



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Introduced:	02/23/01	Bill No:	AB 1123
Tax:	Business Taxes	Author:	Assembly Revenue and Taxation Committee
Board Position:	Support – Board-sponsored	Related Bills:	

BILL SUMMARY

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

- Correct erroneous code section references. (§§25205.6 and 43152.9)
- Clarify the due date and late payment penalty for the California Tire Fee. (§42886)
- Clarify the reference to “board” in the California Tire Fee. (§42886.1)
- Expand the circumstances under which relief of interest may be granted due to an unreasonable error or delay by the Board. (§§6593.5, 7658.1, 8878.5, 11409, 30283.5, 32256.5, 38455, 40103.5, 41097.5, 43158.5, 45156.5, 46157.5, 50112.4, 55046, and 60212)
- Clarify a county’s authority to levy a transactions and use tax. (§§7285, 7285.5, and 7288.3)
- Amend Motor Vehicle Fuel License Tax Law to avoid chaptering out last year’s Board-sponsored changes. (§§7655, 7657, 7658, 7659.2, and Article 2.5 (commencing with §7659.9))
- Conform relief of interest provisions under the Use Fuel Tax Law with all other Board administered taxes and fees. (§8878)
- Add conforming references to the Cigarette and Tobacco Products Tax Law in order to properly administer Proposition 10. (§§30014, 30016, 30104, 30108, 30176.1, and 30181)
- Delete obsolete code section references. (§§30463 and 32255)

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.

ANALYSIS**Correct an erroneous code reference***Health and Safety Code Section 25205.6***Current Law**

Under current law, Section 25205.6 of the Health and Safety Code (added by Chapter 269, Statutes of 1989) refers to hazardous material as that term is defined in subdivision (k) of Section 25501. However, Section 25501 (as amended by Chapter 639, Statutes of 1995, and again by Chapter 664, Statutes of 1997) was revised and renumbered so that the definition of hazardous material is now contained in subdivision (o) of Section 25501.

Comment

In order to correct the reference and avoid future cross-referencing issues, Section 25205.6 should be amended to refer to the definition of hazardous material as defined in Section 25501, rather than in subdivision (k) of Section 25501.

Clarify ambiguous language regarding the reporting of the California Tire Fee and delete language requiring a 20% penalty that is in conflict with the applicable Fee Collection Procedures Law*Public Resources Code Section 42886***Current Law**

Under existing law, Section 42886(a) of the Public Resources Code provides the payment due date for California Tire Fee returns filed on a quarterly basis. However, the current language is confusing because it refers to a yearly reporting period. The payment due date for returns filed on a yearly basis is contained in Section 42886.1.

Existing law provides that the Integrated Waste Management Board (IWMB) may contract with or cooperate with any state agency where an existing state agency performs functions of a similar nature to the IWMB's functions. The IWMB currently contracts with the Board of Equalization (Board) to collect the California Tire Fee. Senate Bill 718 (Chapter 555, Statutes of 1995) amended Section 42882 of the Public Resources Code to provide the Board with administrative authority to collect the California Tire Fee pursuant to the Fee Collection Procedures Law.

Although SB 718 provided the Board the statutory authority to impose interest and penalties or to engage in collection activities, it inadvertently resulted in two penalties for the late payment of fees. One penalty is contained in Section 55042 of the Revenue and Taxation Code (Fee Collection Procedures Law), which the Board uses to impose a penalty of 10 percent of the amount of the fee if the fee is not paid to the Board within the time prescribed. The second penalty is contained in Public Resources Code Section 42886, which provides a 20 percent penalty for the late payment of the fee. Accordingly, current law provides conflicting penalties for late payment of the California Tire Fee.

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Comment

This amendment would remove the confusing reference to the yearly reporting period from Section 42886 and eliminate the 20 percent penalty contained in Section 42886(b) of the Public Resources Code, and leave the 10 percent penalty for late payment of the fee. The Board collects the California Tire Fee pursuant to the Fee Collection Procedures Law, in which the 10 percent penalty is contained. The 10 percent penalty is also consistent with other late payment penalties imposed under all other Board-administered tax and fee programs.

Clarify that references to “board” means “State Board of Equalization”

Public Resources Code Section 42886.1

Current Law

Under existing law, Section 42886.1 of the Public Resources Code provides the Board with statutory authority to require returns and payment of the California Tire Fee on an annual basis. In addition, Section 42886.1 requires that the return be filed with the Board for the preceding designated yearly period on or before the 15th day of the month following each designated yearly period.

