

[Assembly Bill 210](#) (Bloom)

Date: Enrolled

Program: Local Cigarette and Tobacco Products Tax

Sponsors: American Cancer Society Cancer Action Network

Revenue and Taxation Code Sections 7284.8, 30111, and 30462

Effective January 1, 2017

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This analysis only addresses the provisions that impact the Board of Equalization (BOE).

Summary: Authorizes a county or a city and county to impose a tax on the privilege of distributing cigarettes and tobacco products.

Purpose: According to the author, the bill intends to take the success of the statewide tax and leverage it at the local level, empowering local authorities to discourage the use of tobacco products and provide a new funding source to important local programs.

Fiscal Impact Summary: No impact to state revenue.

Existing Law: The BOE administers local sales and use taxes under the Bradley –Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law. Cities and counties are required to contract with the BOE to perform all functions in the administration and operation of the ordinances imposing these local sales and use taxes.

The **Bradley-Burns Uniform Local Sales and Use Tax Law (Bradley-Burns Tax Law)**¹ authorizes cities and counties to impose local sales and use tax. This tax rate currently² is fixed at 1% of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Of this 1%, cities and counties use 0.75% to support general operations. The remaining 0.25% is designated by statute for county transportation purposes, but restricted for road maintenance or the operation of transit systems. The counties receive the 0.25% tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. In California, all cities and counties impose Bradley-Burns local taxes at the uniform rate of 1%.

The **Transactions and Use Tax Law (District Tax Law)**³ and the statutes imposing additional local taxes⁴ authorize cities and counties to impose district taxes under specified conditions. Counties may impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the tax ordinance is approved by the required percentage of voters in the county. Cities also may impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the tax ordinance is approved by the required percentage of voters in the city. Under these laws, the combined district tax rate imposed within any county cannot exceed 2%⁵ (with the exception of the counties of Alameda, Contra Costa, and Los Angeles⁶).

Cigarette and Tobacco Products Tax Law. Existing law imposes an \$0.87 per package of 20 (43 ½ mills per cigarette) cigarette tax. The cigarette tax components and the revenue disposition are as follows:

- \$0.10 per pack (5 mills per cigarette) is allocated to the General Fund (Sections 30101 and 30462 of the Revenue and Taxation Code (RTC));

¹ Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code (RTC).

² RTC Section 7203.1.

³ Part 1.6 (commencing with Section 7251) of Division 2 of the RTC.

⁴ Part 1.7 (commencing with Section 7280) of Division 2 of the RTC.

⁵ RTC Section 7251.1.

⁶ Exceptions authorized through AB 1324 (Ch. 795, 2014, Skinner) for City of El Cerrito, AB 210 (Ch. 194, 2013, Wieckowski) for Alameda County and Contra Costa County and SB 314 (Chapter 785, 2003, Murray) for the Los Angeles Metropolitan Transportation Authority.

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- \$0.02 per pack (1 mil per cigarette) is allocated to the Breast Cancer Fund (RTC Sections 30101 and 30461.6);
- \$0.25 per pack (12 ½ mills per cigarette) is allocated to the Cigarette and Tobacco Products Surtax Fund (RTC Sections 30122 and 30123); and
- \$0.50 per pack (25 mills per cigarette) is allocated to the California Children and Families (CCF) Trust Fund (RTC Sections 30131.2 and 30131.3).

RTC Section 30123 imposes a tax upon the distribution of tobacco products, based on the wholesale cost of these products at a tax rate that is equivalent to the combined rate of tax imposed on cigarettes. In addition, Section 30131.2 imposes an additional tobacco products tax at a rate equivalent to the \$0.50 per pack cigarette tax. The BOE determines the tobacco products tax rate annually based on the March 1 wholesale cost of cigarettes. The 2015-16 tobacco products rate is 28.13%.

The BOE deposits the tobacco products surtax imposed under Section 30123 into the Cigarette and Tobacco Products Surtax Fund (including any revenues that result from an indirect increase in the tobacco products tax triggered by a cigarette tax increase). The BOE deposits the tobacco products surtax imposed under Section 30131.2 into the CCF Trust Fund.

