California Private Railroad Car Tax Law

Revenue and Taxation Code

Part 6 of Division 2

JANUARY 2017

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REVENUE AND TAXATION CODE
DIVISION 2. OTHER TAXES

PART 6. Private Railroad Car Tax[1]

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CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

§ 11201. Title.
§ 11202. Construction.
§ 11203. "Private railroad car."
§ 11204. "Person."
§ 11205. "In this State."
§ 11206. "Class of private railroad cars."

11201. **Title.** This part is known and may be cited as the "Private Railroad Car Tax Law."

History.--Stats. 1978, Ch. 1209, added "Railroad" to title in effect January 1, 1979.

11202. **Construction.** Except where the context otherwise requires the definitions given in this chapter govern the construction of this part.

11203. **"Private railroad car."** (a) "Private railroad car" includes any railroad rolling stock intended for the transportation of any persons, commodity, or material, operated on the railroads of this state, which car is owned by a person other than a railroad or the National Railroad Passenger Corporation. The car's Association of American Railroad's, or successor organization's, reporting mark shall be rebuttably presumed to be the mark of the car owner.

(b) "Private railroad car" does not include:

(1) Freight train or passenger train cars owned by railroad companies which are used or subject to use under the ordinary per diem agreement common to all railroads.

(2) Freight train or passenger cars handled under mileage or through line contract arrangements between railroad companies.

(3) Cars owned by or leased to any railroad company operating in this state, or by any railroad company operated as a part of the same railroad system as the company operating in this state,

[1] The provisions of this part, except as otherwise noted, became effective July 1, 1943.

and used by the railroad company in the operation, maintenance, construction, or reconstruction of its property and assessed and taxed in this state as a part of the property of a railroad company operating in this state.

(4) Passenger train cars, other than those described in subdivision (b), that are privately owned and for which the owner pays the railroad a fee, regardless of how calculated, for transporting such cars.

(5) Any railroad rolling stock for which a railroad or the National Railroad Passenger Corporation is the lessee. For a leased car, the car's Association of American Railroad's, or successor organization's reporting mark is rebuttably presumed to be the mark of the lessee.

History.--Stats. 1972, p. 10, in effect February 29, 1972, made certain non-substantive structural changes and added subdivision (b). Stats. 1974, Ch. 54, p. 117, in effect January 1, 1975, added (4) to subdivision (c). Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" after "Private" in subdivisions (a), (b) and (c). Stats. 1995, Ch. 220, in effect July 31, 1995, substituted "any railroad . . . or material" for "a passenger car, sleeping car, dining car, express car, refrigerator car, oil or tank car, horse or stock car, fruit car, or car designed for the carrying of a special commodity," after "includes", substituted "on" for "upon" after "operated", substituted "of" for "in" after "the railroads", and substituted "a person other than a railroad or the National Railroad Passenger Corporation" for "any of the following:" in subdivision (a); deleted former paragraphs (1), (2), and (3) of subdivision (a) and former subdivision (b) which described qualifying private railroad cars; added the second sentence to subdivision (a) relettered former subdivision (c) as (b); and added paragraph (5) to subdivision (b).

Construction.--Section 11203(a) does not purport to exhaustively list all varieties of railroad cars subject to taxation under the Law, the omission of the word "flatcars" from the list does not establish that the Legislature intended to exclude flatcars from the provisions thereof, and flatcars are subject to such provisions. Also, a lessor of railroad container-freight flatcars formed and operated pursuant to a pooling agreement with a number of railroad companies was not itself a "railroad company" so as to come within the exemption of Section 11203(c)(2). *Trailer Train Company* v. *State Board of Equalization,* 180 Cal.App.3d 565.

Cars not leased to railroads.--Cars are not leased to a railroad within the meaning of the last paragraph of this section when the owner of the cars furnished them to shippers on request, but refused to do so if the proposed haul was not remunerative, the cars were hauled by the railroads over whose lines they were routed by the shippers, the shippers paid the railroads the regular freight charges for the products shipped and the latter paid the car owner 1 1/2 cents per mile for each mile the car moved. Under these circumstances, the railroad did not control the cars as a lessee would have a right to do. *People v. Keith Railway Equipment Co.,* 70 Cal.App.2d 339.

11204. **"Person."** "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

History.--Stats. 1994, Ch. 1200, in effect September 30, 1994, substituted "partnership," for "copartnership," after "firm," substituted "venture" for "advdnture"; and added "limited liability company" after "joint venture".

11205. **"In this State."** "In this State" or "in the State" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

11206. **"Class of private railroad cars."** "Class of private railroad cars" means the Association of American Railroad's, or successor organization's, one letter alpha component of its car type codes as contained in that organization's Exhibit D of the UMLER specification manual or successor exhibit.

History.--Added by Stats. 1995, Ch. 220, in effect July 31, 1995.

CHAPTER 2. ASSESSMENTS

Article	1.	General Provisions §§ 11251-11254.
	2.	Reports. §§ 11271-11273.
	3.	Valuations. §§ 11291-11294.
	4.	Estimated and Escaped Assessments. §§ 11311-11319.
	5.	Reassessments. §§ 11336-11342.
	6.	Jeopardy Assessments. §§ 11351-11354.

Article 1. General Provisions

§ 11251.	Assessment of cars.
§ 11252.	Tax in lieu of other taxes.
§ 11253.	Installment payment agreements.
§ 11253.5	Installment payments; annual statement.
§ 11254.	Return of levied property.

11251. **Assessment of cars.** Private railroad cars operated upon railroads into, out of, or through this state shall be assessed and taxed by the board as prescribed in this part.

History.--Stats. 1974, Ch. 54, p. 117, in effect January 1, 1975, added "at 25 percent of their full cash value" after "board". Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" after "Private". Stats. 1978, Ch. 1207, in effect January 1, 1979, operative January 1, 1981, deleted "railroad" after "Private" and "25 percent of" before "their". Stats. 1982, Ch. 939, in effect January 1, 1983, operative January 1, 1984, added "railroad" after "private" and deleted "cash" after "full." Stats. 1995, Ch. 220, in effect July 31, 1995, added "and taxed" after "assessed" and deleted "at their full value, and taxed" after "by the board".

Constitutionality.--The law is not invalid under either the Federal or State Constitution as lacking equality and uniformity by reason of the classification of cars belonging to private owners and those owned by railroads, the former being taxed for state purposes at the average rate of taxation in the State and the latter being allocated to local taxing districts and taxed at the rates applicable in those districts. *People* v. *Keith Railway Equipment Co.,* 70 Cal.App.2d 339.

11252. **Tax in lieu of other taxes.** The tax imposed in this part is in lieu of all other state, county, municipal, or district taxes, according to value, upon private railroad cars and their appurtenances.

History.--Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" after "private". Stats. 1995, Ch. 220, in effect July 31, 1995, substituted "their appurtenances." for "property incidental to their operations, the value of which property is included in the assessment of the cars." after "and".

11253. **Installment payment agreements.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together

with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) The notice requirement in subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the due date of the tax bill, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 11341.

History.--Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added "The notice requirement in" before "subdivision (b)" in the first sentence of the first paragraph and added the second paragraph of subdivision (d).

11253.5. **Installment payments; annual statement.** The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 11253 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

11254. **Return of levied property.** Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(a) The levy on the property was not in accordance with the law.

(b) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 11253 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(c) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.--Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

Article 2. Reports

§ 11271. Annual report; time of filing.
§ 11272. Extension of time for filing report.
§ 11273. Untimely report; penal assessment.

11271. **Annual report; time of filing.** (a) Every person whose private railroad cars are operated upon the railroads in this state at any time during a calendar year shall file with the board on or before April 30 a report under oath setting forth specifically the information prescribed by the board to enable it to make the assessment required in this part.

(b) In the case of a corporate owner of property, the property statement shall be signed either by an officer of the corporation or by an employee or agent who has been designated in writing by the board of directors to sign such report on behalf of the corporation.

History.--Stats. 1945, p. 1002, in effect September 15, 1945, substituted "the time fixed by the board" for "April 15 of the following calendar year." Stats. 1974, Ch. 54, p. 117, in effect January 1, 1975, added the subdivision letters, substituted "April 30" for "the time fixed by the board" in subdivision (a), and added subdivision (b). Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" between "private" and "cars".

11272. **Extension of time for filing report.** The board for good cause may extend for not to exceed 30 days the time for making a report, provided a written request is filed with the board prior to the period for which the extension may be granted.

History.--Stats. 1947, p. 1701, in effect September 19, 1947, added last sentence. Stats. 1974, Ch. 54, p. 118, in effect January 1, 1975, combined the former first and last sentences, adding "," after "report" at the end of the former first sentence; and deleting "The extension may be granted at any time" before "provided", deleting "therefor" after "request", and deleting "within or" before "prior" in the former last sentence; and added "written" before "request".

11273. **Untimely report; penal assessment.** If any person required to file a report fails to file it on or before April 30 or at the time as extended by the board, a penalty of 10 percent of the assessed value shall be added to the assessment.

