



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/16/07	Bill No:	SB 295
Tax:	Cigarette and Tobacco Products	Author:	Cogdill
Related Bills:			

BILL SUMMARY

This bill would revise the definition of “untaxed tobacco product” to include any tobacco product that was distributed in a manner that resulted in a tax liability, but that was returned to the distributor after the tax was paid and for which the distributor has claimed a deduction pursuant to the California Families and Children Act of 1998 (Proposition 10).

ANALYSIS

CURRENT LAW

Under Cigarette and Tobacco Products Tax Law, Section 30005.5 defines "untaxed tobacco product" to mean either of the following:

- Any tobacco product that has not yet been distributed in a manner that results in a tobacco products tax liability.
- Any tobacco product that was distributed in a manner that resulted in a tobacco products tax liability, but that was returned to the distributor after the tax was paid and for which the distributor has claimed, among other things, a deduction pursuant to subdivision (c) of Section 30123.

Subdivision (c) of both Section 30123 (Proposition 99) and Section 30131.2 (Proposition 10) provide that the wholesale cost used to calculate the amount of tobacco products tax due does not include the wholesale cost of tobacco products if the tobacco products were returned by a customer during the same reporting period the tobacco products were distributed, and the distributor refunds the entire amount the customer paid for the tobacco products in either cash or credit.

PROPOSED LAW

This bill would amend 30005.5 to revise the definition of “untaxed tobacco product” to include any tobacco product that was distributed in a manner that resulted in a tax liability, but that was returned to the distributor after the tax was paid and for which the distributor has claimed a deduction pursuant to subdivision (c) of Section 30131.2 (Proposition 10).

The bill would become effective immediately as a tax levy.

IN GENERAL

Proposition 99, passed on the November 1988 ballot, effective January 1, 1989, imposed a surtax of 25 cents per package of 20 cigarettes, and also created an equivalent tax on tobacco products. Proceeds from the taxes fund health education, disease research, hospital care, fire prevention, and environmental conservation.

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

Assembly Bill 478 (Ch. 660, 1993) and Assembly Bill 2055 (Ch. 661, 1993), effective January 1, 1994, added an excise tax of 2 cents per package of 20 cigarettes for breast cancer research and early detection services.

Proposition 10, passed on the November 1998 ballot, effective January 1, 1999, imposed an additional surtax of 50 cents per package of 20 cigarettes. Additionally, the measure imposed an additional excise tax on the distribution of tobacco products equivalent to the additional cigarette tax, and imposed an equivalent compensating floor stock tax. The revenues from the additional tax are deposited into the California Children and Families Trust Fund and are used to: (1) fund early childhood development programs, and (2) offset any revenue losses to certain Proposition 99 Programs as a result of the additional tax imposed by Proposition 10.

BACKGROUND

In 2001, SB 312 (Ch. 426, Alpert) clarified that a distributor may exclude the wholesale cost of tobacco products returned by a customer from the wholesale cost used to calculate the tax, or may claim a refund of the excise tax paid on the distribution of the tobacco products or take a credit on its return in lieu of a refund.

Among other things, that bill added the current provisions to subdivision (c) of Revenue and Taxation Code Sections 30123 and 30131.2. The bill also amended Section 30005.5 to revise the definition of "untaxed tobacco product" to include any tobacco product that was distributed in a manner that resulted in a tax liability, but that was returned to the distributor after the tax was paid and for which the distributor has claimed a deduction *pursuant to subdivision (c) of Section 30123 (which references Prop. 99)*, or refund or credit pursuant to Section 30176.2 or Section 30178.2. Unfortunately the reference to those identical provisions in subdivision (c) of Section 30131.2 (Prop. 10) was inadvertently overlooked. This bill corrects that omission.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the California Distributor's Association and is intended to make a non-substantive, technical correction to the Cigarette and Tobacco Products Tax Law.
2. **This measure simply corrects a reference error.** As such, the provisions of this bill are not problematic for the Board.

COST ESTIMATE

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

REVENUE ESTIMATE

This provision would not affect the state's revenues.

Analysis prepared by: Cindy Wilson (916) 445-6036 04/20/07

Contact: Margaret S. Shedd (916) 322-2376

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