RTC Section 30111 provides that the taxes imposed by the CTPTL are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products. This restriction does not prohibit the application of sales and use tax, Bradley-Burns local taxes, district taxes or other local taxes to the sale, storage, use or other consumption of cigarettes or tobacco products.

Cigarette and Tobacco Products Licensing Act⁷ (Licensing Act). The Licensing Act requires the BOE to administer a statewide program to license cigarette and tobacco products manufacturers, importers, distributors, wholesalers, and retailers. Business and Professions Code (BPC) Section 22970.1 includes legislative findings and declarations that state “tax revenues have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products conducted by organized crime syndicates, street gangs, and international terrorist groups.” Section 22970.1 further provides that “the licensing of manufacturers, importers, wholesalers, distributors, and retailers will help stem the tide of untaxed distributions and illegal sales of cigarette and tobacco products.”

Proposed Law: Among other things, this bill amends RTC Section 30111 to delete an obsolete reference and to repeal the section as of January 1, 2017. Operative January 1, 2017, the bill adds new RTC Section 30111 as it previously read, except that the new language does not prohibit a county from imposing a local cigarette and tobacco products tax.

The bill adds RTC Section 7284.8 to authorize county or city and county (county) boards of supervisors to impose a tax on the privilege of distributing cigarettes and tobacco products in the county. RTC Section 7284.8 adds the following definitions:

- “Cigarette” means a cigarette, as defined in RTC Section 30003.
- “Tobacco products” means tobacco products, as defined RTC Section 30121(b).
- “Distributing” means making a sale of cigarettes or tobacco products in a county or city and county that has not been taxed by a cigarette or tobacco products tax ordinance of that county or city and county.
- “Sale” includes any transfer of title or possession for a consideration, exchange, or barter, in any manner or by any means whatsoever.

⁷ Division 8.6 (commencing with Section 22970) of the Business and Professions Code (BPC).

The bill authorizes the board of supervisors of a county to contract with the BOE to administer its local cigarette and tobacco products tax ordinance. The BOE would be required to perform those functions pursuant to that contract. The county would reimburse the BOE for any costs incurred in performing those functions.

A county board of supervisors may enter into an agreement with another county to share any local cigarette and tobacco products tax startup and ongoing administrative costs.

RTC Section 7284.8 also requires the BOE to permit the examination of any BOE records with respect to CTPTL upon request by a county officer or employee to the extent necessary for the proper local cigarette and tobacco products tax administration.

The BOE may require reimbursement for costs incurred in complying with such a request. Any person who knowingly accesses, uses, or discloses any confidential information provided by the BOE without authorization is guilty of a misdemeanor.

Lastly, the bill amends, repeals, and adds RTC Section 30462 to revise legislative intent language related to the local cigarette and tobacco products tax prohibition to remove references to the words “county,” “charter county,” “city and county,” and “charter cities and counties.” The section also clarifies that the reference to political subdivision does not include a county, charter county, city and county, and charter city and county.

This bill becomes operative January 1, 2017.

Background: The two most recent bills that proposed authorizing a local cigarettes and tobacco products tax are:

- [Senate Bill 653](#) (Steinberg, 2011-12) would have authorized the governing board of any county or city and county and any school district, subject to specified voter approval requirements, to levy, increase, or extend a transactions and use tax and specified excise taxes, including, but not limited to, an alcoholic beverage tax, cigarette and tobacco products tax, oil severance tax, and sweetened beverage tax. SB 653 died on the Senate inactive file.
- [Assembly Bill 1040](#) (Leno, 2003-04) would have authorized a county to adopt an ordinance imposing a tax on the retail sale of cigarettes and tobacco products. AB 1040 failed passage in Assembly Governmental Organization Committee.

