

LEGISLATIVE BULLETIN



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

SALES TAX LEGISLATION 2011

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Assembly Bill 105 (Committee on Budget) Chapter 6 Fuel Tax Swap Re-enactment

Urgency measure, effective March 24, 2011, but certain provisions are operative July 1, 2010 or July 1, 2011. Among its provisions, repeals Section 7102.1 of, and repeals and adds Sections 6051.8, 6201.8, 6357.3, 6357.7, and 6480.1 to, the Revenue and Taxation Code.

BILL SUMMARY

Among other things, this bill reenacts provisions related to the fuel tax swap of 2010, with adjustments related to diesel fuel, as follows:

- On July 1, 2011, in place of the additional 1.75% sales and use tax rate imposed by the 2010 fuel tax swap legislation on sales of diesel fuel, the bill instead imposes a rate of 1.87%. In subsequent years, the bill further changes this rate as follows:
 - On July 1, 2012, increases the rate to 2.17%.
 - On July 1, 2013, decreases the rate to 1.94%.
 - On July 1, 2014, and thereafter, reinstates the 1.75% rate.

Also on July 1, 2011, in place of the 2010 fuel tax swap's reduced excise tax rate on diesel fuel of 13.6 cents per gallon, this bill decreases that rate further to 13 cents per gallon.

Sponsor: Committee on Budget

LAW PRIOR TO AMENDMENT

In late March 2010, two "fuel tax swap" measures were enacted (<u>ABx8 6</u>, Ch. 11, and <u>SB 70</u>, Ch. 9) that made several changes to the imposition and rates of state taxes on transactions involving transfers of gasoline and diesel fuel. For gasoline, these changes became operative July 1, 2010, and for diesel fuel, the changes become operative on July 1, 2011. In short, in 2010, the "swap" reduced the sales and use tax imposed on sales of gasoline and replaced the lost revenues with an increase in the excise tax on gasoline, and would, in 2011, reduce the excise tax rate on diesel fuel and replace the lost revenues with an increase in the sales and use tax rate imposed on diesel fuel sales.

This "swap" was meant to maintain the status quo on fuels that have either full or partial exemptions from the sales and use tax, such as sales of aviation gasoline and diesel fuel used in farming activities, or full or partial excise tax exemptions, such as diesel fuel used in farming operations, or by train operators or certain bus operators.

This fuel tax swap was intended to be revenue neutral, so that the state's tax revenues would not be increased or decreased, nor would the taxpayers' share of the tax burden be affected. To maintain revenue neutrality, the provisions of this "swap" require the BOE to each year adjust the *excise* tax rates – either upwards or downwards, beginning on July 1, 2011, for gasoline, and July 1, 2012, for diesel, so that the overall revenues derived from the imposition of state excise tax and sales and use tax on sales of gasoline and diesel fuel remain the same.

The specific changes enacted in the 2010 fuel tax swap legislation are as follows:

Gasoline	07/01/10	07/01/11 and thereafter
Sales and use tax*	6% decrease	5% decrease
Excise tax*	17.3 cent/gallon increase	To be determined by BOE ¹
Floor stock tax	17.3 cent/gallon**	

^{*}Aviation gasoline is exempt from the excise tax increase and floor stock tax (sales of aviation gasoline continued to be completely exempt from state, local, and district sales and use tax).

^{**}Each supplier, wholesaler, and retailer was required to file a return and pay a floor stock tax of 17.3 cents per gallon on 1,000 gallons or more of tax-paid gasoline in storage on July 1, 2010, by August 31, 2010, payable to the State Controller.

Diesel Fuel	07/01/11	07/01/12 and thereafter
Sales and use tax*	1.75% increase	1.75% increase
Excise tax	4.4 cent/gallon decrease	To be determined by BOE

^{*}Those persons that currently qualify for the sales and use tax exemption for sales of diesel fuel used in farming activities are exempt from the increase. Also, those purchases by diesel fuel users currently exempt from the excise tax on diesel fuel are exempt from the sales and use tax rate increase if they furnish the seller with an exemption certificate completed in accordance with BOE guidelines. This includes train operators, exempt bus operators, and others.

AMENDMENT

This bill repeals and adds Sections 6051.8 and 6201.8 to the Sales and Use Tax Law to impose an additional 1.87 percent state sales and use tax (in place of the additional 1.75 percent imposed by the 2010 fuel tax swap provisions), operative July 1, 2011, on sales of diesel fuel, as defined in Section 60022 of the Diesel Fuel Tax Law. For subsequent years, the bill adjusts the rates as follows:

- On July 1, 2012, increases the rate to 2.17%.
- On July 1, 2013, decreases the rate to 1.94%.
- On July 1, 2014, and thereafter, reinstates the rate of 1.75%.

The bill repeals and adds Section 6357.3, 6357.7, and 6480.1 to the Sales and Use Tax Law and Sections 7360, 7361.1, and 7653.1 to the Motor Vehicle Fuel Tax Law as those provisions read under the 2010 fuel tax swap.

Also, the fuel tax swap provisions allow the BOE to adjust the sales tax prepayment rates on gasoline and diesel fuel if the established rate could result in prepayments that consistently exceed or are significantly lower than the retailer's sales tax liability.

¹ The BOE is responsible for balancing revenue losses against the revenue gains. For gasoline, the BOE has already determined that an additional \$0.004 per gallon increase in the excise tax rate is necessary for the period July 1, 2011 through June 30, 2012, so that the excise tax revenues equal the amount of General Fund revenue losses attributable to the sales and use tax exemption. Therefore, the total excise tax rate imposed on gasoline on July 1, 2011, will be 35.7 cents per gallon. For diesel fuel, the BOE will adjust the excise tax rate, up or down, so that the revenue loss equals the amount of revenue gain from the sales and use rate increase on sales of diesel fuel. The law requires rate adjustments to be determined by March 1, and those adjusted rates would be effective during the state's next fiscal year, beginning July 1.

In addition, this bill repeals and adds Section 60050 of the Diesel Fuel Tax Law to impose a reduced excise tax rate of 13 cents per gallon on diesel fuel (in place of the reduced rate of 13.6 cents imposed by the 2010 fuel tax swap provisions).

Lastly, this bill repeals Section 7102.1 (added by the third of the 2010 "fuel tax swap" bills, ABx8 9, Ch. 12, § 5) and adds the substance of this statute as subdivision (e) to Sections 6051.8 and 6201.8. These provisions require the BOE, with the concurrence of the Department of Finance, to estimate the revenues, less refunds, that are collected pursuant to each of these sections and to transfer these revenues each quarter to the Public Transportation Account in the State Transportation Fund.

As an urgency statute, the provisions of the bill became effective March 24, 2011, but certain provisions became operative on the specified dates.

BACKGROUND

Proposition 26, approved by voters in the November 2, 2010, statewide election, among other provisions, amended Section 3 of Article XIIIA of the California Constitution. This section now specifies that any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature. The section now further specifies that any tax adopted after January 1, 2010, but prior to the effective date of this proposition, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of the proposition, unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this provision.

The 2010 fuel tax swap provisions were enacted in March 2010 and were enacted with a majority vote of the Legislature.

COMMENTS

- 1. **Purpose.** This is a budget trailer bill intended to re-enact the 2010 Fuel Tax Swap so that the state is in compliance with the two-thirds vote requirement of last year's Proposition 26.
- 2. Issue. Without legislation to reenact the fuel tax swap, Proposition 26 could be interpreted to mean that (1) the 17.3 cents per gallon additional excise tax imposed on gasoline under the 2010 fuel tax swap would no longer be in effect as of November 3, 2010, but the exemption for the state General Fund portion of the sales and use tax rate on sales of gasoline would remain, and (2) the 1.75% additional sales and use tax rate imposed on sales of diesel fuel under the 2010 fuel tax swap would no longer be in effect as of November 3, 2010, but the reduced excise tax rate of 13.6 cents per gallon would remain. If this were to occur, the state's General Fund could be severely negatively impacted.
- 3. The re-enactment of the fuel tax swap isn't exactly the same for diesel fuel as the 2010 swap. The fuel tax swap provisions enacted in 2010 would have imposed an additional sales and use tax rate of 1.75% on the sales of diesel fuel, beginning July 1, 2011. To offset the initial sales and use tax rate increase of 1.87% proposed in this bill, effective July 1, 2011, this bill lowers the diesel fuel excise tax rate to 13 cents (from 13.6 cents) per gallon, which takes effect at the same time. Additional changes in the sales and use tax rate on diesel fuel for fiscal years 2012-13 (2.17%), 2013-14

- (1.94%), and 2014-15 and thereafter (1.75%) continue to be balanced by the annual adjustment, by the BOE, to the excise tax rate for diesel fuel, as specified.
- 4. Exemption for purchases of diesel fuel for qualifying farming activities are not affected. Section 6357.1 of the Sales and Use Tax Law currently contains an exemption from the state's current General Fund rate of 5 percent and the Fiscal Recovery Fund rate of 0.25 percent for sales and purchases of diesel fuel used in farming activities, as defined. As Section 6357.1 is written, sales of diesel fuel qualifying for the exemption under Section 6357.1 will not be subjected to this additional 1.87 percent sales and use tax, or the additional rates thereafter.
- 5. Exemption for purchases of aviation gasoline are not affected. Section 6357 of the Sales and Use Tax Law currently contains an exemption from the taxes imposed under the Sales and Use Tax Law for sales of motor vehicle fuel used to propel aircraft (other than aircraft jet fuel). Neither the reduced sales and use tax nor the increased excise tax on motor vehicle fuel applies to aviation gasoline.
- 6. **Related legislation.** The Senate Committee on Budget and Fiscal Review had a similar measure. SB 81.

Assembly Bill 155 (Calderon) Chapter 313

Use Tax - Nexus

Urgency measure, effective September 23, 2011. Repeals and adds Section 6203 to the Revenue and Taxation Code.

BILL SUMMARY

This bill retroactively repeals the provisions of ABx1 28 (which was enacted on June 28, 2011), and provides for reenactment of those provisions at a later date under specified circumstances (ABx1 28 expanded the types of out-of-state retailers that are required to register with the Board of Equalization (BOE) to collect and report use tax on sales of tangible personal property to California consumers).

Sponsor: Assembly Member Calderon

LAW PRIOR TO AMENDMENT

Under federal law, Article I, Section 8, Clause 3 of the United States Constitution, known as the Commerce Clause, states that Congress has the exclusive authority to manage trade activities between the states, with foreign nations, and Indian tribes. The "Dormant" Commerce Clause, also known as the "Negative" Commerce Clause, is a legal doctrine that courts in the United States have implied from the Commerce Clause. The idea behind the Dormant Commerce Clause is that this grant of power implies a negative converse — a restriction prohibiting a state from passing legislation that improperly burdens or discriminates against interstate commerce. The question of to what extent states can legally compel remote retailers to collect the tax, however, has been a subject of extensive disagreement.

Under California's Sales and Use Tax Law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code, a use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is generally required to be remitted to the BOE on or before the last day of the month following the quarterly period in which the purchase was made, or a purchaser may report the tax on the purchaser's state income tax return (if that purchaser is not registered with the BOE).

Section 6203 of the Sales and Use Tax Law describes various activities that constitute "engaging in business in this state" for purposes of determining whether an out-of-state retailer has sufficient business presence (also known as "nexus") in California such that the state will impose a use tax collection responsibility on sales made to California consumers. If a retailer has sufficient nexus within the terms of Section 6203, that retailer is required to register with the BOE pursuant to Section 6226 and collect the applicable use tax on all taxable sales to California consumers.

ABx1 28 (Chapter 7, First Extraordinary Session of 2011, Blumenfield), among other things, expanded the types of retailers that are "retailers engaged in business in this state" under Section 6203 as follows:

- 1. Any retailer that is a member of a commonly-controlled group and is a member of a combined reporting group that includes another member of the retailer's commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer, including, but not limited to, design and development of tangible personal property sold by the retailer, or the solicitation of sales of tangible personal property on behalf of the retailer.
- 2. Any retailer entering into an agreement under which a person in this state, for a commission or other consideration, refers potential purchasers of tangible personal property to the retailer, whether by an Internet-based link or an Internet website, or otherwise provided that both of the following conditions are met:
 - The retailer's total sales of tangible personal property to California consumers that are referred pursuant to all of those agreements with a person(s) in California in the preceding 12 months must be in excess of \$10,000.

The retailer's total sales of tangible personal property to California consumers in the preceding 12 months must be in excess of \$500,000.

AMENDMENT

This bill retroactively repeals the amendments to Section 6203, as amended by ABx1 28 (Ch. 7, effective June 28, 2011), and adds Section 6203 to the Revenue and Taxation Code to reinstate the provisions of ABx1 28, except with respect to the provision that requires that the retailer's total sales of property to California consumers in the preceding 12 months be in excess of \$500,000; the bill specifies that those sales be in excess of \$1 million.

The bill also specifies, however, that if a federal law governing the imposition of use tax collection obligations is *not* enacted on or before July 31, 2012, then the provisions of the bill that expand the types of out-of-state retailers that are required to register with the BOE to collect California use tax will be operative September 15, 2012. If such federal law is enacted by July 31, 2012, and California does *not* elect to implement that law by enacting conforming state legislation on or before September 14, 2012, then the provisions of this bill that expand the types of out-of-state retailers that are required to register with the BOE will become operative January 1, 2013.

BACKGROUND

ABx1 28 was enacted on June 28, 2011 and on July 7, 2011, a referendum petition was filed with the Office of the Attorney General against the provisions of ABx1 28 that expands the types of retailers required to register and collect California use tax. The referendum petition began the legal process of qualifying a referendum for a statewide ballot to essentially repeal the provisions of ABx1 28 that expanded the types of out-of-state retailers required to register with the BOE and collect the use tax. While valid signatures from 504,760 registered voters were required to qualify the proposal for the ballot, a tentative deal with legislative leaders was made in the early part of September,

2011 to postpone the amendments to Section 6203 made by ABx1 28 for another year, and in return, the referendum petition was dropped. This bill implements that deal.

COMMENTS

- 1. **Purpose.** The purpose of this bill is to provide a safe harbor for up to a year that ultimately will enable California to require remote retailers to collect the use tax and help reduce the over one billion dollar use tax gap.
- 2. Federal legislation. Currently, there are pending congressional measures that would grant states authority to impose a use tax collection obligation on out-of-state retailers not currently required to collect the tax. Some of those measures (S. 1452, Durbin, et al. and H.R. 2701, Conyers, et al.) authorize only Member States under the Streamlined Sales and Use Tax Agreement (SSUTA) to require larger sellers to collect the tax and only when specified conditions are met. Another measure, H.R. 3179, Womack, et al., would authorize any state to impose a use tax obligation on such out-of-state retailers provided specified circumstances are met (but not including a requirement that the state be a Member of the SSUTA).
- 3. **Related legislation.** In addition to ABx1 28 discussed previously, the following measures were considered in 2011 that relate to the use tax gap:
 - AB 153 (Skinner) would have specified that a "retailer engaged in business in this state" includes a retailer entering into an agreement with a California resident under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link or an Internet Web site or otherwise, to the retailer, under specified conditions.
 - SB 234 (Hancock) and SB 655 (Steinberg) would also have amended Section 6203 to specify that any out-of-state retailer that has substantial nexus with this state for purposes of the Commerce Clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty is a "retailer engaged in business in this state."
 - SB 86 (Ch. 14, Stats. 2011) was recently signed into law to allow eligible California purchasers to satisfy their use tax liabilities by using a "look-up" table when they elect to report their use tax obligations on their state income returns with respect to individual non-business purchases of less than \$1,000.

