DRAFT

STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**05/04/06**	Bill No:	**AB 3076**
Tax:	**Sales and Use Tax** **Special Taxes and Fees**	Author:	**Assembly Revenue and Taxation Committee**
Related Bills:			

BILL SUMMARY

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

- Amend Section 6360.1 of the Sales and Use Tax Law, relative to the military lapel pin exemption, to incorporate the correct reference to the United States Code. (Technical)
- Amend Section 8106 of the Motor Vehicle Fuel Tax Law to clarify that a supplier is allowed to take a credit, in lieu of a refund of the tax, on a supplier's tax return for tax-paid motor vehicle fuel removed, entered, or sold by the supplier, when the supplier is otherwise entitled to claim a refund, and repeal Sections 8106.1, 8106.5, and 8106.8 so that all of a supplier's credits in lieu of refund are provided for in Section 8106.
- Amend Sections 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332 and 60636 of the Revenue and Taxation Code to allow small case authority approval by the executive director and chief counsel, jointly, of special taxes and fees settlement reductions not exceeding $5,000.[1]
- Add Sections 9152.2, 30178.3, 32402.2, 40112.2, 41101.2, 43452.2, 45652.2, 46502.2, 50140.2, 55222.2, and 60522.2 to the Revenue and Taxation Code to allow the Board to grant refunds of overpayment of tax, fee, interest, or penalty collected by the Board by means of levy, through liens, or by other enforcement procedures if the claim is filed within three years of the date of overpayment.
- Add Sections 30459.15 (Cigarette and Tobacco Products Tax Law), 32471.5 (Alcoholic Beverage Tax Law), 38800 (Timber Yield Tax Law), 40211.5 (Energy Resources Surcharge Law), 41171.5 (Emergency Telephone Users Surcharge Law), 43522.5 (Hazardous Substances Tax Law), 45867.5 (Integrated Waste Management Fee Law), 46628 (Oil Spill Response, Prevention, and Administration Fees Law), 55332.5 (Fee Collection Procedures Law), and 60637 (Diesel Fuel Tax Law) to the Revenue and Taxation Code to allow the Board to accept offers in compromise under specified Special Taxes and Fees programs.
- Amend Section 60063 of the Diesel Fuel Tax Law to correct erroneous reference sand a typographical error. (Technical)

[1] Additional amendments to these sections, recommended by the Office of the Attorney General, would provide indeterminate sentencing for felony violations of the proposed offers in compromise provisions (instead of a maximum term in prison of three years).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

- Amend Section 60101 of the Diesel Fuel Tax Law to delete intercity bus operator as a person allowed to use dyed diesel fuel on the highway and repeal Sections 60045 and 60046 to delete the definitions of intercity bus and intercity bus operator. (Technical)
- Amend Section 60201.3 of the Diesel Fuel Tax Law to establish a three-year time period for the mailing of a notice of determination to a customer of a supplier who failed to pay for diesel fuel purchased and for which the supplier has been allowed a credit for the diesel fuel tax due to the bad debt. (Housekeeping)
- Amend Sections 60604 and 60606 of the Diesel Fuel Tax Law to correct a spelling error. (Technical)

Summary of Amendments

The amendments to this bill since the previous analysis make nonsubstantive clarifying changes, and remove the limitation on maximum prison sentencing that may be imposed upon a person convicted of a felony for violating the criminal provisions applicable to offers in compromise by willfully concealing property, spoiling, falsifying, or withholding records, or making false statements, as specified. Instead, any prison sentencing would be at the discretion of the court.

ANALYSIS

Buddy Poppies and the United States Code

Revenue and Taxation Code Section 6360.1

Current Law

Under existing law, Revenue and Taxation Code Section 6360.1 provides an exemption from the sales and use tax for the gross receipts from the sale in this state, or the storage, use or other consumption in this state, of a “Buddy Poppy” or any other symbolic, impermanent lapel pin that memorializes United States military veterans killed in foreign wars of the United States. Under existing law, the exemption applies to sales made by, or the storage, use or other consumption by, “any corporation established by the Congress of the United States pursuant to Chapter 7A (commencing with Section 111) of Title 36 of the United States Code, or any of that corporation’s subordinate state or territorial subdivisions, local chapters, or auxiliaries.”

Section 2 of the bill that added Section 6360.1, Senate Bill 3 (Ch. 316, Stats. 1995), indicates that the Legislature intended for the cross-reference to Chapter 7A of Title 36 of the United States Code to refer to Veterans of Foreign Wars (VFW) of the United States.

