifically provides that persons employed by the Board's Investigation Division designated with limited peace officer status are not entitled to peace officer retirement benefits.

This provision remains in effect until January 1, 2010, and as of that date is repealed.

BACKGROUND

The Investigations Division administers the Board's criminal investigations program. The Investigations Division plans, organizes, directs, and controls all criminal investigative activities for the various tax programs administered by the Board. The goal of the Board's Investigations Division is to identify tax evasion problems, identify new fraud schemes, and actively investigate and assist in the prosecution of crimes committed by individuals who are violating the laws administered by the Board.

The nature of these criminal cases requires investigation by specialized law enforcement personnel, specifically trained in these types of crimes. However, when investigating these crimes, investigators are often denied access to criminal history information because they are not peace officers. Also, due to a lack of peace officer powers, Board investigators have no authority to issue misdemeanor citations or to access Department of Motor Vehicles information. To overcome such restrictions, the Board contracts with the Department of Justice and the California Highway Patrol for law enforcement services.

Under existing law, any person desiring new peace officer status after January 1, 1990, is required to request the Commission on Peace Officer Standards and Training (POST) to undertake a feasibility study regarding designating that person or persons as peace officers. Any such study must include, but is not limited to, the current and proposed duties and responsibilities of the proposed peace officers employed in the category seeking the designation change, their field law enforcement duties and responsibilities, their supervisory and management structure, and their proposed training methods and funding sources.

In 1997, the Board contracted with POST to conduct a management review of its four investigative programs; sales tax, cigarette tax, alcoholic beverage tax, and diesel fuel tax. The study assessed the organizational structure and operations of the Board's investigative functions to ensure their ability to perform high-quality and effective investigations in the most efficient manner possible. The study included

interviews with Board personnel from the various investigative units, in addition to personnel from the Department of Justice, other state agencies, district attorney's offices, and local law enforcement agencies. Investigators were questioned about their current caseload and status of their cases. Questions also included job responsibilities, training they received, and knowledge of basic investigative process. Additionally, investigators were asked for input regarding potential changes to improve investigative functions of the Board and their respective jobs.

The POST report issued May 22, 1998 concluded, among other things, that the Board seek limited peace officer status pursuant to Section 830.11 of the Penal Code for Board investigators involved in criminal tax fraud cases. POST believes limited peace officer status will allow Board investigators to conduct complete investigations without the necessity to regularly use outside agency support for basic investigative procedures. POST concluded that this would lead to increased efficiency and effectiveness in conducting criminal tax fraud investigations and reduce the potential for liability. POST further recommended that the Board adopt an operating policy that requires uniformed peace officer presence in situations requiring a peace officer, such as arrests and search warrants.

IN GENERAL

During the 2001-02 Legislative Session, AB 1666 (Horton), SB 1702 (Peace), and SB 1843 (Committee on Budget and Fiscal Review) would have granted limited peace officer status to specified staff in the Board's Investigations Division. Assembly Bill 1666 was placed on the Assembly inactive file while waiting for concurrence in the Senate amendments, SB 1702 died in Assembly Appropriations without being heard, and SB 1843 passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to grant limited peace officer status to specified staff in the Board's Investigations Division in accordance with POST's recommendation.
2. **This measure would empower the Board's Investigations Division investigators with the ability to:**
 - seize plain-view evidence encountered in responding to crime or search scenes;
 - withhold from release, document requests made under the Information Practices Act, which relate to an active criminal tax evasion investigation;
 - issue misdemeanor citations;
 - obtain criminal history information from the California Law Enforcement Telecommunications System on suspects and obtain other criminal history information from allied law enforcement agencies when conducting joint criminal investigations;
 - require participation in basic, intermediate, and advanced investigative training courses and retain available space on an as-needed basis;

- gain credibility with law enforcement personnel; and
- promote a reciprocal exchange of information with law enforcement.

As such, Board investigators would have the ability to conduct complete investigations without the necessity to regularly use outside agency support for basic investigative procedures. In addition, such authority would lead to increased efficiency and effectiveness in conducting criminal tax fraud investigations and reduce the potential for liability.

3. **Limited peace officer authority is a vital component of the Board's Investigations Division.** In accordance with POST recommendations, the new division within the Board is responsible for all criminal investigations of non-Board personnel. As recognized by POST, the new division has made strides to increase the effectiveness and efficiency of Board investigative functions and has placed a new focus on team building, the fostering of teamwork, and improved investigative relationships. The Investigations Division has also been responsible for developing and implementing policies and procedures regarding evidence collection and storage.
4. **This measure does not seek the full peace officer status granted to Franchise Tax Board in 1997 (Senate Bill 951 (Johnson) Chapter 670).** This bill would not provide Board investigators the authority to carry firearms or enhance retirement benefits. Although the need for outside law enforcement would diminish, the Board would specifically adopt a policy in which a person with full peace officer status would be involved in cases involving staff safety.
5. **This bill would not lead to unnecessary and intrusive investigations of ordinary taxpayers.** Though the Investigations Division would review and revise the current policy concerning case screening and supervision of criminal cases under investigation, the Board would continue to use the current high standards for determining if reasonable and probable cause exists to investigate whether or not a crime is being committed or has been committed. This measure would in no way weaken any taxpayer rights contained in current law.

Master Settlement Agreement Compliance
*Revenue and Taxation Code Sections 30165.1,
 30177.5, 30435, 30436, 30449 and 30471
 Health and Safety Code Section 104557*

LAW PRIOR TO AMENDMENT

Under existing law, the Board administers the Cigarette and Tobacco Products Tax Law. An excise tax of \$0.87 per package of 20 cigarettes is imposed on the distribution of cigarettes in this state. Distributors pay the excise tax by purchasing cigarette stamps, which they affix to each package of cigarettes to indicate that the tax has been paid to the state. Distributors are also required to file monthly reports with the Board indicating their distribution of cigarettes and purchase of stamps during the preceding month.

AMENDMENT

This bill adds Section 30165.1 to the Revenue and Taxation Code to prohibit persons from affixing, or cause to be affixed, any tax stamp or meter impression to a package of cigarettes, or pay the tax levied pursuant to Sections 30123 and 30131.2 on a tobacco product defined as a cigarette, unless the brand family of cigarettes or tobacco product, and the tobacco product manufacturer that makes or sells the cigarettes or tobacco product, are included on a compliance list posted by the Attorney General.

This bill also prohibits a person from:

- Selling, offering, or possessing for sale in this state, or importing for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the Attorney General's directory, and
- Selling, distributing, acquiring, holding, owning, possessing, transporting, importing, or causing to be imported cigarettes that the person knows or should know are intended to be distributed in violation of this bill's stamping prohibitions or are not included in the Attorney General's directory.

DIRECTORY OF CIGARETTES APPROVED FOR STAMPING AND SALE

This bill requires the Attorney General to develop and publish on its Internet web site a directory listing the following:

1. All tobacco manufacturers that have provided current, timely, and accurate certifications that certify the tobacco manufacturer is either a participating manufacturer under the Master Settlement Agreement (MSA), or is a non-participating manufacturer that has made all required escrow payments.
2. All brand families that are listed in the certifications, except as specified.

PENALTIES

This bill authorizes the Board, upon a finding that a distributor has violated this bill's prohibitions or reporting requirements, to revoke or suspend the license or licenses of the distributor in the case of a first offense. In the case of a second or subsequent offense, the Board, in addition to revoking or suspending the distributor's license or licenses, is authorized to impose a civil penalty not to exceed the greater of either of the following:

- Five times the retail value of the cigarettes or tobacco products, as defined.
- Five thousand dollars (\$5,000).

A distributor is allowed a defense for a violation provided that:

1. At the time of the violation, the cigarettes or tobacco products claimed to be the subject of the alleged violation belonged to a brand family that was included on the list, as provided.

2. At the time of the violation, the distributor possessed a copy of the Attorney General's most recent written acknowledgment of receipt of the certifications and other information required as a condition of including the brand family on the list, as provided.

However, a defense is not available to the distributor if, at the time of the violation, the Attorney General had provided the distributor with written notice that the brand family had been excluded or removed from the list, or the distributor had failed to provide the Attorney General with a current address for the receipt of written notice through electronic mail.

Any cigarette or tobacco products that are stamped or to which a meter impression is affixed, or for which tax is paid, in violation of this bill's provisions, are subject to seizure and forfeiture pursuant to the Cigarette and Tobacco Products Tax Law, regardless of whether the violation is subject to a defense, as provided. The cigarettes or tobacco products seized and forfeited will be destroyed.

This bill also provides that any person who signs a statement that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

DISTRIBUTOR CREDIT FOR CIGARETTE AND TOBACCO TAXES PAID

If a distributor affixes a stamp or meter impression to a package of cigarettes, or pays the tax on a tobacco product defined as a cigarette, during the period between the date on which the brand family of the cigarettes or tobacco product was excluded or removed from the list and the date on which the distributor received notice of the exclusion or removal, then both of the following apply:

- The distributor is entitled to a credit for the tax paid by the distributor with respect to the cigarette or tobacco product to which the stamp or meter impression was affixed or the tax paid during that period. The distributor is required to comply with regulations prescribed by the Board regarding refunds and credits that are adopted pursuant to Section 30177.5, which this bill adds to the Revenue and Taxation Code. If the distributor has sold the cigarette or tobacco product to a wholesaler or retailer, and has received payment from the wholesaler or retailer, the distributor is required to provide the credit to the wholesaler or retailer.
- The brand family may not be included on or restored to the list until the tobacco product manufacturer has reimbursed the distributor for the cost to the distributor of the cigarettes or tobacco product to which the stamp or meter impression was affixed or the tax paid during that period.

REPORTING OF INFORMATION

This bill requires, not later than 25 days after the end of each calendar quarter or more frequently if so directed, each distributor to submit any information as the Board or Attorney General requires to facilitate compliance of this bill's provisions. The distributor is also required to maintain, and make available to the Board and the

Attorney General, all invoices and documentation of sales of all non-participating manufacturer cigarettes and any other information relied upon in reporting to the Board and the Attorney General for a period of five years.

The Board is authorized to disclose to the Attorney General any information requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this bill. The Board and Attorney General are authorized to share with each other, and may share with other federal, state or local agencies, information for purposes of enforcing this bill's provisions and the Model Statute.

MISCELLANEOUS

This bill does not permit persons to be issued a license or granted a renewal of a distributor's license unless that person has certified in writing that the person will comply fully with this bill's provisions.

This bill authorizes the Attorney General to adopt rules and regulations to, among other things, establish procedures for the seizure and destruction of cigarettes forfeited to the state, including, but not limited to, the state facilities that may be used for the destruction of contraband cigarettes.

This bill adds Section 30435 to the Revenue and Taxation Code to clarify that an employee of the Board, upon presentation of the appropriate identification and credentials, is authorized to enter into, and conduct an inspection of any building, facility, site, or place, as described. Any person that refuses to allow an inspection is guilty of a misdemeanor and subject to a fine, not to exceed \$1,000 for each offense. Section 30435 will remain in effect until January 1, 2010.

BACKGROUND

Under the November 1998 MSA between the State of California, other states, and tobacco product manufacturers, each tobacco company must make annual payments to the participating states in perpetuity, totaling an estimated \$206 billion through 2025. California's share of the revenue is projected to be \$25 billion over the next 25 years, based on receiving approximately 12.8% of the total payments. The payments will be split 50/50 between state and local governments under a Memorandum of Understanding negotiated by the Attorney General and various local jurisdictions (cities and counties) which had also sued the tobacco companies.

The payment provisions of the MSA apply to "participating manufacturers" which include both original signatories to the MSA, as well as other companies which subsequently agree to be bound by the MSA. In return for these payments, the states have agreed to release the cigarette manufacturers from all claims for damages, penalties, and fines. In addition, the participating manufacturers have agreed to certain non-economic terms that restrict their advertising and marketing practices and control their corporate behavior. The primary purpose of these restrictions is to prevent marketing of cigarettes to minors and thereby reduce smoking by minors.

In order to safeguard themselves against unfair competition from tobacco products manufacturers who do not participate in the MSA, the MSA contains provisions which would reduce the payments made to states that do not enact a "Model Statute" to require nonparticipating manufacturers to put funds into escrow accounts. The money in the escrow accounts is intended to be available to pay judgements or settlements on any claims brought by the state against any nonparticipating tobacco manufacturers.

In 1999, California enacted a "Model Statute" pursuant to Senate Bill 822 (Escutia, Chapter 780). That bill, among other things, authorized the Board to adopt any regulations necessary to ascertain, based on the amount of state excise tax paid on cigarettes, the number of tax paid cigarettes sold by tobacco products manufacturers who do not participate in the MSA.

While the Settling States, such as California, have been aggressively enforcing the provisions of the Model Statutes, enforcement has proved costly and cumbersome. Accordingly, approximately fifteen States have enacted Complementary Legislation to make state enforcement of Model Statutes more effective and thereby promote the purposes for which the Model Statutes were enacted. Complementary Legislation has been effective in promoting compliance with the Model Statutes, which led to the development of draft Complementary Legislation that could be recommended as a model to all of the Settling States.

The National Association of Attorneys General (NAAG) Tobacco Committee has recommended that the Attorneys General of the Settling States give serious consideration to the legislation and designate its enactment a priority. The Committee believes that enactment of such legislation by all Settling States will promote the purposes the Model Statutes were designed to serve and safeguard payments to the Settling States that might otherwise be imperiled.

IN GENERAL

Similar provisions were contained in last year's AB 2906 (Horton), AB 1666 (Horton), and SB 1843 (Committee on Budget and Fiscal Review). Assembly Bill 2906 died on the Senate inactive file, Assembly Bill 1666 was placed on the Assembly inactive file while waiting for concurrence in the Senate amendments, and SB 1843 passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to protect California's settlement payments under the MSA, which are directly threatened by manufacturers that do not either join the MSA or make the escrow payments required by the Model Statute. The provisions of this bill are very similar to the Model Complementary Legislation developed under the purview of the NAAG's Tobacco Project Committee.