If the assessee establishes to the satisfaction of the board that the failure to file the property statement timely was due to a reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for filing a petition for reassessment.

History.—Added by Stats. 1974, Ch. 54, p. 118, in effect January 1, 1975. Stats. 1981, Ch. 1132, in effect January 1, 1982, added the second paragraph. Stats. 2001, Ch. 407 (SB 1181), in effect January 1, 2002, deleted “declaration of intent to” after “filing a” in the first sentence of the second paragraph. Stats. 2002, Ch. 664 (AB 3034), in effect January 1, 2003, substituted "at the" for "such" after "April 30 or" in the first sentence of the first paragraph.

Article 3. Valuations

§ 11291. Property included in value of cars.
§ 11292. Depreciable life.
§ 11293. Amount of cars.
§ 11294. Amount of cars; exclusion.

11291. **Property included in value of cars.** The value of private railroad cars shall not include the car owner's tools, shop equipment, materials, supplies, or other like items of personal property customarily kept or maintained at fixed locations for use in repairing, improving, servicing, or operating the cars.

History.--Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" between "private" and "cars". Stats. 1995, Ch. 220, in effect July 31, 1995, deleted "assessed under this part shall include all materials and supplies held, stored, or used in this State by the person owning the private railroad cars, or the receiver or trustee in control thereof, for the purpose of repairing, improving, servicing, or operating the cars. The value of the cars assessed" after "railroad cars", added "the car owner's" after "not include", and added "materials, supplies," after "shop equipment," in the combined first sentence.

Valuation Methods.--The Board properly exercised its discretion in selecting the replacement cost method to assess railroad flatcars, rather than the income capitalization method, where the taxpayer, a company formed by railroad companies to lease container-freight flatcars to carriers, charged rates that were far below the level required for profitable operation and were intended to cover costs only, and thus would not provide the reliable income data necessary to the income method. Because the Board was obligated to tax fairly and uniformly at fair market value, it had discretion to choose the method of valuation. *Trailer Train Company* v. *State Board of Equalization,* 180 Cal.App.3d 565.

Pending state court actions.--Where railroad car companies' action under Railroad Revitalization and Regulatory Reform Act challenging Board's market valuation of their property for state tax assessment purposes presented issues of valuation methodology that were functionally identical to those in pending state court actions, federal district court would abstain from further proceedings until state actions produced final judgment regarding that calculation; proceedings could in fact in law be related for abstention purposes even though they involved different tax year or different taxpayer. *ACF Industries* v. *State Board of Equalization,* 653 F.Supp. 390.

11292. **Depreciable life.** In making the assessment, the board shall value the cars by class based on the owner's acquisition cost, less depreciation. The depreciation shall be computed for these enumerated Association of American Railroad's, or successor organization's, car type groups on a straight-line basis with the indicated depreciable life schedules with a maximum of 80 percent depreciation allowed.

(a) Stack cars (alpha S): 22 years minus the age at acquisition.

(b) Lightweight, low profile intermodal cars (alpha Q): 22 years minus the age at acquisition.

(c) Flat cars (alpha F): 22 years minus the age at acquisition.

(d) Conventional intermodal cars (alpha P): 22 years minus the age at acquisition.

(e) Vehicular flat cars (alpha V): 22 years minus the age at acquisition.

(f) All other cars (all other alphas): 25 years minus the age at acquisition.

(g) Betterments: the remaining depreciable life of the car to which the betterment is applied.

Acquisition cost is defined as the expenditures required to be capitalized by generally accepted accounting principles.

History.--Added by Stats. 1995, Ch. 220, in effect July 31, 1995.

11293. **Amount of cars.** In making an assessment the board shall determine the average number of each class of private railroad cars physically present in the state in the calendar year immediately preceding the fiscal year in which the tax is imposed upon the basis of car days. The board shall multiply the average number so determined by the value of a car of that class as determined under Section 11292 and use the product for the assessment of the cars.

History.--Stats. 1974, Ch. 54, p. 118, in effect January 1, 1975, substituted "an assessment" for "assessments", substituted "number of each class" for "amount", substituted "physically present" for "habitually", added "in the year immediately preceding the year in which the tax is imposed" after "in the state", substituted "car days" for "track mileage", and substituted the balance of the first sentence after "car days" for "or such other factors or combination thereof as may be reasonably calculated to establish the situs of such private cars"; and substituted the last sentence for the former last sentence regarding the amount to be used as the basis for assessment. Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" between "private" and "cars". Stats. 1995, Ch. 220, in effect July 31, 1995, added "calendar" after "state in the", added "fiscal" after "preceding the", deleted "car mileage," after "the basis of", and deleted ", or such other data as would tend to establish this average" after "car days" in the first sentence; deleted "full cash" after "determined by the", substituted "of" for "for" after "value", added "as determined . . . 11292" after "that class", deleted "as the basis" after "product" and substituted "cars" for "property" after "assessment of the" in the second sentence.

11294. **Amount of cars; exclusion.** In determining the averages required in Section 11293, the board shall exclude from the California factor car mileage, car days or such other data which occurs while cars are not qualified for revenue service and are in a repair facility in this state requiring and undergoing or awaiting remodeling, overhaul, renovation, conversion or repair which necessitates total labor in excess of 10 man-hours.

Car days excluded pursuant to this section shall not exceed 90 days per car unless the claimant provides substantiation of the necessity for the additional days in such form as prescribed by the board.

History.--Added by Stats. 1974, Ch. 1236, p. 2682, in effect January 1, 1975, operative only for calendar years 1975 through 1979, inclusive. Stats. 1977, Ch. 388, in effect January 1, 1978, substituted second paragraph for "This section shall remain in effect and be operative only for calendar years 1975 through 1979, inclusive. On January 1, 1980, this section is repealed."

Article 4. Estimated and Escaped Assessments

§ 11311. Assessment if no report made.
§ 11312. Notice of estimated assessment.
§ 11314. Unsatisfactory report.
§ 11315. Assessment of escaped property.
§ 11316. Negligence or fraud; penal assessment.
§ 11317. Entry on current record.
§ 11318. Notice of escaped assessment.
§ 11319. Interest.

11311. **Assessment if no report made.** If any person neglects or refuses to make a report as required by Article 2 of this chapter, the board shall make an estimate of the matters required to enable the board to make the assessment. The estimate shall be made for the year in respect to which the person failed to make the report and shall be based upon any information available to the board.

11312. **Notice of estimated assessment.** After making its estimate the board shall give to the person written notice of the estimate and its assessment. The notice shall be served personally or by mail; if by mail, service shall be made pursuant to Section 1013 of the Code of Civil Procedure and shall be addressed to the person at his address as it appears in the records of the board.

11314. **Unsatisfactory report.** If the board is dissatisfied with the report filed by any person, it may compute and determine the assessment upon the basis of any information available to it.

11315. **Assessment of escaped property.** If any property required to be assessed for any year wholly escapes assessment or escapes assessment in part due to the board's underassessing the property because of failure of the taxpayer to report the property accurately, the board shall immediately assess or reassess the property upon the discovery of the escape.

History.-- Stats. 1945, p. 1002, in effect September 15, 1945, deleted ''immediately'' before ''assess'' and substituted ''first'' for ''third.'' Stats. 1974, Ch. 54, p. 118, in effect January 1, 1975, substituted ''for any year wholly escapes assessment or escapes assessment in part due to the board's underassessing the property because of failure of the taxpayer to report the property accurately'' for ''escapes assessment for any year'', added ''immediately'' after ''shall'', and substituted the balance of the first sentence after ''assess'' for ''the property when it is discovered''; and deleted the former last sentence regarding the inclusion of such an assessment among assessments to be completed.

Construction.-- Escape assessments were properly levied under this section against a lessor of railroad flatcars after the Board determined that the lessor's claim of functional obsolescence pertaining to those cars was unjustified. The section does not require reappraisal of a taxpayer's entire fleet of railcars, only an appraisal of the portion of the fleet that escaped assessment. *Trailer Train Company* v. *State Board of Equalization,* 180 Cal.App.3d 565.

11316. **Negligence or fraud; penal assessment.** If the board makes an assessment pursuant to Section 11311, 11314, or 11315 due to the negligence of the taxpayer, a penalty of 10 percent of the value of the estimated or escape assessment shall be added to the assessment. If the estimated or escape assessment is due to a fraudulent or willful attempt to evade the tax, a penalty of 25 percent of the value of the estimated or escape assessment shall be added to the assessment. A willful failure to file a report as required by Article 2 (commencing with Section 11271) of this chapter shall be deemed to be a willful attempt to evade the tax.

If the assessee establishes to the satisfaction of the board that the failure to file an accurate property statement was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for filing a petition for reassessment.