Assembly Bill 242 (Committee on Revenue & Taxation) Chapter 727

Lemon Law – Use Tax Reimbursement Bad Debt Election Form Requirement Repeal Vessels Purchased Outside this State Claim for Bank Charge Reimbursement Orders of Restitution

Effective January 1, 2012. Amends Sections 1793.2 and 1793.25 of the Civil Code, amends Sections 6055, 6203.5, 6248, 6353, 6356.5, 6356.6, 6358.5, 7096, and 7101 of, and adds Section 7157 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill, among other things, contains Board of Equalization (BOE)-sponsored provisions for the sales and use tax and special taxes and fees programs, to do all the following:

- Amend Civil Code Sections 1793.2 and 1793.25 to allow the BOE to reimburse a
 manufacturer of a new motor vehicle for the use tax the manufacturer refunds to a
 buyer or lessee when the new motor vehicle is reacquired by the manufacturer
 pursuant to California's "Lemon Law." (Technical)
- Amend Revenue and Taxation Code Sections 6055 and 6203.5 of the Sales and Use Tax Law to remove the requirement that retailers and lenders file an election form with the BOE prior to claiming a bad debt in the case of accounts held by a lender that have been found worthless and written off by the lender. (Housekeeping)
- Amend Revenue and Taxation Code Section 6248 of the Sales and Use Tax Law
 to make a technical clarification to the repair, retrofit, and modification exception
 related to the 12-month rebuttable presumption for vessels purchased outside this
 state. (Technical)
- Amend Revenue and Taxation Code Section 7096 of the Sales and Use Tax Law
 to allow a taxpayer to file a claim for reimbursement of bank charges and third
 party check charges incurred by the taxpayer as the direct result of an erroneous
 processing action or erroneous collection action by the BOE. (Housekeeping)
- Add Sections 7157, 8407, 30483, and 60709 to, and amend Sections 7101, 8351, and 30474 of, the Revenue and Taxation Code to provide the BOE and the State Controller's Office with express authority to collect orders of restitution awarded to the BOE in criminal proceedings in the same manner as tax liabilities. These provisions affect the Sales and Use Tax, Motor Vehicle Fuel Tax, Cigarette and Tobacco Products Tax, and Diesel Fuel Tax Laws.

The bill also contains nonsubstantive technical amendments to delete superfluous language in Sales and Use Tax Law Sections 6353, 6356.5, 6356.6, and 6358.5. In addition, this bill amends sections of law administered by the Franchise Tax Board.

Sponsor: Board of Equalization (in part, as identified above)

Lemon Law - Use Tax Reimbursement Civil Code Sections 1793.2 and 1793.25

LAW PRIOR TO AMENDMENT

Under existing law, the Song-Beverly Consumer Warranty Act (beginning with Civil Code Section 1790) contains provisions that provide warranty protections to purchasers of both new and used consumer goods. The act includes provisions that require compensation to California consumers of defective new motor vehicles – provisions colloquially referred to as California's "Lemon Law." These Civil Code provisions specify that if a manufacturer or its representative in this state, such as an authorized dealer, is unable to service or repair a new motor vehicle to meet the terms of an express written warranty after a reasonable number of repair attempts, the manufacturer is required promptly to replace the vehicle or make restitution to the buyer.

Under Civil Code Section 1793.25, in the case of restitution, a manufacturer that has complied with these "Lemon Law" provisions is required to make restitution in an amount equal to the actual price paid or payable by the buyer, including, among other charges, sales tax, when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale. This section further requires the BOE to reimburse the manufacturer for an amount equal to the sales tax included in the restitution. The "Lemon Law" is silent with respect to restitution involving use tax.

Under existing Sales and Use Tax Law, a lease of tangible personal property, including a lease of a motor vehicle, is, with exceptions not relevant here, a "sale" and a "purchase" for purposes of that law. For a lease that is a "sale" and a "purchase," the tax is measured by the amount of rental paid. However, the applicable tax is generally *use* tax, not sales tax, and the lessor is required to collect the use tax from the lessee at the time the amount of rent is paid.

The cases of *Chrysler LLC v. State Board of Equalization* (Super. Ct. San Francisco County, 2008, No. CGC-07-459702) and *Mercedes Benz USA LLC v. State Board of Equalization* (Super. Ct. San Francisco County, 2008, No. CGC 08-471310) involved the leases of new motor vehicles on which use tax had been paid by the lessees. The vehicles were reacquired by the lessor/manufacturer pursuant to California's "Lemon Law," and the lessor/ manufacturer refunded the use tax to the lessees that they had paid. The lessor/manufacturer then sought reimbursement from the BOE for the use tax it refunded. The BOE denied the claim because Section 1793.25 only authorized the BOE to reimburse the manufacturer for *sales* tax refunded to buyers in "Lemon Law" situations. On December 9, 2008, Judge Patrick J. Mahoney ruled in favor of Chrysler and determined that there was no reason that use taxes should be treated differently from sales taxes in these situations. The judge ordered the BOE to reimburse the lessor/manufacturer for the use taxes it refunded to lessees of new motor vehicles it repurchased or replaced pursuant to California's "Lemon Law."

AMENDMENT

This bill amends Civil Code Sections 1793.2 and 1793.25 to authorize the BOE to reimburse a manufacturer of a new motor vehicle for either sales tax <u>or use tax</u> that the manufacturer is required to refund to the buyer <u>or lessee</u> of a new motor vehicle when it provides a replacement vehicle or includes in making restitution to the buyer <u>or lessee</u> pursuant to these Civil Code provisions. This bill makes other nonsubstantive and conforming changes to these Civil Code provisions.

The bill also adds an uncodified provision to specify that these amendments are declaratory of existing law.

COMMENT

Purpose. This bill simply makes conforming changes to California's Lemon Law in light of the ruling in the cited case.

Bad Debt Election Form Requirement Repeal

Revenue and Taxation Code Sections 6055 and 6203.5

LAW PRIOR TO AMENDMENT

Under existing law Sections 6055 and 6203.5 of the Sales and Use Tax Law allow a retailer to be relieved of the liability for the sale or use tax when the measure of tax is represented by amounts that have been found to be worthless and charged off for income tax purposes. These sections also allow retailers who sell their accounts receivables or lenders who purchase them to claim a refund or claim a deduction on sales and use tax returns for the portion of the accounts receivable which is written off as worthless. In such circumstances, existing law requires the retailer and the lender to file an election form with the BOE signed by both parties designating which party is entitled to claim the bad debt loss prior to claiming a deduction or refund.

AMENDMENT

This bill amends Sections 6055 and 6203.5 to remove the requirement that the election form be filed with the BOE and to require instead that the retailer and lender retain the election.

COMMENT

Purpose. The BOE has been administering these provisions for approximately 10 years, and these signed election forms have not been of any assistance in verifying the validity of the claims for bad debt losses, nor provided any valuable benefit to the BOE's audit program. The BOE sees no compelling reason to continue warehousing these election forms, or for burdening taxpayers with filing this paperwork with the BOE. Instead, the bill requires that the election form simply be retained by both the retailer and the lender.

Vessels Purchased Outside this State Revenue and Taxation Code Section 6248

LAW PRIOR TO AMENDMENT

Under existing law, Revenue and Taxation Code Section 6248 of the Sales and Use Tax Law provides a rebuttable presumption that any vehicle, vessel, or aircraft purchased outside California that is brought into this state within 12 months of purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax. The law provides an exception, however, for vehicles, vessels, and aircraft brought back into California within the first 12 months of ownership for the purpose of repair, retrofit, or modification (RRM). If the RRM meets specified criteria, the vehicle, vessel or aircraft will not become subject to use tax solely on the basis that it was brought into California within the first 12 months of ownership. One of these criteria is, for vessels, that the RRM must be conducted by a repair facility that holds an appropriate seller's permit issued by the BOE and is licensed to do business by the county in which it is located. This criterion was added by BOE-sponsored AB 1547 (Ch. 545, Stats. 2009) in order to clarify that the RRM must be performed by a legitimate repair facility; otherwise taxpayers could regularly purchase minor parts or accessories and make their own repairs or modifications over an extended period of time while storing the vessel in California and avoiding California use tax.

AMENDMENT

This bill amends Revenue and Taxation Code Section 6248 to clarify that in the case of a vessel purchased outside this state and brought into this state within the first 12 months of ownership for the exclusive purpose of RRM, the vessel will not be considered purchased for use in California if the RRM is performed by a repair facility that holds an appropriate permit issued by the BOE and is licensed to do business by the county, *city*, or city and county in which it is located if the city, county, or city and county so requires.

COMMENT

Purpose. Most local jurisdictions in California require businesses to hold a business license. However, when a business is located within the city's jurisdiction, generally, if a business license is required, the city, rather than the county, licenses the business. Also, in some instances, a business located within an unincorporated area of a county, is not required to hold a business license at all (such as in Shasta County, Santa Clara County, and San Diego County). Consequently, the specific wording of the statute requiring that the repair facility be licensed to do business *by the county* in which it is located is not always fitting. This could inadvertently subject a purchaser to use tax when the purchaser brings a vessel purchased outside this state back into California within the first 12 months of ownership and uses a repair facility that either is not required to hold a business license, or has an appropriate business license, but not one issued by a county.

This bill clarifies that as long as the repair facility has a permit with the BOE and is licensed by the city, county, or city and county, if so required, the taxpayer's vessel purchase would meet the criteria for the exception related to the 12-month rebuttable presumption, and would not be subject to use tax (assuming all other requirements not pertinent to this discussion are met).

Claim for Bank Charge Reimbursement Revenue and Taxation Code Section 7096

LAW PRIOR TO AMENDMENT

Under current law, the BOE is authorized, as part of its administrative duties with respect to the collection of taxes, to seize property of a delinquent taxpayer. Existing law authorizes the BOE to issue a levy or order to specified financial institutions to withhold and remit credits or personal property of a delinquent taxpayer in order to satisfy the tax obligations of that taxpayer.

However, under Revenue and Taxation Code Section 7096, if the BOE erroneously issues a levy or notice to withhold, and that error results in bank charges or third party check charges incurred by a taxpayer, the taxpayer may file a claim with the BOE for reimbursement of those charges. Bank and third party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those actually paid by the taxpayer and not waived or reimbursed by the financial institution.

AMENDMENT

This bill amends Revenue and Taxation Code Section 7096 to expressly provide that, in addition to reimbursement of bank or third party check charges incurred by a taxpayer as the direct result of an erroneous levy or notice to withhold, a taxpayer may claim reimbursement for bank and third party check charges due to an erroneous processing action or erroneous collection action by the BOE.

COMMENT

Purpose. Occasionally, an erroneous BOE action has resulted in the imposition of bank or third party check charges and the particular erroneous BOE action was not technically a result of a BOE levy or notice to withhold. For example, because of a BOE error, a taxpayer's account has been double-debited when an electronically-transferred payment made in connection with an installment payment agreement was credited erroneously by the BOE to another taxpayer's account. Due to the double payment, the taxpayer's account had insufficient funds, which resulted in bank fees for overdrafts. While the BOE is able to reverse the erroneous debit, the law contains no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third party check charges the taxpayer may have incurred due to the error.

It is only fair and equitable to reimburse taxpayers for bank and third party check charges when those charges are directly attributable to a BOE error, and to no fault of the taxpayer. This proposed change is consistent the intent of the original legislation that authorized the BOE to reimburse taxpayers for such charges stemming from BOE errors. Also, these proposed amendments are consistent with provisions in Revenue and Taxation Code Section 21018 administered by the FTB. The FTB sponsored AB 1767 (Ch. 349, Stats. 2005, Assembly Revenue and Taxation Committee), to specifically allow taxpayers to claim reimbursement for bank charges incurred by taxpayers through similar types of FTB processing and collection errors.

Orders of Restitution

Revenue and Taxation Code Section 7101

LAW PRIOR TO AMENDMENT

Under current law, victims of crimes are entitled to restitution under Section 28 of Article 1 of the California Constitution and Penal Code Section 1202.4, which provide that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted. Courts are required to award an order of restitution from a convicted offender in every case that a crime victim suffers a loss, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. The law provides that an offender's inability to pay shall not be a compelling and extraordinary reason (Penal Code Section 1202.4, subdivisions (f) and (g)).

Under existing law, the BOE may refer cases for criminal prosecution to state courts against a person for certain offenses and the court may order restitution. The most common offenses referred by the BOE for criminal prosecution include the following:

- Tax evasion.
- · Operating without a permit,
- Possession and sale of unstamped cigarettes,
- · Unlicensed sales of cigarettes and tobacco products, and
- Grand theft.

The BOE may also obtain federal court orders of restitution for criminal charges referred to a federal court. The most common charges pursued in federal court include federal offenses such as:

- Wire fraud,
- · Mail fraud, and
- Transportation and sale of contraband tobacco products.

Criminal restitution is a permanent order that does not expire and is not dischargeable through bankruptcy.

Under existing Penal Code Sections 1202.4, 1214, and 1214.2, enforcement of a criminal restitution order for tax, penalties, fines and investigative costs are enforceable as if the order were a civil judgment.

Orders of restitution issued in a federal criminal action for certain crimes are enforceable in the same manner as a civil judgment.

For the State (as a victim of the crime), a restitution order covers its economic loss from a person convicted of a crime. The State's economic loss in these cases is the amount of tax, including applicable penalties, interest, and costs of investigation or prosecution that the taxpayer failed to pay as a result of the crime for which the taxpayer is found guilty.

Under existing Sales and Use Tax Law (Sections 6701 through 6832.6), Cigarette and Tobacco Products Tax Law (Sections 30301 through 30358), and Diesel Fuel Tax Law (Sections 60401 through 60493.5), the BOE is authorized to use specified collection tools in the pursuit of delinquent liabilities, including tax, interest and penalties. With respect to the Motor Vehicle Fuel Tax Law, administrative and collection responsibilities are split between the BOE and the State Controller's Office (SCO), respectively. Under existing

Motor Vehicle Fuel Tax Law (Sections 7851 through 7983), the SCO has the statutory responsibility for collection of amounts due and is authorized to use the same tools as is the BOE to collect delinquent liabilities. The collections methods for both the BOE and SCO include, but are not limited to, the ability to issue a levy, file a lien, and utilize an earnings withhold order.

However, since an order of restitution issued by a court is not a tax or a tax penalty, the BOE's and SCO's tax collection tools are unavailable for use in collecting restitution orders owed to the State. Instead, the agencies must file the order in the civil court and use civil enforcement methods to collect the money. When the BOE or SCO attempts to collect an order of restitution as a civil money judgment, the agencies must use the collection remedies available to any creditor under the Code of Civil Procedure, which are generally inefficient and cumbersome.

Currently, BOE's orders of restitution may be collected either (1) by referring the restitution order to the Franchise Tax Board (FTB) for collection under the Court-Ordered Debt (COD) program, or (2) as a civil money judgment. The California Department of Corrections and Rehabilitation (CDCR) refer restitution orders to FTB on our behalf. The CDCR assists with the collection of restitution from those offenders sentenced to state prison or on parole. When an offender is on parole, but restitution has not been paid in full, the CDCR refers the restitution to the FTB for collection under the COD program. Additionally, the BOE is not an authorized government entity under the COD program. Authorized government entities include (1) courts, (2) county probation and revenue collections departments, (3) county or city jails or juvenile halls, (4) the CDCR, and (5) the Victim Compensation and Government Claims Board. Only a small number of restitution orders awarded to the BOE are referred to the FTB for collection under the COD program. Restitution orders awarded to the BOE in federal cases do not meet the requirements for referral under the COD provisions.