According to the author, California's MSA settlement payments have been significantly less than projected because of declining sales by the four original participating manufacturers. The decline (possibly in the millions of dollars) is partially attributable to increased sales by some non-participating manufacturers

who have created an artificial price advantage over participating manufacturers by not making the escrow payments as required by law.

2. **The Board would not know the date a distributor affixes a stamp.** Under specified circumstances, this bill would entitle a distributor to recoup excise taxes paid for a cigarette tax stamp that was unlawfully affixed during a specified period. In order to determine whether a distributor is entitled to recoup the excise taxes paid, the Board would need to know the exact date a stamp is affixed. However, the Board has no way of knowing that date.

Beginning January 1, 2005, however, this concern will be addressed by SB 1701 (Ch. 881, Stats. 2002) which requires that the stamps and meter impressions be encrypted with the date the stamp or meter impression was affixed.

3. **Suggested technical amendments.** It is suggested that the language that would repeal Section 30435, as of January 1, 2010, be removed. Proposed Section 30435 is intended to address an ambiguity in current law that could affect the Board's ability to verify that tax stamps have been affixed to a package of cigarettes, or the tax paid on a tobacco product defined as a cigarette, in accordance with this provision.
4. **Does the Attorney General have the statutory authority to promulgate regulations under the Cigarette and Tobacco Products Tax Law?** This bill would authorize the Attorney General to adopt rules and regulations establishing procedures for seizure and the destruction of cigarettes forfeited to the state pursuant to Section 30436 or Section 30449, including, but not limited to, the state facilities that may be used for the destruction of contraband cigarettes. However, it is not clear whether the Attorney General would have the statutory authority to adopt regulations pursuant to the Cigarette and Tobacco Products Tax Law. An exception would be those regulations adopted pursuant to proposed Section 30165.1 since that section would specifically grant the Attorney General such authority.
5. **This bill should contain a specific appropriation to cover the Board's start-up costs associated with the MSA provisions.** This bill would require the Board to enforce the MSA Model Statute, as provided, effective January 1, 2004, which would occur in the middle of the state's fiscal year. In order to begin to hire appropriate staff to handle the compliance and enforcement responsibilities to properly administer the MSA Model Statute provisions, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not already be identified in the Board's 2003-04 budget.
6. **Related legislation.** Similar provisions are contained in AB 1276 by the same author. At the end of the 2003, the bill was in the inactive file in the Assembly.

<p style="text-align: center;">Report to the Legislature –Cost of Stamping <i>Revenue and Taxation Code Section 30166.1</i></p>
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LAW PRIOR TO AMENDMENT

Pursuant to Revenue and Taxation Code Section 30101 (Cigarette and Tobacco Products Tax Law), an excise tax of 6 mills (or 12 cents per package of 20) is imposed on each cigarette distributed. In addition, Sections 30123 and 30131.2 impose a surtax of 12 1/2 mills (25 cents per package of 20) and 25 mills (50 cents per package of 20), respectively, on each cigarette distributed. The current total tax on cigarettes is 43 1/2 mills per cigarette (87 cents per package of 20).

Section 30161 of the Cigarette and Tobacco Products Law generally provides that the cigarette tax imposed with respect to the distribution of cigarettes shall be paid by distributors through the use of stamps or meter impressions. Section 30163 requires that an appropriate stamp or meter impression be affixed to, or made on, each package of cigarettes prior to distribution of the cigarettes, except as otherwise provided.

Currently, Section 30166 of the Cigarette and Tobacco Products Tax Law provides that stamps and meter register settings be sold to licensed distributors at their denominated values less 0.85 percent. The discount is intended to help defray the cost (leasing of equipment/labor cost) to the distributor for affixing the stamps.

Of the 87 cent excise taxes imposed on a package of 20 cigarettes, 2 cents go to the Breast Cancer Fund, 10 cents to the General Fund, 25 cents to the Cigarette and Tobacco Products Surtax Fund, and 50 cents to the California Children and Families Trust Fund.

AMENDMENT

This bill adds Section 30166.1 to the Revenue and Taxation Code to require the Board to submit, no later than July 1, 2005, a report to the Legislature that evaluates the average actual costs, including labor for applying indicia or impressions, bonding, warehousing, and leasing stamp equipment, including case cutters and packers, associated with applying stamps or meter impressions to cigarette packages. The report is required to be updated every two years.

BACKGROUND

The distributor discount per roll of stamps (30,000 stamps) since August 1, 1967 is as follows:

Period	Tax Increase Pursuant To:	Stamp Value*	Roll Value**	Licensed Distributors Discount	Discount Amount Per Roll
08/01/67-09/30/67	SB 556	\$0.07	\$2,100	.85 percent	\$17.85
10/01/67-12/31/88	SB 556	\$0.10	\$3,000	.85 percent	\$25.50
01/01/89-12/31/93	Proposition 99	\$0.35	\$10,500	.85 percent	\$89.25
01/01/94-12/31/98	AB 3601	\$0.37	\$11,100	.85 percent	\$94.35
1/1/99-Current	Proposition 10	\$0.87	\$26,100	.85 percent	\$221.85

*Per package of 20 cigarettes

**One roll is equivalent to 30,000 stamps

COMMENTS

1. **Purpose.** This provision is intended to provide the Legislature with information regarding the average actual costs to apply cigarette tax indicia and impressions to packages of cigarettes.
2. **This provision could be problematic to administer.** This provision would require the Board to evaluate the average actual costs, including labor for applying indicia or impressions, bonding, warehousing, and leasing stamping equipment, including case cutters and packers, associated with applying stamps or meter impressions to cigarette packages. In order to evaluate such costs, the Board would need the cooperation of, among others, all cigarette distributors and any company that leases stamping equipment (currently Meyercord Company) to distributors. Currently, this provision does not require persons having information necessary for the Board to complete the required report to provide such information to the Board. As such, the Board would have to base the report on information available, which may not accurately represent the average actual costs associated with applying stamps or meter impressions to cigarette packages.

3. **Bonding costs.** It is unclear why a distributor's bonding costs are part of the average actual cost associated with applying stamps or meter impressions to packages of cigarettes. Bonding is essentially an "insurance" policy that is purchased by distributors that elect to make payment of stamps and meter impressions on a deferred payment basis. The bond, which is equal to not less than 70 percent of the amount and no more than twice the amount of deferred purchases that can be made, is a mechanism to protect the state's interest for non-payment of stamps. Currently, 48 of the 242 distributors licensed with the Board purchase cigarette tax stamps on a deferred basis.

Tax, Interest, and Penalty Immediately Due and Payable

Article 2.5 (commencing with Section 30210)

Article 5 (commencing with Section 30355)

LAW PRIOR TO AMENDMENT

Under existing Cigarette and Tobacco Products Tax Law, an excise tax of 6 mills (or 12 cents per package of 20) is imposed on each cigarette distributed. Proposition 99 imposes an additional surtax of 12 1/2 mills per cigarette (25 cents per package of 20) effective January 1, 1989. Beginning January 1, 1999, Proposition 10 imposes an additional surtax of 25 mills per cigarette (50 cents per package of 20) for a current total tax of 43 1/2 mills per cigarette (87 cents per package of 20).

For tobacco products (which are defined to include cigars, smoking tobacco, chewing tobacco, snuff, and other products containing at least 50 percent tobacco), a tax is imposed on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the combined rate of tax imposed on cigarettes. An additional tax, pursuant to Proposition 10, imposes an additional tax on tobacco products based on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the additional 50-cent per pack tax on cigarettes. The tobacco products tax rate is determined annually by the Board. As of November 8, 2001, the tax rate on tobacco products ranges from 52.65 percent to 490 percent of the wholesale cost (depending on the tobacco product) for the period July 1, 2001 through June 30, 2002.

Existing law provides that if any person fails to make a report or return, the Board shall make an estimate of the number of cigarettes or the wholesale cost of tobacco products distributed by him or her. Upon the basis of this estimate, the Board shall compute and determine the amount required to be paid to the state, adding a penalty of 10 percent. Any person against whom a determination is made, as specified, may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

AMENDMENT

This provision provides that the tax, and applicable penalties and interest become immediately due and payable on account of all products distributed if a person becomes a distributor without first securing a license. In addition, this provision also adds seizure and sale provisions to the Cigarette and Tobacco Products Tax Law to facilitate the administration of the sections providing for the immediate liability for the tax.

This provision remains in effect until January 1, 2010, and as of that date is repealed.

BACKGROUND

A jeopardy determination may be issued if the Board believes that the collection of any amount of tax required to be paid by any person will be jeopardized by delay. If the amount that is due is not paid within 10 days after service upon the person of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 10 days. Determinations are due and payable at the time they become final. The collection of the amounts due and payable generally can not take place until the determination becomes final.

Prior to Proposition 99, tobacco products were not taxed and the tax on cigarettes was paid by the sale of tax stamps. Proposition 99 commenced the taxing of tobacco products, which is based on the wholesale cost of the product at a rate determined annually. The Tobacco Products surtax is imposed on the distributor and is paid on a monthly return. Proposition 99 did not change the manner in which the taxes on cigarettes are paid.

Subsequent to the passage of Proposition 99, unlicensed transient and other distributors were importing tobacco products into the state and distributing them without reporting and paying the tax due. After the passage of Proposition 10 in November 1998, the Investigations Division discovered a counterfeit tax stamp problem with unlicensed distributors importing cigarettes from out-of-state.

The Board's Investigations Division has encountered a large number of cigarettes and tobacco product distributors who are unlicensed. The purpose for being unlicensed is to conceal the nature of their business and to evade the tax. These unlicensed distributors normally maintain minimal assets and are typically transient, which hinders the Board's ability to collect the taxes due and payable. The Board's difficulty in collecting amounts due from these unlicensed distributors is best evidenced by the Cigarette and Tobacco Products Taxes receivables, which consists of 198 accounts. Of these 198 accounts, 23 are directly related to work done by the Investigations Division and account for 94 percent of the accounts receivable balance.

Prior to a search warrant, the Investigations Division has been able to determine in advance that a liability is due by using third party sources. Five recent cases where search warrants were served, large sums of cash in the amounts of \$125,000, \$48,000, \$200,000, \$59,000 and \$58,000, for a total \$490,000, were not seized for

lack of authority to issue immediate billings. Subsequent collection efforts based on current law have been unsuccessful, as that cash is no longer available. In each of these cases, Investigations Division was aware that the subject would owe a large liability to the state.

IN GENERAL

A similar provision was contained in last year's SB 1843 (Committee on Budget and Fiscal Review), which passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to provide for the efficient and effective administration of the Cigarette and Tobacco Products Tax Law. Allowing the Board to recover cash and assets available at the time of the billing, as specified, would be a tremendous aid in the Board's collection effort as these assets are typically not accessible at a later date. This provision mirrors similar provisions currently in the Diesel Fuel Tax Law.
2. **This provision is identical to a 2002 Board proposal.** As part of its 2001-02 Legislative package, the Board voted to adopt a proposal identical to this provision.
3. **Seizure and sale.** This provision would simply extend the seizure and sale provisions from other programs administered by the Board, such as the Sales and Use Tax Law, to the Cigarette and Tobacco Products Tax Law. Seizure and sale language was not necessary for the Cigarette and Tobacco Products Tax Law prior to the passage of Proposition 99 in November 1998. Prior to the passage of Proposition 99, the tobacco products surtax did not exist, collection issues with the cigarette tax was minimal due to the cigarette tax being paid at the time a tax stamp was purchased, and cigarette tax evasion was virtually non-existent. Since the passage of Proposition 99 and Proposition 10, the seizure and sale provision has become a necessary tool to facilitate compliance and to protect the interest of the state.
4. **Due process.** This bill would add Article 5 (commencing with Section 30355) to the Revenue and Taxation Code to allow the Board to seize any property, real or personal, subject to the lien of the tax whenever any person is delinquent in the payment of the obligations imposed under the Cigarette and Tobacco Products Tax Law. The property seized, or a sufficient part of it, would be sold at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale. Persons whose property would be subject to seizure and sale would already have received due process because at the time of the seizure, the persons would have either:
 - Exhausted the Board's administrative appeals process available to contest a liability for taxes, including a hearing before the elected Members of the Board, and the amount owed would have become a final tax liability that was delinquent, or

- Elected not to participate in the Board's appeals process, but the amount owed would have become a final tax liability that was delinquent.

Furthermore, the person would be entitled to notice of the sale at least twenty days in advance of any sale.

As such, a person whose property is subject to seizure and sale would have received due process prior to any seizure and again, prior to any sale.

This bill would also add Article 2.5 (commencing with Section 30210) to the Revenue and Taxation Code to make the tax, and applicable penalties and interest immediately due and payable on account of all products distributed if a person becomes a distributor without first securing a license. These unlicensed distributors would have same administrative appeals procedure rights as licensed distributors to contest the liability for taxes, subject to the jeopardy determination process.

Possession of Fraudulent Tax Stamps or Meter Impressions

Revenue and Taxation Code Section 30473.5

LAW PRIOR TO AMENDMENT

Under current law, any person who possesses, sells, or offers to sell, buys or offers to buy, any false or fraudulent stamps or meter impressions with a tax value greater than seven hundred fifty dollars (\$750) is guilty of a misdemeanor. Current law does not contain corresponding felony provisions for this violation.

All amounts paid to the Board under the Cigarette and Tobacco Products Law are to be transmit to the Treasurer to be deposited in the State Treasury to the credit of the Cigarette Tax Fund, unless otherwise specified.

AMENDMENT

This bill amends Section 30473.5 of the Revenue and Taxation Code to make any person who possesses, sells, or offers to sell, buys or offers to buy, any false or fraudulent stamps or meter impressions in a quantity of less than 2000 guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars (\$5,000) or imprisonment not exceeding one year in the county jail, or both by fine and imprisonment.