History.-- Added by Stats. 1974, Ch. 54, p. 118, in effect January 1, 1975. Stats. 1978, Ch. 1209, in effect January 1, 1979, reworded the existing language of the section pertaining to penalty in Sections 11311, 11314 or 11315 and added the third sentence in the first paragraph. Stats. 1981, Ch. 1132, in effect January 1, 1982, added the second paragraph. Stats. 2005, Ch. 264 (SB 555), in effect January 1, 2006, deleted "declaration of intent to" after "for filing a" in the first sentence of the second paragraph.

11317. **Entry on current record.** (a) An escape assessment shall be entered on the current private railroad car tax record, and if this is not the record for the year in which the property escaped assessment, the entry shall be followed with ''escape assessment for year 20__''. The property shall be assessed at the same value and taxed at the same rate as it would have been assessed and taxed had it not escaped.

(b) If the assessments are made as a result of an audit that discloses that property assessed to the party audited has been incorrectly assessed for a past tax year for which taxes have been paid and a claim for refund is not barred by Section 11553, the tax refunds, including applicable interest under Section 11555, resulting from the incorrect assessments shall be an offset against proposed tax liabilities, including accumulated penalties and interest, resulting from escaped assessments for any tax year covered by the audit. If the refunds exceed any proposed tax liabilities, including penalties and interest, the excess shall be processed in accordance with Section 11551.

(c) Beginning with the 1981–82 fiscal year, assessments for the current year and escape assessments for prior years shall be entered using a 100-percent assessment ratio and the tax rates for years prior to the 1981–82 fiscal year shall be divided by four.

History.-- Added by Stats. 1974, Ch. 54, p. 119, in effect January 1, 1975. Stats. 1978, Ch. 1209, in effect January 1, 1979, added ''railroad'' after ''private''. Stats. 1982, Ch. 1465, in effect January 1, 1983, added the second and third paragraphs. Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007, designated the former first paragraph as subdivision (a) and substituted "20__" for "19__" after "assessment for year" in the first sentence therein, designated the former second paragraph as subdivision (b) and substituted "that" for "which" after "of an audit" in the first sentence therein, and designated the third paragraph as subdivision (c).

11318. **Notice of escaped assessment.** Except in the case of a taxpayer fraudulently or willfully attempting to evade the tax, any escape assessment shall be made and the taxpayer notified thereof within four years after August 1 of the year in which the property escaped assessment. No escape assessment shall be effective until the assessee has been notified personally or by United States mail at his address as contained in the official records of the board. Receipt by the assessee of a tax bill based on such assessment shall suffice as such notice.

History.-- Added by Stats. 1974, Ch. 54, p. 119, in effect January 1, 1975.

Construction.—This section allows the Board four years in which to levy escape assessments, whether due to underreporting of value by the taxpayer or to a changed Board opinion of valuation, and Article XIII, Section 1 of the Constitution, which requires uniform assessment, compels escape assessments if property is not being taxed at its full value. *Trailer Train Company* v. *State Board of Equalization,* 180 Cal.App.3d 565.

11319. **Interest.** If any assessment made pursuant to this article results in a tax that is paid after December 10 of the year to which the assessment relates, the tax shall bear interest at the adjusted annual rate established pursuant to Section 19521 from December 10 of the year in which the assessment should have been made to the date the assessment is added to the board roll; provided, however, that no addition shall be made whenever the escape was due to an error, other than an erroneous opinion of value, on the part of the board.

History.-- Added by Stats. 1974, Ch. 54, p. 119, in effect January 1, 1975. Stats. 1978, Ch. 1112, in effect January 1, 1979, deleted ''one-half of'' before ''1 percent''. Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted ''at the adjusted annual rate established pursuant to Section 19269'' for ''of 1 percent per month'' after ''interest''. Stats. 1982, Ch. 1465, in effect January 1, 1983, substituted ''from December 10 . . . part of the board.'' for ''for the period . . . date of payment.'' after Section 19269. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted ''Section 19521'' for ''Section 19269'' after ''established pursuant to''.

Note.-- Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

Article 5. Reassessments

§ 11336. Time for completion of assessments; notice.
§ 11337. Inspection of assessments.
§ 11338. Petition for reassessment.
§ 11339. Petition for reassessment; assessment made outside regular period.
§ 11340. Contents of petition
§ 11341. Notice of decision.
§ 11342. Closed hearings.

11336. **Time for completion of assessments; notice.** On or before August 1 the board shall complete the assessment of all property required to be assessed and shall notify the assessees thereof. This notice shall include an announcement of the statutory period during which, and the place at which, a petition for reassessment may be filed.

History.— Stats. 1945, p. 1003, in effect September 15, 1945, substituted ''first'' for ''third.'' Stats. 1974, Ch. 54, in effect January 1, 1975, restructured, deleted ''of each year'' after ''August'', and added ''and shall notify the assessees thereof'' after ''assessed'' in the first sentence; and added the second sentence. Stats. 1981, Ch. 1132, in effect January 1, 1982, substituted ''August 1'' for ''the first Monday in August'' after ''before'' in the first sentence, and added ''a declaration of intent to petition for reassessment and'' after ''which,'' in the second sentence. Stats. 2005, Ch. 264 (SB 555), in effect January 1, 2006, deleted "declaration of intent to petition for reassessment and a" after "at which, a" in the second sentence.

11337. **Inspection of assessments.** Between August 1 and August 21, the assessments made by the board shall be open for inspection by all persons interested.

History.—Stats. 1974, Ch. 54, p. 119, in effect January 1, 1975, substituted "fourth" for "third", and deleted "of each year" after "August". Stats. 1981, Ch. 1132, in effect January 1, 1982, substituted "August 1 and August 21" for "the first and fourth Mondays in August" after "Between".

11338. **Petition for reassessment.** The owner or assessee may file a petition for reassessment on or before September 20. If the petition is not filed on or before September 20, or, if the period is extended by the board, by October 5, the assessment of the board shall be final.

(b) The board may extend the period for filing a petition until October 5 provided a written request for the extension is filed with the board on or before September 20.

(c) The board shall hear the applicant on such petition on or before January 31.

History.—Stats. 1974, Ch. 54, p. 119, in effect January 1, 1975, divided the former sentence; substituted "fourth" for "third", added "or the lessee" after "owner", and added "may petition the board for reassessment." After "assessed" in the first sentence; and restructured the second sentence, and added "on or before October 1" after "petition". Stats. 1981, Ch. 1132, in effect January 1, 1982, added the subdivision letters; substituted "On or before August 21" for "at any time prior to the fourth Monday in August," before "the owner" and added "file a declaration of intent to" after "may" in the first sentence, and added the second sentence to subdivision (a); added subdivisions (b) and (c); and substituted "January 31" for "October 1" in subdivision (d). Stats. 2001, Ch. 407 (SB 1181), in effect January 1, 2002, deleted former subdivision (a) which required that owners and lessees file a declaration of intent to petition the board for reassessment by August 20; relettered former subdivision (b) as subdivision (a) and deleted "If a declaration of intent to petition has been timely filed," before "The" therein; and relettered former subdivisions (c) and (d) as (b) and (c), respectively.

Administrative remedies must be exhausted.-- A taxpayer complaining of administrative action must, before seeking judicial relief, exhaust his administrative remedies. Accordingly, in an action by the State to recover the tax, a private car owner who failed to report to the board pursuant to Section 11271 and to petition the board for reassessment pursuant to Section 11338 is not entitled to secure a judicial review of the method used by the board in determining the average number of its cars in the state during the taxable year. *People* v. *Keith Railway Equipment Co.,* 70 Cal.App.2d 339.

11339. **Petition for reassessment; assessment made outside regular period.** (a) Any assessment made outside of the regular assessment period may be the subject of a petition for reassessment. A petition for reassessment may be filed on or before the 50th day following the date of the notice of assessment.

(b) The board may extend the deadline for filing a petition for a period not to exceed 15 days, provided a written request for the extension is filed with the board on or before the expiration of the period for which the extension may be granted.

(c) If a petition for reassessment is not timely filed, the assessment of the board shall be final. The board may consider a petition which is not timely filed to be a claim for refund.

(d) The board shall hear the applicant on the petition within 90 days of the date on which the petition was filed.

History.—Added by Stats. 1974, Ch. 54, p. 119, in effect January 1, 1975. Stats. 1981, Ch. 1132, in effect January 1, 1982, added the subdivision letters; substituted the second sentence in subdivision (a) for "The petition shall be filed within 10 days of the notice of assessment"; and added subdivisions (b), (c), and (d). Stats. 2001, Ch. 407 (SB 1181), in effect January 1, 2002, deleted "A declaration of intent to petition shall be filed within 20 days of the notice of assessment and" before "A petition", substituted "50th" for "30th" after "before the" and substituted "of the notice of assessment" for "by which the declaration of intent must be

filed provided the declaration of intent was timely filed" after "the date" in the second sentence of subdivision (a); deleted "declaration of intent is not timely filed, or, after a declaration of intent has been filed, a" after "If a" in the first sentence of subdivision (c); and substituted "the" for "such" after "applicant on" in the first sentence of subdivision (d).