Effective January 1, 2000, Section 42886.1 was amended by Senate Bill 1231 (Chapter 941, Statutes of 1999), a Board-sponsored measure to, among other things, provide it with the authority to require tire recycling fee payers to report and pay their fees on other than, but not sooner than, a quarterly basis. However, the references to “board” throughout Section 42886.1 do not refer to the Board of Equalization. “Board” is defined in the Section 40110 of the Public Resources Code to mean the California Integrated Waste Management Board (CIWMB). Accordingly, SB 1231 inadvertently provides the CIWMB, rather than the Board of Equalization, with the statutory authority to require returns and payment of the California Tire Fee on an annual basis.

Comment

This amendment would clarify that the Board of Equalization, rather than the CIWMB, has the authority to require returns and payment of the California Tire Fee on other than, but not sooner than, a quarterly basis. However, as currently drafted, some confusion could still arise because “board” is defined under the Public Resources Code to mean the Integrated Waste Management Board. All references to the Board of Equalization in this code section should be explicitly spelled out.

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Provide the Board with the authority to grant relief of interest imposed due to an audit determination, provided the relief is granted due to an unreasonable error or delay by an employee of the Board

Revenue and Taxation Code Sections 6593.5, 7658.1, 8878.5, 11409, 30283.5, 32256.5, 38455, 40103.5, 41097.5, 43158.5, 45156.5, 46157.5, 50112.4, 55046, and 60212

Current Law

Under existing law, tax payments made after the due date are subject to interest. Current law allows the Board to relieve the taxpayer of interest when the reason for late payment is due to a disaster or due to an unreasonable error or delay by an employee of the Board acting in his or her official capacity.

Comment

The provision to allow the Board to grant relief from interest was added by AB 821 (Chapter 612, Statutes of 1998). The purpose of that Board-sponsored bill was to address situations where interest was imposed upon the taxpayer due to unreasonable errors or delays by Board employees. However, the bill inadvertently omitted situations where interest is imposed due to an audit determination or a late prepayment of sales tax on diesel or other fuels by not including the appropriate code sections that address those situations.

These amendments would provide the Board the authority to grant relief of interest in all applicable instances, including an audit determination and late prepayment of sales tax on diesel and other fuels, provided the reason for late payment is due to unreasonable error or delay by an employee of the Board.

For example, in the situation where an audit determination is made, an unreasonable error or delay by an employee of the Board could include delays due to an unexpected lengthy absence from work by the auditor which results in a significant delay in completion of the audit. However, it would not include situations where the completion of the audit is delayed due to delays requested by the taxpayer, delays due to normal verification procedures used in an audit, or due to the Board not selecting the taxpayer's account for audit until a later date.

Amend Transactions and Use Tax Law to (1) clarify that an ordinance, not a resolution, is necessary for the adoption of the tax; (2) clarify that Section 7285 authorizes counties to levy a transactions and use tax for general purposes; (3) delete the necessity of forming an authority to levy a district tax for special purposes; (4) require two-thirds voter approval of a special-purpose tax; and (5) clarify that transactions and use taxes may be levied in multiples of 0.25%

Revenue and Taxation Code Sections 7285, 7285.5, and 7288.3

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Current Law

Under current law, Revenue and Taxation Code Section 7285 provides that the board of supervisors of any county may levy a transactions and use tax at a rate of 0.25 percent or a multiple thereof, if the ordinance or resolution proposing that tax is approved by a two-thirds vote of all members of the board of supervisors and the tax is approved by a majority vote of the qualified voters of the county voting in an election on the issue. Conversely, Revenue and Taxation Code Sections 7261, 7262, and 7285.5 require adoption of an ordinance. Those sections do not allow the board of supervisors to adopt a resolution stating its intent to subsequently enact an ordinance if the resolution receives voter approval.

Under Section 7285, a county may adopt a resolution of intent to levy the tax, obtain voter approval of the resolution, but then neglect to subsequently enact an ordinance to levy the tax. Without an ordinance detailing the specifics of the proposal, the tax cannot go into effect. This omission may not be detected until the county submits the required documents to the board to enable it to enter into a contract to administer the tax. As a result, the ordinance would have to be enacted at the last minute, sometimes risking a delay in implementing the tax.

Under current law, Revenue and Taxation Code Section 7285.5 provides that the board of supervisors of any county may establish an authority for specific purposes. That authority may impose a transactions and use tax at a rate of 0.25 or 0.5 percent, provided that the ordinance proposing that tax is approved by a two-thirds vote of the authority and is subsequently approved by a majority vote of the qualified voters.

Comment

When Section 7285 was enacted in 1987, several appellate court opinions indicated that if a district tax was levied by a special district and the revenues placed in the general fund of that district (rather than a special account) the tax was a general tax, not a special tax, and so did not require two-thirds voter approval. The Legislature believed that no voter approval was required at all, but included a provision to require voter approval due to the passage the previous year of Proposition 62. Thus, the Legislature incorporated the special authority requirement into the statute in order to permit majority voter approval.