When the BOE and SCO collect an order of restitution as a civil money judgment, both agencies must use the collection remedies available to any creditor under the Code of Civil Procedure. The statutory procedures for obtaining levies and liens can delay the collection of the order of restitution, and the BOE must rely on the availability of external resources to collect amounts owed as a civil money judgment. The BOE must also pay fees for services performed by outside sources such as levy and process server fees.

For example, in order for the BOE to file a state lien on an offender's real property, the BOE must convert the Order of Restitution to an Abstract of Judgment and have the Abstract of Judgment endorsed by the court clerk. Once the Abstract of Judgment is obtained, the BOE can then file the judgment with a County Recorder's office in any county where the offender owns real property. This establishes an automatic lien against an offender's current or future real property.

To enforce an Order of Restitution on an offender's income or personal assets, the BOE must obtain a Writ of Execution. Once a Writ of Execution is obtained, the BOE must deliver this document to a levying officer (County Sheriff or Marshal) with instructions identifying which property to levy. Payment of a fee is required. The Writ of Execution allows the BOE to levy the offender's bank accounts, business receipts, and personal property to satisfy any unpaid balance remaining on a restitution order. In general, depending on the nature of the assets involved (bank accounts, wages and vehicles), the

civil collection process can take anywhere from 90 days to one year from the date of seizure to the date of the auction to complete.

Currently, restitution orders are not maintained on the BOE's two automated systems—the Integrated Revenue Information System (IRIS) and the Automated Compliance Management System (ACMS). Instead, restitution orders are monitored and collected separately from tax and fee liabilities.

AMENDMENT

This bill amends and adds Sections 7101 and 7157 (sales and use tax), and 8351 and 8407, respectively (motor vehicle fuel tax), adds Sections 30483 (cigarette and tobacco products tax), and 60709 (diesel fuel tax), and amends Section 30474 of, the Revenue and Taxation Code, to provide both the BOE and SCO with express authority to collect and deposit an order of restitution, awarded to the State of California in criminal proceedings, in the same manner as tax liabilities.

BACKGROUND

During the 2010 Legislative session, the FTB sought and was granted similar authority for enhancing collections of restitution orders. Enactment of Assembly Bill 1530 (Stats. 2010, Chapter 359, Skinner) allows FTB to collect restitution orders or any other amounts awarded to the FTB by a court of competent jurisdiction (federal or state court) in criminal proceedings in the same manner and with the same priority as tax liabilities. This bill passed the Assembly with a 78-0 vote and the Senate with a 30-2 vote.

COMMENT

Purpose. This change in law accomplishes the following:

- Streamlines and accelerates the BOE's collection process on orders of restitution received in criminal cases; and,
- Utilizes the efficient collection tools available to both the BOE and SCO for tax administration, thereby improving the collection process for orders of restitution awarded to the BOE in criminal proceedings.

Assembly Bill 289 (Cedillo) Chapter 289 AIDS/HIV Thrift Store Exemption

Tax levy, effective September 21, 2011. Amends Section 6363.3 of the Revenue and Taxation Code.

BILL SUMMARY

This bill extends until January 1, 2019, the sales and use tax exemption for sales of used clothing, household items, or other retail items by thrift stores operated for purposes of raising funds to provide medical, hospice, or social services for individuals with HIV or AIDS, which is due to sunset on January 1, 2012.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Under existing law, the sales tax or the use tax applies to the sale or use of tangible personal property (including second hand property) in this state, unless specifically exempted by law. Under existing law, Revenue and Taxation Code Section 6363.3, as added by AB 3187 (Stats. 1996, Ch. 781, Martinez), provides a sales and use tax exemption for sales of used clothing, household items, and other retail items sold by thrift stores operated by a nonprofit organization. To qualify, the purpose of the thrift store must be to obtain revenue for the funding of medical, hospice, and social services to individuals with HIV disease or AIDS, and at least 75 percent of the net income derived from operations of the thrift store must actually be expended for that purpose. In addition, the thrift store must be a nonprofit organization exempt from state income tax under Revenue and Taxation Code Section 23701d.

In 2001, AB 180 (Ch. 383, Stats. 2001, Cedillo) amended Section 6363.3 to extend the January 1, 2002 sunset date to January 1, 2007. That section was amended again in 2006 by SB 1341 (Ch. 373, Stats. 2006, Cedillo), which extended the January 1, 2007 sunset date to the current January 1, 2012.

Current law also provides an exemption for sales by other charitable organizations that relieve poverty and distress. Under Section 6375, sales (including thrift store sales) by charitable organizations are exempt from sales and use tax under the following conditions:

- 1. The organization must be formed and operated for charitable purposes and must qualify for the "welfare exemption" from property taxation provided by Revenue and Taxation Code Section 214.
- 2. The organization must be engaged in the relief of poverty and distress.
- 3. The organization's sales or donations must be made principally as a matter of assistance to purchasers or donees in distressed financial condition.
- 4. The property sold or donated must have been made, prepared, and assembled or manufactured by the organization.

The welfare exemption referred to in condition (1) is available to property owned and operated by a charitable organization under certain conditions. Among the conditions is

the requirement that the property be used in the actual operation of a charitable activity. Property used merely to raise funds is not used in a charitable activity even though the funds will be devoted to a charitable purpose. To qualify for the welfare exemption, a thrift store must, among other things, conduct a rehabilitation program recognized by the California Department of Rehabilitation or operate under a city or county rehabilitation program. It must also sell goods processed in some manner by people who are being rehabilitated through the program and are employed in the operation of the store.

Merchandise sold through thrift stores operated by Goodwill Industries, the Salvation Army, and St. Vincent de Paul, for example, qualify for the exemption under Section 6375.

AMENDMENT

This bill amends Section 6363.3 to extend from January 1, 2012 to January 1, 2019, the sunset date on the exemption for sales of used clothing, household items, or other retail items by thrift stores operated by a nonprofit organization, if the purpose of the thrift store is to obtain revenue for the funding of medical, hospice, or social services to individuals with HIV or AIDS.

As a tax levy, the provisions of the bill became effective September 21, 2011.

COMMENTS

- 1. Purpose. To extend until January 1, 2019, the existing exemption for sales by thrift stores operated for purposes of raising funds to benefit individuals with HIV or AIDS. This exemption is due to expire on January 1, 2012. Extending the exemption contained in existing law for goods sold through these thrift stores demonstrates the Legislature's recognition that these nonprofit thrift stores should be treated similarly as the other thrift stores currently qualifying for an existing exemption, such as those operated by the Salvation Army, Goodwill Industries and St. Vincent de Paul.
- 2. **Provisions are not problematic to administer.** Since the BOE is already administering the sales and use tax exemption for thrift stores that benefit individuals with HIV or AIDS, eliminating the sunset date does not pose a problem.

Assembly Bill 686 (Huffman) Chapter 176

Transactions and Use Tax – Decreases rate to 0.125, or multiples of 0.125 percent

Effective January 1, 2012. Amends Sections 7285, 7285.5, 7285.9, and 7285.91 of the Revenue and Taxation Code.

BILL SUMMARY

This bill decreases the rate at which a county or a city may levy, increase, or extend a transactions and use tax to a rate of 0.125, or multiples of 0.125 percent (currently 0.25 or multiples of 0.25 percent).

Sponsor: County of Marin

LAW PRIOR TO AMENDMENT

The State Board of Equalization (BOE) administers local sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law, which are divisions of the Revenue and Taxation Code.

The Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Revenue and Taxation Code Section 7200) authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. However, beginning July 1, 2004, and continuing through the "revenue exchange period" (also known as the "Triple Flip"), Section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under Sections 7202 and 7203, and instead provides that the applicable rate is the following: (1) in the case of a county, 1 percent; and (2) in the case of a city, 0.75 percent or less. "Revenue exchange period" means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the BOE, pursuant to Government Code Section 99006, that the \$15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenue to satisfy the state's bond obligations.

Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may by used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. All local jurisdictions impose the Bradley-Burns local taxes at the uniform rate of 1 percent.

The **Transactions and Use Tax Law** (Part 1.6, commencing with Revenue and Taxation Code Section 7251) and the Additional Local Tax Law (Part 1.7, commencing with Section 7285) authorizes cities and counties to impose transactions and use taxes (hereinafter referred to as district taxes) under specified conditions. **Section 7285** authorizes a county to impose a district tax for general purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. **Section 7285.5** authorizes a county to impose a district tax for special purposes at a rate of 0.25

percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

For purposes of funding libraries, **Section 7286.59** authorizes a county to impose a district tax at a rate of either 0.125 or 0.25 percent for a period not to exceed 16 years, if the ordinance proposing the tax is approved by the board of supervisors and a two-thirds vote of the qualified voters of the county. The revenues are to be used exclusively for funding public library construction, acquisition, programs, and operations within the county.

With respect to cities, **Section 7285.9** authorizes a city to impose a district tax for general purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all members of the governing body and a majority vote of the qualified voters of the city. **Section 7285.91** authorizes a city to impose a district tax for special purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all member of the governing body and a two-thirds vote of the qualified voters of the county.

The combined rate of all district taxes imposed in any county cannot exceed 2 percent.

Cities and counties are required to contract with the BOE to perform all functions in the administration and operations of the ordinances imposing the Bradley-Burns local taxes and the district taxes.

AMENDMENT

This bill amends Sections 7285 and 7285.5 to decrease the rate at which a county may levy, increase, or extend a transactions and use tax to 0.125, or multiples of 0.125 percent, for general and special purposes. This bill also amends Sections 7285.9 and 7285.91 to decrease the rate at which a city may do the same.

The bill is effective on January 1, 2012.

IN GENERAL

Cities and counties may impose a district tax for general or specific purposes. These taxes can be imposed either directly by the city or county or through a special purpose entity established by the city or county. Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code.

Beginning April 1, 2011, there will be 132 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 132 jurisdictions, 40 are county-imposed taxes and 92 are city-imposed taxes.

As stated previously, the combined rate of all district taxes imposed in any county shall not exceed 2 percent. District taxes increase the tax rate within a city or county by adding the district tax rate to the combined state and local (Bradley-Burns local tax) tax rate of 8.25 percent².

Generally, district tax rates are imposed at a rate of 0.25 percent or 0.25 percent

²Effective April 1, 2009, ABx3 3 (Chapter 18 of the Third Extraordinary Session, signed by Governor Schwarzenegger on February 20, 2009) temporarily increased the state sales and use tax rate by 1 percent. The combined state and local (Bradley-Burns local tax) tax rate, effective April 1, 2009, increased from 7.25 percent to 8.25 percent. The 1 percent tax rate increase will expire on July 1, 2011.

increments up to the 2 percent limit. Currently, the district tax rates vary from 0.10^3 percent to 1 percent. The combined state, local, and district tax rates range from 8.375 percent to 10.25 percent, with the exception of the cities of South Gate and Pico Rivera (10.75%) in Los Angeles County⁴.

Some cities and counties have more than one district tax in effect, while others have none. A listing of the district taxes, rates, and effective dates is available on the BOE's website: www.boe.ca.gov/sutax/pdf/districtratelist.pdf.

LEGISLATIVE HISTORY

Similar bills have been introduced during the last three Legislative Sessions:

- AB 978 (Perez), introduced in the 2009-10 Legislative Session, would have authorized cities and counties, subject to two-thirds approval of the voters, to impose a transactions and use tax at a rate of 0.125 percent for funding of economic development projects. This bill was never heard in a Committee.
- AB 1646 (DeSaulnier), introduced in the 2007-08 Legislative Session, would have authorized counties, subject to two-thirds approval of the voters, to impose a transactions and use tax at a rate in 0.25 percent increments and not to exceed a maximum tax rate of 1 percent for county health purposes. This bill also provided that the tax is not subject to the 2 percent rate limitation. This bill was held in the Senate Revenue and Taxation Committee.
- SB 264 (Alquist), Chapter 430, Statutes 2007, authorized the Santa Clara Valley Transportation Authority, subject to two-thirds approval of the voters of the County of Santa Clara, to impose a transactions and use tax at a rate of 0.125 percent for transit facilities and services.
- SB 203 (Simitian), Chapter 682, Statutes 2005, authorized the County of San Mateo, subject to two-thirds approval of the voters in the county, to impose a transactions and use tax at a rate of 0.125 or 0.25 percent for park and recreation purposes.

COMMENTS

- 1. Purpose. According to the author's office, the purpose of the bill is to allow cities and counties to seek voter approval of additional district taxes in smaller 0.125% increments. Further, this bill will allow local jurisdictions to propose smaller taxes to fund services such as police, fire, schools, local transportation projects, parks, and libraries.
- 2. BOE's costs to administer a rate of 0.125% as a percentage of revenue will be higher. The BOE's administrative costs are driven by the workload involved in registering taxpayers, processing returns and payments, and performing audit and

³Some cities and counties are authorized by special legislation to impose a district tax at a rate other than a 0.25 percent. For example, the Fresno County Zoo Authority imposes a district tax at a rate of 0.10 percent.

⁴In 2003, SB 314 (Ch. 785, Murray) authorized the Los Angeles County Metropolitan Transportation Authority to impose a 0.50 district tax for specific transportation projects, and excluded that 0.50 percent tax from the 2 percent limitation. In 2009, voters within Los Angeles County approved an additional 0.50 percent effective July 1, 2009. The 0.50 percent tax increase in Los Angeles County raised the tax rate in the cities of South Gate and Pico Rivera from 10.25 to 10.75 percent.

collection activities. These costs are relatively fixed. The cost of administering the tax is not related to the revenue generated by the tax. However, the ratio of such costs to the amount of revenue generated by the tax varies inversely with the tax rate. Therefore, if the tax rate or volume of taxable sales is very low, the ratio of cost to revenue will be high.

To illustrate this point, assume that a local jurisdiction receives \$100 in taxable sales. Let us also assume that the BOE's costs to administer \$100 in taxable sales is \$0.01. If a jurisdiction levied a tax at a rate of 0.25%, the amount of revenue generated from 0.25% tax would be \$0.25 (\$100 X 0.25%). The jurisdiction's net revenue would be \$0.24 (\$0.25 - \$0.01). If the same jurisdiction levied a tax at a rate of 0.125%, the amount of revenue generated from 0.125% tax would be \$0.13 (\$100 X 0.125%). However, the jurisdiction's net revenue would be \$0.12 (\$0.13 - \$0.01). Thus, the net revenue from imposing a tax at a rate of 0.25% versus imposing a tax at a rate of 0.125% is cut in half. Because the BOE's administrative costs are primarily fixed, the workload associated with administering a tax rate of 0.125% is essentially the same as administering the 0.25% rate. This means that the BOE's cost to administer a smaller rate as a percentage of revenue will be higher. (The administration rate of \$0.01 used above is for illustration purposes only. It does not reflect the actual costs to administer a district tax.)

- 3. Though not unique, imposition of an 0.125 percent tax rate is uncommon. Under the Transactions and Use Tax Law, counties are authorized to impose transactions and use taxes for general or special purposes at a rate of 0.25 percent, or multiples of 0.25 percent, subject to voter approval. With the exception of Section 7286.59 that authorizes counties to impose a tax at a rate of 0.125 or 0.25 percent for library purposes, counties impose transactions and use taxes at a rate of 0.25 percent, or multiples of 0.25 percent.
 - Currently, there are four counties that levy a library purposes tax at a rate of 0.125 percent (Fresno, Nevada, Solano, and Stanislaus).
- 4. **Related legislation.** AB 1086 (Ch. 327, Stats. 2011, Wieckowski) authorizes any local government entity in the County of Alameda to impose a transactions and use tax, in excess of the combined rate limitation (2%) of transactions and use taxes imposed within a county, to support countywide transportation programs, as specified.