11340. **Contents of petition.** Every petition for reassessment filed under Section 11338 or Section 11339 shall be in writing and shall state the specific grounds upon which the petition is founded. The petition shall include a statement of the petitioner's opinion of value of the private railroad cars assessed.

Any petition that does not meet the requirements of this section shall be deemed invalid and shall not be acted upon by the board. A petition timely filed but deemed invalid may be amended or supplemented and refiled within such time as the board may prescribe; provided, however, that no amendment of a petition filed under Section 11338 may be filed later than December 31.

History.—Added by Stats. 1978, Ch. 1209, in effect January 1, 1979. Stats. 1981, Ch. 1132, in effect January 1, 1982, substituted "December 31." for "September 15." at the end of the second sentence in the second paragraph.

11341. **Notice of decision**(a) The board shall render its decision on the petition for reassessment within 45 days of the date of the hearing on the petition, and shall mail notice of its decision to the applicant.

(b) If the board determines that the amount of the assessment should be increased, the notice shall advise the applicant of the amount of additional tax that is due, and the date by which payment must be made. If the additional tax is not paid within 15 days following the date on which notice is mailed, it is delinquent, and a penalty of 10 percent of the amount of the additional tax shall be added thereto, plus interest on the amount of the additional tax at the rate of 3 /4 of 1 percent per month, or fraction thereof, from the date on which the additional tax became due until the date of payment.

(c) If the board determines that the amount of the assessment should be reduced, the notice shall advise the applicant of the amount of the tax that will be refunded or credited. The board shall proceed to refund or credit the overpayment in the manner prescribed in Section 11551, and interest shall be added to the credit or refund in the amount provided in Section 11555.

History.—Added by Stats. 1981, Ch. 1132, in effect January 1, 1982.

11342. **Closed hearings.** A petitioner may request the board to close to the public a portion of the hearing by filing a declaration under penalty of perjury that evidence is to be presented which relates to trade secrets, the disclosure of which will be detrimental to the business interests of the owner of the trade secrets. If the board grants the request, only evidence relating to the trade secrets may be presented during the time the hearing is closed.

History.-- Added by Stats. 1984, Ch. 678, in effect January 1, 1985.

Application.-- This section goes further than protecting just the taxpayer, whose business affairs are protected under Section 11665. It allows a taxpayer seeking reassessment to shield trade secrets when disclosure would be detrimental to the business interests of "the owner" of the trade secrets. *General American Transportation Corp.* v. *State Board of Equalization,* 193 Cal.App.3d 1175.

Article 6. Jeopardy Assessments[2]

§ 11351. Jeopardy assessment.
§ 11352. Notice of assessment.
§ 11353. Petition for reassessment; security.
§ 11354. Delinquency penalty.

11351. **Jeopardy assessment.** If at any time after the lien date the board believes that the collection of all or part of the tax imposed by this part will be jeopardized by delay, it shall immediately determine the assessed value of the property and the tax rate to be applied. From these it shall compute the amount of tax together with any interest and penalties. The amount so determined shall be due and payable upon service of a notice of assessment upon the person assessed and shall be final 10 days after service unless the person assessed within such 10-day period petitions for reassessment.

11352. **Notice of assessment.** The notice of assessment shall be inscribed "jeopardy assessment" and shall be served upon the assessee in the manner prescribed in Section 11312. It shall contain in addition to the information prescribed in Section 11404 notice that the tax, interest, and penalties are due and payable at the time of service and will be delinquent 10 days thereafter unless they are paid or a petition for reassessment is filed.

11353. **Petition for reassessment; security.** The person against whom a jeopardy assessment is made may file a petition for reassessment with the board within 10 days of service upon him of the notice of assessment. At the time of filing the petition the person shall deposit with the board such security as the board may deem necessary to insure payment of the amount due.

11354. **Delinquency penalty.** A jeopardy assessment is delinquent at the time it becomes final, and if unpaid at this time, a penalty of 10 percent of the tax shall be added thereto, plus interest on the amount of tax at the adjusted annual rate established pursuant to Section 19521 from the date on which the tax becomes due and payable until the date of payment.

History.--Stats. 1978, Ch. 1112, in effect January 1, 1979, deleted "one-half of" before "1 percent". Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted "adjusted annual rate established pursuant to Section 19269" for "rate of 1 percent per month or fraction thereof," after "tax at the". Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "Section 19521" for "Section 19269" after "established pursuant to".

Note.--Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

CHAPTER 3. LEVY AND PAYMENT OF TAX

§ 11401. Levy and rate of tax.
§ 11403. Computation of tax rate.
§ 11404. Notice of assessment.
§ 11405. Delinquency penalty.

[2] Article 6 was added by Stats. 1974, Ch. 54, p. 120, in effect January 1, 1975.

§ 11406.	Absence of notice.
§ 11407.	Excusable delay due to disaster.
§ 11408.	Reasonable reliance on written advice: relief of tax, penalty and interest.
§ 11408.5	Innocent spouse relief.
§ 11409.	Errors or delays caused by board employee-interest relief.

11401. **Levy and rate of tax.** On or before October 1, the board shall levy upon private railroad cars assessed under this part, for each year, a tax computed at the next preceding year's average rate of general property taxation in the state and shall enter the tax upon a record maintained by the board for that purpose.

History.--Stats. 1967, p. 2855, in effect November 8, 1967, added "general property" following "average rate of." Stats. 1974, Ch. 54, p, 120, in effect January 1, 1975, added "On or before October 1," at the beginning of the sentence. Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" between "private" and "cars".

Tax Rate.--Imposition of additional tax as a result of use of a higher rate, subsequent to *Board of Supervisors* v. *Lonergan,* 27 Cal.3d 855, wherein it was held that the Article XIII A tax-rate limitation did not apply to real or personal property on the 1978-79 secured roll, impermissibly conflicted with Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. § 11503), which prohibits the taxation of rail-transportation property at a rate higher than the rate generally applicable to commercial and industrial property in the same assessment jurisdiction. *Trailer Train Co.* v. *State Board of Equalization,* 697 F.2d 860, cert. den. 464 U.S. 846.

Provision of Railroad Revitalization and Regulatory Reform Act prohibiting states from assessing "rail transportation property" at higher assessment ratio than other commercial and industrial property included specialty railroad cars leased to shippers by independent car lines. *ACF Industries Inc.* v. *California State Board of Equalization*, 42 F.3d 1286.

11403. **Computation of tax rate.** The board shall compute the average rate of general property taxation in the state by:

(a) Adding the county, city, school district, and other general taxes, but not the special taxes on intangibles, aircraft, baled cotton or any other property which is subject to a uniform statewide tax rate, nor special assessments, and

(b) Dividing the amount obtained by the total assessed valuation in the state as shown by the county tax rolls for the same year.

"Total assessed valuation," as used in this section, does not include the assessments of property which is subject to a uniform statewide tax rate.

"Special assessments," as used in this section, mean any amount levied solely against real estate or real estate and improvements.

History.--Stats. 1967, p. 2855, in effect November 8, 1967, revised the section, deleting special taxes from the computation of the rate, adding subdivisions "(a)" and "(b)" to the first paragraph, deleting the former last paragraph defining special assessments, and adding the last paragraph. Stats. 1978, Ch. 1209, in effect January 1, 1979 inserted colon after "by" in first paragraph and added subsection letters "(a)" and "(b)".

11404. **Notice of assessment.** On or before October 15th in each year the board shall cause to be mailed to each person against whom a tax is levied a notice stating the amount of the assessment, the rate and amount of tax, and a demand that the tax be paid to the board not later than December 10th following.

History.--Stats. 1953, p. 2464, in effect September 9, 1953, substituted "10th" for "5th".

11405. **Delinquency penalty.** If the tax is not paid on or before December 10th following the levy of the tax, a penalty of 10 percent of the amount of the tax shall be added thereto plus interest on the amount of the tax at the adjusted annual rate established pursuant to Section 19521 from December 10th until the date of payment.

History.--Stats. 1953, p. 2464, in effect September 9, 1953, substituted "10th" for "5th" in both places. Stats. 1975, Ch. 661, p. 1431, in effect January 1, 1976, substituted "1 percent" for "one-half of 1 percent". Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted "adjusted annual rate established pursuant to Section 19269" for "rate of 1 percent per month, or fraction thereof," after "tax at the". Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "Section 19521" for "Section 19269" after "established pursuant to".

Note.--Section 77 of Stats. 1975, Ch. 661, provided that notwithstanding any provisions of law, additional revenues deposited to the credit of any fund or account which are attributable to the increase in interest pursuant to this act shall only be appropriated for expenditure, allocation, or transfer as provided in legislation enacted after the effective date of this act. Sec. 78 thereof provided that the interest rate change in this act shall apply to all interest accrued on or after January 1, 1976.

Note.--Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

11406. **Absence of notice.** Failure to pay the tax is not excused nor is any assessment or levy invalidated because of the failure of the board to send the notice prescribed by Section 11404, the sending of an erroneous notice, or the failure of the person whose property is assessed to receive the notice.