Any person who possesses, sells, or offers to sell, buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under the Cigarette and Tobacco Products Tax Law in a quantity of 2000 or greater, is guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars (\$5,000) or imprisonment not exceeding one year in the county jail, or both the fine and imprisonment.

The court is required to order any fines assessed to be deposited in the Cigarette and Tobacco Products Compliance Fund.

BACKGROUND

With the passage of Proposition 10 in November 1998, which increased the tax from \$0.37 to \$0.87 per pack of twenty, the incentive to evade the taxes has escalated. Prior to this time, the Board had no evidence of counterfeit stamps in California. However, recent information has indicated this is changing. The most recent case involved approximately one million dollars (\$1,000,000) in counterfeit California stamps on their way to Los Angeles from out of state. Possession of this quantity of stamps under current law is only a misdemeanor, which is not a very effective deterrent against flagrant offenders.

Unaffixed stamps are generally found and seized during the search warrant process. Three recent cases where search warrants were served led to the seizure of unaffixed stamps in amounts of 36,000, 69,000 and 146,129, for a total 251,129 counterfeit stamps. If these stamps had been affixed, the amount of tax evaded would have amounted to \$31,320, \$60,030 and \$127,132, respectively.

IN GENERAL

Similar provisions were contained in last year's SB 1843 (Committee on Budget and Fiscal Review), which passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to provide an effective deterrent against flagrant offenders.
2. **These provisions are similar to a Board proposal adopted in 2001.** That proposal would have:
 - Generally provided that any person who, with the intent to defeat or evade the taxes imposed, possessed or sold false or fraudulent stamps would be guilty of a felony. This bill provides that such a person would be guilty of a misdemeanor.
 - Not provided that the misdemeanor would be punishable by a fine or imprisonment.

Sales of Untaxed Cigarettes
Revenue and Taxation Code Section 30474

LAW PRIOR TO AMENDMENT

Section 30474 of the Revenue and Taxation Code provides that any person who knowingly possesses, keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any unstamped package of cigarettes is guilty of a misdemeanor punishable by a fine of not more than one-thousand dollars (\$1,000), imprisonment for not more than one year in a county jail, or both. The guilty person must also pay one hundred dollars (\$100) for each carton of 200 cigarettes possessed, sold or offered for sale, as determined by the court. The court must direct that 50 percent

of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the Board.

AMENDMENT

This bill amends Section 30474 to clarify that the penalty for possessing, selling or offering to sell unstamped cigarettes does not apply to a licensed distributor.

BACKGROUND

The cigarette tax is paid by distributors, who purchase tax stamps from banks and affix them to each package of cigarettes before distribution. As such, licensed distributor's inventory consists of unstamped packages of cigarettes.

IN GENERAL

Similar provisions were contained in last year's SB 1700 (Peace), AB 1666 (Horton) and SB 1843 (Committee on Budget and Fiscal Review). Senate Bill 1700 died in the Assembly Governmental Committee, Assembly Bill 1666 was placed on the Assembly inactive file while waiting for concurrence in the Senate amendments, and SB 1843 passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to clarify that penalties related to unstamped cigarettes do not apply to licensed distributors who affix stamps to packages of cigarettes.
2. **The Board staff does not foresee any administrative problems with this provision.** This provision would simply clarify existing law. Accordingly, enactment of this provision would not affect the Board's administration of the Cigarette and Tobacco Products Tax Law.

<p style="text-align: center;">Sale or Possession for Sale of Counterfeit Cigarettes <i>Revenue and Taxation Code Section 30474.1</i></p>
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LAW PRIOR TO AMENDMENT

Section 30474 of the Revenue and Taxation Code provides that any person who knowingly possesses, keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any unstamped package of cigarettes is guilty of a misdemeanor punishable by a fine of not more than one-thousand dollars (\$1,000), imprisonment for not more than one year in a county jail, or both. The guilty person must also pay one hundred dollars (\$100) for each carton of 200 cigarettes possessed, sold or offered for sale, as determined by the court. The court must direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the Board.

Section 30474.5 imposes an additional penalty for possessing, selling or offering to sell unstamped cigarettes in an amount of one hundred dollars (\$100) for each carton of 200 cigarettes, as determined by the court. The court will direct the additional penalty assessed to be transmitted to the Controller for deposit in the Unlawful Sales Reduction Fund, which this bill creates. Upon appropriation by the Legislature, the moneys in the fund will be allocated to the Office of Criminal Justice Planning (OCJP) for the funding of a competitive grant program.

AMENDMENT

This bill adds Section 30474.1 to the Revenue and Taxation Code to provide that the sale or possession for sale of counterfeit tobacco products, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, wholesaler, or retailer will result in the seizure of the product by the Board or any law enforcement agency. In addition, the possession or possession for sale of counterfeit product constitutes a misdemeanor punishable as follows:

- A violation with a total quantity of less than two cartons of cigarettes is a misdemeanor punishable by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not to exceed one year in a county jail, or both the fine and the imprisonment, and also results in the revocation by the Board of the manufacturer, distributor, or wholesaler license.
- A violation with a quantity of two cartons of cigarettes or more is a misdemeanor punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and also results in the revocation by the Board of the manufacturer, distributor, or wholesaler license.

A court is required to consider a defendant's ability to pay when imposing fines pursuant to this provision. Also, for the purposes of this provision, counterfeit cigarette and tobacco products includes cigarette and tobacco products that have false manufacturing labels, false or fraudulent stamps or meter impressions, or a combination thereof. The Board is required to seize and destroy any cigarettes or other tobacco products forfeited to the state under this provision.

This provision remains in effect until January 1, 2010, and as of that date is repealed.

BACKGROUND

Philip Morris USA has filed lawsuits against retailers engaged in the illegal sale of counterfeit versions of the Company's cigarettes, according to a March 3, 2003 press release. Fifteen suits were filed against 325 retailers in federal courts in seven states, including California. The lawsuits are aimed at stopping the retail sale of counterfeit cigarettes and their illegal use of Philip Morris USA's trademarks, including the MARLBORO® mark, and identifying suppliers of counterfeit cigarettes. Through these lawsuits, Philip Morris states that they are able to gather information about where this product is coming from so that they, working together with

government agencies, legislators and tobacco retailers, wholesalers and suppliers, can take further actions to stop the sale of counterfeit cigarettes.

These suits are the result of periodic audits conducted by the company during which cigarettes were purchased in the marketplace. Philip Morris USA shares the results of these audits and other information with law enforcement at the federal, state and local level.

IN GENERAL

Similar provisions were contained in last year's AB 1666 (Horton) and SB 1843 (Committee on Budget and Fiscal Review). Assembly Bill 1666 was placed on the Assembly inactive file while waiting for concurrence in the Senate amendments and SB 1843 passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to deter manufacturers, importers, distributors, wholesalers, or retailers from selling or possessing counterfeit cigarettes or tobacco products.
2. **Revocation of the manufacturer, distributor, or wholesaler license.** This provision would, in part, require the Board to revoke the manufacturer, distributor, or wholesaler license for selling or possessing counterfeit cigarettes or tobacco products. This would also result in an automatic revocation of distributor's or wholesaler's cigarette and tobacco products license pursuant to proposed Section 22978.6.
3. **False manufacturing labels.** This provision would define counterfeit cigarettes and tobacco products to include, in part, products that have false manufacturing labels. Board staff is not trained to detect false manufacturing labels and would not be able to determine with certainty whether or not product seized has a false label. However, cigarette and tobacco product manufacturers, such as Philip Morris, do provide Board staff information to aid in the detection of false manufacturing labels. In addition, such companies are willing to provide experts who can analyze suspect seizures.

Extension of Time to Prosecute Penal Provisions
Revenue and Taxation Code Section 30481

LAW PRIOR TO AMENDMENT

Under existing Cigarette and Tobacco Products Law, Section 30481 provides that the prosecution for violation of any of the criminal provisions shall be instituted within three years after the commission of the offense, or within two years after the violation is discovered, whichever is later. These sections do not conform to the federal law (Section 6531(4)) which has a six year statute of limitation for fraud, California income tax law (Revenue and Taxation Code 19704) which mirrors federal law, or Section 801.5 of the California Penal Code which states that the statute is four years after discovery, or within four years after completion of the offense, whichever is later.

Title 26, Subtitle F, Chapter 66, Subchapter D Section 6531 of the federal law provides that:

“No person shall be prosecuted, tried, or punished for any of various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after commission of the offense, except that the period of limitations shall be 6 years

. . .

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof.

. . .”

Under current state law, California Penal Code Section 801.5 provides that:

Notwithstanding Section 801 or any other provision of the law, prosecution for any offense described in subdivision (c) of Section 803 shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.

Under Revenue and Taxation Code Section 19704, relating to the state income tax laws administered by the Franchise Tax Board, any action for prosecution must be instituted within six years after the commission of the offense.

AMENDMENT

The bill amends Section 30481 of the Revenue and Taxation Code to extend the current three years statute to six years for filing a criminal prosecution in a state court and conform this law to the Federal Law and state income tax laws and be more in line with California Penal Code statute of limitations for felonies that involve fraud.

BACKGROUND

Revenue and Taxation Code Section 7154 (Sales and Use Tax Law) was amended in 1992 to five years instead of three years because of a court case (*People v. Zamora*, 116 Cal.3d 538). The judge in the case ruled that an auditor who discovers an underreporting on the returns or other information may trigger the discovery date of a fraud violation. The judge held that "discovery" for statute of limitations purposes occurs after the authorities have notice of circumstances sufficient to make them suspicious of fraud thereby leading them to make inquiries, which might reveal fraud. Since most audits are done on a three-year cycle, the then existing three year statute would have run on the first year under audit before fraud was discovered and the criminal case was developed. A successful prosecution at this time would be difficult due to the limited time remaining under the statute. Since a normal prosecution may take two to three years, the statute would have run.

In one fuel tax case, after working jointly with federal and state agencies, the Assistant United States Attorney (AUSA) declined to file federal charges. Even though federal statutes had not expired, due to the length of the investigation and legal proceedings, the state statute of limitations had expired. Subsequently, a potential criminal fraud prosecution became a civil billing. Currently, two other federal and state joint fuel investigations are pending in which the state statute of limitations has run while the state has waited for the AUSA to file charges. If the AUSA decides to drop the federal charges, no charges can be prosecuted by the state. Further, with the increasing number of counterfeit cigarette stamps found in California, the Investigations Division is working jointly on many of its cigarette cases with the federal Bureau of Alcohol, Tobacco and Firearms Bureau (ATF). These joint efforts increase the possibility of additional statute problems arising.

IN GENERAL

Similar provisions were contained in last year's SB 1843 (Committee on Budget and Fiscal Review), which passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to allow the state sufficient time to file criminal fraud charges in state court when the AUSA declines to file charges in federal court and prevent criminal fraud cases from being treated solely as civil liabilities.
2. **This provision is identical to a 2002 Board proposal.** As part of its 2001-02 Legislative package, the Board voted to adopt a proposal identical to this provision. However, the Board's proposal would have also extended the time in which the prosecution for violating the penal provisions may be instituted under various other programs administered by the Board, including the sales and use tax law.

Recoupment of Costs of Criminal Investigations <i>Revenue and Taxation Code Section 30482</i>

LAW PRIOR TO AMENDMENT

Other tax agencies (Franchise Tax Board and Employment Development Division) currently have such recoupment authority. However, statutory authority does not exist for the State to seek recoupment of the costs that are incurred during criminal investigations conducted by the Board. The State of California's costs to conduct various criminal investigations result in thousands of dollars being expended annually.

AMENDMENT

The bill adds Section 30482 to the Cigarette and Tobacco Products Tax to allow the Board to seek recoupment of costs incurred during criminal investigations. All reimbursed monies are to be deposited into the appropriate State funds.

BACKGROUND

The Franchise Tax Board (FTB) indicated that cost recoupment is ordered on approximately 50 percent of their cases. The FTB also provided the following data on cost recoupment orders:

Period	Number of cases	Amount ordered	Amount collected
2000	18	\$124,817	\$71,841
Jan 2001 – Oct 2001	27	\$174,937	\$47,095

It is the Board's Investigations Division's understanding from some district attorneys that judges are hesitant to order recoupment absent a statute clearly giving that authority. In a recent Board case (*People v. Elias Chaghouri*), the judge refused to include the Board's investigation costs in the restitution order. He based his ruling in large part on the proposition that the costs of investigations are a normal part of the State's costs and since there are no statutes authorizing recovery, none was allowed. Accordingly, the district attorneys argue that this ruling fails to recognize the simple fact that investigation costs would not be a normal operating cost of a business or a government agency if it were not for the existence of the crimes in the first place. It also does not recognize the fact that certain crimes incur costs that are specific to the particular crime. Such costs cannot reasonably be viewed as normal operating expenses.

IN GENERAL

Similar provisions were contained in last year's SB 1843 (Committee on Budget and Fiscal Review), which passed the Assembly with no further action.

COMMENTS

1. **Purpose.** This provision is intended to conform the Cigarette and Tobacco Products Tax Law with authority already granted to other California tax agencies, and to make the intent clear and concise to avoid various interpretations by the courts.
2. **This provision is identical to a 2002 Board proposal.** As part of its 2001-02 Legislative package, the Board voted to adopt a proposal identical to this provision. However, the Board's proposal would have also allowed the Board to seek recoupment of costs incurred during criminal investigations under various other programs administered by the Board, including the sales and use tax law.

Assembly Bill 433 (Nation) Chapter 491***Marine Invasive Species Fee***

Effective January 1, 2004. Among its provisions, amends Section 71215 of the Public Resources Code and amends Sections 44000, 44005, 44007, and 44008 of the Revenue and Taxation Code.

BILL SUMMARY

Among other things, this bill:

- Renames the "Ballast Water Management Fee Law" to the "Marine Invasive Species Fee Collection Law",
- Extends the sunset date for the Fee from January 1, 2004 to January 1, 2010, and
- Requires the Board to collect the Marine Invasive Species Fee from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California, as specified.