Proposed Law

This bill would amend Section 6360.1 to incorporate the correct reference in the United States Code that provides for the establishment of the VFW.

Comment

Under legislation adopted in 1998, the provisions authorizating for the establishment of the VFW were moved from Chapter 7A of Title 36 of the United States Code (commencing with Section 111) to Chapter 2301 of Title 35 of the United States Code (commencing with Section 230101). This bill would therefore substitute the correct reference to the United States Code in Section 6360.1.

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Authority to approve reductions in special taxes and fees settlement matters not exceeding $5,000

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

Current Law

Existing law permits the Board of Equalization (Board) to settle a tax dispute without recourse to litigation consistent with a reasonable evaluation of the costs and risks associated with litigation of the matter. This process is intended to avoid the costs and uncertainty of future litigation for both the state and the taxpayer and to accelerate resolution of disputed liabilities and collection of revenue. The Board's settlement program is available to taxpayers or feepayers who have a petition for redetermination, late protest, or claim for refund pending in connection with a tax or fee liability administered by the Board. Settlement proposals may be considered for civil tax or fee matters in dispute under the following tax and fee programs: Sales and Use Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Childhood Lead Poisoning Prevention Fee, Occupational Lead Poisoning Prevention Fee, Integrated Waste Management Fee Law, Oil Spill Response, Prevention Fee and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law (Tire Recycling Fee, Marine Invasive Species Fee, License and Administration Fee for Manufacturers and Importers, Covered Electronic Waste Recycling Fee) and Diesel Fuel Tax Law.

Under existing law, the Board's Executive Director or Chief Counsel may recommend to the Board, itself, a settlement of any civil tax matter in dispute. Any such recommendation must first be submitted to the Attorney General, who must advise the Board within 30 days whether the proposed settlement is reasonable from an overall perspective. The members of the Board must then approve or deny the settlement recommendation within 45 days of the submission of the recommendation to the Board.

In smaller reduction settlements, the Board's Executive Director and Chief Counsel, jointly, may approve civil tax dispute settlements involving a reduction in sales and use tax and penalties of $5,000 or less *without* review by the Attorney General. When such small case settlement reductions are approved, the Board Members must be notified.

Proposed Law

This bill would add Sections 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332 and 60636 to the Revenue and Taxation Code to allow the Board's Executive Director and Chief Counsel, jointly, to approve special taxes and fees settlement reductions of $5,000 or less, under the specified special taxes and fees laws, consistent with the Sales and Use Tax Law.

Background

The settlement authority for the sales and use tax program was originally authorized by Assembly Bill 3225 (Ch. 708, Stats. 1992) and was extended indefinitely by Assembly Bill 3308 (Ch. 138, Stats. 1994). These measures added the general settlement provisions in law that allow for settlements of sales and use tax matters with review by the Attorney General. In 1995, SB 722 (Ch. 497) was enacted to provide similar authority under the Board's special taxes and fees laws. Additional settlement authority was granted to the Board's sales and use tax program with the enactment of Assembly Bill 2894 (Ch. 723, Stats. 2000) which authorized the Executive Director and Chief Counsel of the Board with authority to jointly approve settlements involving a reduction in sales and use tax and penalty of $5,000 or less without Attorney General review. However, this measure did not provide similar joint approval authority for settlements involving special taxes and fees.

Comment

The purpose of this provision is to streamline the Board's program for settling smaller cases involving special taxes and fees. Cases involving smaller dollar reductions also tend to involve less complicated issues that may handled on an expedited basis. If this provision were to become law, staff would be able to settle these smaller cases more quickly and efficiently. Taxpayers could have their cases resolved approximately 6 to 8 weeks sooner and revenue collection on these cases would be accelerated by 6 to 8 weeks. In addition, staff time currently devoted to preparing the detailed recommendations to be reviewed by the Attorney General on these smaller cases may be more productively spent in processing the more significant settlement cases.

Supplier may take credit for tax-paid motor vehicle fuel
Revenue and Taxation Code Section 8106

Current Law

Under existing law, Revenue and Taxation Code Section 8101 allows a supplier to claim a refund of the tax on motor vehicle fuel when the supplier uses the fuel off highway, exports the fuel, sells the fuel to the armed forces of the United States, sells the fuel to a foreign consulate officer or employee, or delivers tax-paid fuel to a terminal and removes the fuel from the terminal. A supplier entitled to a refund under Section 8101 may take a credit *in lieu of a refund* on his or her tax return, except when fuel is sold to the armed forces of the United States.