The decision in *Rider v. San Diego* (1991) 1 Cal.4th 1, and subsequent voter approval of Proposition 218 in 1996, clarified that a tax levied by a special-purpose agency is a special tax, requiring two-thirds voter approval. The language in Section 7285.5 and 7288.3 (enacted in 1989 and 1991, respectively) regarding the special authority and majority voter approval is therefore contrary to law, and its continued presence in the statute has caused considerable confusion. Counties are unsure if the majority voter-approval requirements in Sections 7285.5 and 7288.3 invalidate the authority to levy a special tax. In addition, the rates in Sections 7285.5 and 7288.3 are pegged at 0.25% or 0.5%, instead of 0.25% or a multiple thereof, as in Section 7285. Except for the voter-approval thresholds, the requirements of Sections 7285, 7285.5, and 7288.3 should be harmonized.

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Section 7285 does not specifically state the purposes for which the tax may be authorized. Only by comparison to Section 7285.5, or by reference to the legislative history, is it apparent that the tax authority granted by that section is for general purposes. As a result, the precise nature of the taxing authority granted to counties by Section 7285 is not clear.

These amendments would clarify that Section 7285 authorizes counties to levy a transactions and use tax for general purposes. These amendments would also remove the option that counties adopt a resolution to pass a general purpose tax, and therefore would only require passage of an ordinance. In addition, the amendments would allow counties to levy a special tax directly, without first establishing an authority for specific purposes, saving time and resources that now are spent on obtaining that authority.

**Incorporate provisions in last year's Board-sponsored bills
due to be chaptered out by AB 2114 on January 1, 2002**

*Revenue and Taxation Code Sections 7655, 7657, 7658 and
7659.2 of, and add Article 2.5 (commencing with Section 7659.9)*

Current Law

In the 1999-2000 Legislative Session, the Board sponsored two bills with provisions that affected the Motor Vehicle Fuel License Tax Law. Among other things, AB 2894 (Chapter 923, Statutes of 2000) added Article 1.2 (commencing with Section 7659.9) to Chapter 5 of Part 2 of Division 2 of the Revenue and Taxation Code to require persons whose estimated tax liability averages \$20,000 or more per month to submit payment by electronic funds transfer (EFT) for certain Special Taxes accounts. The Board also sponsored AB 2898 (Chapter 1052, Statutes of 2000) to enable the Board to establish criteria that would allow for a more efficient process to provide relief of penalty by eliminating the requisite written statement under penalty of perjury from the person seeking relief under the established criteria.

Operative January 1, 2002, AB 2114 (Chapter 1053, Statutes of 2000) will conform the Motor Vehicle Fuel License Tax Law to the state Diesel Fuel Tax Law and Federal Fuel Tax Law by moving the collection point of the excise tax on gasoline from the first distribution level to the refinery or terminal rack level. On January 1, 2002, AB 2114 amends Sections 7655, 7657, 7658 and 7659.2, and repeals the EFT provisions in Chapter 5, thereby chaptering out the provisions of last year's AB 2894 and AB 2898.

Comment

These amendments would incorporate the existing provisions contained in Board-sponsored bills AB 2894 and AB 2898 into the Motor Vehicle Fuel Law effective January 1, 2002 and ensure that those changes will not be chaptered out by the provisions of AB 2114 when it becomes operative on that date.

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**Conform relief of interest provisions in the Use Fuel Tax Law
with the other tax and fee laws administered by the Board**

Revenue and Taxation Code Section 8878

Current Law

Under existing Sales and Use Tax Law, Section 6593 provides that if the Board finds that a person's failure to make a timely return or payment was due to a disaster, the person may be relieved of interest provided, in part, by Section 6459. Section 6459 provides that the Board for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid. However, any person to whom an extension is granted is required to pay interest in addition to the tax from the date on which the tax would have been due without the extension until the date of payment. Several other tax and fee programs administered by the Board contain identical provisions to Sales and Use Tax Law Section 6593.

Section 8878 of the Use Fuel Tax Law contains similar provisions to Section 6593, except it does not reference Section 8754, which is similar to Sales and Use Tax Law Section 6459. It appears the reference to Section 8754 was inadvertently overlooked when Section 8878 of the Use Fuel Tax Law, along with similar sections in other tax and fee laws administered by the Board, were added to the Revenue and Taxation Code by AB 357 (Chapter 947, Statutes of 1981).

Comment

This amendment would allow the Board to relieve interest where a person has failed to make a timely return or payment due to a disaster, which would be consistent with the Sales and Use Tax Law and other Board-administered tax and fee laws.