Sponsor: Ocean Conservancy

LAW PRIOR TO AMENDMENT

Under existing law, Section 71215 of the Public Resources Code requires the State Lands Commission (Commission) to establish a reasonable and appropriate fee to carry out the California Ballast Water Management for Control of Nonindigenous Species Act in an amount not to exceed one thousand dollars (\$1,000) per vessel voyage. This fee is known as the Ballast Water Management Fee. The Commission has sole rate setting authority to raise and lower the fee in addition to adjusting the fee for inflation every two years. The fee is currently set at \$200 per qualifying voyage.

The Board collects the Ballast Water Management Fee from the owner or operator of each vessel that enters a California port with ballast water loaded from outside the exclusive economic zone (EEZ). The Board administers and collects the Ballast Water Fee in accordance with the Ballast Water Management Fee Law. The fees collected are deposited in the State Treasury to the credit of the Exotic Species Control Fund.

The Ballast Water Fee and the Ballast Water Management Fee Law will be repealed as of January 1, 2004, unless a later enacted statute deletes or extends that date.

AMENDMENT

This bill revises and recasts the provisions of Division 36 (commencing with Section 71200) of the Public Resources Code, which will now be known as the "Marine Invasive Species Act."

Among other things, this bill amends Section 71215 to require the Commission to establish, through regulation, a reasonable and appropriate fee solely for the purposes of carrying out the Marine Invasive Species Act. The fee may not exceed one thousand dollars (\$1,000) for each voyage, as specified.

Pursuant to the Marine Invasive Species Fee Collection Law, the Board is required to collect the fee from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. The fee may not be assessed on any vessel arriving at a California port or place if:

- That vessel comes directly from another California port or place, and
- During that transit has not arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.

The fees imposed are to be deposited into the Marine Invasive Species Control Fund, which this bill creates. This bill also requires all money accruing to the Exotic Species Control Fund be transferred to the Marine Invasive Species Control Fund.

This bill amends Section 44000 of the Revenue and Taxation Code to rename the "Ballast Water Management Fee Law" to the "Marine Invasive Species Fee Collection Law." The bill also amends Section 44005 to correct a reference error.

This bill amends Section 44007 to require the Board to transmit payments of the fee to the Treasurer to be deposited in the State Treasury to the credit of the Marine Invasive Species Control Fund, which this bill establishes.

This bill additionally amends Section 71271 of the Public Resources Code and Section 44008 of the Revenue and Taxation Code to extend, from January 1, 2004 to January 1, 2010, the sunset date of the Marine Invasive Species Act and newly named Marine Invasive Species Fee Collection Law, respectively.

BACKGROUND

In 1999, Assembly Bill 703 (Ch. 849, Stats. 1999) added Division 36 (commencing with Section 71200) to the Public Resources Code to address the introduction of nonindigenous aquatic species. Among other things, that bill requires the Board to collect a fee from the owner or operator of each vessel that enters a California port with ballast water loaded from outside the EEZ.

Assembly Bill 2380 (Ch. 110, Stats. 2000) added the Ballast Water Management Fee Law to provide necessary fee collection and other administrative provisions required for the Board to comply with the requirement to collect the Ballast Water Management Fee.

COMMENTS

1. **Purpose.** This bill is intended to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable.

2. **Provisions would not be problematic to administer.** Enactment of this measure would not materially affect the Board's administration of the current Ballast Water Management Fee program.
3. **This bill would require that the Board's contract with the Commission be renegotiated.** This bill proposes to revise and extend an existing fee beyond its January 1, 2004 repeal date, which would occur during the middle of the Board's current contract with the Commission to administer the fee for fiscal year 2003-04. In order to begin to develop computer programs, revise forms and publications, notify feepayers, mail additional billings, process additional payments, and train staff, the Board would need to renegotiate its contract with the Commission to cover the Board's start-up costs that would not already be identified in the 2003-04 contract.

Assembly Bill 986 (J. Horton) Chapter 569
Study to Consolidate Tax Agencies' Functions

Effective January 1, 2004. Adds Section 38 to the Revenue and Taxation Code.

BILL SUMMARY

This bill requires the Legislative Analyst (LAO) to submit a report to the Legislature on the consolidation of the remittance processing and cashing functions, and the mail processing operations, of the Board of Equalization (BOE), Franchise Tax Board (FTB), and the Employment Development Department (EDD), based on specified criteria.

Sponsor: Assembly Member Jerome Horton

LAW PRIOR TO AMENDMENT

Under existing law, the BOE, which consists of 5 voting members (4 members elected to represent the 4 districts throughout California, and the Controller) administers the sales and use tax, cigarette and tobacco products tax, alcoholic beverage tax, and various other taxes and fees. The BOE also sets values of property for state-ASSESSEES and monitors the property tax assessment practices of county assessors.

The FTB administers the state personal income taxes and corporations income taxes.

The EDD is responsible for the audit and collection of employment taxes and maintains employment records for more than 19 million California workers.

AMENDMENT

This bill adds Section 38 to the Revenue and Taxation Code to require the LAO to submit a report to the Legislature regarding the possible consolidation of the remittance processing and cashing functions, and the mail processing operations, of the FTB, BOE, and EDD.

The bill requires the three agencies to provide all data and information that the LAO identifies as necessary for completing the report and also require the agencies to assist in the preparation of the report. The information provided is to include, but not be limited to, an evaluation of the short- and long-term fiscal and budgetary advantages and disadvantages from the proposed consolidation of the specific functions. All information is required to be submitted to the LAO by July 1, 2004.

The purpose of the report is to determine, to the extent possible and based on available information and reasonable assumptions, if there are any benefits to the

consolidation of the management and control of these operations, based on all of the following criteria:

- The elimination of duplicative functions and fragmented responsibilities.
- Increase operational efficiencies due to the use of improved technologies and economies of scale.
- Additional interest earnings for the state.

For purposes of this bill, “remittance processing and cashiering” means receiving, batching, balancing, and depositing remittances.

The LAO provides its report and any recommendations and considerations with regard to the possible consolidation of the specified functions to the Legislature by November 1, 2004.

BACKGROUND

Assembly Bill 3181 (Leonard) of 1986 would have required that beginning July 1, 1988, the cashiering operations of the BOE and EDD be done by the FTB. The bill also would have required that a task force, consisting of BOE, EDD, FTB, the Department of Finance, and the State Treasurer be established to prepare an implementation plan. If the task force determined that the proposed consolidation was not cost-effective, then the consolidation would not have taken place. AB 3181 did not pass out of the Senate Revenue and Taxation Committee. AB 3181 attempted to implement a suggestion from the Little Hoover Commission, which based its recommendation on a study conducted by the accounting firm Peat, Marwick, and Mitchell.

IN GENERAL

The BOE collects 25 different taxes and fees, including sales and use tax that provides nearly forty (40) percent of the State’s revenue. As such, the BOE is dedicated to leadership in the field of tax administration, taxpayer services, and taxpayer information. Each year the BOE manually processes monthly, quarterly, fiscal yearly, and calendar yearly tax payments and return forms from approximately one million registered businesses. The BOE mails out return forms along with a return envelope to registered taxpayers for all the tax programs administered. Peak periods occur the month following each of the four calendar quarters. The second and fourth quarters produce the largest volume since these periods include monthly, quarterly and yearly (fiscal and calendar) filers. Monthly peak periods also occur due to the filing of prepayment forms by quarterly prepayment reporting basis taxpayers. These taxpayers are required to make two prepayments during the first two months of the quarter followed by a quarterly return and payment.

COMMENTS

1. **Purpose.** Its purpose is to require a study of consolidating specified operations of the BOE, FTB, and EDD in the furtherance of good government and the elimination of wasteful or duplicative processes. The author intends an independent third party to study the efficiencies that could be achieved by combining resources of the three taxing agencies in order to provide elected officials with the data they need to make an informed decision about the issue of consolidation.
2. **The bill would study the combination of processes that are common to all three taxing agencies.** The proposed study would require the LAO to look at the tasks leading up to the point at which the tax return information must be reviewed and verified by tax experts at each of the three different agencies. The return review process requires employees to apply laws, rules, and policies that are unique to each of the different taxing agencies. The consolidation approach contained in this bill looks for common grounds to achieve efficiencies on processes that are not unique to any of the agencies.
3. **The following are some of the issues that would need to be addressed in a study.**
 - Should the agencies combine facilities or run separate facilities?
 - How would the processes work if some information is scanned at one agency while it is key entered in another?
 - How would the different data centers communicate with each other when the BOE uses the Teale Data Center, EDD primarily uses the Health and Human Services Data Center, and FTB maintains its own data center?
 - What are the underlying confidentiality issues with agencies sharing information?
 - Which fund gets priority when a taxpayer sends insufficient payment for all three tax programs?
 - Are there any issues with electronic fund transfer payments?
4. **Related Legislation.** Assembly Bill 1503 (Levine) contains legislative intent to conduct a study on the most economically feasible and effective method of collecting taxes and other revenues owed to the state. This bill was not heard in any committee in 2003.

Assembly Bill 1666 (Cogdill) Chapter 867
Cigarette and Tobacco Products: Reporting Requirements

Effective January 1, 2004. Amends, repeals, and adds Sections 30142, 30168, 30181, and 30182 of the Revenue and Taxation Code.

BILL SUMMARY

Among other things, this bill:

- Allows a distributor to elect either a monthly or twice-monthly payment basis for amounts owing for stamps and meter register settings purchased on a deferred basis;
- Reduces the amount of security required to be posted by a distributor that defers payments for stamps and meter register settings and elects a twice-monthly payment basis, from 70 percent to 50 percent, of the amount of stamps and meter register settings for which payment is deferred;
- Allows a distributor of tobacco products to elect either a monthly or twice-monthly basis to file a return and remit payment of the amount of tax due respecting his or her distributions of tobacco products and their wholesale cost during the preceding month.

Sponsor: California Distributors Association

LAW PRIOR TO AMENDMENT

Under current Cigarette and Tobacco Products Tax Law, an excise tax of 43 1/2 mills per cigarette (87 cents per package of 20) is imposed on each cigarette distributed. The cigarette tax imposed with respect to the distribution of cigarettes is paid by distributors through the use of stamps or meter impressions. An appropriate stamp or meter impression is required to be affixed to, or made on, each package of cigarettes prior to distribution of the cigarettes, except as otherwise provided.

Current law also imposes a surcharge on tobacco products at a rate to be annually determined by the Board. The tobacco products tax rate is equivalent to the combined rate of tax on cigarettes. Currently, the surcharge rate for fiscal year 2002-03 is 48.89 percent.

Every applicant for a license as a distributor is required to file with the Board security in the amount and form as the Board prescribes. The minimum security that is required of any distributor is one thousand dollars (\$1,000). However, distributors desiring to defer payment for stamps and meter impressions are required to furnish a security equal to not less than 70 percent of the amount and not more than twice the amount of the purchase of stamps and meter register settings for which payment may be deferred. Amounts owing for stamps and meter register settings purchased on a deferred payment basis in any calendar month are due and payable to the Board on or before the 25th day of the following calendar month.

Each distributor of tobacco products is required to file a return on or before the 25th day of each month respecting his or her distributions of tobacco products and their wholesale cost during the preceding month and such other information as the Board may require. Each distributor of tobacco products is also required to remit the amount of tobacco products tax due to the Board on or before the 25th day of the calendar month following the close of the monthly period for which it relates.

AMENDMENT

This bill amends Section 30142 of the Cigarette and Tobacco Products Tax Law to reduce the security required to be provided by a licensed distributor desiring to defer payments for stamps or meter register settings and who elects to make deferred payments on a twice-monthly basis. Specifically, the amount of the security required is as follows:

- Equal to not less than 70 percent of the amount and not more than twice the amount, as fixed by the Board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred if a distributor elects to make payments on a monthly basis.
- Equal to not less than 50 percent of the amount and no more than twice the amount, as fixed by the Board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred if a distributor elects to make payments on a twice-monthly basis.

This bill amends Section 30168 to allow a distributor to elect a payment basis for amounts owing for stamps and meter register settings purchased on a deferred basis. A distributor could elect to make the payment on either a monthly basis or a twice-monthly basis. If a distributor elects a monthly basis, payment is required to be remitted on or before the 25th day of the month following the month in which the stamps and meter register settings were purchased. However, if a distributor elects a twice-monthly payment basis, the payment due is as follows:

- The first monthly remittance shall be made on or before the 5th day of the month. The amount due is to be equal to either one-half of the total amount of those purchases of stamps and meter register settings made during the preceding month or the total amount of those purchases of stamps and meter register settings made between the first day and the 15th day of the preceding month, *whichever is greater*.
- The second monthly remittance shall be made on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

This bill also amends Section 30181 to allow a distributor of tobacco products to elect to file a return and make payment of the tax due on either a monthly or a twice-monthly basis respecting his or her distributions of tobacco products and their wholesale cost during the preceding month and any other information as the Board may require. If a distributor elects a monthly basis, the distributor is required to file a return and make payment of the tax on or before the 25th day of the month following

the month during which the tobacco products were distributed. If a distributor elects a twice-monthly basis, the distributor is required to file two returns and make two remittances during the month following the month during which the tobacco products were distributed as follows:

- The first monthly return is required to be filed, together with the first remittance of tax, on or before the 5th day of the month for those distributions of tobacco products that occurred between the first day and the 15th day of the preceding month.
- The second monthly return is required to be filed, together with the second remittance of tax, on or before the 25th day of the month for those distributions of tobacco products that occurred between the 16th day and last day of the preceding month.

This bill amends Section 30182 to require a distributor that elects to make deferred payments on a twice-monthly basis to file a report on or before the 5th day of the month respecting his or her distributions of cigarettes and purchases of stamps and meter register settings.

A distributor election made pursuant to the provisions of this bill will remain in effect for at least one year from the date the election is made. However, if the Board finds that good cause exists for a distributor's inability to maintain the election for the full year, the Board may authorize the distributor to make a new election, as specified.