Commentary:

1. **Statewide vs. locally imposed tobacco taxes.** Existing law imposes the cigarette and tobacco products taxes upon the distribution of such products. The proposed local cigarette and tobacco products taxes also impose the tax on the distribution of such products. However, the definitions of “distribution” differ. The statewide tax “distribution” definition includes, in part, the sale of untaxed cigarettes or tobacco products in this state. The proposed definition of local “distribution” is making a sale of cigarettes in a county or city and county that has not been taxed by a cigarette and tobacco product tax ordinance.

Since the local tax and state tax differ, the local tax cannot be assessed and collected in the same manner as the state cigarette and tobacco products taxes imposed under the CTPTL. BOE-administered local taxes that are consistent with a statewide tax allow jurisdictions to take advantage of the functions already performed for the statewide program. For example, each district tax ordinance administered by the BOE includes provisions identical to those contained in the Sales and Use Tax Law.

Furthermore, without a corresponding statewide tax, implementing a local cigarette and tobacco products tax would require the same implementation time and administrative costs as implementing a new tax or fee program.

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2. **Uniform local tax.** This bill authorizes a county to impose a tax on the privilege of distributing cigarettes and tobacco products. The bill does not require county ordinances to include uniform tax and administration language. As mentioned in Comment 1, the proposed local cigarette and tobacco products taxes cannot be uniformly assessed and collected under the CTPTL.

Without a uniform tax, this bill could potentially result in the adoption of several different tax schemes by each county, which would make administration, collection and enforcement complex, challenging, and expensive.

BOE staff suggests an amendment to add statutory provisions that allow the BOE to collect the locally-imposed cigarette and tobacco products taxes in a uniform manner. In addition, the local tax language should include a due date for the tax and return, an authorization for refund payments, and tax administrative provisions that require the BOE to administer the tax in accordance with the Fee Collections Procedures Law (FCPL).⁸ The FCPL generally provides for the BOE's administration of fee programs, including collection, reporting, returns, refunds, and appeals procedures, as well as the BOE's authority to adopt administration and enforcement regulations.

The BOE staff can assist with developing model legislation for a uniform local cigarette and tobacco products taxes program.

3. **Procedural local tax provisions.** This bill should also include procedural provisions related to contracting with the BOE to collect and administer the tax, similar to the Bradly Burns Tax Law and District Tax Law. Those laws contain provisions that specify a required ordinance, ordinance operative date, BOE reimbursement for start-up and on-going administrative costs, and address unconstitutional or invalid taxes. The procedural provisions should also include BOE notification requirements for any county that elects to contract with the BOE for collection and administration.
4. **Double taxation.** This bill authorizes a local tax on the privilege of distributing cigarettes and tobacco products. Distributing means the making of a sale of such products in a county that has not been taxed by a cigarette or tobacco products tax ordinance of that jurisdiction.

The term "distributing" will likely result in the imposition of local tax on cigarettes and tobacco products more than once. For example, a distributor sells product to a wholesaler in County #1 and imposes the County #1 local tax. That wholesaler sells that same product to a retailer in County #2. Since the product has not been taxed in County #2, the County #2 local tax applies. If the retailer sells that same product to a customer in County #3, the County # 3 local tax applies since the product has not been taxed in that county.

Furthermore, it is unclear how a seller would know if a local tax has been imposed in a county. As a result, later sales in that same county may be taxed again.

5. **BOE contract is optional.** The bill authorizes a county to contract with the BOE for local cigarette and tobacco products administration and collection. However, there does not appear to be language that requires the BOE to contract with a county or city and county.
6. **Costs may exceed revenues.** This bill does not increase BOE administrative costs since it only authorizes a county to impose a tax. However, if the county or city and county passes an ordinance and elects to contract with the BOE to perform functions related to the ordinance, the BOE would incur costs related to the start-up of a new tax program in addition to ongoing costs for the BOE's services in administering the ordinance. Without uniform tax language, these start-up and ongoing costs would vary from contract to contract and likely result in administrative costs exceeding revenues.

However, if a uniform tax is approved, the one-time start-up costs would be the same, regardless of whether one county or all 58 counties adopt an ordinance to impose the new tax. The first county that contracts with the BOE would pay these start-up costs. Subsequent contract costs would be

⁸ Part 30 (commencing with Section 55001).

less expensive since the one-time start-up costs and related workload were addressed and funded under the first contract.