Assembly Bill 1086 (Wieckowski) Chapter 327

Transactions and Use Tax – Alameda County

Effective January 1, 2012. Adds and repeals Chapter 3.7 (commencing with Section 7291) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

BILL SUMMARY

This bill authorizes the County of Alameda to impose a transactions and use tax for the support of countywide transportation programs at a rate no more than 0.50 percent that, in combination with other transactions and use taxes, exceed the maximum combined rate (2%), as specified.

Sponsor: County of Alameda

LAW PRIOR TO AMENDMENT

The State Board of Equalization (BOE) administers local sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law, which are divisions of the Revenue and Taxation Code.

The Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code), authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. However, beginning July 1, 2004, and continuing through the "revenue exchange period" (also known as the "Triple Flip"), Section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under Sections 7202 and 7203, and instead provides that the applicable rate is the following: 1) in the case of a county, 1 percent; and 2) in the case of a city, 0.75 percent or less. "Revenue exchange period" means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the BOE, pursuant to Section 99006 of the Government Code, that the \$15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenues to satisfy the state's bond obligations.

Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may by used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county.

The **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code) authorizes cities and counties to impose transactions and use taxes (hereinafter referred to as district taxes) under specified conditions. **Section 7285** authorizes a county to impose a district tax for general purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. **Section 7285.5** authorizes a county to impose a district tax for special purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

The combined rate of all district taxes imposed in any county cannot exceed 2 percent.

Cities and counties are required to contract with the BOE to perform all functions in the administration and operations of the ordinances imposing the Bradley-Burns local taxes and the district taxes.

AMENDMENT

This bill adds Chapter 3.7 (commencing with Section 7291) to the Transactions and Use Tax Law to authorize the County of Alameda to impose a transactions and use tax for the support of countywide transportation programs at a rate of no more than 0.50 percent that would, in combination with all transactions and use taxes imposed, exceed the 2 percent limitation established in Section 7251.1, if all of the following requirements are met:

- 1) The County of Alameda adopts an ordinance proposing a transactions and use tax by any applicable voting approval requirement.
- 2) The ordinance proposing the transactions and use tax is submitted to the electorate on the November 6, 2012, General Election ballot and is approved by the voters voting on the ordinance in accordance with Article XIII C of the California Constitution.
- 3) The transactions and use tax conforms to the Transactions and Use Tax Law, Part 1.6, other than Section 7251.1.

This bill is effective on January 1, 2012. This bill provides that if the ordinance proposing the transactions and use tax is not approved as required, the provisions of the bill are repealed as of January 1, 2014.

IN GENERAL

Cities and counties may impose a district tax for general or specific purposes. These taxes can be imposed either directly by the city or county or through a special purpose entity established by the city or county. Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code.

As of April 1, 2011, there are 132 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 132 jurisdictions, 40 are county-imposed taxes and 92 are city-imposed taxes. Of the 40 county-imposed taxes, 26 are imposed for transportation purposes.

As stated previously, the combined rate of all district taxes imposed in any county shall not exceed 2 percent. Generally, tax rates are imposed at a rate of 0.25 percent or 0.25 percent increments up to the 2 percent limit. A city's tax rate counts toward the combined rate in computing the 2 percent limit in a county. Currently, the district tax rates vary from 0.10 percent to 1 percent. The combined state, local, and district tax rates range from 8.375 percent to 10.25 percent, with the exception of the cities of South Gate and Pico Rivera (10.75%) in Los Angeles County⁵.

⁵ In 2003, SB 314 (Ch. 785, Murray) authorized the Los Angeles County Metropolitan Transportation Authority to impose a 0.50 district tax for specific transportation projects, and excluded that 0.50 percent tax from the 2 percent limitation. In 2009, voters within Los Angeles County approved the additional 0.50 percent effective July 1, 2009, which raised the tax rate in the cities of South Gate and Pico Rivera from 10.25 to 10.75 percent.

COMMENTS

- Purpose. To provide additional funding for transportation programs and services for Alameda County. According to the author's office, in November 2010, voters within the city of Union City approved an additional 0.50 percent tax effective April 1, 2011. Consequently, Alameda County cannot enact a new district tax as Union City's 0.50 percent tax increase, which, combined with the county's district taxes, reaches the maximum 2 percent limit.
- 2. Current district taxes levied within the County of Alameda. Currently, Alameda County has five district taxes imposed within its borders—three county-wide taxes and two city-wide taxes. The tax rates for the three county-wide taxes are 0.50 percent each for a total county-wide tax rate of 1.50 percent. Thus, the total state, local, and district tax rate imposed within the unincorporated area of Alameda County is 9.75 percent. The two cities that impose a district tax are San Leandro at a rate of 0.25 percent and Union City at a rate of 0.50 percent, with a total state, local, and district tax rate of 10.00 and 10.25 percent, respectively.

As previously stated, cities and counties may impose district taxes as long as the combined rate in the county does not exceed 2 percent. The city district taxes count against the 2 percent limit. Because Union City imposes a tax of 0.50 percent, Alameda County is prohibited from enacting a new district tax.

Of the three county-wide taxes, two are imposed for transportation purposes and one is imposed for essential health care services. The two 0.50 percent district transportation taxes levied within the borders of Alameda County are levied by the Alameda County Transportation Improvement Authority (ACTIA) and the Bay Area Rapid Transit (BART). In 2010, the ACTIA merged with the Alameda County Congestion Management Agency (ACCMA) to form the new county-wide transportation agency—the Alameda County Transportation Commission (Alameda CTC). The Alameda CTC is a joint powers authority whose members include the 14 cities in Alameda County, the County of Alameda, Alameda County Transit, BART, ACCMA, and ACTIA.

- 3. This bill contains an exclusion from the 2 percent rate limitation in Section 7251.1 of the Transactions and Use Tax Law. As previously stated, Alameda County is currently prohibited from imposing an additional county-wide transactions and use tax (Union City tax pushes Alameda County to the 2 percent cap). However, this bill contains a provision that excludes this tax from the 2 percent cap.
- 4. **Related legislation.** AB 686 (Ch. 176, Stats. 2011, Huffman) decreases the rate at which cities and counties may levy, increase, or extend a transactions and use tax to 0.125% (currently 0.25%), or a multiple thereof, for general or specific purposes.

SB 653 (Steinberg) authorizes the governing board of any county or city and county or school district, subject to specified voter approval requirements, to levy, increase, or extend a local personal income tax, vehicle license fee, transactions and use tax (excluded from the 2 percent cap), alcoholic beverage tax, cigarette and tobacco products tax, sweetened beverage tax, and oil severance tax, as provided. The bill requires the BOE, the Franchise Tax Board, or the Department of Motor Vehicles to perform various functions related to the administration and collection of the local tax if the county or city and county contracts with the state agency.

Assembly Bill 1307 (Skinner) Chapter 734

Denial or Suspension of a Contractor's License Refusal of Seller's Permit New Employee Registry Data

Effective January 1, 2012. Amends Section 7145.5 of the Business and Profession Code, adds Section 6070.5 to the Revenue and Taxation Code, and amends Section 1088.5 of the Unemployment Insurance Code.

BILL SUMMARY

This Board of Equalization (BOE)-sponsored bill:

- Authorizes the BOE to request the Contractors State License Board for a denial or suspension of a contractor's license for failure to resolve any outstanding BOErelated final tax or fee liabilities. (Business and Professions Code Section 7145.5)
- Authorizes the BOE to refuse to issue a seller's permit to any person who has an
 outstanding liability with the BOE and has not entered into an installment payment
 agreement, as specified. (Revenue and Taxation Code Section 6070.5)
- Allows the BOE to use the new employee registry information maintained by the Employment Development Department (EDD) for tax enforcement purposes. (Unemployment Insurance Code Section 1088.5)

Sponsor: Board of Equalization

IN GENERAL

This bill is sponsored by the BOE in order to provide additional incentives for taxpayers to pay their outstanding BOE-related tax and fee liabilities and to enhance the BOE's ability to collect those liabilities.

California's tax system is one based on the principal of voluntary compliance. Most taxpayers that report their tax and fee liabilities to the BOE are honest and generally comply with the tax laws. However, the BOE's number of taxpayers with overdue accounts receivables, as well as the overall balance, continues to increase - further complicating the state's budget woes. Within the last three-year period, the BOE's accounts receivable balances for unpaid *final* liabilities (liabilities that are due and not under appeal) have nearly doubled. As of the end of 2010, these outstanding liabilities totaled over \$1.5 billion.

Recent economic turmoil is one factor contributing to this increase. However, other reasons include the fact that some businesses purposefully fail to remit the tax, such as when a taxpayer diverts the sales tax reimbursement collected from a customer for his or her own purposes instead of remitting the tax to the State. Those businesses that fail to pay their tax liabilities have in many cases an unfair competitive advantage over taxpayers who comply with the law and pay their fair share.

In general, the tools the BOE has in current law to provide incentives for taxpayers to timely pay their tax and fee liabilities and to assist the BOE in collecting delinquent tax or fee liabilities include:

- The imposition of penalties and interest on the amount of the late tax or fee payment.
- The authority for the BOE to revoke a taxpayer's seller's permit for failure to pay outstanding sales and use tax liabilities.
- The opportunity for taxpayers to enter into affordable installment payment plans.
- The authority for the BOE to issue an Order to Withhold (OTW) to any third-person in
 possession of funds or properties belonging to the debtor, such as bank accounts,
 rental income, or accounts receivables, which, in turn, requires that third person to
 submit to the BOE all the debtor's cash or cash equivalents that would satisfy the
 OTW.
- The authority for the BOE to use Earnings Withholding Orders (EWO) to collect delinquent tax liabilities for which a state tax lien is in effect. An EWO is a continuing wage garnishment based on a percentage of a debtor's earnings, not to exceed 25 percent of disposable income. The EWO remains in effect until the total amount owing has been paid, or the order has been withdrawn.
- The authority for the BOE to issue a warrant to seize property and convert it to cash to satisfy a debt. Warrants are enforced by a marshal. "Till-tap" or "keeper" warrants are warrants served by the California Highway Patrol or the local sheriff that allow them to enter a tax debtor's business and take possession or personal property or collect the contents of the cash registers.
- In addition to the preceding, a statutory tax lien automatically arises by operation of law, which is a claim upon real and personal property for the satisfaction of a tax debt. The lien is in force for 10 years, unless the liability becomes satisfied or a Notice of State Tax Lien is recorded with a county recorder's office or the Secretary of State. The recording of the notice provides notice to all parties of the debt against real and personal property belonging to the tax debtor and located in the California county where recorded.

This bill provides additional tools that will assist the BOE in reducing its growing outstanding accounts receivable balances from taxpayers' failure to remit the taxes that are owed, and assist in reducing the unfair competitive advantage these tax debtors have over law-abiding taxpayers.

Denial or Suspension of a Contractor's License *Business and Professions Code Section 7145.5*

LAW PRIOR TO AMENDMENT

Under Business and Professions Code (BPC) Section 24205, a taxpayer's alcoholic beverage license is automatically suspended if the taxpayer is at least three months delinquent in the payment of sales or use or alcoholic beverage taxes or penalties. The suspension remains in effect until those liabilities are paid.

Existing Vehicle Code Sections 11617 and 11721 allow the Department of Motor Vehicles to automatically cancel a dealer or lessor-retail license when the BOE has revoked or suspended the licensee's seller's permit. (Sales and Use Tax Law Section 6070 of the Revenue and Taxation Code authorizes the BOE to revoke or suspend a taxpayer's seller's permit whenever the taxpayer fails to comply with any provision of the Sales and Use Tax Law, including failing to pay sales or use taxes that are due.)

Existing BPC Section 7145.5 allows the Contractor's State License Board (CSLB) to refuse to issue, reinstate, reactivate, or renew or to suspend a contractor's license for the failure of a licensee to resolve any outstanding final liabilities, including taxes, penalties, interest, and any fees assessed by the CSLB, the Franchise Tax Board (FTB), the EDD, or the Department of Industrial Relations (DIR). The BOE is not listed as one of the agencies to which Section 7145.5 applies.

Therefore, under current law, the CSLB is not authorized to suspend or deny a contractor's license for a licensee's failure to pay any BOE-related outstanding taxes, penalties, interest, or fees.

AMENDMENT

This bill amends BPC Section 7145.5 to authorize the CSLB to refuse to issue, reinstate, reactivate, or renew or to suspend a contractor's license for failure to resolve any outstanding BOE-related final tax or fee liabilities, provided the CSLB's registrar has mailed a preliminary notice to the licensee at least 60 days prior to the refusal or suspension that indicates that the license will be refused or suspended by a date certain.

BACKGROUND

Although a licensee's failure to pay the BOE's liabilities is not within the statutory authority provided under BPC Section 7145.5 that would allow the CSLB to suspend or deny a contractor's license, existing BPC Section 7071.17(b) and (e) does provide an alternative, albeit very cumbersome approach. Under this section, the registrar of the CSLB may suspend a contractor's license for any "unsatisfied final judgment that is substantially related to the construction activities of a licensee ... or to the qualifications, functions, or, duties of the license." In order to request a suspension under this provision, the CSLB would require the BOE to submit an abstract of judgment relating to the contractor's liability as a condition for the registrar to initiate the proceeding to suspend the license.

However, the procedure available under this provision would require that the BOE first file a request for judgment in a Superior Court, obtain the judgment, and then file an abstract of the judgment with CSLB – a cumbersome process. And, CSLB does not use this procedure on a routine basis. Therefore, CSLB staff has recommended that the BOE pursue legislation to amend BPC Section 7145.5 in a manner as this bill proposes to do.

The BOE currently has over 90,000 delinquent sales and use tax accounts. Of this amount, over 1,700 accounts represent outstanding final liabilities of construction contractors (750 of which are closed accounts, with nearly \$42 million in unpaid delinquencies, and 950 of which are active accounts, with nearly \$10 million in delinquencies). These amounts do not include accounts in bankruptcy, in installment payment agreements, or in the appeals process.

Since the enactment of legislation in 1990 (Ch. 1386, AB 2282, Eastin), the CSLB has been authorized to suspend or refuse to issue or renew a contractor's license upon notification of a contractor's failure to resolve all outstanding final liabilities imposed by the DIR, EDD, and FTB. The purpose of that bill was to establish joint enforcement action among the three agencies in order to enforce collection of taxes and compliance with the laws, and to create a level playing field for business competition.

In 1993, by Executive Order, the Joint Enforcement Strike Force (JESF) was established to combat the underground economy. The JESF is comprised of several agencies

including the CSLB, DIR, EDD, FTB, and BOE. Reports indicate that the underground economy imposes burdens on businesses that comply with the law and properly pay tax obligations. Reports also indicate that while these agencies have authority to enforce liens and warrants to collect outstanding liabilities, these collection tools are ineffective against taxpayers who primarily operate on a cash basis because current information on their assets or income is unavailable.

Similar to EDD and FTB, the BOE finds that some delinquent contractors do not respond to its usual enforcement actions. Suspension or denial of a contractor's license would be a last resort collection method. When the BOE is unable to convince a contractor to pay its outstanding liability in full or to enter into an installment payment agreement, and when no other collection tools are effective, then the BOE would consider requesting CSLB to deny or suspend a contractor's license.