The provisions of this bill remain in effect until January 1, 2007, and as of that date are repealed.

On or before January 1, 2006, the Legislative Analyst, with assistance of, and based on information provided by the Board, is required to prepare a report to the Legislature of the economic impact of this bill. The report shall include an evaluation of the Board's ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

IN GENERAL

Every applicant for a license as a distributor is required to file with the Board a security in the amount and form as the Board prescribes. The minimum security that is required of any distributor is one thousand dollars (\$1,000). However, every distributor desiring to purchase tax stamps or meter register settings on the deferred payment basis would request the Board to set the maximum amount of such purchases the distributor may have unpaid at any time and the amount of the required bond. The maximum amount of stamps and meter register setting purchases for which the distributor may defer payment can not exceed one and one-half times the distributor's average monthly tax liability based on the distributor's previous six months' experience. Or in the case of a distributor not previously authorized to make deferred payment purchases or a distributor the character of whose business has changed substantially, the maximum amount will be set at one and one-half times the estimated average monthly tax liability as determined by the

Board. When a distributor is authorized to purchase stamps or meter register settings on the deferred payment basis, the bond will be fixed in an amount equal to 70 percent of the amount of deferred payment purchases which the distributor may have unpaid at any time.

Once the required security is received, the Board provides written authorization for the amount of deferred payment purchases the distributor may have to the Bank of America branch where tax stamp and meter register settings purchases are to be made. The Board currently contracts with Bank of America to sell cigarette tax stamps to licensed distributors and to remit the tax collected to the Board.

Payment for all deferred payment purchases of tax indicia made during each calendar month must be made at the Bank of America branch office where the purchases were made, and must be made by the 25th day of the calendar month following the month in which the purchases were made. Remittance for such purchases are made payable to "State Board of Equalization." The privilege of making deferred payment purchases will be suspended if there is a delinquent balance owing.

COMMENTS

1. **Purpose.** This bill is intended to address the difficulty distributors experience trying to obtain bonds for deferred purchases of tax stamps. According to the author, two issues have had a distinct impact on this insurance. First, insurance companies have been forced to raise their rates and reduce policies since September 11, 2001. An average bond, if available, has risen from under 4 percent to over 6.5 percent of its value. Second, recent large judgments against manufacturers (not distributors) have had a chilling effect on bonding. Although most judgments have been lowered or dismissed all together, bond companies are still concerned. According to the sponsors, if bonds were not available, the cash requirements of all distributors would be impossible to meet.
2. **How would this bill affect the Board's contract with Bank of America?** The Board contracts with Bank of America to sell cigarette tax stamps to licensed distributors, to collect the cigarette tax, and to remit the tax collected to the Board. The Board's current contract with Bank of America is for the three-year period commencing July 1, 2001 and ending June 30, 2004. Accordingly, the Board would have to renegotiate its contract with Bank of America to accept payment for deferred purchases of tax stamps on both a monthly and a twice-monthly basis for the period of January 1, 2004 (the effective date of this measure) to June 30, 2004.
3. **Distributors purchasing tax stamps on a deferred basis.** Currently, 48 of the 242 distributors licensed with the Board purchase cigarette tax stamps on a deferred basis. The combined credit limit of these 48 distributors is approximately \$371 million, with a corresponding security of \$260 million ($\$371 \text{ million} \times 70\% = \260 million). The Board is authorized to suspend a distributor's privilege to purchase tax stamps on the deferred basis if a distributor fails to promptly pay for stamps when payment is due. And if collection of these amounts remain unpaid, the Board could pursue the distributor's security deposit.

There has been only one instance in the last ten years where the Board had to make a claim against a distributor's surety bond for non-payment of stamps and meter register settings purchased on a deferred payment basis. However, it is important to point out that very recently, a situation has arisen in which an outstanding deferred-payment balance was not paid by the due date. As of the date of this analysis, that balance is still outstanding.

4. **This bill should contain a specific appropriation to the Board.** This bill would allow a distributor to elect either a monthly or twice-monthly payment basis for the payment of amounts owing for stamps and meter register settings purchased on a deferred basis. In addition, this bill would allow a distributor of tobacco products to elect either a monthly or twice-monthly basis to file a return and remit payment of the amount of tax due respecting his or her distributions of tobacco products. If enacted, the provisions of this bill would require that implementation begin during the 2003-04 fiscal year. In order to begin to develop the fee payer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not already be identified in the Board's 2003-04 budget.

Assembly Bill 1744 (Committee on Revenue and Taxation) Chapter 316
Diesel Fuel Tax Refund Documentation

Effective January 1, 2004. Among its provisions, amends 60501 of the Revenue and Taxation Code.

BILL SUMMARY

This bill codifies provisions of the Board's Diesel Fuel Tax Regulation relating to the use of an original invoice retained in an alternative storage media to support a diesel fuel tax claim for refund.

Sponsor: Burlington Northern Railroad

LAW PRIOR TO AMENDMENT

Existing Diesel Fuel Tax Law Section 60501 provides that persons who have paid a tax for diesel fuel lost, sold, or removed, as provided, or used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall be reimbursed and repaid the amount of the tax. A claim for refund with respect to diesel fuel is allowed under Section 60501 only if specified conditions apply. Among other things, a claim for refund must contain specified information with respect to all of the diesel fuel covered by the claim and be supported by the original invoice showing the purchase. If no original invoice was created, electronic invoicing can be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

Diesel Fuel Tax Law Section 60604 provides, in general, that every person dealing in, removing, transporting, or storing diesel fuel in this state must keep records, receipts, invoices, and other pertinent papers with respect to any claim for refund filed, as the Board may require.

The Board's Special Taxes Administration Regulation 4901, "Records," interprets and makes specific, in part, the provisions of Section 60604. Under the regulation a taxpayer may convert hardcopy documents received or produced in the normal course of business and required to be retained to storage-only imaging media such as microfilm or microfiche and discard the original hardcopy documents, subject to specified conditions, for purposes of storage and retention.

AMENDMENT

This bill amends Section 60501 of the Revenue and Taxation Code to authorize a diesel fuel tax claim for refund to be support by an original invoice facsimile retained in an alternative storage media showing the purchase.

COMMENTS

1. **Purpose.** This bill is intended to codify the Board's regulation concerning the storage and retention of records and documents in an alternative storage media.
2. **This provision would not materially affect the Board's administration of the Diesel Fuel Tax Law.** Since this provision would basically codify the Board's interpretation of the law, it would not materially affect the Board's workload.

Senate Bill 20 (Sher) Chapter 526
Covered Electronic Waste Recycling Fee

Effective January 1, 2004. Among its provisions, adds Chapter 8.5 (commencing with Section 42460) to Part 3 of Division 30 of the Public Resources Code.

BILL SUMMARY

This bill:

- Establishes the covered electronic waste recycling fee and requires a retailer selling a covered electronic device to a consumer to collect the covered electronic waste recycling fee from the consumer in specified amounts,
- Authorizes the Integrated Waste Management Board (IWMB) to solicit and use any and all expertise available in other state agencies, including, but not limited to, the State Board of Equalization (Board), and
- Authorizes the IWMB to contract with the Board or another party for the collection of the covered electronic waste recycling fee.

Sponsor: Senator Byron Sher

LAW PRIOR TO AMENDMENT

Under existing law, there is no fee on the hazardous electronic devices sold in this state.

AMENDMENT

This bill adds Chapter 8.5 (commencing with Section 42460) to Part 3 of Division 30 of the Public Resources Code as the Electronic Waste Recycling Act of 2003.

COVERED ELECTRONIC WASTE RECYCLING FEE

This bill imposes, on and after July 1, 2004, a covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer. A retailer selling a covered electronic device to a consumer is required to collect a covered electronic waste recycling fee from the consumer for each covered device sold by the retailer in the following amounts:

- Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.
- Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

The covered electronic waste recycling fee is to be transmitted to the IWMB in accordance with a schedule and procedure that the IWMB establishes pursuant to proposed Sections 42475 and 42475.2.

Among other things, Section 42475 authorizes the IWMB to adopt any regulations, as specified, which are necessary to implement the Electronic Waste Recycling Act of 2003. The IWMB and the Department of Toxic Substances Control (DTSC) may solicit and use any and all expertise available in other state agencies, including, but not limited to, the DTSC, the Department of Conservation, and the Board.

Section 42475.2 authorizes the IWMB and the DTSC to adopt regulations to implement the Electronic Waste Recycling Act of 2003 as emergency regulations.

A retailer selling a covered electronic device is allowed to retain 3 percent of the covered electronic waste recycling fee as reimbursement for any costs associated with the collection of the fee.

The IWMB, in collaboration with the DTSC, is required to review the covered electronic waste recycling fee on and after July 1, 2005, and at least every two years thereafter and make any adjustments to the fee to ensure that there are sufficient revenues to fund the covered electronic waste recycling program, which this bill establishes. The IWMB is required to base any adjustment of the covered electronic waste recycling fee on the both of following factors:

- The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of 100 percent of the covered electronic waste that is projected to be recycled in the state.
- The sufficiency of revenues in the account for the IWMB and the DTSC to administer, enforce, and promote the covered electronic waste recycling program, plus a prudent reserve not to exceed 5 percent of the amount in the account.

This bill authorizes the IWMB to collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to be collected by the Board to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as provides the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

However, the IWMB is authorized to contract with the Board or another party for collection of the covered electronic waste recycling fee.

FINANCIAL PROVISIONS

The covered electronic waste recycling fee is to be deposited into the Electronic Waste Recovery and Recycling Account (Account), which this bill creates in the Integrated Waste Management Fund. The funds in the Account are available for expenditure by the IWMB and the DTSC, upon appropriation by the Legislature, for the following purposes:

- To make electronic waste recycling payments to an authorized collector of covered electronic waste.
- To make electronic waste recycling payments to covered electronic waste recyclers of covered electronic waste.
- To provide for costs of the IWMB and the DTSC to administer the Electronic Waste Recycling Act of 2003.
- To provide funding to the DTSC to implement and enforce hazardous waste control laws, as described.

DEFINITIONS

This bill defines the following terms:

- "Retailer" - a person who sells a covered electronic device in the state to a consumer but who did not manufacture the device. "Retailer" includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer.
- "Sell" or "sale" - any transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.
- "Covered electronic device" - a cathode ray tube, cathode ray tube device, flat panel screen, or any other similar video display device with a screen size that is greater than four inches in size measured diagonally and which the DTSC determines, when discarded or disposed, is a hazardous waste, as specified.

A "covered electronic device" does not include an automobile or a large piece of commercial or industrial equipment, including, but not limited to, commercial medical equipment, that contains a cathode ray tube, cathode ray tube device, flat panel screen, or other similar video display device that is contained within, and is not separate from, the larger piece of industrial or commercial equipment.
- "Consumer" - a purchaser or owner of a covered electronic device. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

"Consumer" does not include a manufacturer who purchases specialty or medical electronic equipment, as defined, that is a covered electronic device.

COMMENTS

1. **Purpose.** This bill is intended to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of hazardous electronic devices.
2. **Could the state require out-of-state retailers to remit a covered electronic waste recycling fee?** Various Supreme Court cases have focused on states' ability to impose the use tax on out-of-state firms making sales to in-state customers. In 1967 the Supreme Court ruled in *National Bellas Hess, Inc. v. Illinois Department of Revenue*, 386 U.S. 753 (1967), that a firm that has no link to a state except mailing catalogs to state residents and filling their orders by mail cannot be subject to that state's sales or use tax. The Court ruled that these mail order firms lacked substantial physical presence, or nexus, required by the Due Process Clause and the Commerce Clause of the United States Constitution.

In the 1977 case of *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274 {51 L.Ed.2d 326, 97 S.Ct. 1076} the Court articulated that, in order to survive a Commerce Clause challenge, a tax must satisfy a four part test: 1) it must be applied to an activity with a substantial nexus with the taxing State, 2) it must be fairly apportioned, 3) it does not discriminate against interstate commerce, and 4) it must be fairly related to the services provided by the State.

North Dakota enacted anti-National Bellas Hess legislation with the expressed purpose of creating nexus with mail order firms selling to consumers in the state, in an attempt to compel out-of-state retailers to collect the use tax on mail order sales and test the continuing validity of the National Bellas Hess decision. The statute was challenged, and in 1992 the Supreme Court issued a ruling in *Quill Corporation v. North Dakota* (1992) 504 U.S. 298. The Court in *Quill* applied the *Complete Auto Transit* analysis and held that satisfying due process concerns does not require a physical presence, but rather requires only minimum contacts with the taxing state. Thus when a mail-order business purposefully directs its activities at residents of the taxing state, the Due Process Clause does not prohibit the state's requiring the retailer to collect the state's use tax. However, the Court held further that physical presence in the state was required for a business to have a "substantial nexus" with the taxing state for purposes of the Commerce Clause. The Court therefore affirmed that in order to survive a Commerce Clause challenge, a retailer must have a physical presence in the taxing state before that state can require the retailer to collect its use tax.

Based on the above cases, it is questionable whether the state could require an out-of-state manufacturer of a covered electronic device, who has no physical presence in California, to remit a fee in order for that device to be sold to a consumer in this state. Further, it should be noted that this bill would define a "retailer" to mean a person who sells a covered electronic device *in this state*. Based on that definition, it is unclear if the restrictions would apply to an out-of-

state retailer that has no physical presence in the state, since without a physical presence it is possible that a sale of the device that ends up in California would not have been made by the retailer in this state.