11407. **Excusable delay due to disaster.** If the board finds that a person's failure to make a timely report or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 11319, 11405, and 11430.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he bases his claim for relief.

History.--Added by Stats. 1981, Ch. 947, in effect January 1, 1982.

11408. **Reasonable reliance on written advice: relief of tax, penalty and interest.** (a) If the board finds that a person's failure to make a timely report or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

History.--Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

11408.5. **Innocent spouse relief.** (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to pay a tax levied and required to be paid under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed, and the understatement of tax liability is attributable to one spouse; or any amount of the tax was unpaid and the nonpayment of the tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar years subject to the provisions of this part, but shall not apply to any calendar year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to pay a levy or an omission of an item from the payment, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a person that owns a private railroad car operated upon the railroads in this state to which the understatement is attributable. If neither spouse rendered substantial services as such a person, then the attribution of applicable items of understatement shall be treated as community property.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

History. Added by Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008.

11409. **Errors or delays caused by board employee; interest relief.** (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if the person filed a timely report and no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted "this part" for "Section 11319" after "person by" in the first sentence of subdivision (a).

CHAPTER 3.5. CORRECTIONS

§ 11426. Correctable errors; time limit.
§ 11427. Hearing on increase of tax.
§ 11428. Entry and notice.
§ 11429. Payment.
§ 11430. Delinquency penalty.

11426. **Correctable errors; time limit.** When it can be determined by any report or from any papers of the board what was intended or what should have been assessed, defects in form or clerical errors of the board in assessing private railroad cars may be corrected by the board under this chapter at any time within four years after the assessment was made.

History.-- Added by Stats. 1953, p. 2479, in effect September 9, 1953. Stats. 1974, Ch. 54, p. 120, in effect January 1, 1975, substituted "four" for "two". Stats. 1978, Ch. 1209, in effect January 1, 1979 added "railroad" between "private" and "cars".

11427. **Hearing on increase of tax.** If the correction will increase the amount of tax due, the board shall give the assessee opportunity for a hearing after at least 10 days' notice at which he may present his objections to the change. The board's decision is final.

History.--Added by Stats. 1953, p. 2479, in effect September 9, 1953. Stats. 1974, Ch. 54, p. 121, in effect January 1, 1975, substituted "10" for "five".

11428. **Entry and notice.** The date and nature of the correction shall be entered in the records of the board and a statement of the correction of the assessment shall be mailed to the assessee.

History.--Added by Stats. 1953, p. 2479, in effect September 9, 1953.

11429. **Payment.** If the amount of the tax is increased the additional tax shall be paid to the board on or before December 10th following the levy of the tax, or on or before the fifteenth day following the date of mailing the statement, whichever is the later.

History.--Added by Stats. 1953, p. 2479 in effect September 9, 1953.

11430. **Delinquency penalty.** If the additional tax is not paid within the time specified in Section 11429, it is delinquent and a penalty of 10 percent of the amount of the additional tax shall be added thereto, plus interest on the amount of the additional tax at the adjusted annual rate established pursuant to Section 19521 from the date on which the additional tax became due and payable until the time of payment.

History.--Added by Stats. 1953, p. 2479, in effect September 9, 1953. Stats. 1974, Ch. 54, p. 121, in effect January 1, 1975, substituted "within the time specified in Section 11429" for "when due and payable", and added "it is delinquent and" after "Section 11429,". Stats. 1975. Ch. 661, p. 1431, in effect January 1, 1976, substituted "1 percent" for "one-half of 1 percent". Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted "adjusted annual rate established pursuant to Section 19269" for "rate of 1 percent per month, or fraction thereof," after "tax at the." Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "Section 19521" for "Section 19269" after "established pursuant to".

Note.--Section 77 of Stats. 1975, Ch. 661, provided that notwithstanding any provisions of law, additional revenues deposited to the credit of any fund or account which are attributable to the increase in interest pursuant to this act shall only be appropriated for expenditure, allocation, or transfer as provided in legislation enacted after the effective date of this act. Sec. 78 thereof provided that the interest rate change in this act shall apply to all interest accrued on or after January 1, 1976.

Note.--Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

CHAPTER 4. COLLECTION OF TAX

Article	1.	Security for Tax. §§ 11451-11453.
	2.	Suit for Tax. §§ 11471-11473.
	3.	Lien of Tax. §§ 11491-11496.
	4.	Warrant for Collection of Tax. §§ 11501-11503.
	5.	Seizure and Sale. §§ 11511-11514.
	6.	Payment on Termination of Business and Successor's Liability. §§ 11521-11524.
	7.	Miscellaneous Provisions. §§ 11531-11533.

Article 1. Security for Tax

§ 11451.	Notice of delinquency. [Repealed]
§ 11451.	Notice of delinquency.
§ 11452.	Credits not to be transferred. [Repealed]
§ 11452.	Notice of levy.
§ 11453	Employer withheld earnings.
§ 11453.	Report of credits, etc. [Repealed]

11451. **Notice of delinquency.** [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

11451. **Notice of delinquency.** (a) If any person is delinquent in the payment of the amount required to be paid by him or her or in the event a determination has been made against him or her which remains unpaid, the board may, not later than four years after the payment became delinquent, or within 10 years after the last recording of an abstract under Section 11495 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in its possession or under its control any credits or other personal property belonging to the delinquent, or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or that person. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires earlier. All persons so notified shall forthwith, after receipt of the notice, advise the board of all the credits, other personal property, or debts in their possession, under their control, or owing by them.

(b) If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or a state or federal savings and loan association or other credits or personal property in the possession or under the control of a bank or a state or federal savings and loan association, the notice to be mailed shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank or the state or federal savings and loan association at which the deposit is carried or at which the credits or personal property is held. A bank, a state or federal savings and loan association, or a state or federal credit union withholding any deposit or other credits or personal property required to be withheld in which the delinquent taxpayer and another person or persons have an interest, or held in the name of a third party or parties in which the delinquent taxpayer is ultimately determined to have no interest, is not liable therefor to any of the persons who have an interest in the deposit or other credits or personal property unless the deposit or other credits or personal property is released or transferred to the delinquent taxpayer.

(c) In the case of a deposit or other credits or personal property for which the transfer or other disposition is prevented, the depository institution required to prevent transfer or other disposition shall send a notice by first-class mail to each person named on a deposit, other credits, or personal property included in the notice from the board, provided a current address for each person is available to the depository institution. This notice shall inform each person as to the reason for preventing transfer or disposition of the deposit or other credits or personal property, the amount thereof which is prevented from transfer or other disposition, and the date by which that amount is to be remitted to the board. An institution may assess the deposit or other credits or personal property of each person receiving this notice a reasonable service charge not to exceed three dollars ($3).

(d) Notwithstanding any other provision, with respect to a deposit in a bank or a state or federal savings and loan association or other credits or personal property in the possession or under the control of a bank or a state or federal savings and loan association, the aggregate amount of deposits, credits, or personal property to be withheld shall be an amount equal to two times the amount of the tax, interest, or penalty due from the person. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of that transfer or disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

11452. **Credits not to be transferred.** [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

Text of section operative until July 1, 2001.

11452. **Notice of levy.** (a) Subject to the limitations in subdivisions (b) and (c), the board may, by notice of levy, served personally or by first-class mail, require all persons having in their

possession, or under their control, any credits or other personal property belonging to a person as defined in this part who is liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that person, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate.

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the person liable during the period of the levy.

(d) For the purposes of this section, "payments" does not include earnings, as defined in subdivision (a) of Section 706.001 of the Code of Civil Procedure, or funds in a deposit account, as defined in Section 9105 of the Commercial Code. "Payments" does include all of the following:

(1) Payments due for services for independent contractors, dividends, rents, royalties, residuals, patent rights, and mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the person liable for the tax.

(3) Any other payments or credits due or becoming due the person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.--Added by Stats 1987, Ch. 498, in effect January 1, 1988.

Text of section operative July 1, 2001.

11452. **Notice of levy.** (a) Subject to the limitations in subdivisions (b) and (c), the board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a person as defined in this part who is liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that person, or the

amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate.

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.
(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the person liable during the period of the levy.

(d) For the purposes of this section, "payments" does not include earnings, as defined in subdivision (a) of Section 706.001 of the Code of Civil Procedure, or funds in a deposit account, as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. "Payments" does include all of the following:

(1) Payments due for services for independent contractors, dividends, rents, royalties, residuals, patent rights, and mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the person liable for the tax.

(3) Any other payments or credits due or becoming due the person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988. Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, operative July 1, 2001, substituted "paragraph (29) of subdivision (a) of Section 9102" for "Section 9105" after "as defined in" in subdivision (d).

Note.--Section 75 of Stats. 1999, Ch. 991 (SB 45), provided that this act shall become operative on July 1, 2001.

11453. **Employer withheld earnings.** (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 11452 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of

its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

11453. **Reports of credits, etc.** [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

Article 2. Suit for Tax

§ 11471. Suit to enforce payment. [Repealed.]
§ 11471. Suit to enforce payment.
§ 11472. Prosecution by Attorney General.
§ 11473. Attachment.
§ 11474. Prima facie evidence.
§ 11475. Process serving.