This provision is a duplicate of a BOE-sponsored measure considered last year (AB 2332 (Eng)). Although approved by the Legislature, Governor Schwarzenegger vetoed AB 2332, stating:

"Not resolving outstanding financial liabilities is a serious offense, but this bill is unnecessary. The BOE already has at its disposal a number of enforcement actions that it can take against contractors that are delinquent on tax payments. This bill proposes to shift some responsibility for tax collection from the BOE to a Board that is designed to protect the safety and well being of consumers."

COMMENT

This additional collection tool will only be used as a last resort effort to bring a contractor into compliance. Before the contractor's license is suspended or denied under this provision, the law would require that the CSLB's registrar provide a preliminary notice to the licensee of its intent to suspend or deny on a date certain at least 60 days prior to the date of the suspension or denial.

This bill is not intended to shift any responsibility for the BOE's tax collection efforts to the CSLB. Instead, it gives the BOE an additional collection tool that also serves as a strong incentive for delinquent contractors to resolve their outstanding liabilities. The use of this collection tool places the BOE on equal footing with FTB and EDD, and promotes joint enforcement action among the three tax collection agencies.

Refusal of Seller's Permit

Revenue and Taxation Code Section 6070.5

LAW PRIOR TO AMENDMENT

Under existing law, Revenue and Taxation Code Section 6005 defines a "person" to include, among others, any individual, firm, partnership, joint venture, limited liability company, association, corporation, or any other group or combination acting as a unit.

Section 6066 requires every person desiring to engage in business as a seller within this state to apply for a seller's permit with the BOE. There is no fee for obtaining a seller's permit and the permit is valid indefinitely as long as the applicant maintains a business as a seller and is in good standing with the BOE.

Under Section 6070, whenever any person fails to comply with any provision of the Sales and Use Tax Law, including timely payments of amounts due, the BOE may revoke the person's seller's permit. However, before revoking a seller's permit, the BOE is required to provide a 10-day advance written notice to the taxpayer of the time and place of a hearing to be held and the taxpayer must show why the permit should not be revoked. This provision specifies that the BOE shall not issue a new permit after the revocation of a permit unless it is satisfied that the holder of that permit will comply with the provisions of the Sales and Use Tax Law.

Section 6069 requires a seller whose permit has been previously suspended or revoked to pay a reinstatement fee of \$100 to the BOE for the renewal or reissuance of a permit.

Section 6701 provides the BOE with the authority to require that a person file a security deposit with the BOE whenever it deems it necessary to insure compliance with the Sales and Use Tax Law. A security deposit is generally requested in cases where the taxpayer has a history of noncompliance. The maximum amount of security the BOE may require, however, is \$50,000, and it must be released by the BOE after a three-year period in which the person has filed all returns and paid all tax to the state.

Under Business and Professions Code Section 22971 (which is under California's Cigarette and Tobacco Products Licensing Act of 2003, administered by the BOE), the terms "control" or "controlling" are defined to mean possession, direct or indirect, of the power:

- (A) To vote 25 percent or more of any class of the voting securities issued by a person.
- (B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, as specified; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of that person.

AMENDMENT

This bill adds Revenue and Taxation Code Section 6070.5 to the Sales and Use Tax Law to provide that the BOE may refuse to issue a seller's permit to any person who has an outstanding liability with the BOE and has not entered into an installment payment agreement.

In addition, the bill authorizes the BOE to refuse to issue a seller's permit if:

(a) the person desiring to engage in or conduct business as a seller within this state is not a natural person or individual, and

(b) any person "controlling", as defined in Business and Professions Code Section 22971, the person this is desiring to engage in or conduct business as a seller within this state has an outstanding final liability with the BOE.

The bill requires the BOE to provide a notice to the person who applied for a seller's permit who was refused a permit pursuant to this provision, and allows the person to request reconsideration that will afford the person a hearing, as specified.

COMMENTS

1. Purpose. This provision is intended to give the BOE more discretion in issuing seller's permits to taxpayers that have outstanding, unpaid, delinquent tax liabilities with the BOE, and to provide those taxpayers with a sound, reasonable incentive to take care of these outstanding liabilities by requiring them to simply enter into, and comply with, an installment payment agreement, as a prerequisite to obtaining a new seller's permit. This allows the BOE the discretion to withhold issuing a permit to a person under the most common scenarios the BOE encounters involving taxpayer noncompliance.

This provision would apply when a taxpayer applies for a new seller's permit while failing to resolve an outstanding tax debt with the BOE under his or her current seller's permit account. It could also be used when the BOE revokes a taxpayer's seller's permit because of the taxpayer's noncompliance with the law, and the taxpayer applies for a new seller's permit under a different type of entity.

For example, if the original seller's permit was held by a sole proprietor and that permit was revoked by the BOE because of the taxpayer's noncompliance with the Sales and Use Tax Law, current law does not allow the BOE to refuse to issue a seller's permit if the sole proprietor creates a corporation and applies for a seller's permit under the name of the corporation.

However, any taxpayer with a non-final liability, such as one under appeal, would still be able to obtain a new seller's permit while continuing to exercise the rights and remedies available to all taxpayers with non-final liabilities.

- 2. This provision also gives taxpayers a right for a hearing. To ensure fair treatment of taxpayers, the bill specifies that any person denied a seller's permit because of an outstanding final liability under this provision, will be granted a hearing regarding the manner. Such a hearing would be consistent with hearings that taxpayers currently avail themselves of when the BOE is contemplating revoking a taxpayer's seller's permit under current statutory authorization. These hearings are typically handled at the district office level by the administrator of that district office. Under this provision, the person denied a seller's permit will be required to file a written request for reconsideration within 30-days of the written notice of denial.
- 3. Installment payment agreements take into account a taxpayer's financial situation. An installment payment agreement allows taxpayers to pay their debt in full in smaller, more manageable payments. Installment payment agreements generally require equal monthly payments, and the amount of an installment payment is based on the amount a taxpayer owes and his or her ability to pay that amount. If the liability is over \$5,000, taxpayers are required to submit a financial statement to help the BOE determine the amount a taxpayer can pay. If a taxpayer's financial situation changes to a degree necessary to change the installment amounts, whether it improves or worsens, the BOE will make necessary adjustments to the amounts required to be paid.

New Employee Registry Data

Unemployment Insurance Code Section 1088.5

LAW PRIOR TO AMENDMENT

Under existing law, Unemployment Insurance Code Section 1088.5 requires all employers to report information on newly hired or rehired employees who work in this state to the EDD within 20 days following the date the employee is hired. The information to be reported includes the employee's full name, address, social security number, and first date the employee worked. An employer is also required to report its business name and address, state employer identification number, and federal employer identification number. This EDD report is generally referred to as the "new employee registry."

Under Section 1088.5, the new employee registry information may only be used for programs administered by the EDD, FTB, public assistance programs, worker's compensation programs, and enforcement of child support obligations. Under current law, the BOE is *not* authorized to use the new employee registry.

AMENDMENT

This provision amends Unemployment Insurance Code Section 1088.5 to authorize the BOE to use information in the new employee registry for tax collection and enforcement purposes.

BACKGROUND

In 1996, the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was signed into law. The primary purpose of PRWORA is to provide a strengthened child support enforcement program that locates non-custodial parents and enforces child support orders. One key provision of PRWORA related to child support orders is a requirement that all states have a program to report timely information about newly hired and rehired employees.

In 1997, pursuant to the federal PRWORA legislation, California enacted legislation (Ch. 606, AB 67, operative July 1, 1998) to establish a new employee registry. The purpose was to aid in the collection of debts of individuals who were able to avoid collection because the employer quarterly return information reported to EDD was received too late to be used as an effective collection information resource.

Also, because of the effectiveness of the new employee registry, in 2003, the FTB sponsored legislation to use the registry for its non-tax debt collection programs. AB 1742 (Ch. 455, Stats. 2003, Committee on Revenue and Taxation) authorized the FTB to use the registry when pursuing non-tax debt collection such as vehicle registration dishonored check collection, delinquent fines imposed for labor law violations, and court-ordered debt collection.

In 2007, at the direction of the Legislature, the Legislative Analyst Office, in consultation with the Department of Finance, prepared a report on the challenges facing California's three tax agencies and the need to engage in information and data sharing to effectively and efficiently administer the overall tax system. This report, entitled *A Report on Tax Agency Information and Data Exchange*, focuses on how increased cooperation and information sharing among the tax agencies can serve to improve tax compliance and enforcement activities.

The report points out how compliance and enforcement issues have become of increasing concern to California due to a number of different trends and factors. For example, the growth of the Internet and other forms of remote sales has led to the noncompliance with the state's use tax. These factors, coupled with other features of today's economy such as new and different business ownership structures and the large cash economy, have led to increased concern about the tax gap. The report goes on to say that the collection, sharing, and accessibility of tax-related information among agencies are seen as primary methods for dealing with the tax gap.

In addition, the report describes how the state's tax agencies currently exchange data and information. However, despite the information sharing that already occurs, each of the tax agencies has identified additional information now collected, but not shared, that would be useful to the other agencies for tax compliance purposes.

COMMENTS

- 1. **Purpose.** This provision assists the BOE in locating missing taxpayers and possibly garnishing the wages of taxpayers that are delinquent in their payment of BOE-administered taxes or fees. Currently, the BOE uses the EDD's online wage and employment information which is based on quarterly employment returns filed by employers. Even though this information is available to the BOE shortly after the end of each quarter, this information is relatively old when compared to the new employee registry information (four to six months more current). According to the FTB, the new employee registry has been a valuable enforcement resource in allowing that agency to identify delinquent taxpayers and begin collection action shortly after those taxpayers have started a new job. The BOE believes this information could be valuable for its collection efforts as well.
- 2. Key amendments. The August 31, 2011 amendments deleted provisions to assist in the collection of delinquent amounts by authorizing the BOE to join in FTB's Financial Institution Records Match (FIRM) system. Due to concerns raised by the banking and credit union industry related to the potential for additional workload, the author agreed to delete this provision.

Assembly Bill 1424 (Perea) Chapter 455

Revise Top 250 Tax Debtor List to Top 500 License Suspension for Debtors on List Prohibit State Contracts with Debtors on List Collection Agreements with Other States or IRS

Effective January 1, 2012, but certain provisions become operative July 1, 2012. Among its provisions, adds Section 494.5 to the Business and Professions Code, amends Sections 7063 of, adds Sections 6835, 7057, and 7057.5 to, and adds Article 9 (commencing with Section 6850) to Chapter 6 of Part 1 of Division 2 of, the Revenue and Taxation Code.

BILL SUMMARY

This bill:

- 1. Increases the Board of Equalization's (BOE's) public list of the top 250 tax delinquencies to the top 500 tax delinquencies (Revenue and Taxation Code [RTC] Section 7063)
- Requires state governmental licensing entities to refuse to issue, reactivate, reinstate, or renew an occupational, professional or a driver's license, or suspend a license of tax debtors on the top 500 delinquencies list on or after July 1, 2012. (Business and Professions Code [BPC] 494.5)
- 3. Prohibits any state agency from entering into a contract for goods and services with a tax debtor on the top 500 list (Public Contract Code Section 10295.4)
- Allows the BOE to collect any delinquent tax debts owed to other states and the Internal Revenue Service (IRS), but only upon a reciprocal agreement in which the other states or IRS agree to collect the BOE's delinquent tax debts (RTC Sections 6835 and 6850)

Similar provisions also apply to the Franchise Tax Board (FTB); however, this analysis only addresses the provisions as they relate to the BOE.

Sponsor: Assembly Member Perea

LAW PRIOR TO AMENDMENT

Under Since January 1, 2007, Revenue and Taxation Code Section 7063 and 19195 require the BOE and the FTB, respectively, to make available as a matter of public record a list of the largest 250 tax delinquencies of more than \$100,000 in unpaid tax. Prior to making a tax delinquency a matter of public record, however, the law requires these tax agencies to provide a preliminary written notice by certified mail, return receipt requested, to the person or persons held liable for the tax. The law further specifies that for purposes of compiling the list, the tax delinquency must have been recorded as a notice of state tax lien in any county recorder's office in this state. Also, the law specifies that if a delinquency is currently under litigation, in bankruptcy, or the taxpayer is complying with an installment payment agreement, the delinquency may not be made public as a qualifying tax delinquency. Section 7063 requires that the BOE update its list quarterly.

Under existing law, there are two instances in which a tax debtor's license is suspended for unpaid BOE-related taxes: an alcoholic beverage license and a Department of Motor Vehicle (DMV) dealer license.

Under Business and Professions Code (BPC) Section 24205, a taxpayer's alcoholic beverage license is automatically suspended if the taxpayer is at least three months delinquent in the payment of sales or use or alcoholic beverage taxes or penalties. The suspension remains in effect until those liabilities are paid.

Under Vehicle Code Sections 11617 and 11721, the DMV is permitted to automatically cancel a dealer or lessor-retail license when the BOE has revoked or suspended the licensee's seller's permit. (Sales and Use Tax Law Section 6070 of the RTC authorizes the BOE to revoke or suspend a taxpayer's seller's permit whenever the taxpayer fails to comply with any provision of the Sales and Use Tax Law, including failing to pay sales or use taxes that are due).

Existing BPC Section 7145.5 allows the Contractors State License Board (CSLB) to refuse to issue, reinstate, reactivate, or renew or suspend a contractor's license for the failure of a licensee to resolve any outstanding final liabilities, including taxes, penalties, interest, and any fees assessed by the CSLB, the FTB, the EDD, or the Department of Industrial Relations (DIR). Under current law, the BOE is not listed as one of the agencies to which Section 7145.5 applies (however, in a BOE-sponsored measure this year, AB 1307 (Skinner), the BOE is seeking to be included within this provision).

Existing Public Contracts Code Section 10295.1 prohibits state departments and state agencies from contracting with a vendor, contractor, or their affiliates (vendor) that does not possess a seller's permit or a certificate of registration for use tax. Under this section, these vendors are regarded as "retailers engaged in business in this state" and are required to collect the California sales or use tax on all their sales into the state in accordance with the Sales and Use Tax Law.

Under this provision, a state department or state agency is exempted from the provisions if the department or agency makes a written finding that the contract is necessary to meet a compelling state interest, as specified.

AMENDMENT

Among other things, this bill:

- 1. Amends RTC Section 7063 to increase the top 250 public list of tax delinquencies to the top 500.
- 2. Adds Section 494.5 to the BPC to require the BOE to provide the BOE's top 500 delinquencies list, including the name, social security number or taxpayer identification number and the last known address of the person identified on that list, to state governmental licensing entities.
- 3. Requires all state licensing entities to collect the social security number or the federal taxpayer identification number from all applicants for licenses with the entities in order to match the names on the BOE list.
- 4. Requires those entities to withhold issuance or renewal of the license of an applicant or to suspend the license of a licensee whose name appears on that list on or after July 1, 2012, after providing a 90-day advance notice to the licensees.

5. Requires the BOE to develop a release form that would be issued to the state governmental licensing entity for any applicant or licensee that complies with his or her delinquent tax obligation by either payment in full, entry into an installment payment arrangement, or who has a financial hardship, as determined by the BOE. The state governmental licensing entity would have five business days to process the release.

The bill defines the following terms:

- 1. "License" includes certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. "License" would include a driver's license, but exclude vehicle registration.
- 2. "Licensee" means an individual authorized by a license to drive a motor vehicle or authorized by license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.
- 3. "State governmental licensing entity" means any entity included in BPC Sections 101, 1000, or 19420, the Office of Attorney General, the Department of Insurance, the Department of Motor Vehicles (DMV), the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing a person to engage in a profession or occupation, including any certificate, business or occupational license, or permit or license issued by the DMV or the Department of the California Highway Patrol. Except for licenses under the jurisdiction of the California Supreme Court, the State Bar of California would have a discretionary suspension process, as would the Alcoholic Beverage Control Board.