3. **Petitions for redetermination and claims for refund.** It is suggested that, for purposes of the covered electronic waste recycling fee, the IWMB handle the petitions for redetermination and approve the claims for refund based upon the grounds that the IWMB improperly or erroneously calculated the amount of the fee or identified the wrong feepayer. It would be difficult for Board staff to resolve feepayer protests and claims based on actions of another state agency, and doing so could result in a significant number of additional appeals conferences and Board hearings. Accordingly, the following language is suggested:

42464.5. (a) If the board contracts with the State Board of Equalization to collect the fee imposed in Section 42464, the State Board of Equalization may collect that fee pursuant to the Fee Collection Procedures Law (Part 30 commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(b) No petition for redetermination of fees determined by the board pursuant to Section 42464 shall be accepted or considered by the State Board of Equalization if the petition is founded upon the grounds that the board has improperly or erroneously calculated the amount of the fee pursuant to Section 42464(e) or has incorrectly determined that the person is subject to the fee. Any appeal of a determination based on the grounds that the amount of the fee was improperly or erroneously calculated or that the person is not responsible for the fee shall be accepted by the State Board of Equalization and forwarded to the board for consideration and decision.

(c) No claim for refund of fees paid pursuant to Section 42464 shall be accepted or considered by the State Board of Equalization if the claim is founded upon the grounds that the board has improperly or erroneously calculated the amount of the fee pursuant to Section 42464(e) or has incorrectly determined that the person is subject to the fee. Any claim for refund based on the grounds that the amount of the fee was improperly or erroneously calculated or that the person is not responsible for the fee shall be accepted by the State Board of Equalization and forwarded to the board for consideration and decision.

It is also suggested that the bill specify a due date for the fee and authorize the payment of refunds on overpayments of the fee.

4. **Overriding federal government or court actions.** Proposed Section 42485 would prohibit the IWMB or the DTSC from implementing the Act if federal law changes, as provided, or a court holds that the law is invalid. However, the proposed section does not indicate what would occur should the Act be implemented prior to a change in federal law or court action. Would the provisions of the Act cease to be effective in such a case? If that is the author's intent, Section 42485 should be amended to cover the cessation of the Act in the event the contingencies occur in the future. For example, the bill should provide

for what would happen to the amounts on deposit in the Electronic Waste Recovery and Recycling Account, and address how refunds would be made.

5. **Other technical concerns.** Board staff is working with the author's office in drafting appropriate amendments to address the following concerns:

- The term "retailer" is defined as a person who sells a hazardous electronic device in the state to a consumer but who did not manufacture the device. As such, the term "person" should be defined.
- Section 42464.2 provides that the IWMB could collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law. However, the IWMB cannot simply use the Fee Collection Procedures Law to collect the fee since that law is a collection mechanism specific to the Board. The subdivision goes on further to provide that the IWMB may contract with the Board or another party for the collection of one or more of the fees due under this "section" (Section 42464.2). However, Section 42464.2 does not impose any fee. In addition, Section 42464.2 would not specifically authorize the Board to collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law if the IWMB elects to contract with the Board for collection of the fee. The following language is suggested to address these concerns:
- Section 42464.2 provides that the IWMB "may collect the fees imposed pursuant to this section pursuant to the Fee Collection Procedures Law". Since there are no fees imposed under Section 42464.2, it appears that "section" was inadvertently used instead of "article" or "part". It is therefore recommended that Section 42464.2 be amended to correct this drafting error. In addition, the Fee Collection Procedures Law, which is located in the Revenue and Taxation Code, specifically applies to collection of taxes and fees by the Board of Equalization. Accordingly, the reference to that law should be moved to the second sentence of Section 42464.2 in which the Board (of Equalization) is referenced. The amendments should also specifically authorize the Board (of Equalization) to collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law, if the IWMB elects to contract with the Board for collection of that fee. The following language is suggested to address these concerns:

~~42464.2. The board may collect the fees imposed pursuant to this section pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The board may contract with the State Board of Equalization or another party for collection of fees due under this articlesection. If the board contracts with the State Board of Equalization to collect the fee under the article, the State Board of Equalization may collect that fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.~~

Senate Bill 1016 (Bowen) Chapter 603
Face-to-Face Sales of Cigarettes

Effective January 1, 2004. Amends Section 30101.7 of the Revenue and Taxation Code.

BILL SUMMARY

This bill requires that every retail sale of cigarettes in California be a vendor-assisted, face-to-face sale, unless:

- The seller has fully complied with all of the requirements of the Jenkins Act, and
- The seller has either paid all applicable taxes due on the sale, or the seller includes a prominent notice on the package indicating that the purchaser is responsible for any applicable California taxes on the cigarettes.

This bill also requires the Board to provide information relative to a seller's failure or attempt to comply with the Jenkins Act to the Attorney General.

Sponsor: Senator Debra Bowen

LAW PRIOR TO AMENDMENT

Under current law, Section 30101 of the Cigarette and Tobacco Products Tax Law imposes an excise tax of 6 mills (or 12 cents per package of 20) on each cigarette distributed. In addition, Section 30123 and 30131.2 impose a surtax of 12 ½ mills (25 cents per package of 20) and 25 mills (50 cents per package of 20), respectively, on each cigarette distributed. The current total tax on cigarettes is 43 ½ mills per cigarette (87 cents per package of 20).

Sections 30123 and 30131.2 also impose a surcharge on tobacco products at a rate to be annually determined by the Board. The tobacco products tax rate is equivalent to the combined rate of tax on cigarettes. The surcharge rate for fiscal year 2003-04 is 46.76 percent.

Section 30101.7 provides, in part, that no person may engage in a retail sale of cigarettes in California unless the sale is a vendor-assisted, face-to-face sale.

A "face-to-face sale" is defined to mean a sale in which the purchaser is in the physical presence of the seller or the seller's employee or agent at the time of the sale. A face-to-face sale does not include any transaction conducted by mail order, the Internet, telephone, or any other anonymous transaction method in which the buyer is not in the seller's physical presence. However, this does not prohibit any lawful sale of a tobacco product that occurs by means of a vending machine.

Persons may engage in a non-face-to-face sale of cigarettes to a person in California provided that the seller complies with either of the following conditions:

- All applicable California taxes on the cigarettes have been paid.
- The seller includes on the outside of the shipping container for any cigarettes shipped to a resident in California from any source in the United States, an externally visible and easily legible notice located on the same side of the shipping container as the address to which the package is delivered stating the following:

"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

Current law also imposes a sales or use tax on the sale or purchase of tangible personal property in this state (including cigarettes and tobacco products). When a person sells cigarettes or tobacco products at retail in this state, the sales tax applies. The seller is responsible for this tax and must pay it to the state. When the sales tax does not apply, the use tax does. For example, when a person buys cigarettes from a point outside this state for the use or consumption in this state, the use tax is the applicable tax. If the out-of-state seller has nexus within the state, the seller is required to collect the use tax from the purchaser at the time of sale. If the seller does not collect the use tax, or if the seller does not have nexus in this state, the purchaser is required to pay the use tax directly to the Board.

Federal Jenkins Act. Chapter 10A of Title 15 of the United States Code (also known as the Jenkins Act) requires any person that sells or transfers cigarettes for profit in interstate commerce and ships the cigarettes into a state that imposes a tax on cigarettes to file by the 10th of each calendar month a memorandum or a copy of the invoice for each and every shipment of cigarettes made during the previous calendar month in that state. This information is required to show the name and address of the person to whom the shipment was made, the brand, and quantity of the shipment. Any person who violates these provisions shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000, imprisoned not more than 6 months, or both.

AMENDMENT

This bill amends Section 30101.7 of the Revenue and Taxation Code to provide that a person may engage in a non-face-to-face sale of cigarettes to a person in California provided that both of the following conditions are met:

- The seller has fully complied with all of the requirements of Chapter 10A (commencing with Section 375) of Title 15 of the United States Code, otherwise known as the Jenkins Act.
- The seller has fully complied with either of the following requirements:
 - (1) All applicable California taxes on the cigarettes have been paid.

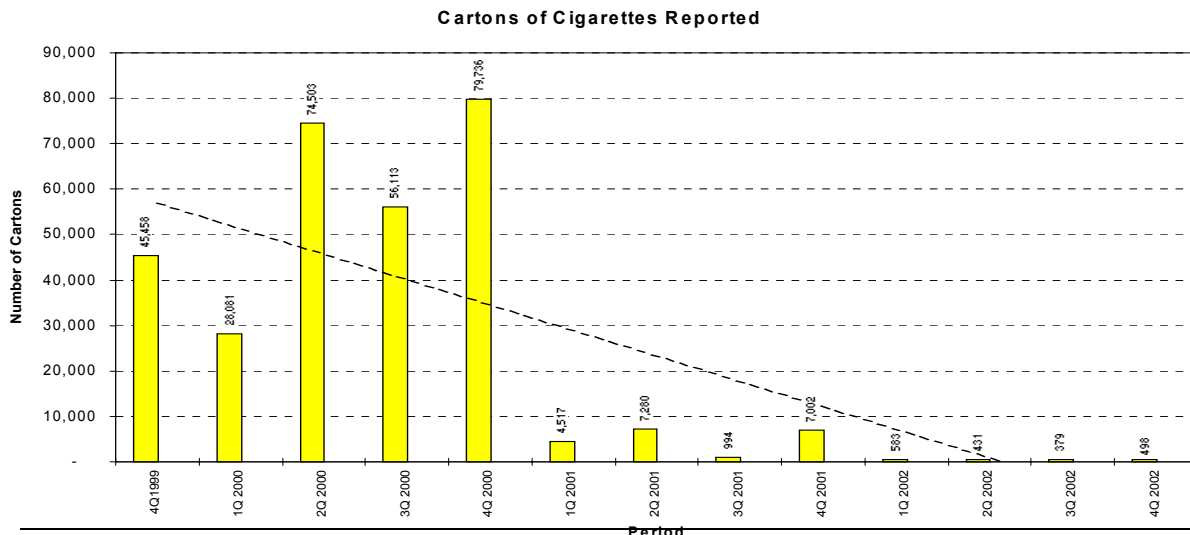
- (2) The seller includes on the outside of the shipping container for any cigarettes shipped to a resident in California from any source in the United States an externally visible and easily legible notice located on the same side of the shipping container as the address to which the package is delivered stating as follows:

"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

This bill also requires the Board to provide information relative to a seller's failure or attempt to comply with the Jenkins Act to the Attorney General. The Attorney General is required to provide an annual report to the Legislature regarding all actions taken to comply with, and enforce, the Jenkins Act.

IN GENERAL

Because of the state excise tax imposed on cigarettes and the sales tax due on such sales, many consumers have turned to the Internet as a way of obtaining cigarettes from out-of-state sellers who do not charge the California taxes. In May 1999, the Board began a program to promote Jenkins Act compliance by out-of-state cigarette distributors. Since the inception of the program, 387,039 cartons of cigarettes have been reported the Board, which represents \$3,367,239 (387,039 cartons x \$8.70 excise tax per carton = \$3,367,239) in cigarette excise tax. The following graph summarizes by quarter the number of cartons of cigarettes reported to the Board from October 1, 1999 to December 31, 2002.



As shown in the chart, the number of cartons of cigarettes reported pursuant to the Jenkins Act has significantly decreased since the compliance program commenced.

With respect to the number of cartons of cigarettes that are not being reported, the Board recently estimated cigarette excise tax revenues for out-of-state cigarette purchases to be \$53.9 million per year. However, that figure includes out-of-state purchases from all untaxed out-of-state sources, including the Internet, mail order, and cross border sales. The Jenkins Act only applies to Internet and mail order sales, which staff estimates to be 40 percent of the total amount of out-of-state sales. Therefore, it is estimated that approximately \$21,560,000 ($\$53,900,000 \times .40 = \$21,560,000$) in excise tax or 2,478,161 ($\$21,560,000 / \$8.70 \text{ excise tax per carton} = 2,478,161$) cartons of cigarettes, is not being reported to the Board on an annual basis*.

BACKGROUND

Senate Bill 1766 (Ch. 686, Stats. 2002, Ortiz) added Section 30101.7 to the Cigarette and Tobacco Products Tax Law to require, in part, that every retail sale of cigarettes in California be a vendor-assisted, face-to-face sale, unless all applicable taxes due on the sale are paid or the seller includes a prominent notice on the package indicating that the purchaser is responsible for any applicable California taxes on the cigarettes.

On April 1, 2003, Attorney General Bill Lockyer filed lawsuits to enforce, in part, the provisions of SB 1766. Specifically, the lawsuits were filed against five out-of-state tobacco retailers for selling cigarettes to minors via the Internet, failing to report tobacco sales to California tax authorities, and depriving the state of excise taxes. The complaints allege that the defendants have violated California laws that govern payment of excise taxes on Internet cigarette sales, and federal statutes that require out-of-state sellers to report such sales to California tax agencies. Additionally, the lawsuits allege the defendants have wrongfully denied the state revenue. The defendants' failure to notify consumers of their obligation to pay taxes constitutes deceptive advertising, according to the complaints.

In 2002, Senate Bill 2082 (Bowen) would have required any person who advertises on the Internet to sell cigarettes in California, and who is subject to the provisions of the Jenkins Act, to conspicuously disclose that a purchaser who buys cigarettes shipped into California is responsible for paying the state excise tax and the state use tax and to show in the advertisement the amount of these taxes that would be due. This bill would have also required the person selling or transferring the cigarettes to provide to the Board a copy of the invoice for each shipment made into California. That bill failed passage out of the Assembly Revenue and Taxation Committee.

* This number was not adjusted for cartons of cigarettes reported to the Board since that volume is deemed to be relatively insignificant to the estimated \$53.9 million per year in out-of-state purchases of cigarettes.

