

Amend Health and Safety Code Section 25299.43 and Revenue and Taxation Code Section 55001 to make non-substantive, technical reference corrections, and amend Revenue and Taxation Code Section 55332.5 to incorporate language inadvertently omitted. (Technical)

Source: Legislative and Research Division

**Correct reference to the imposition of the underground
storage tank maintenance fee within the Health and Safety Code**
Health and Safety Code Section 25299.43

Existing Law. Under current Health and Safety Code Section 25299.41 in Article 5 (commencing with Section 25299.40) of Chapter 6.75 of Division 20, an owner of an underground storage tank is required to pay a storage fee of six mills (\$0.006) for each gallon of petroleum (including, but not limited to, gasoline and diesel fuel) placed in an underground storage tank which he or she owns. Section 25299.43 imposes an additional fee of eight mills (\$0.008), for a total underground storage fee of fourteen mills (\$0.014) per gallon of petroleum placed in the tank. Section 25299.43 also provides in subdivision (g) that the additional fee imposed shall be paid to the BOE under the Underground Storage Tank Maintenance Fee Law “in the same manner as, and consistent with, the fees imposed under Section 24299.41.”

Background. The Underground Storage Tank Cleanup Fund was originally established in 1989 by Senate Bill 299 (Keene). Subsequent legislation affected fees, fund accounts, repeal dates, and various other provisions, including Senate Bill 1764 (Stats. 1994, Ch. 1191) that added Section 25299.43 to the Health and Safety Code. As added, Section 25299.43 read, in part:

The fee imposed pursuant to this section shall be paid to the State Board of Equalization pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed pursuant to Section 24299.41.

In 2004, Assembly Bill 1906 (Ch. 774), among other things, amended Section 25299.43 to temporarily increase the underground storage tank maintenance fee. Amendments to Section 25299.43 also deleted former language from subdivision (a) into the current subdivision (g). Both the former subdivision (a) and current subdivision (g) contain a typographical error referencing Section 24299.41 rather than Section 25299.41 as imposing the underground storage tank maintenance fee.

This Proposal. This proposal would amend Health and Safety Code Section 25299.43 to correctly reference Section 25299.41 rather than 24299.41 as the section imposing the underground storage tank maintenance fee.

Correct reference in title to the Fee Collection Procedures Law
Revenue and Taxation Code Section 55001

Existing Law. The Fee Collection Procedures Law was added to the Revenue and Taxation Code as **Part 30** (commencing with Section 55001) of Division 2. Section 55001 provides that this “**chapter** shall be known and may be cited as the Fee Collection Procedures Law.” As such, Section 55001 incorrectly cites a single chapter of the Fee Collection Procedures Law rather than referencing the law in its entirety as Part 30.

Background. The Fee Collection Procedures Law was added by Senate Bill 1920 (Stats. 1992, Ch. 407). The Fee Collection Procedures Law contains “generic” administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

This Proposal. This proposal would amend Section 55001 to make a non-substantive reference correction to the Fee Collection Procedures Law, from “chapter” to “part.”

Incorporate missing language from the
Fee Collection Procedures Law relating to offers in compromise
Revenue and Taxation Code Section 55332.5

Existing Law. Under the existing Sales and Use Tax Law (7093.6), Use Fuel Tax Law (9278), Cigarette and Tobacco Products Tax Law (30459.15), Alcoholic Beverage Tax Law (32471.5), Emergency Telephone Users Surcharge Act (41171.5), Oil Spill Response, Prevention, and Administration Fees Law (46628), Underground Storage Tank Maintenance Fee Law (50156.18), Fee Collection Procedures Law (55332.5), and Diesel Fuel Tax Law (60637), the BOE is allowed to compromise a final tax liability if certain requirements are met.

Background. In 2008, [Assembly Bill 2047](#) (Ch. 222, Stats. 2008) amended the BOE’s offers in compromise statutes to allow the BOE to compromise, until January 1, 2013, certain final tax, fee or surcharge (tax) liabilities of (1) businesses that are not discontinued or transferred if the final tax liability arises from transactions in which the taxpayer did not receive sales tax reimbursement or use tax, (2) persons liable as successors, and (3) consumers who incurred a use tax liability. It appears there were inadvertent errors that included, in part, paragraph (2) of subdivision (p) of Section 55332.5 that omitted the words “or financial condition of the feepayer or other person liable with respect to the fee.” These omissions were corrected in last year’s [Senate Bill 1548](#) (Ch. 285, Wyland); however, the omission in Section 55332.5 was inadvertently

overlooked.

This Proposal. This would amend Section 55332.5, as amended by Section 593 of Chapter 15 of the Statutes of 2001, to simply make a technical and non-substantive correction to incorporate missing language.

Section 25299.43 of the Health and Safety Code is amended to read:

25299.43. (a) To implement the changes to this chapter made by Chapter 1191 of the Statutes of 1994, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank that the person owns, in addition to the fee required by Section 25299.41.

(b) On and after January 1, 1996, the storage fee imposed under subdivision (a) shall be increased by two mills (\$0.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee increased under subdivision (b) shall be increased by an additional three mills (\$0.003) for each gallon of petroleum placed in an underground storage tank.

(d) On and after January 1, 2005, the storage fee increased under subdivision © shall be increased by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

(e) On and after January 1, 2006, the storage fee increased under subdivision (d) shall be increased by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

(f) On and after January 1, 2010, the storage fee increased under subdivision (e) shall be increased by an additional six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank. The increase provided for in this subdivision shall be effective until January 1, 2014, at which time, the fee shall revert back to the fee pursuant to subdivision (e).

(g) The fee imposed under this section shall be paid to the State Board of Equalization under Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed under Section ~~24299.41~~ 25299.41.

(h) The State Board of Equalization shall amend the regulations adopted under Section 25299.41 to carry out this section.

Section 55001 of the Revenue and Taxation Code is amended to read:

55001. This ~~chapter~~ part shall be known and may be cited as the Fee Collection Procedures Law.

Section 55332.5 of the Revenue and Taxation Code, as amended by Section 16 of Chapter 285 of the Statutes of 2012, is amended to read:

55332.5. (a)(1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 30 (commencing with Section 55001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g)(1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or

evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the feepayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(i) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the feepayer.
- (2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 55381. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

(k) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that a person did any of the following acts regarding the making of the offer:

(A) Concealed from the board property belonging to the estate of a feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(l) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from an officer or employee of this state property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(m) For purposes of this section, "person" means the feepayer, a member of the feepayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the feepayer, or another corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(n) This section shall become operative on January 1, 2018.