



State Board of Equalization

# News Release

**Vice Chairperson Jerome E. Horton**

**4<sup>th</sup> District – Los Angeles**

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## **Jerome Horton Presents Testimony on Tobacco Control and Licensing to Congressional Oversight Committee**

Jerome E. Horton, Vice Chairperson of the California State Board of Equalization (BOE) today submitted [testimony](#) to the Subcommittee on Oversight of the Committee on Ways and Means outlining California's successful experience with its Cigarette and Tobacco Products Licensing Act. Horton was invited to testify to contribute to the Subcommittee's continuing work on federal control of illegal tobacco sales.

"As the legislative author of the California Cigarette and Tobacco Products Licensing Act (Act), which enhanced regulatory control over the marketing and distribution of cigarettes and tobacco products, I am particularly proud to present testimony to the subcommittee today as the Vice Chairman of California's Board of Equalization, which is responsible for administering the Act in California." Horton said in introducing the testimony.

"As you consider the possibility of additional federal action in this area, I urge you to reflect on two persistent problems which are highlighted by the California experience:

- First, illegal tobacco products come from interstate traffic. So long as we have a patchwork of state regulatory systems, many of which reflect less stringent regulations, California will be a target destination for smugglers.
- Second, while we have had a very high rate of success with the cigarette licensing system in California, our problem has shifted to other – non-cigarette – tobacco products – "OTP". As cigarette smuggling has decreased, we have seen a corresponding increase in enforcement problems related to OTP. Since OTP are not yet subject to an effective track and trace system, they present greater enforcement problems for both federal and state agencies."

Horton authored the legislation creating the California Cigarette and Tobacco Products Licensing Act of 2003 ([AB 71](#)), to increase control over the marketing of cigarettes and tobacco products. Another critical part of this legislation was to set aside funding to specifically target reduction of illegal sales to minors.

"By regulating the tobacco market in California and strategic enforcement and prosecution of criminals who evade cigarette and related tax laws, we have substantially reduced cigarette smuggling in California, taken tons of illegal cigarettes off our streets, leveled the playing field for legitimate California businesses and generated \$153 million in new tax revenue for the state," Horton continued.

"The California Tobacco Licensing and Control Act is among the most successful pieces of legislation I was able to have enacted during my career as a term-limited member of the State Legislature. The effectiveness of the bar code tax stamp is reflected in the decline in the number of counterfeit stamp seizures (Exhibit A). In fiscal year 2004-05, 869 cigarettes seizures were found to have counterfeit tax stamps. In 2008-09, that number decreased to 49 cigarette

seizures—a 94 percent decrease over the five-year period. Furthermore, the number of cigarette seizures overall also dropped from 14 percent to 2 percent during this period showing further Licensing Act compliance. The state inspectors and investigators of the Board of Equalization have proven the effectiveness of technology-based tax stamps, manufacturer and distributor licensing, and vigorous enforcement. Use of these strategies has led to the retention of nearly \$153 million in annual state tax revenues: \$87.7 million in cigarette excise tax, \$16 million in other tobacco products excise tax, and \$49.2 million in state sales and use taxes (Exhibit B). These measures have been an effective tool to reduce tax evasion and increase the retention of revenues in the cigarette and tobacco product tax program. “

The Act requires the BOE to license all entities engaged in the sale of cigarettes and tobacco products in California. It also gave the Board the authority to penalize violations of California’s Stop Tobacco Access to Kids Enforcement Act. “The authorization of additional inspectors and their funding by the licensing requirement have helped reduce underage access to all types of tobacco products in California,” Horton offered in his testimony.

The Act also requires the licensure of all cigarette and other tobacco products and gives the BOE the authority to conduct inspections at any place at which cigarettes or other tobacco products are sold, produced or stored. It also provides for monetary fines and penalties. “The Licensing Act is a significant deterrent to tax evasion, which is very important in these tough budgetary times,” Horton said.

Legislation also required the BOE to implement a high tech tax stamp that has also proven effective. [Senate Bill 1701 \(Peace\)](#) required the BOE to replace the heat-applied decal stamps and meter impressions with “bar code” stamps and meter impressions encrypted with specified information. In California, stamps are the method of tax payment for cigarettes; they are affixed to packages of cigarettes by the distributor, defined as the person making the first sale of cigarettes in California.

The data contained within the encryption of each cigarette tax stamp includes the name and address of the distributor, the date the stamp was affixed, and the denominated value of the stamp. This encrypted information provides BOE investigators “track and trace” capability by allowing verification of tax paid product using scanning devices in the field that are designed to read the encrypted information on the stamp and detect counterfeit stamps. Visual representations or images of California’s tax stamp have been discovered in the marketplace; however, there has been no successful duplication of the tax stamp’s encryption or security features.

Horton’s testimony comes after Congress has taken another step in tobacco control, this time to deal with internet sales which are bypassing traditional transaction enforcement and threatening to undermine all existing tobacco control efforts. Of this, Horton said,

“In this regard, I want to take this opportunity to commend the Congress and the President for the enactment of the Prevent All Cigarette Trafficking Act earlier this year. The PACT Act will make it harder for vendors to circumvent federal, state, and local tax laws and will force internet retailers to comply with other regulations of tobacco products, including selling to minors. One of my primary motivations as an elected official – formerly as a legislator and now as a Member of the only elected Tax Board in the United States -- has been to do whatever I can to prevent the exposure of young people to the health and addiction risks of smoking cigarettes.

As President Obama declared when he signed the PACT Act into law, “the constant and insidious barrage of advertising...draws millions of teenagers into a lifelong struggle to quit a habit.” It is a habit that kills too many Americans. So while I am pleased that California’s legislation has controlled contraband tobacco and raised state revenues, I applaud the efforts of Congress and the President, which have helped California maintain its status as the number two state in the nation when it comes to the lowest percentage of population that smokes — 14 percent according to one study.”

Vice Chairperson Jerome E. Horton is the 4th District Member of the BOE, representing more than 8.5 million residents in Los Angeles County. He is also the BOE Legislative Committee chairperson. Horton is the first African American to serve on the BOE since its inception in 1879, and the third African American constitutional officer in

California's history. Horton was appointed by the Governor and confirmed by both the Assembly and the Senate in 2009. Horton previously served as an Assembly member from 2000-2006.

The five-member California State Board of Equalization is a publicly elected tax board. The BOE collects more than \$53 billion annually in taxes and fees supporting state and local government services. It hears business tax appeals, acts as the appellate body for franchise and personal income tax appeals, and serves a significant role in the assessment and administration of property taxes. For more information on other taxes and fees in California, visit [www.taxes.ca.gov](http://www.taxes.ca.gov).

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Testimony to the Subcommittee on Oversight of the Committee on Ways and Means can be found online at: [www.boe.ca.gov/members/horton/news/testimony\\_to\\_subcommittee\\_on\\_oversight.pdf](http://www.boe.ca.gov/members/horton/news/testimony_to_subcommittee_on_oversight.pdf)