11471. **Suit to enforce payment.** [Repealed by Stats. 1998, Ch. 695 (SB 2235), in effect January 1, 1999.]

11471. **Suit to enforce payment.** At any time within four years after any tax or any amount of tax required to be collected becomes due and payable and at any time within four years after the delinquency of any tax or any amount of tax required to be collected, or within the period during which a lien is in force as the result of the recording or filing of a notice of state tax lien

under Section 7171 of the Government Code, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of the State of California to collect the amount delinquent together with penalties and interest.

History.--Added by Stats. 1998, Ch. 695 (SB 2235), in effect January 1, 1999.

11472. **Prosecution by Attorney General.** The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

History.--Added by Stats. 1998, Ch. 695 (SB 2235), in effect January 1, 1999.

11473. **Attachment.** In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

History.--Stats. 1974, Ch. 1516, p. 3393, in effect January 1, 1975, operative January 1, 1976, substituted the balance of the sentence after "may" for "issue, and no bond or affidavit previous to the issuing of the attachment is required". Stats. 1975, Ch. 200, in effect January 1, 1976, postponed the operative date to January 1, 1977. Stats. 1998, Ch. 695 (SB 2235), in effect January 1, 1999, renumbered former Section 11472 to Section 11473.

Note.--Section 48 of Stats. 1974, Ch. 1516, provided that if any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. Sec. 49(b) thereof provided that except as otherwise provided by rules adopted by the Judicial Council effective on or after January 1, 1976, this act shall not apply to any writ of attachment issued prior to January 1, 1976, and such writs of attachment shall continue to be governed in all respects by the provisions of Chapter 4 (commencing with Section 537) of Title 7 of Part 2 of the Code of Civil Procedure in effect on December 31, 1975. Sec. 50 thereof provided no payment by state to local governments because of this act.

11474. **Prima facie evidence.** In the action a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the tax, of the delinquency of the amount of tax, interest, and penalties set forth in the certificate, and of compliance by the board with all provisions of this part in relation to the assessment of the property and computation and levy of the tax.

History.--Stats. 1998, Ch. 695 (SB 2235), in effect January 1, 1999, renumbered former Section 11473 to Section 11474.

Board's certificate sufficient to establish prima facie case.--In an action by the state to recover delinquent private car taxes the certificate provided for by this section is sufficient to establish a prima facie case. After such a certificate has been introduced in evidence, accordingly, a motion for a nonsuit should not be granted. *People* v. *Keith Railway Equipment Co.,* 70 Cal.App.2d 339.

11475. **Process serving.** In any action brought under this part, process may be served according to the Code of Civil Procedure and the Civil Code or may be served upon any agent or clerk in this state employed by any private railroad car company in a place of business maintained by the private railroad car company in this state. In the latter case, a copy of the process shall be sent by registered mail to the private railroad car company at its principal or home office.

History.---Added by Stats. 1998, Ch. 695 (SB 2235) in effect January 1, 1999.

Article 3. Lien of Tax

§ 11491. Tax constitutes a lien.
§ 11492. Lien date.
§ 11493. Satisfaction of lien.
§ 11494. Priority of lien.
§ 11495. Recording certificate; lien.
§ 11496. Release of lien.

11491. **Tax constitutes a lien.** The tax, together with the interest and penalties thereon, constitutes a lien upon, and has the effect of an execution duly levied against, all private cars and other personal property, belonging to or owned by the person against whom the tax is levied, and a lien upon all real property of said person as provided in Section 11495.

History.--Stats. 1947, p. 2035, in effect September 19, 1947, substituted "private cars and other personal property" for "property, real, personal, or mixed" and added last clause.

11492. **Lien date.** The lien upon personal property created by this part attaches as of 12:01 a.m. on the first day of January of each year with respect to taxes, together with the interest and penalties thereon, to be levied during the year.

History.--Stats. 1947, p. 2035, in effect September 19, 1947, added "upon personal property." Stats. 1967, p. 2244, operative January 1, 1968, substituted "as of 12:01 a.m. on the first day of March" for "on the first Monday in March." Stats. 1982, Ch. 939, in effect January 1, 1983, operative January 1, 1984, added "created by this part" after "property" and substituted "January" for "March" after "day of".

11493. **Satisfaction of lien.** The lien upon personal property shall not be removed until the tax, interest, and penalties are paid, or the property subject to the lien is sold in payment of the tax, interest, and penalties.

History.--Stats. 1947, p. 2036, in effect September 19, 1947, added "upon personal property."

11494. **Priority of lien.** The lien upon personal property is paramount to all private liens or encumbrances of whatever character, and to the rights of any conditional vendor or other holder of the legal title, in or to any private car assessed under this part.

History.--Stats. 1947, p. 2036, in effect September 19, 1947, added "upon personal property."

11495. **Recording certificate; lien.** If any amount required to be paid to the state under this part is not paid when due, the board may within four years after the amount is due file for record in the office of any county recorder a certificate specifying the amount, interest, and penalty due, the name and address as it appears on the records of the board of the person liable for the same, and the fact that the board has complied with all provisions of this part in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid together with interest and penalty constitutes a lien upon all real property in the county

owned by the person or afterwards and before the lien expires acquired by him. The lien has the force, effect, and priority of a judgment lien and shall continue for 10 years from the time of the filing of the certificate unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the filing of the certificate or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by filing for record a new certificate in the office of the county recorder of any county and from the time of such filing the lien shall be extended to the real property in such county for 10 years unless sooner released or otherwise discharged.

History.--Added by Stats. 1947, p. 2035, in effect September 19, 1947. Stats. 1957, p. 2021, in effect September 11, 1957, substituted "10" for "five" years. Stats. 1974, Ch. 54, p. 121, in effect January 1, 1975, substituted "four" for "three" in the first sentence.

11496. **Release of lien.** The board may at any time release all or any portion of the property subject to any lien provided for in this part from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties.

History.--Added by Stats. 1947, p. 2035, in effect September 19, 1947.

Article 4. Warrant for Collection of Tax

§ 11501. Issuance of warrant.
§ 11502. Payment of fees.
§ 11503. Collection of fees.

11501. **Issuance of warrant.** At any time within four years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 11495 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988. Stats. 1996, Ch. 872, in effect January 1, 1997, substituted "sheriff or marshal" for "sheriff, marshal, or constable" after "directed to any" in the second sentence.

11502. **Payment of fees.** The board may pay or advance to the sheriff or marshal the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988. Stats. 1996, Ch. 872, in effect January 1, 1997, substituted "sheriff or marshal," for "sheriff, marshal, or constable," after "advance to the" in the first sentence.

11503. **Collection of fees.** The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

Article 5. Seizure and Sale

§ 11511. Seizure of property.
§ 11512. Notice of sale.
§ 11513. Sale of property.
§ 11514. Return of revenue in excess of amount due the state.

11511. **Seizure of property.** At any time within four years after any person is delinquent in the payment of any amount, the board may forthwith collect the amount by its seizure of any property, real or personal, of the person and its sale of that property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

11512. **Notice of sale.** Notice of the sale and the time and place thereof shall be given to the delinquent person and to all persons who have an interest of record in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the taxpayer or other person at his or her last known address or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988. Stats. 1990, Ch. 1528, in effect January 1, 1991, added "and to all . . . of record" after "person", substituted "20" for "10" after "least", added "personally served or" after "shall be" and substituted "taxpayer or other person" for "person" after

"addressed to the" in the first sentence, substituted "If not personally served, the notice" for "It" in the second sentence, deleted "also" after "shall", substituted "pursuant to . . . of the Government Code," for "for at least 10 days before the date set for the sale" after "published", substituted "city" for "county" after "published in the", and substituted "or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located" for "seized is to be sold" after "property" in the third sentence, and added the fourth sentence to the first paragraph; and deleted the former first sentence of the second paragraph which provided "If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 10 days prior to the date set for the sale.", and added "taxes," after "including", and substituted "is" for ", interest, penalties, and costs are" in the first sentence of the second paragraph.

11513. **Sale of property.** At the sale the board shall sell the property in accordance with law and the notice, and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

11514. **Return of revenue in excess of amount due the state.** If upon the sale the moneys received exceed the total of all amounts, including interest, penalties, and costs due the state, the board shall return the excess to the person liable for the amounts and obtain that person's receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest or lien, the board shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the board shall deposit the excess moneys with the Treasurer, as trustee for the owner, subject to the order of the person liable for the amount, or that person's heirs, successors, or assigns.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

Article 6. Payment on Termination of Business and Successor's Liability

§ 11521. Withholding of tax due from purchase price.
§ 11522. Failure to withhold sufficient amount from purchase price.
§ 11523. Certificate of payment.
§ 11524. Notice of successor liability.