Proposed Law

This bill would amend Section 8106 of the Motor Vehicle Fuel Tax Law to clarify that a supplier may take a credit in lieu of a refund on his or her tax return for any tax-paid motor vehicle fuel exported, removed, sold, or used by the supplier if the supplier would be entitled to a refund under Section 8101.

Comment

Credits in lieu of refund are allowed under Sections 8106 (when purchased for use off highway), 8106.1 (when sold to a foreign consulate officer or employee), 8106.5 (when exported), and 8106.8 (when tax-paid fuel is delivered to a terminal and removed from the terminal). The difference between how the “refund” section and the “credit in lieu of refund” sections are structured has caused some confusion regarding whether a supplier should file a claim for refund or take a credit for taxes on motor vehicle fuel sold to the armed forces of the United States. This amendment would simply clarify this confusion.

Extension of statute of limitations on claims for refund

Revenue and Taxation Code Sections 9152.2, 30178.3, 32402.2, 40112.2, 41101.2, 43452.2, 45652.2, 46502.2, 50140.2, 55222.2, and 60522.2

Current Law

Under the existing Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law, a claim for refund must be filed within the latest of the following periods:

- Three years from the due date of the return for the period for which the overpayment was made.
- Six months from the date of the overpayment.
- For a payment made pursuant to a determination, six months from the latter of the date the determination became final or the payment was made.

No refund may be allowed for an overpayment if a claim for refund is not filed by the taxpayer with the Board within these periods.

If any person is delinquent in the payment of the amount required to be paid by him or her, the Board may, by notice of levy, require all persons having in their possession, or under their control, any credits or other personal property belonging to that person to withhold from those credits or personal property the amounts due and to transmit those amounts to the Board at the time it may designate. Existing law also allows for a perfected and enforceable state tax lien for a person's failure to pay any amounts owned under the tax laws administered by the Board. Collection efforts such as these could occur outside of the three year statute of limitation from the due date of the return for the period for which the overpayment was made. In such case, a claim for refund must be filed six months from the date of overpayment by levy, through the use of liens, or by other enforcement procedures.

In the past, the Board has received sales and use tax amounts pursuant to a notice of levy or as a result of a tax lien in error because the taxpayer had already paid the liability in full, the creditor remitted an amount in excess of the amount due, or the taxpayer provided documents supporting a lower amount of tax due. When the statute of limitations period has not expired and a taxpayer files a timely claim for refund, the Board is authorized to refund any erroneous amounts collected. However, there have been cases in the past where the statute of limitations has barred the Board from initiating a refund for purposes of sales and use tax.

To provide a remedy for this inequity, Senate Bill 1827 (Stats. 1996, Ch. 1087) added Section 6902.3 to the Sales and Use Tax Law to extend the statute of limitations period with respect to overpayments from erroneous levies, liens, or other enforcement procedures and allow the Board to refund to a taxpayer any such amounts within three years from the last day of the month following the quarterly period in which the determination became final, or three years from the date of the levy or lien, whichever period expires later.

Proposed Law

This bill would add Sections 9152.2, 30178.3, 32402.2, 40112.2, 41101.2, 43452.2, 45652.2, 46502.2, 50140.2, 55222.2, and 60522.2 to the Revenue and Taxation Code to allow the Board to grant refunds of overpayments of tax, fee, interest, or penalty collected by the Board by means of a levy, lien, or other enforcement procedure if the claim is filed within three years of the date of overpayment.

Comment

This bill would extend the claim for refund provisions that exist under the Sales and Use Tax Law to specified special tax and fee programs administered by the Board. The bill would extend the statute of limitations period to allow the Board to grant a claim for refund filed within three years of the date of overpayment of tax, interest, or penalty collected by the Board by means of a levy, by the use of liens or other enforcement procedures.

Offers in compromise for specific Special Taxes and Fees programs

Revenue and Taxation Code Sections 30459.15, 32471.5, 38800, 40211.5, 41171.5, 43522.5, 45867.5, 46628, 55332.5, and 60637

Current Law

Under existing law, when a tax or fee (tax) liability is not paid when due, the Board will bill the tax or fee-payer (taxpayer), negotiate for payments, search for the taxpayer's assets, and take collection actions to gain access to assets to satisfy the debt. Collection actions may include manually searching records for assets, making telephone calls, or seizing and selling such assets as vehicles, vessels, or stocks. In the event of a hardship, existing law allows installment payment arrangements, or collection may be deferred until the financial situation of the tax debtor improves. However, if taxpayers can obtain loans or can use credit lines to pay their tax debts, they are expected to do so.