COMMENTS

1. **Purpose.** This bill is intended to facilitate the collection of taxes on cigarettes sold to residents of California over the Internet or by mail order.
2. **Internet purchases.** As efforts increase in this state to stop the illegal sale of cigarettes to minors, minors may find it more difficult to purchase cigarettes from traditional locations such as liquor stores and gas station mini-marts. This may lead to minors turning to the Internet as a means of acquiring cigarettes since the retailer is not likely to verify the age of the purchaser. This can lead to additional tax avoidance since the Internet retailer is unlikely to collect the California taxes due and the minor purchasing cigarettes is unlikely to self-report the California taxes due.
3. **The Jenkins Act.** The Jenkins Act requires any person that sells or transfers cigarettes for profit in interstate commerce and ships the cigarettes into a state that imposes a tax on cigarettes to file by the 10th of each calendar month a copy of the invoice for each and every shipment of cigarettes made during the previous calendar month in that state. Many consumers who shop on the Internet may not be aware of these provisions and think they are successfully avoiding the tax by purchasing cigarettes from out-of-state sellers over the Internet. The Board utilizes the information required to be provided by the Jenkins Act to bill consumers for the taxes due. Unfortunately, some cigarette retailers do not comply with the provisions of the Jenkins Act. Since the Jenkins Act is a federal statute, the Board requires the assistance of federal law enforcement agencies to enforce the provisions of the Jenkins Act. Also, the provisions of the Jenkins Act apply only to the sale of cigarettes, not tobacco products.
4. **Enforcement.** This bill would make additional requirements of any person who sells cigarettes to consumers in this state. However, some of these retailers are located outside California and have no business presence in this state. Without a presence in this state, the state would have a difficult time enforcing the provisions of this bill.

Senate Bill 1049 Chapter 741***Water Rights Fee***

Effective January 1, 2004. Among other things adds Article 1 (commencing with Section 1525) to Chapter 8 of Part 2 of Division 2 to the Water Code.

BILL SUMMARY

Among its provisions, this bill requires the Board of Equalization (Board) to assess and collect various fees associated with water rights from owners of water rights on behalf of the State Water Resources Control Board (SWRCB) to fund its programs.

LAW PRIOR TO AMENDMENT

Under current law, Section 174 of the Water Code finds and declares that in order to provide for the orderly and efficient administration of the water resources of the state it is necessary to establish a control board which shall exercise the adjudicatory and regulatory functions of the state in the field of water resources. It is also the intention of the Legislature to combine the water rights and the water pollution and water quality functions of state government to provide for consideration of water pollution and water quality, and availability of unappropriated water whenever applications for appropriation of water are granted or waste discharge requirements or water quality objectives are established. These duties currently fall under the purview of the SWRCB.

AMENDMENT

Among its provisions, this bill adds Article 1 (commencing with Section 1525) to Chapter 8 of Part 2 of Division 2 to the Water Code to require each person or entity who holds a permit or license to appropriate water, and each lessor of water, to pay an annual fee according to a fee schedule established by the SWRCB. The fee schedule is to be adopted by emergency regulations and set at a rate to recover the total amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The SWRCB's recoverable costs could include, but not be limited to, the costs incurred in reviewing applications, registrations, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion or use of water subject to this division, and the administrative costs incurred in connection with carrying out these actions.

Section 1537 requires the Board to collect all annual fees and other fees referred by the SWRCB for collection. The fees are to be collected pursuant to the Fee

Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The SWRCB is required to provide the Board with the name and address of each person or entity who is liable for a fee or expense, the amount of the fee or expense, and the due date.

The Board will not handle appeals or claims for refund related to the fees. Those will be handled by the SWRCB.

BACKGROUND

The following is an excerpt from the Legislative Analyst's Office's "Analysis of the 2003-04 Budget Bill."

Water Rights Fee Structure Should Be Revised. Since water rights holders benefit directly from all aspects of the water rights program—including permit issuance and compliance monitoring—we conclude that the existing fee structure should be revised so that fee revenues replace all General Fund support budgeted for the board's program. These fees should also cover water-rights-related costs incurred by other state departments (such as DFG). To accomplish this, we recommend the enactment of legislation to (1) increase existing water rights application fees and (2) establish an *annual* water rights compliance fee. We further recommend that the Legislature enact legislation to establish a special fund for the deposit of these fee revenues, with expenditures from the fund subject to appropriation by the Legislature. By creating the special fund, the Legislature will be able to exercise oversight over the expenditure and use of the fees.

Finally, as a result of creating this new fee structure, we recommend that the General Fund in SWRCB's budget be reduced by \$7.2 million and the new special fund item be increased by a like amount.

The State Water Resources Control Board's water rights program is responsible for permitting and enforcing a subset of California's water rights. In the sections that follow, we discuss the current funding for the program, conclude that fees assessed on water rights holders should fully fund the board's water rights activities, and recommend legislation that would increase current application fees and establish ongoing compliance fees on water rights holders.

The SWRCB's Water Rights Program

The board's water rights program permits and enforces water rights established after 1914. The board assesses nominal one-time fees on water rights applications, but the General Fund primarily supports the program.

Water Rights Program Overview. The SWRCB's water rights program is responsible for (1) issuing new water rights for water bodies that have not already been fully "allocated" to water rights holders, (2) approving changes to existing water rights (this may be to facilitate a water transfer), and (3) conducting ongoing enforcement and compliance monitoring of water rights

under its jurisdiction. The board's enforcement authority applies only to water rights established after 1914.

Water Rights Permitting Process. The water rights permits issued by the board specify the purpose of use, point of diversion, quantity, and other conditions that protect prior water rights holders, the public interest, and the environment. As part of the permit issuance process, the board publicly notices the permit application, allows for public comment, and conducts various environmental reviews as required by statute, including the California Environmental Quality Act (CEQA). Other state agencies, including the Department of Fish and Game (DFG), may also be involved in the environmental review process for water rights.

Licensing and Ongoing Enforcement Activities. After a water right has been granted and the terms of the permit have been established, the board will inspect the water project. Before a project can be licensed, all of the terms of the permit must be met and the largest volume of water under the permit must be put to beneficial use. This license represents the final confirmation of the water right and remains effective as long as its conditions are fulfilled and the water diverted continues to be used for a beneficial nonwasteful purpose. The board has authority to enforce the conditions of permits and licenses, and it does so by conducting inspections and investigating complaints about the water use behavior of water rights holders.

Fee Support Is Minimal. Currently, a one-time nominal application fee is assessed on all water rights applications, varying depending on the amount of the proposed diversion and/or storage. The minimum application fee is \$100. The current statutorily established fee schedule was last revised in the mid-1980s. These fees raise an insignificant amount of revenue—only about \$30,000—when compared to program expenditures of \$11.1 million in the current year. Applicants proposing large water diversions that are likely to have an impact on the environment pay for the preparation of any environmental documents required to comply with CEQA. However, the applicant does not cover the department's costs of reviewing these documents.

Budget Proposal. The budget proposes expenditures of \$8.7 million (\$7.2 million General Fund) to support the water rights program in 2003-04. This reflects the Governor's proposal to reduce the General Fund support for the program by \$3.3 million, a nearly 30 percent reduction in General Fund support. The vast majority of support for the program is proposed from the General Fund, with the balance coming from special funds, federal funds, and reimbursements (including fees). Fee revenues are estimated to cover less than 1 percent of program expenditures.

The 2003-04 budget actually included a \$3.6 million General Fund reduction to the SWRCB, which represents one half of a General Fund fiscal year reduction.

COMMENTS

1. **Purpose.** This bill is sponsored by the Senate Budget Committee to implement the recommendation of the LAO to have the SWRCB fund itself through fees.
2. **Due to budgetary constraints, it would be very difficult for the Board to start-up and administer the proposed water rights fees.** Currently, Board staff availability is extremely limited, which is impacting staff's ability to address regular workloads. Implementation of this legislation would require the reassignment of existing staff within divisions that are already understaffed.

This bill would also impact the Board's ability to administer other proposed legislative changes. The Board would not have the necessary staff to start-up and administer the proposed water rights fees if other pending legislation (SB 20 - electronic waste fee; AB 35 or AB 1416 - cigarette tax increase; AB 71 - cigarette retailer licensing program; AB 433 - marine invasion species fee; and AB 1239 - tobacco products manufacturers fee) is signed into law.
3. **The timing of the proposed water rights fees would have a negative impact on the Board's Revenue Database Consolidation (RDC) project.** The RDC project is integrating all business taxes' programs into one corporate database, which is a complex and challenging effort. Because of the current status of the RDC project, programming for the proposed water rights fee would substantially increase administrative costs due to additional programming, testing, and staff needed to perform these functions. Furthermore, the added strain on staff due to the RDC project would result in most work on the water rights fees programming being completed during overtime (weekends).
4. **The fees would probably be due when the Board is at its peak period for processing returns and payments.** Based on discussion with the SWRCB, the anticipated timing for the initial water rights fees billings would fall in January 2004, and again in April 2004. This time period is a "rush" period for the Property and Special Taxes Department, Sales and Use Tax Department, Administrative Support Division (Mail Services and Reproduction) and Return Process Section.
5. **The bill lacks a direct appropriation to the Board for administrative start-up costs.** Typically, the Board would look at a deficiency process to cover administrative start-up costs. However, the Department of Finance is no longer entertaining deficiencies. While the SWRCB is seeking an interagency contract to reimburse the Board for its administrative start-up costs, this is not a preferred method of reimbursement since the ultimate responsibility and decision of reimbursement would be with the SWRCB.
6. **Finding and billing the correct fee payer is anticipated to be a difficult task.** Staff from the SWRCB stated that they do not maintain adequate ownership data for water rights fees billing purposes. The SWRCB registration database is out-of-date. This could result in billing and ownership issues, including adequately segregating multiple points of incidence of the fee; one body of water can have multiple water rights holders as well as sub-contractors. For example, federal

government owns water rights and sub-contracts portions to local governments for their use.

7. **Is it more appropriate for the SWRCB to bill and collect the fees?** The SWRCB currently has a billing mechanism for the various licensing fees that it administers. This bill would also require it to maintain the database of fee payers, set the fee rates, and handle refund and appeal issues. The Board would only have authority to bill and collect the fees on behalf of the SWRCB. Bifurcation of this fee program would be administratively inefficient, prone to error, likely to cause confusion for the fee payers, and inconsistent with the other 25 plus tax and fee programs administered by the Board.
8. **Related legislation.** Assembly Bill 1764 (Budget Committee) contains provisions almost identical to this bill. That bill was not enrolled.

Senate Bill 1060 (Senate Revenue and Taxation Committee) Chapter 605
Board-Sponsored Measure

Effective January 1, 2004. Among its provisions, amends Sections 7326, 8105, 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332, 60022, 60507, 60604, 60606, and 60636 of the Revenue and Taxation Code

BILL SUMMARY

This bill contains **Board of Equalization-sponsored** provisions for the special taxes and fees programs, which do the following:

- Add a record retention period for the public record created for each tax settlement in excess of five hundred dollars. (§§ 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332 and 60636)
- Exclude “racing fuel” from the definition of “motor vehicle fuel.” (§ 7326)
- Extend the period for filing a refund on tax-paid fuel. (§§ 8105 and 60507)
- Correct an inadvertent drafting error. (§ 60022)
- Add the terms qualified highway vehicle operator, highway vehicle operator/fueler, pipeline operator, and vessel operator to the record section of the Diesel Fuel Tax Law. (§§ 60604 and 60606)

Settlement Record Retention

*Revenue and Taxation Code Sections 9271,
30459.1, 32471, 40211, 41171, 43522,
45867, 46622, 50156.11, 55332 and 60636*

LAW PRIOR TO AMENDMENT

Under existing law, the executive director or chief counsel of the Board, with the approval of the Attorney General, may recommend the settlement of a civil tax matter which is subject to appeal, protest, or refund claim, if a settlement is consistent with a reasonable evaluation of the costs and risks associated with litigation of the matter. Settlement proposals may be considered for civil tax or fee matters in dispute under the following tax and fee programs: Sales and Use Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law (Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee), Integrated Waste Management Fee Law, Oil Spill Response, Prevention Fee and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

Whenever a reduction of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved in settlement of a tax liability pursuant to any of

the above-referenced laws, a public record is created with respect to that settlement and placed on file in the office of the Executive Director of the Board. This public record is a one-page document, titled "Public Record Statement," and contains the following information:

- The name or names of the taxpayers who are parties to the settlement;
- The total amount in dispute;
- The amount agreed to pursuant to the settlement;
- A summary of the reasons why the settlement is in the best interests of the State of California; and,
- If applicable, the Attorney General's conclusion regarding the reasonableness of the settlement.

AMENDMENT

This bill adds a one-year record retention period to the settlement program.

COMMENT

Since public access to the Executive Director's office is restricted, an additional copy of the public record statement is retained in the reception area of the Board's headquarters building. No provision is made in the law authorizing the destruction of these records after a reasonable period of time. Consequently, public records regarding settlements which date back to 1993 are currently being retained by the Board. These records will continue to accumulate indefinitely until a retention period is added into the law. The purpose of the change is to add a one-year record retention period for the settlements records that is similar to the requirement described in the next paragraph.

Effective January 1, 2003, Revenue and Taxation Sections 7093.6, 9278 and 50156.18 were added allowing the Board to enter into offers in compromise (Assembly Bill 1458, Chapter 152, Stats. 2002). The offers in compromise provisions have a similar public record requirement as the settlement statutes, but they contain a record retention period that provides that these records will be placed on file "for at least one year." Thereafter, the records may be destroyed in a manner consistent with the Board's record retention schedule after the one year period has expired.

Motor Vehicle Fuel Definition
Revenue and Taxation Code Section 7326

LAW PRIOR TO AMENDMENT

Under existing law, Section 7360 of the Revenue and Taxation Code (Motor Vehicle Fuel Tax Law) imposes the motor vehicle fuel tax on the removal of motor vehicle fuel in this state from a terminal if the motor vehicle fuel is removed at the rack. "Motor vehicle fuel" is defined pursuant to Section 7326 to mean gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol. Racing fuel, which is not specifically excluded from the definition of "motor vehicle fuel", is subject to the motor vehicle fuel tax upon its removal at the rack.

AMENDMENT

This bill revises the definition of "motor vehicle fuel" to specifically exclude "racing fuel."