In addition, the bill adds RTC Section 7057 to the Sales and Use Tax Law to authorize the BOE to disclose to state governmental licensing agencies identifying information of persons appearing on the list of 500.

The bill additionally adds RTC Sections 6835 and 6850 to the Sales and Use Tax Law to permit the BOE to enter into agreements with the IRS and other states that impose a sales and use tax to collect delinquent tax debts due them, and for them to collect BOE's delinquent sales and use tax debts, provided no employee displacement occurs.

The bill also adds Section 10295.4 to the Public Contracts Code to prohibit any state agency from entering into any contract for the acquisition of goods or services with a contractor whose name appears on either the BOE's or FTB's list of the largest tax delinquencies.

The provisions of the bill become effective January 1, 2012.

COMMENTS

1. Purpose. The bill is intended to allow the state to suspend the professional and/or driver's licenses of debtors on the FTB's and the BOE's top debtor's lists until they begin making payments on the taxes they owe. This bill also allows California to work with other states and the IRS to track down debtors who have moved funds out-of-state. According to the author, "Most Californians think it's important to pay their taxes on time, but there are still those who don't pay what they owe, yet still enjoy living lavish lifestyles. Delinquent debtors have avoided paying their fair share for long enough."

- 2. Key amendments. The August 18, 2011 amendments deleted the provisions that would have allowed state governmental licensing entities the *option* of suspending licenses, and that would have required the BOE or the FTB to suspend the license if the licensing entities opted not to suspend. These amendments require the licensing entities to suspend, or refuse to issue, reactivate, reinstate, or renew the licenses of the tax debtors for licensees appearing on the list on or after July 1, 2012. The June 6, 2011 amendments deleted the BOE-sponsored technical and housekeeping provisions related to the sales and use tax and special taxes and fees programs (now contained in AB 242 [Committee and Revenue and Taxation]), and added new provisions expanding the public list of delinquencies to the top 500, providing for the license suspension authority, prohibiting state agencies from contracting with a tax debtor on the top 500 list, and the contracting authority with the IRS and other states for the collection of tax debts.
- 3. BOE Members support expanding the top 250 list to the top 500. Since the BOE began posting the top 250 largest tax delinquencies in 2007, the BOE has received over \$5 million from 36 qualifying taxpayers. The list, updated quarterly, currently includes debtors with over \$400 million in tax liabilities. By increasing the list to the top 500 delinquencies, an additional \$105 million in sales and use tax liabilities would be added to the list, thereby increasing the potential for more taxpayers to come forward and resolve their outstanding tax liabilities. These 500 taxpayers have some of the largest tax debts due the state. The Members of the BOE recognize that if they continue ignoring their tax debts, the public should have a right to know who they are.

Senate Bill 86 (Committee on Budget and Fiscal Review) Chapter 14 Use Tax Look-up Table

Urgency measure, effective March 24, 2011. Among its provisions, amends Section 6452.1 of the Revenue and Taxation Code.

BILL SUMMARY

This bill enacts statutory changes related to the 2011 Budget Act to allow the use of a "look-up" table when eligible purchasers elect to report their use tax obligations on their state personal income or corporate or franchise income tax returns with respect to individual non-business purchases of less than \$1,000.

Sponsor: Committee on Budget and Fiscal Review

LAW PRIOR TO AMENDMENT

Under existing law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless the tax has been paid to the state, or the purchaser has a receipt for payment of the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax when the purchase of that tangible personal property is subject to tax.

The use tax is the same rate as the sales tax and generally is required to be remitted to the Board of Equalization (BOE) on or before the last day of the month following the quarterly period in which the purchase was made. A use tax liability typically occurs when a California consumer or business purchases tangible items for their own use from an out-of-state retailer that is not registered with the BOE to collect the California use tax. When a person is late in payment of his or her use tax obligations, the law imposes a 10 percent penalty, plus interest, currently at the rate of 7 percent per year.

As an alternative to reporting the use tax to the BOE, existing law allows eligible purchasers to report "qualified use tax" on their state personal income tax returns or their state corporation franchise or income tax returns (hereinafter referred to state income tax returns) for their taxable purchases. Eligible purchasers include those not required under the law to be registered with the BOE, and "qualified use tax" is defined to include the applicable state, local and district tax use tax imposed on the purchase. However, the law specifies that "qualified use tax" does not include the use tax imposed on specified mobile homes or commercial coaches, vehicles, vessels or aircraft, leases of tangible personal property, or cigarettes and tobacco products when the purchaser is registered as a cigarette and/or tobacco products consumer (collection of use tax on these transactions is already provided for under other programs).

Under the law, when an eligible purchaser timely reports his or her use tax obligations on a timely filed state income tax return, that payment of use tax is considered to be timely reported. However, the law does not preclude the BOE from making a determination for understatements of use tax against the purchaser, and the law specifies that any such

determination be issued in accordance with the Sales and Use Tax Law (generally, within three years from the due date of the state income tax return).

Further, current law provides a longer period – six years from the due date of the state income tax return - with respect to the time in which the BOE may issue a deficiency determination to an eligible purchaser that made a "gross understatement" of use tax. Section 6487.3 of the Sales and Use Tax Law defines "gross understatement" as a deficiency that is in excess of 25 percent of the amount of qualified use tax reported on a person's state income tax return. In the case of fraud, however, a deficiency determination may be issued to a qualified purchaser at any time.

AMENDMENT

This bill would, among other things, amend Revenue and Taxation Code Sections 6452.1 and 18510 to *allow* eligible purchasers to use a "look-up" table when they elect to report their use tax obligations on their state income returns with respect to individual non-business purchases of less than \$1,000.

Among its provisions, the bill would provide that "qualified use tax" means either of the following:

- 1) The state, local and district use tax that has not been paid to a retailer, as specified, or
- 2) For one or more single non-business purchases of individual items of tangible personal property with a sales price of less than \$1,000, the estimated amount of use tax due based on the person's adjusted gross income as reflected in the use tax table shown in the accompanying instructions of the state income tax return.

The bill would require the BOE to annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to the Franchise Tax Board (FTB) such amounts in the form of a use tax table as part of the accompanying instructions of the acceptable tax return.

The FTB would be required to revise the accompanying instructions for filing state income tax returns in a form and manner approved by the BOE.

The provisions of this bill became effective on March 24, 2011, and applies to taxable purchases made during the calendar year 2011 for which use tax was not paid to the BOE.

BACKGROUND

With the increasing numbers of businesses and consumers shopping on-line, in the early 2000's the BOE and the Legislature began focusing on additional needed program or statutory changes necessary to encourage voluntary compliance, and to provide a cost-effective outreach and education effort to a wider audience of purchasers.

The BOE began working with the FTB to incorporate an actual use tax *return* inside the state personal income tax booklets. For the first time since enactment of the use tax law of 1935, 3.6 million booklets containing a use tax return were mailed to California households for the tax year 2002. Yet, only 322 of the 3.6 million returns were actually filed, yielding a mere \$20,000 in use tax.

In an effort to further increase the public's awareness of the use tax and to encourage voluntary compliance in reporting the use tax, legislation enacted in 2003 (SB 1009, Ch. 718) required the FTB to revise the personal income tax and corporation franchise and

income tax returns to add a separate line for use tax reporting. This legislation also required revisions to the accompanying instructions in the state income tax booklets to include additional information about the use tax.

This legislation allows consumers and businesses that are not required to be registered with the BOE to report use tax on their state income tax returns for purchases made on or after January 1, 2003, and through December 31, 2009, as an alternative to reporting the tax to the BOE (businesses and certain consumers already registered with the BOE, however, may not use this alternative). SB 858 (Ch. 721, 2010) eliminated the sunset date. With this use tax line, in the first year (2004) California purchasers remitted a total of \$2.8 million as a direct result of that line. And, every year since, the amount remitted has increased. Last year, reported amounts on the use tax line amounted to \$10.2 million.

However, data obtained from FTB indicated that professionally-prepared returns accounted for about two-thirds of the returns filed with FTB, yet individual-prepared returns were about three times more likely to report use tax. Also, we heard from some tax practitioners that they did not necessarily believe they had a fiduciary duty to their clients to inquire about their clients' use tax obligations when preparing their state income tax returns, since payment of use tax on the state income tax return was merely a voluntary option. In response, in 2007, 2008 and 2009, the BOE sponsored legislation to not only eliminate the sunset date of these provisions, but to also *require* businesses and consumers who have failed to report use tax to the BOE on their taxable purchases for the preceding year to report the use tax on the income tax returns for the taxable year in which the liability for the qualified use tax was incurred. However, none of these attempts was successful. The first and third attempts (AB 969, 2007, Eng and AB 469, 2009, Eng) were vetoed by the Governor, and the second attempt (AB 1957, 2008, Eng) failed passage in the Senate Revenue and Taxation Committee.

An additional measure to address the over \$1 billion use tax gap was enacted during 2009's Fourth Extraordinary Session. ABx4 18 (Ch. 16) was enacted to impose a use tax registration and reporting obligation on larger businesses. Under this provision of law, businesses (except for those already registered to report sales or use tax) that have annual gross receipts from business operations of at least \$100,000 annually, are required to register with the BOE and file an annual use tax return and report their purchases subject to use tax. Since its enactment, this bill has resulted in additional collections of \$32 million in use tax, interest and penalties.

COMMENTS

- 1. **Purpose.** To make various changes to state laws regarding tax compliance and tax programs in order to implement provisions of the 2011-12 Budget agreement.
- 2. Issue. Although the use tax law has been in existence since 1935, many Californians are unaware that they incur a use tax liability when they make a purchase over the Internet or from a mail order catalog from an unregistered out-of-state retailer. Also, many Californians do not hold onto their receipts for their incidental purchases all year long to identify how much they spent, let alone whether they paid tax to the out-of-state retailer when they made the purchase. Providing California eligible purchasers a convenient way to satisfy their use tax liabilities by using a lookup table for their less costly purchases would enable them to comply with the law and improve overall use tax collections.

3. The optional use tax table would provide simplicity. A use tax table would make compliance with reporting use tax more convenient for taxpayers who know they have made untaxed purchases but have not kept receipts from those purchases. For individual purchases of less than \$1,000, the table would reflect the amount of use tax due based on the person's California adjusted gross income as shown in the instructions in the state income tax booklet. For individual purchases of \$1,000 or more, or for any business-related purchase, taxpayers would be required to report the actual amount of use tax due.

Of the 45 states with sales and use taxes, 38 also have an individual income tax. Of these 38 states, 23 provide for taxpayers to report use tax obligations on the individual income tax return, and another seven, provide information about the use tax in the individual income tax booklets. Nine of those states incorporate a use tax table, and according to a June 2010 report prepared by the Research Department of the Minnesota House of Representatives, *Use Tax Collection on Income Tax Returns in Other States*, many of those states that allow purchasers to report their use tax obligations using the tables have higher participation rates. Although those states collect less use tax per return than do states without lookup tables, the greater participation rate in those states overwhelms the effect of lower average use tax reporting per return.

4. What would the use tax table look like? The bill does not incorporate a specific use tax table that eligible purchasers could use to determine their use tax liability if they opt to do so, but requires the BOE to calculate the estimated amount of use tax due according to a person's adjusted gross income by July 30th each year.

The tables adopted by other states typically consist of two columns. Taxpayers find their income in the left column and read across to the right column to find their estimated use tax liability. There is some indication from the states first implementing lookup tables that their tables may have derived from amounts from federal tables used prior to 1987 for estimating sales tax liability of taxpayers claiming the itemized deduction for sales tax paid. The states that have subsequently added provisions for lookup tables appear to have modeled their tables on those used in other states. We expect that the table the BOE would establish would likely be similar to other states' tables, with appropriate adjustments relative to, among other things, California tax rates.

- 5. An eligible purchaser's correct use of the look-up table would prevent future liability. The bill would provide a safe harbor provision for those eligible purchasers who use the lookup table correctly, so that the BOE would be precluded from making any determination against those purchasers when the purchaser uses that table in accordance with the accompanying instructions.
- 6. **No new penalties would be imposed.** This measure would not impose any new penalties for a person's failure to pay the use tax on the FTB return or to the BOE. Current law already provides for a 10 percent penalty, as well as interest (and has done so since 1935), for a person's late payment of the use tax.

Senate Bill 617 (Calderon & Pavley) Chapter 496

State Agency Regulations – Standardized Impact Analysis
State Government – Financial Accountability

Effective January 1, 2012, but certain provisions operative November 1, 2013. Amends Sections 11346.2, 11346.3, 11346.5, 11346.9, 11347.3, 11349.1, 13401, 13402, 13403, 13404, 13405, 13406, and 13407 of, and adds Sections 11342.548, 11346.36, and 11349.1.5 to, the Government Code.

BILL SUMMARY

This bill:

- 1. Requires state agencies to prepare a standardized regulatory impact analysis, as specified, with regard to the adoption, amendment, or repeal of a major regulation, as defined, that is proposed on or after November 1, 2013. Require that the agency submit the analysis to the Department of Finance (DOF) for review and comments, as specified, which must be included with the notice of proposed action. (Government Code [GC] Section 11346.3, et al.)
- 2. Requires the DOF, in consultation with the Office of Administrative Law and other state agencies, to adopt regulations for conducting the standardized regulatory impact analyses, as specified, to be utilized by state agencies when promulgating major regulations. (GC Section 11346.36.)
- 3. Revises certain provisions of the Administrative Procedures Act with respect to state agencies proposing to adopt, amend, or repeal regulations. (GC Section 11346.2, et al.)
- 4. Requires state agencies to conduct effective, independent, and ongoing monitoring of their internal accounting and administrative controls. Require the Department of Finance to establish, and modify as necessary, a framework of recommended practices to guide state agencies in conducting active ongoing monitoring or processes for internal accounting and administrative controls. (GC Section 13401, et al.)

Sponsor: Senators Calderon and Pavley

LAW PRIOR TO AMENDMENT

Current law establishes detailed procedural requirements in the Administrative Procedure Act (APA) (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code) that must be followed by state agencies when they propose to adopt, amend, or repeal regulations.

The need for regulatory action is identified in a number of ways. Under current law, interested persons may identify the need for regulatory action by filing a petition with a state agency for the adoption, amendment, or repeal of a regulation. When a petition is filed, a state agency must acknowledge its receipt in writing and, within 30 days, either schedule the petition for a public hearing or issue a detailed written decision indicating why the petition was denied on its merits and submit the decision to the Office of

Administrative Law (OAL) for publication in the California Regulatory Notice Register. If an interested person disagrees with the reasons why an agency denied its petition, the interested person may also file a petition for reconsideration, which must be acknowledged and responded to in the same manner as the original petition.

Current law also allows state agencies to internally identify the need for regulatory action and gives state agencies that are considering adopting, amending, or repealing a regulation the discretion to informally consult with interested persons before considering whether to initiate the formal APA process for adopting, amending, or repealing a regulation. Current law only requires state agencies to consult with interested persons prior to initiating the formal APA process when a regulation involves complex proposals or numerous proposals.

If a state agency decides to begin the formal APA process to adopt, amend, or repeal a regulation, the APA provides for the public to actively participate in the agency's rulemaking. The APA requires a state agency to notify by mail every person who has filed a request for notice and also a representative number of businesses affected regarding the commencement of each regulatory action. The APA also requires a state agency to publish the same written notice in the California Regulatory Notice Register and to post the notice on its Website.