11521. **Withholding of tax due from purchase price.** If any person liable for any amount under this part sells his or her business or quits the business, the person's successors or assigns shall withhold a sufficient amount of the purchase price to cover the amount due until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

11522. **Failure to withhold sufficient amount from purchase price.** If the purchaser of a business fails to withhold a sufficient amount of the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money. Within 60 days after receiving a written

request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but in any event not later than 90 days after receiving the request, or 90 days from the date of the sale of the business, whichever period expires later, the board shall either issue the certificate or mail notice to the purchaser, at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate. Failure of the board to mail the notice will release the purchaser from any further obligation to withhold from the purchase price as provided in this article. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988. Stats. 1991, Ch. 236, in effect July 29, 1991, added "from the" after "withhold" in the third sentence, substituted "last date upon" for "time within" after "the", and substituted "be not later . . . the business" for start to run at the time the person sells out his or her business or at the time that the determination against the person becomes final, whichever event occurs later" after "enforced shall" in the fourth sentence.

11523. **Certificate of payment.** The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

11524. **Notice of successor liability.** The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of assessment, not later than three years after the date the board is notified of the purchase of the business. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 11336) of Chapter 2. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988. Stats. 1991, Ch. 236, in effect July 29, 1991, added "not later than . . . the business" after "assessment" in the second sentence.

Article 7. Miscellaneous Provisions

§ 11531. Remedies are cumulative.
§ 11532. Board action.
§ 11533. Personal liability for unpaid taxes.
§ 11534. Collection cost recovery fee.

11531. **Remedies are cumulative.** The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or Attorney General constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

11532. **Board action.** In all proceedings under this chapter the board may act on behalf of the people of the State of California.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

11533. **Personal liability for unpaid taxes.** (a) Upon termination, dissolution, or abandonment of a corporate business, any officer or other person who has control or supervision of or is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation in complying with any requirement of this part, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if that officer or other person willfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to this part.

(b) The officer or other person shall be liable only for taxes which became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subdivision (a), plus interest and penalties on those taxes.

(c) For purposes of this section, "willfully fails to pay or cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(d) The sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 2 (commencing with Section 11251) and Chapter 3 (commencing with Section 11401).

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988.

11534. **Collection cost recovery fee.** (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

History.--Added by Stats. 2010, Ch. 721, in effect October 19, 2010.

CHAPTER 5. OVERPAYMENTS AND REFUNDS

Article	1.	Claim for Refund. §§ 11551-11555.
	2.	Suit for Refund. §§ 11571-11577.
	3.	Cancellations. §§ 11596-11597.

Article 1. Claim for Refund

§ 11551.	Excess payments; certification. [Repealed.]
§ 11551.	Excess payments; certification.
§ 11552.	Disposition of excess payments. [Repealed.]
§ 11553.	Time for filing claim.
§ 11553.5.	Filing extension; disability.
§ 11554.	Form and content of claim.
§ 11555.	Interest on overpayment.

11551. **Excess payments; certification.** [Repealed by Stats. 1979, Ch. 516, in effect January 1, 1980.]

11551. **Excess payments; certification.** If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.--Added by Stats. 1979, Ch. 516, in effect January 1, 1980. Stats. 1987, Ch. 498, in effect January 1, 1988, added "or her" after "his" in the second sentence of the first paragraph; and substituted "fifteen" for "five" after "exceeding", substituted "($15,000)" for "($5,000)" after "dollars", and added "or her" after "his" in the first sentence of the second paragraph. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted "to the State Board of Control" after "and shall certify" in the first sentence; substituted "The" for "If approved by the State Board of Control, the" before "excess" in the second sentence; added the third sentence; and deleted the second paragraph which read: "In the case, however, of a determination by the board that an amount not exceeding fifteen thousand dollars ($15,000) was not required to be paid under this part, the board without obtaining approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors." Stats. 2011, Ch. 351,

in effect January 1, 2012, substituted "fifty" for "fifteen" and "($50,000)" for "($15,000)" in the last sentence of the paragraph.

11552. **Disposition of excess payments.** [Repealed by Stats. 1979, Ch. 516, in effect January 1, 1980.]

11553. **Time for filing claims.** No credit or refund shall be allowed after four years from December 10 of the year in which the assessment is made or after six months from the date of overpayment, whichever period expires the later, unless a written claim is filed with the board within such period.

History.--Stats. 1957, p. 2022, in effect September 11, 1957, substantially revised this section, which formerly provided for a limitation of three years from the "date of overpayment." Stats. 1974, Ch. 54, p. 121, in effect January 1, 1975, substituted "four" for "three", and substituted "December 10" for "the first Monday in August".

11553.5. **Filing extension; disability.** (a) The limitation period specified in Section 11553 shall be suspended during any period of a person's life that the person is financially disabled.

(b)(1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

11554. **Form and content of claim.** The claim shall be in writing and shall state the specific grounds upon which it is founded.

11555. **Interest on overpayment.** Interest shall be paid upon the amount of any overpayment of tax at the adjusted annual rate established pursuant to Section 19521 upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the overpayment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board from the first day of the month following the month the tax becomes due. The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the

board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

History.--Added by Stats. 1972, p. 2530, in effect March 7, 1973. Stats. 1974, Ch. 54, p. 121, in effect January 1, 1975, substituted "upon the amount of any overpayment" for "upon any overpayment of any amount", and added "from the first day of the month following the month the tax becomes due" at the end of the first sentence after "board"; and added the second sentence and subdivisions (a) and (b) thereof. Stats. 1975, Ch. 661, p. 1432, in effect January 1, 1976, substituted "1 percent" for "one-half of 1 percent" in the first sentence. Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted "adjusted annual rate established pursuant to Section 19269" for "rate of 1 percent per month" after "tax at the" in the first sentence. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "Section 19521" for "Section 19269" after "established pursuant to" in the first sentence; substituted "he or she" for "he" in subdivision (a).

Note.--Section 76 of Stats. 1975, Ch. 661, provided that notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because this act contains a revenue source which may be utilized by local governments to cover the cost of the mandate. Sec. 78 thereof provided that the interest rate change in this act shall apply to all interest accrued on or after January 1, 1976.

Note.--Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

Article 2. Suit for Refund

§ 11571. Injunction forbidden.
§ 11572. Necessity for refund claim.
§ 11573. Action for refund; limitation.
§ 11574. When refund claim not acted upon.
§ 11574.5. Failure to bring timely suit.
§ 11575. Disposition of amount of judgment.
§ 11576. Interest.
§ 11577. Judgment for assignee forbidden.

11571. **Injunction forbidden.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this State or against any officer of the State to prevent or enjoin under this part the assessment of property or the collection of any amount required to be collected.

Railroad revitalization and regulatory reform act.

--In action under the Act, railroad car companies' offer of district court's prior stipulated order enjoining collection of more than 59.6% of taxes assessed, as sole evidence of Board discrimination, would not support grant of preliminary injunction to limit 1986 tax and prevent collection of portion of that tax based on Board's higher valuation of true market value. *ACF Industries* v. *State Board of Equalization,* 653 F.Supp. 390.

11572. **Necessity for refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

History.--Stats. 1945, p. 1003, in effect September 15, 1945, substituted "board" for "State Treasurer." Stats. 1957, p. 2022, in effect September 11, 1957, completely revised this section, which previously had provided for payment under protest and a suit in Sacramento County.

Scope of Review.--In an action for refund of taxes paid on railroad flatcars, the trial court utilized the proper standards of review where it applied the substantial evidence test of review to all questions of fact, including the Board's application of valuation methods to the flatcars, and it applied the independent judgment test of review to the question of law posed by the lessor's challenge of the valuation method itself. *Trailer Train Company* v. *State Board of Equalization,* 180 Cal.App.3d 565.

11573. **Action for refund; limitation.** Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in any city or city and county of this State in which the Attorney General has an office for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

History.--Original section provided that no action may be brought more than 90 days after payment of amount sought to be recovered. Stats. 1949, p. 1342, in effect October 1, 1949, extended the limitation period from 90 days to one year. Stats. 1957, p. 2022, in effect September 11, 1957, completely revised the section to read as above.

11574. **When refund claim not acted upon.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

History.--Original section provided that court shall not consider any grounds of illegality other than those set forth in the protest. Stats. 1957, p. 2022, in effect September 11, 1957, completely changed subject matter of the section.

11574.5. **Failure to bring timely suit.** Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the State on account of any alleged overpayments.

History.--Added by Stats. 1957, p. 2022, in effect September 11, 1957.

11575. **Disposition of amount of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any amounts due from the plaintiff under this part, and the balance of the judgment shall be refunded to the plaintiff.

11576. **Interest.** In any judgment, interest shall be allowed at the adjusted annual rate established pursuant to Section 19521 upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the

judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

History.--Stats. 1945, p. 1003, in effect September 15, 1945, substituted "board" for "Controller". Stats. 1975, Ch. 661, p. 1432, in effect January 1, 1976, substituted "12 percent" for "6 percent". Stats. 1982, Ch. 5 (First Extra Session), in effect June 1, 1982, substituted "adjusted annual rate established pursuant to Section 19269" for "rate of 12 percent per annum" after "allowed at the". Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "Section 19521" for "Section 19269" after "established pursuant to".

