

**Amend Sections 7154, 8404, 9355, 30481, 32556, 40188, 41143.8, 43607, 46706, 55365, and 60708 of the Revenue and Taxation Code to extend the time in which the prosecution for violating the penal provisions may be instituted, consistent with FTB laws.**

**Source: Investigations Division**

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

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

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

. . .

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

. . .”

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

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

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

**Background.** Revenue and Taxation Code Section 7154 (Sales and Use Tax Law) was amended in 1992 to five years instead of three years because of a court case

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

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

This proposal would extend the current three years statute to six years for filing a criminal prosecution in a state court and conform these laws to the Federal Law and state income tax laws and be more in line with California Penal Code statute of limitations for felonies that involve fraud. This would allow the state sufficient time to file criminal fraud charges in state court when the AUSA declines to file charges in federal court and prevent criminal fraud cases from being treated solely as civil liabilities.

*Section 7154 of the Sales and Use Tax Law is amended to read:*

7154. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~five~~ six years after the commission of the offense, ~~or within two~~ four years after the violation is discovered, whichever is later.

*Section 8404 of the Motor Vehicle Fuel Tax Law is amended to read:*

8404. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~ six years after the commission of the offense, ~~or within two~~ four years after the violation is discovered, whichever is later.

*Section 9355 of the Use Fuel Tax Law is amended to read:*

9355. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~six years after the commission of the offense, ~~or within two~~  
~~four~~ years after the violation is discovered, whichever is later.

*Section 30481 of the Cigarette and Tobacco Products Tax Law is amended to read:*

30481. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~six years after commission of the offense ~~or within two~~  
~~four~~ years after the violation is discovered, whichever is later.

*Section 32556 of the Alcohol Beverage Tax Law is amended to read:*

32556. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~six years after the commission of the offense, ~~or within~~  
~~two~~ four years after the violation is discovered, whichever is later.

*Section 40188 of the Energy Resources Surcharge Law is amended to read:*

40188. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~six years after commission of the offense ~~or within two~~  
~~four~~ years after the violation is discovered, whichever is later.

*Section 41143.8 of the Emergency Telephone Users Surcharge Law is amended to read:*

41143.8. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~six years after commission of the offense ~~or within two~~  
~~four~~ years after the violation is discovered, whichever is later.

*Section 43607 of the Hazardous Substances Tax Law is amended to read:*

43607. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~six years after the commission of the offense.

*Section 45956 of the Integrated Waste Management Fee Law is amended to read:*

45956. Any prosecution for violation of any provision of this part shall be instituted within ~~three~~ six years after the commission of the offense, ~~or within four years after~~  
~~the violation is discovered, whichever is later.~~

*Section 46706 of the Oil Spill Response, Prevention, and Administration Fees Law is amended to read:*

46706. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~six years after the commission of the offense.

*Section 55365 of the Fee Collection Procedures Law is amended to read:*

55365. Any prosecution for violation of any provision of this part shall be instituted within ~~three~~six years after the commission of the offense.

*Section 60708 of the Diesel Fuel Tax Law is amended to read:*

60708. Any prosecution for violation of any of the penal provisions of this part shall be instituted within ~~three~~six years after the commission of the offense, ~~or within two~~four years after the violation is discovered, ~~whichever is later.~~