If a debt remains unpaid for a number of years, and a lien has been filed but assets cannot be located, the Board may write off the debt. When a debt is written off, it is still due and owing and any liens recorded are still valid, but routine billing and collection actions are discontinued unless assets are subsequently located. There is no statute of limitations on the Board's collection of a tax debt, and interest and applicable penalties continue to accrue. The debt also remains on the taxpayer's credit record, impeding his or her ability to obtain credit.

Proposed Law

This bill would add Sections 30459.15 (Cigarette and Tobacco Products Tax Law), 32471.5 (Alcoholic Beverage Tax Law), 38800 (Timber Yield Tax Law), 40211.5 (Energy Resources Surcharge Law), 41171.5 (Emergency Telephone Users Surcharge Law), 43522.5 (Hazardous Substances Tax Law), 45867.5 (Integrated Waste Management Fee Law), 46628 (Oil Spill Response, Prevention, and Administration Fees Law), 55332.5 (Fee Collection Procedures Law), and 60637 (Diesel Fuel Tax Law) to the Revenue and Taxation Code to allow the Board to accept offers in compromise for specific Special Taxes and Fees programs.

Background

In 2002, the Board sponsored legislation to add Sections 7093.6 (Sales and Use Tax Law), 9278 (Use Fuel Tax Law), and 50156.18 (Underground Storage Tank Maintenance Fee Law) to provide a statutory process to compromise tax liabilities. Since enactment, the approval rate has improved to 42%, from a historical low of less than 10% in 1999. For the fiscal year 2004-05 the Offer in Compromise (OIC) program collected approximately 60% of the tax due (which excludes penalty and interest).

In General

In general, an offer in compromise is a process whereby the taxpayer offers to pay an amount that he or she believes to be the maximum amount that he or she can pay within a reasonable period of time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount. Currently, only Sales and Use Tax, Use Fuel Tax, and Underground Storage Tank Maintenance Fees may be compromised without brining a suit against the taxpayer. Under other tax programs, in order to compromised the taxpayer's liability, the Board obtains a stipulated judgment from the court followed

by the filing of a satisfaction of the judgment when all terms of the agreement have been met. The suit brought against the taxpayer adds another burden. All court filing fees are paid by the taxpayer, which vary for each county, but range from $100 to $400 (depending on the amount of the liability and the number of parties). In addition, the court documents, which include a stipulation setting forth the terms of the compromise, are a matter of public record. Credit reporting agencies that monitor the courts have access to this information and may update their records, further damaging the taxpayers credit history.

In the offer in compromise process, the Board administers the program consistent with procedures followed by the Franchise Tax Board and the Employment Development Department with respect to:

- The terms of the offer
- The process leading up to the acceptance of the offer, including high levels of review; and
- The refunding of rejected offers without interest, at the taxpayer's discretion.

Comments

Since the Board only has the statutory authority to compromise a tax debt for Sales and Use Tax, Use Fuel Tax, and Underground Storage Tank Maintenance Fees, the Board must use an administrative process to compromise tax liabilities for tax programs that do not have such statutory authority. However, this requires that the Board initiate a civil action against the tax debtor. Such an action may be prepared and filed by staff, but, in some cases requires the assistance of the Attorney General.

This bill would allow the rest of the Special taxes and fees programs to compromise final tax liabilities when it is in the best interest of the state and when the taxpayer does not have the means to pay more than the amount offered now or in the foreseeable future.

The proposed additions to the Revenue and Taxation Code would provide greater efficiency in processing acceptable offers by eliminating the court process. This would save the taxpayer the court fee and eliminates the potential that a civil action may appear on the taxpayer's credit report. The proposal could actually reduce the taxpayer's compliance burden by eliminating the suit for tax.

Additionally, this measure would allow the Board a means to resolve aged collection cases or accounts receivables that are not economically feasible to pursue for collections. Finally, the OIC program could result in the acceleration of receipt of funds by converting payment arrangements into lump-sum payments.

If enacted, these provisions would: (1) offer taxpayers the ability to compromise their taxes and fees in one process; (2) accelerate revenue collection in certain instances, and; (3) provide for a voluntary resolution that is agreeable to both parties.