Add conforming references to Proposition 10

*Revenue and Taxation Code Sections 30014,
30016, 30104, 30108, 30176.1, and 30181*

Current Law

Under current law, as amended by Proposition 10 in November, 1998, the California Children and Families First Act of 1998 imposes an additional excise tax on cigarettes and tobacco products under Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of the Revenue and Taxation Code. As a result, certain sections of the Cigarette and Tobacco Products Tax Law do not currently reference the new sections created by Proposition 10. This lack of reference to the Proposition 10 sections results in an inconsistent application of administrative provisions.

Comment

In order for the Board to properly administer the surtax in a manner consistent with the other excise taxes imposed on cigarettes and tobacco products, these amendments would add conforming and necessary code section references to the sections added by Proposition 10. Specifically, these amendments would:

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- Reference the additional tax in the definition of “transporter” to include any person transporting into or within this state tobacco products upon which the tobacco products surtax imposed by Proposition 10 has not been paid.
- Allow common carriers engaged in interstate or foreign passenger service to be exempted from the Proposition 10 surtax.
- Require distributors engaged in business in this state and selling and accepting orders for cigarettes and tobacco products to collect the tax from the purchaser, if the purchaser is other than a licensed distributor, at the time the purchaser becomes obligated to pay the tax.
- Require every person engaged in business in this state and making gifts of untaxed cigarettes and tobacco products as samples to collect the tax from the donee, if the donee is other than a licensed distributor, at the time the donee becomes obligated to pay the tax.
- Allow refunds on tobacco products exported to a point outside California.
- Require a distributor to report and pay a surtax liability on a return if the tax has not been paid through the purchase of stamps or meter impressions.

Delete an obsolete section reference

Revenue and Taxation Code Section 32255

Current Law

Under existing law, Section 32255 of the Revenue and Taxation Code provides the Board with the authority to relieve persons of the penalty imposed for a person’s failure to make a timely return or payment when the Board finds that the failure was due to reasonable cause. To be relieved of the penalty, the law requires that the person seeking relief file a statement under penalty of perjury setting forth the facts upon which his or her claim for relief is based.

Board-sponsored legislation, AB 2894 (Chapter 923, Statutes of 2000) combined the provisions for failure to pay tax and failure to file a return into one statute. AB 2894 resulted in the repeal of Section 32292 and therefore made obsolete the references to that section in Section 32255.

Comment

This amendment would delete an obsolete section reference in order to avoid confusion for taxpayers. The Board would continue to relieve persons of the penalty or interest imposed for a person’s failure to pay tax when the Board finds that the failure was due to unreasonable error or delay by an employee of the Board acting in his or her official capacity.

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Correct a referencing error*Revenue and Taxation Code Section 43152.9***Current Law**

Under current law, Section 43152.9 of the Revenue and Taxation Code provides that the fee imposed pursuant to Section 25205.6 of the Health and Safety Code (environmental fee), which is collected and administered under Section 43053, is due and payable on the last day of the second month following the end of the calendar year.

However, the environmental fee is no longer collected and administered under Section 43053 of the Revenue and Taxation Code, therefore making its reference in Section 43152.9 obsolete. Operative July 1, 1998, SB 660 (Chapter 870, Statutes of 1997) moved the section under which the environmental fee is collected and administered from Section 43053 to Section 43054 of the Revenue and Taxation Code.

Comment

In order to avoid taxpayer confusion, this amendment would correct the reference error contained in Section 43152.9 of the Revenue and Taxation Code.

Delete an obsolete code section*Revenue and Taxation Code Section 30463***Current Law**

Under current law, Section 30463 of the Revenue and Taxation Code (as added by Chapter 1472, Statutes of 1967) contains language to appropriate cigarette tax revenues imposed pursuant to Article 3 (commencing with Section 30131) of Chapter 2 (as added by Chapter 963, Statutes of 1967). However, Section 30463 became obsolete when Article 3 was repealed by Chapter 454, Statutes of 1982.

The current Article 3 (commencing with Section 30131), as added by Proposition 10 in November, 1998, imposes a tax on cigarette and tobacco products, the funds of which are dedicated to early childhood development programs. The appropriation of this portion of the excise taxes imposed on cigarettes and tobacco products is contained in Section 30131.3.

Comment

This amendment would repeal Section 30463, which pertains to an obsolete disposition of cigarette tax revenues, and thereby avoid any conflict with the current Article 3 (commencing with Section 30131) as added by Proposition 10 in 1998.

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COST ESTIMATE

Any Board costs associated with this bill would be absorbable.

REVENUE ESTIMATE

This bill would not impact the state’s revenues. However, if this bill is *not* enacted, the state would lose approximately \$1.1 million annually in interest on electronic funds transfer payments of the gasoline tax (i.e., this bill would preserve that revenue by ensuring that those EFT provisions, which also generate revenues from interest, will not be chaptered out).

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