The written notice must:

- State the time, place, and nature of the regulatory action;
- Identify the state agency's authority for initiating the proposed regulatory action and refer to the specific provision of law being implemented, interpreted, or made specific by the proposed regulatory action;
- Contain an informative digest drafted in plain English describing existing law, the proposed regulatory action, the effect of the proposed regulatory action, and the broad objectives of the regulatory action;
- Contain a determination as to whether the proposed regulatory action imposes a
 mandate on local agencies or school districts and an estimate of the cost or
 savings to any state agency, the cost to any local agency or school district, other
 nondiscretionary cost or savings imposed on local agencies, and the cost or
 savings in federal funding to the state anticipated to result from the proposed
 regulatory action;
- Contain a determination and statement regarding whether the proposed regulatory action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with out-of-state businesses;
- Contain a description of all the cost impacts, known to the agency, that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action;
- Contain a statement regarding the results of the state agency's assessment of the proposed regulatory action's potential for adverse economic impact on California business enterprises and individuals, and its potential to impose unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements;

- Contain a determination and statement as to whether the proposed regulatory action will have a significant effect on housing costs;
- Include a statement that the state agency may not adopt the proposed regulatory
 action unless it finds that no reasonable alternative considered by the agency or
 that was identified and brought to the agency's attention would be more effective in
 carrying out the purpose for which the action is proposed or would be as effective
 and less burdensome to affected private persons than the proposed action;
- Include the contact information for two agency representatives to whom inquiries concerning the proposed regulatory action may be directed;
- State the date by which written comments must be received to present statements, arguments, or contentions in writing relating to the proposed regulatory action in order for them to be considered by the state agency before it adopts the proposed regulatory action;
- State that the state agency has prepared the text of the proposed regulatory action and an initial statement of reasons regarding the proposed regulatory action, which are available to the public;
- State that if a public hearing is not scheduled, a public hearing will be scheduled if requested no later than 15 days prior to the close of the written comment period;
- State that if the state agency makes sufficiently related changes to the proposed regulatory action, the full text of the changes will be available for public comment for at least 15 days prior to the adoption of the proposed regulatory action; and
- Explain how the public can obtain a copy of the final statement of reasons and provide the address for the state agency's Website.

In order to further assist the public, the APA requires state agencies to prepare an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. The initial statement of reasons is required to: (1) provide the state agency's specific purpose for the proposed regulatory action and the agency's rationale for determining that the proposed regulatory action is reasonably necessary to carryout such purpose; (2) identify each technical, theoretical, and empirical study, ,report, or similar document, if any, the state agency is relying upon in initiating the proposed regulatory action; and (3) a description of any reasonable alternatives that would lessen any adverse impact on small business and the state agency's reasons for rejecting those reasonable alternatives. However, state agencies are not required, in the initial statement of reasons, to artificially construct alternatives, describe unreasonable alternatives, or justify why the agency has not described alternatives.

If a state agency adopts a proposed regulatory action after considering all of the written comments submitted during the comment period and conducting a public hearing, then the state agency must prepare a final statement of reasons and an updated informative digest. The final statement of reasons must contain: (A) an update of all the information contained in the initial statement of reasons; (B) a determination as to whether the adopted regulatory action imposes a mandate on local agencies or school districts and, if so, whether the mandated costs are reimbursable; (C) a summary of each public comment objecting to or recommending a change to the proposed regulatory action and an explanation of the changes to the proposed regulatory action made in response to such comments or the state agency's reasons for not making any changes; and (D) a

determination with supporting information that no alternative considered by the agency would be more effective or would be as effective and less burdensome to affected private persons than the adopted action. The updated informative digest must provide an update to the information set forth in the informative digest included in the original notice. Then, the state agency must submit the entire rulemaking file to the OAL.

The OAL is charged with the orderly review of adopted regulations in order to reduce the number of administrative regulations and improve the quality of those regulations that are adopted. In its review, the OAL determines if the regulations comply with all six of the substantive standards prescribed by law, which are: necessity, authority, clarity, consistency, reference, and nonduplication.

Existing law, the Financial Integrity and State Manager's Accountability Act (FISMA) of 1983, stipulates that state agency and department heads are responsible for establishing and maintaining systems of internal controls within their organization. Under the FISMA, organization management is responsible for documenting the system, communicating the system requirements to employees, assuring that the system is functioning as designed and modifying the system as changes in conditions warrant. Chapter 69, Statutes 2006 (effective July 12, 2006) amended FISMA to require that heads of state agencies conduct an internal review and prepare a report on the adequacy of the system(s) of internal control on a biennial basis.

AMENDMENT

This bill revises certain provisions of the APA and requires state agencies to prepare a standardized regulatory impact analysis, as specified, with respect to the adoption, amendment, or repeal of a major regulation, as defined, that is proposed on or after November 1, 2013. Specifically, this bill:

- 1) Defines "major regulation" to mean any proposed adoption, amendment, or repeal of a regulation that will have an economic impact on California business enterprises and individuals in an amount exceeding \$50 million, as estimated by the state agency.
- 2) Requires state agencies proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, to prepare a standardized regulatory impact assessment as prescribed by the DOF, addressing all of the following:
 - The creation or elimination of jobs within the state.
 - The creation of new businesses or the elimination of existing businesses within the state.
 - The competitive advantages or disadvantages for businesses currently doing business within the state.
 - The increase or decrease of investment in the state.
 - The incentives for innovation in products, materials, or processes.
 - Monetization, to the extend practicable, of the benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.
- 3) Requires a state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, to submit the standardized regulatory impact assessment

- to the DOF upon completion. The DOF shall comment, within 30 days of receiving such assessment, on the extent to which the assessment adheres to the regulations adopted by the DOF, as specified.
- 4) Requires, prior to November 1, 2013, the DOF, in consultation with the OAL and other state agencies, to adopt regulations for conducting the standardized regulatory impact assessment. The regulations, at a minimum, shall assist the agencies in specifying the methodologies for the following:
 - Assessing and determining the benefits and costs of the proposed regulation, expressed in monetary terms to the extent feasible and appropriate. Assessing the value of nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, the increase in openness and transparency of business and government and other nonmonetary benefits consistent with the statutory policy or other provisions of law.
 - Comparing proposed regulatory alternatives with an established baseline so agencies can make analytical decisions for the adoption, amendment, or repeal of regulations necessary to determine that the proposed action is the most effective, or equally effective and less burdensome, alternative in carrying out the purpose for which the action is proposed, or the most cost-effective alternative to the economy and to affected private persons that would be equally effective in implementing the statutory policy or provision of law.
 - Determining the impact of a regulatory proposal on the state economy, businesses, and the public welfare.
 - Assessing the effects of a regulatory proposal on the General Fund and special funds of the state and affected local government agencies attributable to the proposed regulation.
 - Determining the cost of enforcement and compliance to the agency and to affected business enterprises and individuals.
 - Making the estimation if a regulation is to be deemed a major regulation.
- 5) Requires state agencies to provide the DOF and the OAL ready access to their records and full information and reasonable assistance in any matter requested for purposes of developing the regulations required by this bill.
- 6) Requires the OAL, on or before November 1, 2015, to submit to the Senate and Assembly Committees on Governmental Organization a report describing the extent to which submitted standardized regulatory impact analyses for proposed major regulations adhere to the regulations adopted by the DOF. The report shall include a discussion of agency adherence to the specified regulations as well as a comparison between various state agencies on the question of adherence. In addition to this report, the OAL may notify the Legislature of noncompliance by a state agency with the specified regulations.
- 7) Defines "noncompliance" to mean that the agency failed to complete the economic impact assessment or standardized regulatory impact analysis, or failed to include the assessment or analysis in the file of the rulemaking proceeding, as specified.

- 8) Requires state agencies, when submitting an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation, to include the following additional information:
 - The problem the agency intends to address.
 - Enumerate the benefits or goals provided in the authorizing statute. The benefits
 may include, to the extent applicable, nonmonetary benefits such as the protection
 of public health and safety, worker safety, or the environment, the prevention of
 discrimination, the promotion of fairness or social equity, and the increase in
 openness and transparency in business and government, among other things.
 - For a major regulation proposed on or after November 1, 2013, the standardized regulatory impact analysis (The applicable provision, subdivision (b)(2) of GC section 11346.2, references a date of January 1, 2013, which is a drafting error. According to the author's office, this drafting error will be fixed with clean-up legislation in 2012.)
- 9) Specifies that reasonable alternatives included in the initial statement of reasons shall include alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.
- 10) Requires state agencies proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, to prepare an economic impact analysis, as specified, that includes the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.
- 11) Specifies that analyses conducted pursuant to this bill are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner.
- 12) Specifies that regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices, not reassess statutory policy.
- 13) Provides that the baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that will effectively implement the statutory policy or other provisions of law.
- 14) Requires the notice of proposed adoption, amendment or repeal of a regulation submitted by the state agency to OAL to also include:
 - A policy statement overview of the benefits anticipated by the proposed adoption, amendment, or repeal or a regulation, including, to the extend applicable, nonmonetary benefits such as the protection of public health and safety, worker safety or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things.
 - An evaluation of whether a proposed regulation is inconsistent or incompatible with existing state regulations.

- A statement of the results of the economic impact assessment or the standardized regulatory impact analysis.
- A statement that the state agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified would be more cost-effective to affected private person and equally effective in implementing the statutory policy. For a major regulation proposed on or after November 1, 2013, the statement shall be based upon the standardized regulatory impact analysis of the proposed regulation, as specified.
- 15) Requires state agencies when submitting to the OAL a final statement of reasons, to also include the following:
 - A determination with supporting information that no alternative considered by the agency would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. For a major regulation proposed on or after November 1, 2013, the determination shall be based upon the standardized regulatory impact analysis, and upon the statement of benefits, as specified.
 - An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses including the standardized regulatory impact analysis for a major regulation, as well as the benefits of the proposed regulation.
- 16) Deletes certain provisions in GC Code Section 11346.3, which provide that "It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation." (This would change the purpose of Section 11346.3 and require state agencies to perform economic impact assessments as part of the requirements for the valid adoption of a regulatory action.)
- 17) Provides that state agency heads are responsible for the establishment and maintenance of effective, independent, and objective ongoing monitoring of the internal accounting and administrative controls within their agencies.
- 18) Requires state agency heads to implement systems and processes to ensure the independence and objectivity of the monitoring of internal accounting and administrative control as an ongoing activity, as specified.
- 19) Requires the DOF, in consultation with the State Auditor and the Controller, to establish, and modify as necessary, a framework of recommended practices to guide state agencies in conducting active ongoing monitoring of processes for internal accounting and administrative controls.

This bill becomes operative January 1, 2012, but certain provisions would be operative November 1, 2013.

BACKGROUND

Informal Rulemaking Process. The BOE is always looking for ways to improve its current regulations and trying to identify areas that may need more or less regulation. Therefore, the BOE values the public's opinion of its regulations and the BOE's Website has a dedicated page that the public can use to submit informal suggestions for regulatory and other changes, in addition to accepting formal rulemaking petitions authorized under the APA. Furthermore, the BOE posts the name of the BOE's Regulations Coordinator on its website, and invites the public to contact the BOE Regulations Coordinator with questions about any of the Board's existing regulations, pending regulatory actions, or the rulemaking process. The Board also encourages its staff to suggest ways to improve the BOE's current regulations and to identify areas that may need more or less regulation; and the BOE has established a Business Taxes Committee, a Property Tax Committee, a Customer Service and Administrative Efficiency Committee, and a Legislative Committee to formally identify and address the need for potential regulations or the need to repeal existing regulations and work with interested parties, when necessary.

Once BOE staff identifies a regulatory issue, staff prepares an issue paper for the BOE Members, which describes the regulatory issue and makes recommendations for addressing the issue through the adoption, amendment, or repeal of a regulation, or other alternative actions. Staff then submits the issue paper to the BOE Members for discussion during a public BOE meeting or committee meeting.

The BOE Members may respond to the issue paper by agreeing that regulatory action is necessary and authorizing BOE staff to either begin the formal rulemaking process or work with industry representatives, taxpayer groups, public officials, and other interested parties to draft regulatory language to be brought back to the BOE Members at a later The BOE Members may also direct staff to begin drafting specific regulatory language or assign work on a potential regulation to a specific BOE committee or the BOE's Legal Department depending upon its nature. Or, the BOE Members may simply disagree with the issue paper's conclusion that regulatory action is needed and direct staff to cease work. However, in most cases, the BOE Members assign a regulatory project to the BOE's Business Taxes Committee or Property Tax Committee and the assigned committee conducts one or more interested parties meeting with the public. When the committee is satisfied that all the issues have been addressed and the draft regulation is ready for BOE Member consideration, the committee recommends that the BOE Members authorize staff to publish the notice of action for a public hearing on the proposed regulatory action. The publication of the notice of action begins the formal rulemaking process set forth in the APA.

Formal Rulemaking Process. Approximately 60 days before the public hearing date, BOE sends to the OAL a copy of the *Notice of Action for the proposed regulatory action*. The notice includes the date, time, and place of the hearing (and all of the other information listed above), and explains how to contact the BOE's Regulations Coordinator to obtain the text of the proposed regulatory action.

At least 45 days before the public hearing, OAL publishes the notice in the *California Regulation Notice Register*, and invites the public to review and comment on the proposed regulatory action (comments may be made in writing before the BOE hearing date or in person at the hearing). At the same time, BOE sends the Notice of Action to

interested taxpayers, public officials, industry groups, and other interested parties who have requested notice and invites them to review and comment on the proposed regulatory action. The Notice of Action is also posted on the BOE's Website and made available by e-mail.

Comments received from interested parties are circulated to the BOE Members and BOE staff.

The BOE Members then hold the scheduled public hearing in accordance with both the APA and the Bagley-Keene Open Meeting Act. (The BOE always schedules and conducts a public hearing.) At the hearing, responsible BOE staff members respond to oral and written comments, and recommend whether or not the BOE Members should adopt the proposed regulatory action as originally proposed or whether the BOE Members should approve potential changes to the original proposed text of the regulatory action to address public comments.

If the BOE Members are satisfied with the text of the proposed regulatory action with or without nonsubstantial or solely grammatical changes, the BOE Members may formally vote to adopt the text with or without the changes, and direct staff to complete the rulemaking file and submit it to OAL for review and approval. If the BOE Members are not satisfied with the proposed text, they may direct staff to make further sufficiently related changes to the text, and make the changed text available for public comment for another 15 days. Subsequently, the BOE Members may adopt the text of the proposed regulatory action with the sufficiently related changes after considering any comments received during the additional 15-day comment period and direct staff to complete the rulemaking file and submit it to OAL for review and approval. And again, if the BOE Members are not satisfied with the proposed text, they may also direct staff to terminate the rulemaking project and/or start a new and different project.

Generally, the BOE submits its rulemaking files to the OAL within three weeks of BOE adoption; however, the OAL has 30 business days to review the rulemaking file.

COMMENTS

- Purpose. To provide a more thorough review of future regulations. According to Senator Calderon, this bill "will require agencies to review regulations with an estimated cost of more than \$50 million and mandates that the least burdensome, most cost-efficient method of implementation be adopted to lessen the burden on affected businesses."
- 2. BOE is currently very pro-active in seeking the input from interested parties. The BOE does not believe that it has any regulations that are burdensome to businesses in California. The BOE already works closely with all interested parties who wish to participate in its rulemaking activities, to ensure that it does not inadvertently adopt burdensome regulations.

