

Add Sections 7157, 8407, 30482, 32558, 40189, 41143.9, 43608, 45957, 55366, and 60710 to the Revenue and Taxation Code to allow recoupment for costs incurred in criminal investigations.

Source: Investigations Division

The State of California's costs to conduct various criminal investigations result in thousands of dollars being expended annually. Currently, statutory authority does not exist for the State to seek recoupment of the costs that are incurred during criminal investigations conducted by the Board of Equalization (Board).

Other tax agencies (Franchise Tax Board and Employment Development Division) currently have such recoupment authority. This proposal would allow the State to also recoup some of the investigative costs for those criminal investigations conducted by the Board. All reimbursed monies would be deposited into the appropriate State funds.

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

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

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

In order to conform with authority already granted to other California tax agencies, and to make the intent clear and concise to avoid various interpretations by the courts, this proposal would amend various Revenue and Taxation Code Sections to allow the Board to seek recoupment of costs incurred during criminal investigations.

Sections 7157 is added to the Sales and Use Tax Law to read:

7157. Any person convicted of a misdemeanor under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the Retail Sales Tax Fund.

Sections 8407 is added to the Motor Vehicle Fuel Tax Law to read:

8407. Any person convicted of a misdemeanor under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the Motor Vehicle Fuel Account.

Sections 30482 is added to the Cigarette and Tobacco Products Tax Law to read:

30482. Any person convicted of a misdemeanor or felony under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the Cigarette Tax Fund.

Sections 32558 is added to the Alcoholic Beverages Tax Law to read:

32558. Any person convicted of a misdemeanor or felony under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the Alcohol Beverage Control Fund.

Sections 40189 is added to the Energy Resources Surcharge Law to read:

40189. Any person convicted of a misdemeanor or felony under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the Energy Resources Surcharge Fund.

Sections 41143.9 is added to the Emergency Telephone Users Surcharge Law to read:

41143.9. Any person convicted of a misdemeanor or felony under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the State Emergency Telephone Number Account in the General Fund.

Sections 43608 is added to the Hazardous Substances Tax Law to read:

43608. Any person convicted of a misdemeanor or felony under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the Hazardous Waste Control Account.

Sections 45957 is added to the Integrated Waste Management Fee Law to read:

45957. Any person convicted of a misdemeanor or felony under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the Integrated Waste Management Account in the Integrated Waste Management Fund.

Sections 55366 is added to the Fee Collection Procedures Law to read:

55366. Any person convicted of a misdemeanor or felony under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the Motor Vehicle Fuel Account.

Sections 60710 is added to the Diesel Fuel Tax Law to read:

60710. Any person convicted of a misdemeanor or felony under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the Board under this part shall be transmitted to the State Treasurer who shall deposit it into the State Treasury and credit it to the Motor Vehicle Fuel Account.