Note.--Section 76 of Stats. 1975, Ch. 661, provided that notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because this act contains a revenue source which may be utilized by local governments to cover the cost of the mandate. Sec. 78 thereof provided that the interest rate change in this act shall apply to all interest accrued on or after January 1, 1976.

Note.--Section 89 of Stats. 1982, Ch. 5 (First Extra Session) provided that the provisions of this act shall apply to all interest and additions to tax accruing on or after the effective date of this act.

11577. **Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of an assignee of the person who paid the amount.

History.--Stats. 1945, p. 1003, in effect September 15, 1945, substituted "board" for "State Treasurer".

Article 3. Cancellations

§ 11596. Cancellation of illegal assessments. [Repealed.]
§ 11596. Cancellation of illegal assessments.
§ 11597. Cancellation of penalties; petition.

11596. **Cancellation of illegal assessments.** [Repealed by Stats. 1987, Ch. 498, in effect January 1, 1988.]

11596. **Cancellation of illegal assessments.** If any amount for taxes, penalty and interest has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.--Added by Stats. 1987, Ch. 498, in effect January 1, 1988. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted "in excess of fifteen thousand dollars ($15,000)" after "penalty and interest", substituted ", certify" for "and shall certify to the State Board of Control" after "in its records", and substituted ", and" for ". If the State Board of Control approves, it shall" after "determination was made" in the first sentence; deleted former third sentence which read, "If an amount not exceeding fifteen thousand dollars ($15,000) has been illegally determined either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board."; and added a new third sentence. Stats. 2011, Ch. 351, in effect January 1, 2012, substituted "fifty" for "fifteen" and "($50,000)" for "($15,000)" in the last sentence of the paragraph.

11597. **Cancellation of penalties; petition.** (a) Any penalty provided for in Section 11341, 11354, 11405, or 11430 may be canceled by the board upon a finding that (1) the failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, provided the principal payment is made within 30 days after the delinquency date, or (2) there was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of tax due is made within 10 days after the notice of shortage is mailed by the board.

(b) Except as provided in subdivision (c), any taxpayer seeking cancellation of the penalty shall file with the board a petition for cancellation or refund within 20 days of payment of the principal amount of the tax or within 20 days after the board mails notice of the entry of the penalty, whichever date is later. The petition shall be accompanied by a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

History.--Added by Stats. 1982, Ch. 1465, in effect January 1, 1983. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, designated the former first paragraph as subdivision (a); designated the former second paragraph as subdivision (b) and added "Except as provided in subdivision (c)," before "any taxpayer" in the first sentence therein; and added subdivision (c).

CHAPTER 6. ADMINISTRATION

§ 11651.	Administration by board.
§ 11651.5.	Alternate time for completion of assessments; notice.
§ 11652.	Records of taxpayers.
§ 11653.	Records of railroad companies.
§ 11654.	Furnishing of data.
§ 11655.	Confidentiality; exception.
§ 11656	Confidentiality; paid return preparers.
§ 11657	Fee and expense reimbursement; unreasonable staff action.

11651. **Administration by board.** The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

11651.5. **Alternate time for completion of assessments; notice.** If the board for any reason fails to complete the private railroad car tax assessments by the time specified in Section 11336, it may nevertheless complete them within the next calendar month. In such case there shall be added one calendar month to the dates specified in Sections 11337, 11338, 11401, 11404, and 11405. The board shall notify each assessee by mail at his address as it appears in the records of the board of the substituted dates during which the assessment may be examined, a petition for reassessment filed, and the tax paid without penalty.

History.--Added by Stats. 1974, Ch. 54, p. 122, in effect January 1, 1975. Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" after "private".

11652. **Records of taxpayers.** Every person whose property is subject to tax under this part shall keep such records and other pertinent data with respect to the operation of his private railroad cars as the board requires. The board or its authorized representative may examine the records and data.

History.--Stats. 1945, p. 1003, in effect September 15, 1945, deleted "in this State" after "private cars." Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" after "private".

11653. **Records of railroad companies.** Every railroad company with lines in this state shall keep such records and other data with respect to the operation of private railroad cars over those lines and make such reports as the board requires. The company shall on demand make the records and data available to the board or its authorized representative.

History.--Stats. 1974, Ch. 54, p. 122, in effect January 1, 1975, added "and make such reports" after "over those lines" in the first sentence. Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" after "private".

11654. **Furnishing of data.** Any person having private railroad cars in his possession or control in this state shall furnish such data concerning the cars as the board may request.

History.--Added by Stats. 1974, Ch. 54, p. 122, in effect January 1, 1975. Stats. 1978, Ch. 1209, in effect January 1, 1979, added "railroad" after "private".

11655. **Confidentiality; exception.** (a) Except as provided herein, all information and records relating to the business affairs of persons required to report to the board pursuant to this part shall be held secret by the board.

(b) The board shall disclose information and records to law enforcement agencies, grand juries, and other duly authorized legislative or administrative officials of the state pursuant to their authorization to examine such information and records.

(c) The board also may disclose information, records, and appraisal data relating to state assessment of private railroad companies whose cars operate in interstate commerce to tax officials of other states having duties corresponding to those described by this part. The disclosure shall be limited to instances in which there is a reciprocal exchange of information by the states in which the cars operate, and shall be made only pursuant to a written agreement between the agencies involved. The agreement shall provide that any request for information be in writing, shall specify the information to be exchanged, and shall require that any information furnished be used solely for tax administration purposes and otherwise shall be held secret. The request for information and any written material furnished pursuant to the request shall be open to inspection by the person to whom the information relates at the office of the board in Sacramento.

History.--Added by Stats. 1974, Ch. 54, p. 122, in effect January 1, 1975. Stats. 1982, Ch. 1465, in effect January 1, 1983, added "(a) Except as provided herein, all" before "information" at the beginning of the former first sentence, added "(b)" before "The board" at the beginning of the former second sentence and added subdivision (c).

Construction.--A taxpayer was not improperly denied the right of cross-examination with respect to a witness's testimony, where the taxpayer sought disclosure of the names of other taxpayers whose property was valued by a different method and where this section requires that all such records be held secret by the Board. *Trailer Train Company* v. *State Board of Equalization,* 180 Cal.App.3d 565.

Confidentiality.--This section applies to reassessment hearings such that reassessment hearings and records must be closed to the public where needed to preserve confidentiality. Thus, a taxpayer was entitled to an injunction barring disclosure of documents submitted at such a hearing. *General American Transportation Corp.* v. *State Board of Equalization,* 193 Cal.App.3d 1175.

11656. **Confidentiality; paid return preparers.** (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 2 (commencing with Section 11251) of this part, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

11657. **Fee and expense reimbursement; unreasonable staff action.** (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or denial of a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2001.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

CHAPTER 7. DISPOSITION OF PROCEEDS

§ 11701. Deposit of taxes.
§ 11702. Appropriation for refunds.

11701. **Deposit of taxes.** All money received by the board under this part shall be transmitted to the State Treasurer and shall be deposited in the State Treasury to the credit of the General Fund.

11702. **Appropriation for refunds.** The moneys so deposited, or so much thereof as may be necessary, is hereby appropriated for the purpose of making refunds under this part and shall, upon warrant of the Controller, be withdrawn from the State Treasury for such purpose.

PROPERTY TAX RULES

Title 18. Public Revenue
California Code of Regulations

DIVISION 1--STATE BOARD OF EQUALIZATION
CHAPTER 1. STATE BOARD OF EQUALIZATION--PROPERTY TAX (1-1099)

SUBCHAPTER 10. PRIVATE RAILROAD CAR TAX (1001-1019)

1001. Annual Report
1002. Petitions for Reassessment, Private Railroad Cars
(Repealed effective January 1, 1996.)
1003. Missing Private Railroad Car Count Data

Rule 1001. ANNUAL REPORT.

Reference: Section 11271, Revenue and Taxation Code.

The report required by Section 11271 of the Revenue and Taxation Code of all persons whose private railroad cars are operated upon the railroads in this State at any time during a calendar year shall be filed on or before the thirtieth day of April of the following year.

History: Originally adopted December 13, 1945 as section 2300, Subchapter 5, Chapter 2, title 18, California Administrative Code; renumbered as above March 27, 1968, effective April 28, 1968.
Amended March 28, 1979, effective March 30, 1979.

Rule 1003. MISSING PRIVATE RAILROAD CAR COUNT DATA.

Reference: Section 11293, Revenue and Taxation Code.

In determining the private railroad car count averages required by statute the Board may substitute for missing border crossing information the average length of stay in the state experienced by private railroad cars of the same class and assessee during the calendar year immediately preceding the year in which the tax is imposed. Border crossing information shall be deemed missing only when it cannot be submitted by the assessee.

History: Adopted March 28, 1979, effective March 30, 1979.

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