The BOE actively seeks public input regarding its rulemaking activities and invites the public, not just taxpayers, to recommend proposed changes to BOE regulations in real-time via the BOE's website. The BOE also accepts formal rulemaking petitions and works with interested parties (industry representatives, taxpayer groups, public officials, and so forth) during the BOE's informal and formal rulemaking processes to draft effective regulations that address specific regulatory needs and are not broader than necessary.

- 3. This bill will make it more difficult to adopt, amend, or repeal a regulation. This bill adds to the APAs rulemaking requirements, and thereby delays necessary rulemaking, creates additional grounds for challenging the validity of state regulations, and potentially forces state agencies to incur additional costs. The bill converts the economic impact provisions in GC Section 11346.3 into mandatory requirements and adds the requirement that state agencies prepare economic impact analysis to those provisions, and thereby imposes additional work and related costs on state agencies and render regulations invalid whenever state agencies do not comply with section 11346.3 in adopting, amending, or repealing a regulation.
- 4. How many "major regulations" has BOE adopted, amended, or repealed to the OAL? The BOE maintains on its website rulemaking files for regulations it adopts, amends, or repeals for the years 2009, 2010, and 2011. The BOE's Disclosure Office maintains Rulemaking files for periods prior to 2009. In the time provided to prepare an analysis on this bill, staff reviewed the rulemaking files for the years 2009, 2010, and 2011, and did not find a "major regulation" adopted, amended, or repealed by the BOE.
- 5. **Related legislation.** Similar bills were introduced this session that would have made changes to the Administrative Procedures Act. None of these measures passed out of their house of origin.
 - SB 366 (Calderon and Pavley) would require each state agency to identify any regulations that are duplicative, overlapping, inconsistent, or out of date, and adopt, amend, or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistency, or out of date provisions. The bill requires state agencies to complete the specified actions within 180 days of the effective date of the bill.
 - SB 396 (Huff) would require each state agency to review each regulation adopted prior to January 1, 2011, and report to the Legislature on the regulations. The bill would also require, beginning January 2018, and at least every five years thereafter, require each agency to review each regulation that has been in effect for at least 20 years and submit a report to the Legislature on its findings associated with the review.
 - SB 400 (Dutton) would require that an economic impact assessment on a
 proposed regulation include additional criteria, and that agencies submit economic
 assessments for certain regulations to OAL for it to determine whether the
 assessment is based upon sound economic knowledge, methods, and practices.
 The bill would also require the OAL to reject a regulation that is not based on
 sound economic knowledge, methods, and practices.
 - SB 401 (Fuller) would specify that every regulation proposed by an agency after January 1, 2012, include a provision repealing the regulation in five years. This bill would prohibit the OAL from approving a proposed regulation unless it contains repeal provisions.
 - SB 591 (Gaines) would require, beginning July 1, 2012, each state agency to determine how many regulations it imposes and, beginning December 31, 2013, reduce the total number of regulations it has identified by 33 percent. The bill would also require, until December 31, 2021, that any new regulation proposed by an agency also eliminate another regulation.

- SB 688 (Wright) would require an economic impact statement for a proposed regulation t include a detailed estimate of the total actual costs of compliance for affected businesses and individuals. This bill would also require the adopting agency to notify specified committees of the Legislature if the estimated total costs of compliance exceed \$10 million, and that the regulation effective date is postponed in that event.
- AB 530 (Smyth) would require state agencies submitting regulation packages to identify all documents, including technical, theoretical, and empirical studies upon which the agency relied for rejecting each reasonable alternative to the proposed regulation. The bill would prohibit an agency from rejecting a reasonable alternative unless the statement of reasons includes at least one of these documents. The bill would also repeal a provision that authorizes the agency to avoid having to artificially construct alternatives, describe unreasonable alternatives, or justify why it did not describe alternatives.

Senate Bill 805 (Committee on Veterans Affairs) Chapter 246 Itinerant Veteran Vendors

Tax levy, effective September 6, 2011. Amends Section 6018.3 of the Revenue and Taxation Code.

BILL SUMMARY

This bill extends the January 1, 2012 sunset date to January 1, 2022, for the provision that classifies specified itinerant veteran vendors as consumers of tangible personal property sold for \$100 or less, as specified.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Under California's Sales and Use Tax Law (Part 1, Division 2 of the Revenue and Taxation Code, commencing with Section 6001), except where specifically exempted by statute, sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. The law does not contain a general exemption from sales or use tax for sales of tangible personal property by veterans.

Under the law, generally every retailer or any other person engaged in the business of selling tangible personal property of a kind the retail sale of which is taxable in this state is required to obtain a seller's permit and report the tax on his or her sales on a return prescribed by the BOE. However, California's Sales and Use Tax Law places a variety of retailers making taxable sales of tangible personal property under a "consumer" reporting status. Under a "consumer" reporting status, a qualifying retailer making otherwise taxable sales is not required to obtain a seller's permit or report tax on those sales. Rather, the qualifying retailer is only required to pay tax on his or her cost of the taxable components of the products he or she sells.

The "consumer" reporting status is intended primarily to minimize reporting burdens placed on smaller businesses and entities, while minimizing the associated revenue loss that can accompany a complete exemption from the tax. The law has extended this consumer reporting status to certain sales by such entities as nonprofit youth groups, Parent-Teacher Associations, nonprofit veterans' organizations, various charitable organizations, schools and school districts, optometrists, veterinarians, podiatrists, licensed hearing aid dispensers, and others with respect to certain products they sell.

With respect to certain veterans that sell goods, Section 6018.3 provides that, until January 1, 2012, a "qualified itinerant vendor" is a consumer of tangible personal property owned and sold by the qualified itinerant vendor, except alcoholic beverages and tangible personal property sold for more than \$100.

This provision specifies that a person is a "qualified itinerant vendor" when all of the following apply:

 The person was a member of the United States Armed Forces, who received an honorable discharge or a release from active duty under honorable conditions from service,

- 2) The person is unable to obtain a livelihood by manual labor due to a service-connected disability.
- 3) For the purposes of selling tangible personal property, the person is a sole proprietor with no employees, and
- 4) The person has no permanent place of business in this state.

The law also defines "permanent place of business" as any building or other permanently affixed structure, including a residence that is used in whole or in part for the purpose of making sales of, or taking orders and arranging for shipment of, tangible personal property, and excludes from that term, any building or other permanently affixed structure, including a residence, used for any of the following:

- 1) The storage of tangible personal property.
- 2) The cleaning or the storage of equipment or other property used in connection with the manufacture or sale of tangible personal property.

These provisions, however, do not apply caterers or vending machine operators.

AMENDMENT

This bill extends the January 1, 2012 sunset date in Revenue and Taxation Code Section 6018.3 to January 1, 2022 so that qualified itinerant veteran vendors would remain consumers for an additional 10 years with respect to tangible personal property they sell for \$100 or less under the specified conditions.

As a tax levy, the provisions of the bill became effective September 6, 2011.

BACKGROUND

Revenue and Taxation Code Section 6018.3 was added during the 2009 Legislative Session (Stats. 2009, Ch. 621, Committee on Veteran Affairs) and became operative on April 1, 2009. This bill had the unanimous support of all Members of the BOE, and passed the Legislature unanimously.

For several years prior to enactment of SB 809, several veterans had argued that state law which exempts honorably discharged veterans from locally-imposed license taxes and fees also exempts itinerant veterans from any tax imposed by the state. More specifically, they argued that Business and Professions Code Section 16102 exempts honorably discharged veterans from application of the sales and use tax on sales of food products and carbonated beverages from a mobile food cart. This section reads in its entirety as follows:

"Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefore."

This provision was enacted in 1893 pursuant to AB 74, and was described in the chaptered bill as "An act to establish a uniform system of county and township government." In its present form (which has remained unchanged since 1941), Section

16102 falls within Chapter 2 of Part 1 of Division 7 of the Business and Professions Code, entitled *Licensing by Counties*.

In 1999, the BOE held that this Business Code provision does not apply to sales or use taxes imposed pursuant to California's Sales and Use Tax Law. The BOE's decision was subsequently challenged unsuccessfully in Los Angeles Superior Court (No. BC 210257). The BOE's decision is also consistent with that of the Office of Legislative Counsel in its two opinions specific to this issue rendered in 1998 and 2006, concluding that the exemption provided in this Business and Professions Code section only applies to county license tax and license fees, and does not apply to sales and use taxes.

COMMENTS

- 1. Purpose. To enable qualifying veterans to retain their consumer status with respect to their itinerant sales. This provision represents one small step towards recognizing our disabled veterans who have already made, or are making the transition from military to civilian employment, and it should not be allowed to sunset. This provision assists in this transition by simplifying reporting requirements under the Sales and Use Tax Law for those qualifying disabled veterans that are honorably discharged or released from service that desire to engage in the business of selling goods they own. For qualifying disabled veterans without employees or a permanent place of business, this provision eliminates the need for them to hold a seller's permit, file sales tax returns, and remit sales tax on their sales.
- 2. Amendments. The June 20, 2011 amendment incorporated a 10-year sunset date. This amendment was adopted by the Assembly Revenue and Taxation Committee. The Committee analysis of the introduced version of this bill (which would have deleted the sunset date entirely) notes, "While such a deletion would offer QIVs [qualified itinerant veterans] a degree of certainty regarding their future tax treatment, this Committee has a longstanding policy of including sunset dates for tax expenditure programs to ensure effective legislative oversight. As such, the Committee may wish to consider extending the current sunset date for an appropriate period instead of deleting the sunset date outright."
- 3. What are a qualifying veteran's tax obligations? Under these provisions, a qualifying itinerant disabled veteran making taxable sales of goods, wares or merchandise owned by him or her is not required to report sales tax on his or her sales of these items. Instead, the veteran is only required to pay tax on his or her cost of any taxable purchases of the items or the component parts of the items he or she sells. For example, when a veteran is selling his or her own paintings, the veteran would pay tax on his or her purchase of the paint, brushes, and canvas used to make the painting. The sale of the painting, itself, would thereafter be exempt from tax. Under this provision, if the qualifying veteran makes no sales of alcoholic beverages or sales that exceed the \$100 cap, the veteran is not required to obtain a seller's permit, file sales tax returns, or remit sales tax on his or her sales of the goods he or she sells. This essentially eliminates the sales tax compliance costs and associated recordkeeping that can be unduly burdensome for disabled veterans.
- **4. Enactment of this bill would simplify matters.** These provisions apply to a small group of itinerant disabled veteran vendors, and if the sunset date were not extended,

the BOE would have to re-register these individuals, reand ensure that they are complying with the law.	re-issue a seller's permit to them

TABLE OF SECTIONS AFFECTED

Sections		BILL AND CHAPTER NUMBER		SUBJECT		
Revenue & Taxation Code						
§6018.3	Amend	SB 805	Ch. 246	Itinerant veteran vendors		
§6070.5	Add	AB 1307	Ch. 734	Refusal of seller's permit		
§6051.8	Repeal Add	AB 105	Ch. 6	Diesel fuel surtax		
§6055	Amend	AB 242	Ch. 727	Worthless accounts		
§6201.8	Repeal Add	AB 105	Ch. 6	Diesel fuel use tax surtax		
§6203	Repeal Add	AB 155	Ch. 313	Collection by retailer – use tax		
§6203.5	Amend	AB 242	Ch. 727	Worthless accounts		
§6248	Amend	AB 242	Ch. 727	Vessels brought into California for repairs		
§6353	Amend	AB 242	Ch. 727	Gas, electricity, and water		
§6356.5	Amend	AB 242	Ch. 727	Farm equipment and machinery		
§6356.6	Amend	AB 242	Ch. 727	Timber harvesting equipment		
§6357.3	Repeal Add	AB 105	Ch. 6	Diesel fuel exemption from rate increase		
§6357.7	Repeal Add	AB 105	Ch. 6	Motor vehicle fuel		
§6358.5	Amend	AB 242	Ch. 727	Racehorse breeding stock		
§6363.3	Amend	AB 289	Ch. 289	Nonprofit thrift store		
§6452.1	Amend	SB 86	Ch. 14	Use Tax look-up table		
§6480.1	Repeal Add	AB 105	Ch. 6	Definition: prepaid sales tax		
Article 9 (commencing with §6850)	Add	AB 1424	Ch. 455	Collection of tax debts due to the Internal Revenue Service or other states		
§7057	Add	AB 1424	Ch. 455	Registration of employees		
§7057.5	Add	AB 1424	Ch. 455	Information disclosure		
§7063	Amend	AB 1424	Ch. 455	Public disclosure of tax delinquencies		

TABLE OF SECTIONS AFFECTED CONTINUED

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT	
Revenue & Taxation Code (continued)					
§7096	Amend	AB 242	Ch. 727	Claim for reimbursement	
§7101	Amend	AB 242	Ch. 727	Fiscal Recovery Fund	
§7157	Add	AB 242	Ch. 727	Orders of restitution	
§7285	Amend	AB 686	Ch. 176	Counties authority to levy tax for general purpose	
§7285.5	Amend	AB 686	Ch. 176	Counties authority to levy tax for specific purpose	
§7285.9	Amend	AB 686	Ch. 176	Cities authority to levy tax: general purpose	
§7285.91	Amend	AB 686	Ch. 176	Cities authority to levy tax: specific purpose	
Chapter 3.7 (commencing with §7291)	Add Repeal	AB 1086	Ch. 327	Local government finance in the County of Alameda	
Business and Professions Code					
§494.5	Adds	AB 1424	Ch. 455	Suspension of driver's license	
§7145.5	Amend	AB 1307	Ch. 734	Suspense of contractor's license	
Civil Code					
§ 1793.2	Amend	AB 242	Ch. 727	Lemon Law	
§ 1793.25	Amend	AB 242	Ch. 727	Lemon Law	
Government Code					
§11342.548	Add	SB 617	Ch. 496	Definition: "Major regulation"	
§11346.2	Amend	SB 617	Ch. 496	Availability to public of copy of proposed regulation; Initial statement of reasons for proposed action	
§11346.3	Amend	SB 617	Ch. 496	Assessment of potential for adverse economic impact on businesses and individuals	
§11346.5	Amend	SB 617	Ch. 496	Contents of notice of proposed adoption, amendment, or repeal of regulation	
§11346.9	Amend	SB 617	Ch. 496	Final statements of reasons for proposing adoption or amendment of regulation; Informative digest	

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTIONS		BILL AND CHAPTER NUMBER			SUBJECT
Government Code (continued)					
§11346.36	Add	SB 617	Ch. 496	Ν	lotice of proposed action
§11349.1.5	Add	SB 617	Ch. 496	S	tandardized regulatory impact analyses
§13401	Amend	SB 617	Ch. 496	L	egislative findings; Declarations
§13402	Amend	SB 617	Ch. 496	е	Responsibilities of agency heads for stablishment of internal accounting stems
§13403	Amend	SB 617	Ch. 496		lements of internal accounting and dministrative control systems
§13404	Amend	SB 617	Ch. 496	D	efinitions
§13405	Amend	SB 617	Ch. 496	R	Reports and Evaluations
§13406	Amend	SB 617	Ch. 496	ir	Provision of false or misleading information connection with evaluations and reports; nvestigations
§13407	Amend	SB 617	Ch. 496	U	Ise of existing resources
Public Contract Code					
§10295.4	Add	AB 1424	Ch. 455	P	Prohibit State Contracts with Debtors on List
Unemployment Insurance Code					
§1088.5	Amend	AB 1307	Ch. 734	Ν	lew Employee Registry Data