If the rate is set too low and/or only a few counties impose the tax, or contract with the BOE to administer the tax, administrative costs would be paid from a smaller revenue base. Under these circumstances, revenues generated by the proposed tax may not suffice to cover the BOE's administrative costs. If the costs were to exceed the revenues, more than likely the General Fund would need to make up the difference.

7. **Cigarette and tobacco products tax evasion.** Tax evasion is one of the major areas that can reduce state revenues generated from cigarettes and other tobacco products taxes. BOE staff estimated that cigarette tax evasion in California was running at a rate of approximately \$126.2 million, plus \$87.8 million in tax on other tobacco products.⁹

During the mid-1990's, the BOE's cigarette tax evasion estimates remained stable since cigarette prices and excise taxes were fairly consistent during that time. However, since November 1998, two major events dramatically increased California excise taxes and cigarette prices (excluding taxes): Proposition 10 and the Tobacco Master Settlement Agreement between states and tobacco manufacturers (tobacco settlement). These two developments, coupled with typical wholesaler and retailer distribution margins, coincided with an approximate 50% increase in the average prices of cigarettes to California consumers compared to early November 1998. According to BOE estimates, the impacts of Proposition 10 and the tobacco settlement more than doubled the dollar amount of cigarette tax evasion in California.

Since 1998, many new measures have reduced cigarette and other tobacco products tax evasion. These include the Licensing Act, an encrypted cigarette tax stamp, and the Prevent All Cigarette Trafficking Act (PACT Act).

This measure's local cigarette and tobacco products tax will result in an increase in the retail price of cigarette and tobacco products to the extent that the tax increase is passed along to consumers. Based on historical data related to Proposition 10 and the tobacco settlement, as well as research of similar experiences in other states, BOE staff believes any local cigarette tax and resulting increase in the other tobacco products tax could result in both a decrease in actual consumption and an increase in tax evasion.

8. **Cigarette and tobacco products tax enforcement.** In 2003, [Assembly Bill 71](#) (J. Horton, Ch. 890) enacted the Licensing Act, which established a statewide licensure program administered by the BOE to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. The Licensing Act requires the licensure of all persons engaging in the sale of cigarettes and tobacco products.

The Licensing Act is funded through the imposition of licensing fees. However, the Licensing Act enforcement costs exceed the amount of revenues from the licensing fees with the shortfall made up by the various cigarette and tobacco products tax funds (comprised of payments made to the state for the excise taxes on the distribution of cigarettes and tobacco products).

Since this measure would authorize a local cigarette and tobacco products tax, which would be enforced, in part, pursuant to the Licensing Act, BOE staff suggests an amendment to require the county or city and county to reimburse the BOE for the enforcement services it performs under the Licensing Act.

9. **Why not increase the existing excise tax on cigarettes and tobacco products?** As noted previously, it may not be cost effective for the BOE to administer the tax proposed in this bill. It may be more cost effective to increase the existing statewide cigarette and tobacco products tax and allocate the additional revenue to the counties.

⁹ <http://www.boe.ca.gov/legdiv/pdf/CigaretteEvasion.pdf>.

10. **Related legislation.** [SBx2 9](#) (McGuire) is substantially similar to this bill, except that bill does not include provisions that authorize a county or city and county to contract with the BOE to collect the tax. That bill is pending in the Assembly.

Administrative Costs: This bill does not increase administrative costs to the BOE because it only authorizes a county to impose a local cigarette and tobacco products tax. However, if the county passes an ordinance and elects to contract with the BOE to perform functions related to the ordinance, the county would be required to reimburse the BOE for its administrative costs, including implementation-related costs.

Revenue Impact: This measure only authorizes a county to adopt an ordinance to impose local cigarette and tobacco products taxes. Since there are several unknown variables related to the proposed tax, such as uniform tax language and the specific rates that may be adopted by each jurisdiction, a revenue estimate could not be prepared at this time.