In addition, these provisions include:

1. Language to accommodate offers from Cigarette and Tobacco Products (CTP) consumers who purchase untaxed CTP from out-of-state CTP sellers.

2. A provision that omits the requirement that a taxpayer be out of business and not involved in a similar type of business under the Hazardous Substances Tax Law, Integrated Waste Management Fee Law, and the Fee Collection Procedures Law.
3. Clarifying language to ensure that the Board properly credit the offer payment to other associated taxpayers that are not part of the OIC.
4. Provisions that require taxpayers that have a fraud or evasion penalty assessed to meet certain requirements, as specified. Taxpayers that have been prosecuted for felony tax evasion are not eligible for participation in the OIC program.
5. Provisions that specify that any person who, in connection with any offer or compromise, willfully conceals any property, withholds records, or makes false statements, as specified, shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison.

Technical corrections to Diesel Fuel Tax Law
Revenue and Taxation Code Section 60063

Current Law

Under the existing Diesel Fuel Tax Law, Revenue and Taxation Code Section 60063 references the tax imposed by Sections

Diesel Fuel Tax Law: intercity bus and intercity bus operator
Revenue and Taxation Code Sections 60045, 60046, and 60101

Current Law

Under Revenue and Taxation Code Section 60101, an intercity bus operator who is registered as an interstate user is allowed to use dyed diesel fuel on the highway when lawful under the Internal Revenue Code. Section 60045 defines an intercity bus and Section 60046 defines an intercity bus operator.

HR 4520, the American Jobs Creation Act of 2004, was signed on October 22, 2004 with an effective date of January 1, 2005, and repealed the Internal Revenue Service's (IRS) provision that allowed an intercity bus to use dyed diesel fuel on the highway. The IRS dyed diesel fuel penalty will now apply to dyed diesel fuel used by an intercity bus on the highway. The state provision allowing the use of dyed diesel fuel on the highway by an intercity bus is obsolete with the change in the IRS law.

Proposed Law

This bill would delete the obsolete definitions of "intercity bus" and "intercity bus operator" and the provision that allows an intercity bus operator to use dyed diesel fuel on the highway. This would place the state law in conformity with federal law.

Diesel Fuel Tax Law: issuance of notice of determination to unlicensed suppliers
Revenue and Taxation Code Section 60201.3

Current Law

Under the existing Revenue and Taxation Code Section 60201.3, a supplier is relieved from liability for diesel fuel tax insofar as the sales of the diesel fuel are represented by accounts which have been found worthless and charged off for income tax purposes. If the supplier has previously paid the tax, the supplier may take a credit for the amount of the tax on a tax return. If the supplier has been allowed a credit for the bad debt, the customer who failed to pay for the diesel fuel becomes liable for the diesel fuel tax. The tax, penalties, and interest are immediately due and payable under the unlicensed supplier provisions of the Diesel Fuel Tax Law. Section 60361 states that the Board shall determine immediately the amount of the tax and shall give the customer notice of this determination. However, no provision provides the time period in which the notice must be given to customer.

Proposed Law

This bill would amend Section 60201.3 to require that the notice of determination shall be given to the customer who did not pay the supplier for the diesel fuel within three years after the return on which the credit for the bad debt was taken was due or the date a refund of the tax on the bad debt was paid.

Diesel Fuel Tax Law: spelling error
Revenue and Taxation Code Sections 60604 and 60606

Current Law

Under existing law, Revenue and Taxation Code Sections 60604 and 60606 require a highway vehicle operator/refueler to keep specified records, and allow the Board or its authorized representative to examine those records to ascertain whether all taxes due are being properly reported and paid, respectively.

In 2001, Assembly Bill 309 (Ch. 429) added a definition for highway vehicle operator/fueler to the Diesel Fuel Tax Law. However, Sections 60604 and 60606 were not amended to include the term.

In 2003, Senate Bill 1060 (Ch. 605) amended Sections 60604 and 60606 to include the term highway vehicle operator/fueler, but the bill as signed into law used the incorrect term of highway vehicle operator/refueler.

Proposed Law

This bill would correct inadvertent drafting errors in Sections 60604 and 60606 to make the wording agree with the term highway vehicle operator/fueler, as defined in Section 60034.

COST ESTIMATE

Enactment of this measure would not materially impact the Board's administrative costs.

REVENUE ESTIMATE

This bill would not significantly impact state revenues.

Analysis prepared by:	Sheila T. Waters	916-445-6579	05/16/06
Contact:	Margaret S. Shedd	916-322-2376	

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