COMMENT

Racing fuel is specifically manufactured, distributed and used for racing motor vehicles at a racetrack. It is understood that racing fuel is not formulated for use on the public highways and therefore is not subject to tax in any event. Therefore, persons buying racing fuel must first pay the motor vehicle tax and subsequently apply for a refund pursuant to Section 8101 of the Motor Vehicle Fuel Tax Law. Section 8101 generally provides that a person who has paid a tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall be reimbursed and repaid the amount of the tax if that person buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state.

Prior to January 1, 2002, racing fuel was excluded from the definition of motor vehicle fuel. Therefore, racing fuel was not at any time subject to the tax. However, when the Motor Vehicle Fuel Tax Law was revised to move the point of imposition of tax on motor vehicle fuel from the first distribution of the fuel to the removal from the rack pursuant to Assembly Bill 2114 (Stat. 2000, Ch. 1053, Longville), the longstanding exclusion for racing fuel was inadvertently omitted from the definition. As a result, racing fuel became subject to tax upon its removal from the rack as of January 1, 2002, the operative date of AB 2114. Excluding racing fuel from the definition of motor vehicle fuel would be beneficial both for the taxpayer and for the state in that it would eliminate the need for filing a claim for refund for purchases of fuel that is not subject to tax.

Fuel Tax Refund Filing Period
Revenue and Taxation Code Sections 8105 and 60507

LAW PRIOR TO AMENDMENT

Under the existing Motor Vehicle Fuel Tax Law, a person who pays tax on motor vehicle fuel may apply for a refund on certain uses, sales and removals listed in Revenue and Taxation Code Section 8101. Among the uses for which a refund claim may be filed is the export of the fuel for use outside California. The claim for refund must be filed with the State Controller and supported by the original invoice showing the purchase of the fuel. Section 8105 requires that the claim for refund be filed within three years from the date of the purchase of the fuel.

Likewise, under the existing Diesel Fuel Tax Law, a person who pays tax on diesel fuel may apply for a refund on certain uses, sales and removals listed in Revenue and Taxation Code Section 60501. Among the uses for which a refund claim may be filed is the export of diesel fuel for use outside California. The claim for refund must be filed with the Board and be supported by specified information. Section 60507 requires that the claim for refund be filed within three years from the date of the purchase of the fuel.

AMENDMENT

This bill allows for a refund claim to be filed within three years from the date of purchase or six months after the receipt of an invoice for the tax when the tax was not invoiced at the time of the purchase of the fuel, whichever period expires later.

COMMENT

This bill addresses a problem that has arisen during the course of fuel company audits and is intended to authorize the State Controller and the Board to accept claims for refund of tax from purchasers of fuel who otherwise would be entitled to a refund, but, due to circumstances beyond their control, are barred by the existing statute of limitations from applying for a refund.

In most situations, the statute of limitations for filing a claim for refund of tax presents no problem because tax is paid on the fuel at the time of purchase and a timely refund claim can be filed by the purchaser for tax-paid fuel used in an exempt manner. Sometimes, a supplier that properly documents a sale of fuel for export may sell fuel ex-tax to a purchaser who in fact exports the fuel. Because no tax is owed and because the supplier has properly documented the sale for export transaction, no refund claim is necessary.

A problem does arise, however, if a supplier fails to meet the statutory requirements for making an ex-tax sale of fuel to a purchaser for export. This fact may be uncovered several months or years after the transaction occurred during the course of an audit of the supplier. While the supplier may owe the tax, the purchaser may not if the use was exempt from tax. Nevertheless, if the supplier pays the tax to the State, then it will charge its customer for the tax, the customer must pay the supplier and then seek a refund of tax from the State. In some cases, a purchaser's claim for

refund may be barred by the statute of limitations because the supplier's invoice for tax to the customer may be issued more than three years after the date of the purchase of the fuel. When a purchaser's claim for refund is barred by the statute of limitations, the only recourse for the purchaser is to file a claim with the Victims Compensation and Government Claims Board for the amount of the tax. Board staff would likely recommend to the Victims Compensation and Government Claims Board that the claim be granted because the fuel was exported and was not used on a California highway.

Drafting Error Correction – Diesel Fuel Tax Law
Revenue and Taxation Code Section 60022

LAW PRIOR TO AMENDMENT

Under existing Diesel Fuel Tax Law, Section 60022 of the Revenue and Taxation Code generally defines the term "diesel fuel" to mean any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. Specifically excluded from the definition of diesel fuel is, among other things, the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board. This specific exclusion will remain in effect until January 1, 2007.

In addition, effective January 1, 2007, Section 60022 will provide that "diesel fuel" includes any combustible liquid, by whatever name the liquid may be known or sold, when the liquid is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the motor vehicle fuel tax or use fuel tax.

AMENDMENT

This bill corrects an inadvertent drafting error in Section 60022, operative January 1, 2007, enacted pursuant to AB 86XX thereby not repealing Board-sponsored amendments as contained in AB 309.

COMMENT

In 2001, both Assembly Bill 86XX (Ch. 8 of the Second Extraordinary Session, Florez) and Assembly Bill 309 (Ch. 429, Longville) amended Section 60022 of the Diesel Fuel Tax Law. Assembly Bill 86XX amended Section 60022 to exclude "water in a diesel fuel and water emulsion" from the definition of diesel fuel until January 1, 2007.

Assembly Bill 309 (Ch. 429, Longville), a Board-sponsored measure, amended Section 60022 to specify that diesel fuel does not include gasoline, liquid petroleum gas, natural gas in liquid or gaseous form, or alcohol in addition to kerosene. Additionally, Assembly Bill 309 proposed to delete the reference that diesel fuel includes any combustible liquid when the liquid, as specified, is used in an internal

combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the Motor Vehicle Fuel Tax (commencing with Section 7301) or the Use Fuel Tax (commencing with Section 8601).

Since both AB 86XX and AB 309 proposed to amend Section 60022 of the Diesel Fuel Tax Law, double-joining language was added to each of the bills. However, the double-joining language contained in AB 86XX, which was enacted after AB 309, inadvertently repeals the provisions enacted by AB 309 as of January 1, 2007.

Diesel Fuel Tax Law Terms

Revenue and Taxation Code Sections 60604 and 60606

LAW PRIOR TO AMENDMENT

Under existing Diesel Fuel Tax Law, Section 60604 of the Revenue and Taxation Code requires every interstate user, supplier, exempt bus operator, government entity, ultimate vendor, highway vehicle operator, train operator, and every person dealing in, removing, transporting, or storing diesel fuel in this state to keep those records, receipts, invoices, and other pertinent papers with respect thereto in that form as the Board may require.

In addition, Section 60606 provides that the Board or its authorized representative may examine the books, records, and equipment of any interstate user, supplier, exempt bus operator, government entity, ultimate vendor, highway vehicle operator, train operator, or person dealing in, removing, transporting, or storing diesel fuel and may investigate the character of the disposition that the interstate user, supplier, exempt bus operator, government entity, ultimate vendor, highway vehicle operator, train operator, or person makes of the diesel fuel in order to ascertain whether all diesel fuel taxes due are being properly reported and paid.

AMENDMENT

This bill amends Sections 60604 and 60606 to clarify that a “qualified highway vehicle operator,” “highway vehicle operator/fueler,” “pipeline operator,” and “vessel operator” is required to maintain records and that the Board is authorized to examine the records of such persons.

COMMENT

In 2001, Assembly Bill 309 (Ch. 429, Longville) added the terms “qualified highway vehicle operator,” “highway vehicle operator/fueler,” “pipeline operator” and “vessel operator” to the Diesel Fuel Tax Law. However, those terms were inadvertently not included in Sections 60604 and 60606. Since a qualified highway vehicle operator, highway vehicle operator/fueler, pipeline operator, and vessel operator each deal in diesel fuel and file returns and reports, the record keeping sections were intended to specifically identify them, consistent with all other taxpayers under the Diesel Fuel Tax Law.

TABLE OF SECTIONS AFFECTED

SECTION	BILL AND CHAPTER NUMBER		SUBJECT	
Revenue and Taxation Code				
<i>General Provisions</i>				
§38	Add	AB 986	Ch. 569	Tax agency consolidation
<i>Motor Vehicle Fuel Tax Law</i>				
§7326	Amend	SB 1060	Ch. 605	Exclude "racing fuel" from definition of "motor vehicle fuel"
§8105	Amend	SB 1060	Ch. 605	Filing period for refunds on tax paid fuel
<i>Use Fuel Tax Law</i>				
§9271	Amend	SB 1060	Ch. 605	Settlement public record retention period
<i>Cigarette and Tobacco Products Tax Law</i>				
§30019	Add	AB 71	Ch. 890	Importer definition
§30101.7	Amend	SB 1016	Ch. 603	Additional exception to face-to-face sales of cigarettes
§30142	Amend Repeal Add	AB 1666	Ch. 867	Distributor security for deferred payments of stamps or meter register settings
§30165.1	Add	AB 71	Ch. 890	Attorney General MSA compliance list
§30166.1	Add	AB 71	Ch. 890	Report to Legislature regarding distributors costs for applying indicia or impressions
§30168	Amend Repeal Add	AB 1666	Ch. 867	Due date for amounts owing for stamps purchased on a deferred basis

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
<i>Cigarette and Tobacco Products Tax Law (cont.)</i>				
§30177.5	Add	AB 71	Ch. 890	Credit to a distributor that has a violation defense for stamping cigarettes or paying taxes on tobacco products not on the MSA compliance list
§30181	Amend Repeal Add	AB 1666	Ch. 867	Due date for return and payment of tax for tobacco products
§30182	Amend Repeal Add	AB 1666	Ch. 867	Due date for report for distributions of cigarettes
Article 2.5 (commencing with § 30210) of Chapter 4 of Part 13 of Division 2	Add Repeal	AB 71	Ch. 890	Payment by Unlicensed Persons
Article 5 (commencing with § 30355) of Chapter 5 of Part 13 of Division 2	Add Repeal	AB 71	Ch. 890	Seizure and Sale
§30435	Add Repeal	AB 71	Ch. 890	Inspection authority
§30436	Amend	AB 71	Ch. 890	Property forfeited
§30449	Amend	AB 71	Ch. 890	Sale or destruction of forfeited property
§30459.1	Amend	SB 1060	Ch. 605	Settlement public record retention period

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
<i>Cigarette and Tobacco Products Tax Law (cont.)</i>				
§30471	Amend	AB 71	Ch. 890	Failure to file report or furnish a supplemental report
§30473.5	Amend	AB 71	Ch. 890	Possession of fraudulent tax stamps with intent to evade
§30474	Amend	AB 71	Ch. 890	Possession of unstamped cigarettes clarification
30474.1	Add Repeal	AB 71	Ch. 890	Penalty for sale or possession of counterfeit cigarettes or tobacco products
§30481	Amend	AB 71	Ch. 890	Extension of statute for filing a criminal prosecution in a state court
§30482	Add	AB 71	Ch. 890	Recoupment of costs
<i>Alcoholic Beverage Tax Law</i>				
§32471	Amend	SB 1060	Ch. 605	Settlement public record retention period
<i>Energy Resources Surcharge Law</i>				
§40211	Amend	SB 1060	Ch. 605	Settlement public record retention period
<i>Emergency Telephone Users Surcharge Law</i>				
§41171	Amend	SB 1060	Ch. 605	Settlement public record retention period
<i>Hazardous Substances Tax Law</i>				
§43522	Amend	SB 1060	Ch. 605	Settlement public record retention period

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
<i>Marine Invasive Species Fee Collection Law</i>				
§44000	Amend	AB 433	Ch. 491	Rename Ballast Water Management Fee Law
§44005	Amend	AB 433	Ch. 491	Reference correction
§44007	Amend	AB 433	Ch. 491	Rename Exotic Species Control Fund
§44008	Amend	AB 433	Ch. 491	Sunset date extension
<i>Integrated Waste Management Fee Law</i>				
§45867	Amend	SB 1060	Ch. 605	Settlement public record retention period
<i>Oil Spill Response, Prevention, and Administration Fees Law</i>				
§46622	Amend	SB 1060	Ch. 605	Settlement public record retention period
<i>Underground Storage Tank Maintenance Fee Law</i>				
§50156.11	Amend	SB 1060	Ch. 605	Settlement public record retention period
<i>Fee Collection Procedures Law</i>				
§55332	Amend	SB 1060	Ch. 605	Settlement public record retention period
<i>Diesel Fuel Tax Law</i>				
§60022	Amend	SB 1060	Ch. 605	Drafting error correction
§60501	Amend	AB 1744	Ch. 316	Refund documentation: alternative storage media

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION	BILL AND CHAPTER NUMBER		SUBJECT	
Revenue and Taxation Code				
<i>Diesel Fuel Tax Law (cont.)</i>				
§60507	Amend	SB 1060	Ch. 605	Filing period for refunds on tax paid fuel
§60604	Amend	SB 1060	Ch. 605	Records
§60606	Amend	SB 1060	Ch. 605	Examination of records
§60636	Amend	SB 1060	Ch. 605	Settlement public record retention period
Business and Professions Code				
Division 8.6 (commencing with § 22970)	Add Repeal	AB 71	Ch. 890	Cigarette and Tobacco Products Licensing Act of 2003
Government Code				
§15618.5	Add	AB 71	Ch. 890	Engraved Pictures or Photographs from DMV
Health and Safety Code				
§104557	Amend	AB 71	Ch. 890	Release of Money Placed in Qualified Escrow Fund
Penal Code				
§830.11	Amend Repeal Add	AB 71	Ch. 890	Limited Peace Officer Status

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION	BILL AND CHAPTER NUMBER	SUBJECT
Public Resources Code		
Chapter 8.5 Add (commencing with § 42460) to Part 3 of Division 30	SB 20 Ch. 526	Covered Electronic Waste Recycling Fee
§71215 Amend	AB 433 Ch. 491	Marine Invasive Species Fee
Water Code		
Article 1 Add (commencing with § 1525) to Chapter 8 of Part 2 of Division 2	SB 1049 Ch. 741	Water Rights Fee