STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**03/22/07**	Bill No:	**AB 1748**
Tax:	**Sales and Use** **Special Taxes and Fees**	Author:	**Assembly Revenue and Taxation Committee**
Related Bills:			

BILL SUMMARY

This bill contains **Board of Equalization-sponsored provisions** for the sales and use tax and special taxes and fees programs, which would do the following under the Revenue and Taxation Code:

- Amend Section 6478 of the Sales and Use Tax Law and Section 7659.7 of the Motor Vehicle Fuel Tax Law to provide appeals rights to taxpayers who have been assessed a 10 percent penalty for failure to make a prepayment in accordance with the law and that failure is due to negligence or intentional disregard for the law.
- Amend Section 7204.3 of the Bradley-Burns Uniform Local Sales and Use Tax Law to correct an erroneous term and amend Section 7273 of the Transactions and Use Tax Law to add wording consistent with other subdivisions contained in Section 7273. (Technical)
- Amend Section 7211 of the Bradley-Burns Uniform Sales and Use Tax Law to clarify that the Board of Equalization shall continue to enforce the Bradley-Burns ordinance of any city or city and county that levies a tax administered by the Board under the Transactions and Use Tax Law. (Technical)
- Amend Section 7252 and delete Sections 7252.5 through 7252.30 of the Transactions and Use Tax Law to simplify the definition of "districts."
- Add Section 7269 to the Transactions and Use Tax Law to provide for a limitation on redistributions of transactions and use taxes.
- Repeal Sections 7204.02, 7204.5, and 7208 of the Bradley-Burns Uniform Local Sales and Use Tax Law and Sections 7251.2 and 7271.05 of the Transactions and Use Tax Law as these sections were enacted to serve a specific purpose and that purpose has been accomplished. (Technical)
- Repeal Sections 7286.28, 7286.40, 7286.47, 7286.56, and 7286.65 of the Transactions and Use Tax Law to eliminate special statutes that are redundant due to subsequent legislation that authorized cities to levy transactions and use taxes for general and special purposes. (Technical)
- Amend Section 9304 of the Use Fuel Tax Law and Section 60653 of the Diesel Fuel Tax Law to delete the word "License" to conform to the correct title of the "Motor Vehicle Fuel Tax Law." (Technical)
- Amend Section 30182 of the Cigarette and Tobacco Products Tax Law to change the due date of the monthly report filed by cigarette distributors who pay on a twice-monthly basis to the same report due date as cigarette distributors paying on a monthly or weekly basis.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

- Amend Section 30187 of the Cigarette and Tobacco Products Tax Law to change the return due date for consumers owing excise taxes on purchases from out-of-state cigarette sellers to be consistent with the due date of their use tax return.

ANALYSIS

Appeals Rights for Prepayment Penalty

Revenue and Taxation Code Sections 6478 and 7659.7

Current Law

Under the Sales and Use Tax Law and the Motor Vehicle Fuel Tax Law, certain taxpayers whose monthly tax liabilities meet or exceed certain thresholds are required to make monthly prepayments of the tax liability. Under these laws, if a taxpayer fails to timely make the prepayment, or fails to make the full prepayment required, a six percent penalty applies to the amount not timely remitted. However, under Section 6478 of the Sales and Use Tax Law and Section 7659.7 of the Motor Vehicle Fuel Tax Law, that penalty may be increased to 10 percent if a person's failure to make a prepayment in accordance with the law is due to negligence or intentional disregard of the law. This 10 percent penalty is assessed in cases where a taxpayer has repeatedly been late in making his or her prepayments or repeatedly failed to make the full prepayment, and has received a warning from the Board that a 10 percent negligence penalty would apply if the taxpayer continues to fail to make prepayments in accordance with the law.

Unlike other penalties imposed in the law for late payments, the law does not provide a mechanism to provide relief of this negligence penalty when the Board finds that the person's failure to make a prepayment in accordance with the law is due to reasonable cause. Instead, the taxpayer must pay the penalty and file a claim for refund. If the claim for refund is denied, the taxpayer may then pursue his or her appeals rights.

Proposed Law

This measure would amend the laws so that the negligence penalty imposed under Sections 6478 and 7659.7 would be assessed as a deficiency determination and permit the taxpayer to petition for redetermination.

Comment

Purpose. These amendments would provide taxpayers with an opportunity to dispute the application of the discretionary negligence penalty through the filing of a petition for redetermination without having to pay the penalty and request a refund.

Technical Wording Changes

Revenue and Taxation Code Sections 7204.3 and 7273

Current Law

Assembly Bill 1809 (Ch. 49, Assembly Budget Committee, signed by Governor Schwarzenegger on June 30, 2006), a budget trailer bill, made a number of revenue and taxation related changes necessary to implement the Budget Act of 2006. Among those changes, AB 1809 amended Section 7204.3 of the Bradley-Burns Uniform Local Sales and Use Tax Law and Section 7273 of the Transactions and Use Tax Law to adopt a new simplified costing methodology to allocate the Board's administrative costs for state and local sales and use taxes among the state, local entities, and special taxing districts. The simplified costing methodology was developed by Board staff and recommended by the Legislative Analyst's Office (LAO).

Sections 7204.3 and 7273 were amended to require the Board, beginning fiscal year 2006-07, and each fiscal year thereafter, to charge each local entity and special taxing district an amount for the Board's services in administering the local sales and use tax ordinance of that jurisdiction based on the methodology described in Alternative 4C of the November 2004 report by the State Board of Equalization entitled "Response to the Supplemental Report of the 2004 Budget Act."

The amendments to these sections contained certain drafting errors. With respect to Section 7204.3, subdivision (a)(2) of this section incorrectly uses the term "district," rather than "local entity." Section 7204.3 requires the Board to charge each city, city and county, county, or redevelopment agency for the services it provides in administering the local entity's tax ordinance. This statute covers a local entity (i.e., city, city and county, county, or redevelopment agency) but does not cover a district. The term "district" refers to special tax districts under the Transactions and Use Tax Law, not local entities under Bradley-Burns Uniform Local Sales and Use Tax Law.

With respect to Section 7273, subdivision (a)(1) was amended to add the wording "each district." For consistency, it is suggested that this same wording be added to subdivision (a) (2) of Section 7273.

Proposed Law

This measure would correct an inadvertent drafting error in Section 7204.3 to replace the term "district" with "local entity," consistent with other terms contained in both Section 7204.3 and all other sections under Bradley-Burns Uniform Local Sales and Use Tax Law. This measure would also add "each district" to subdivision (a)(2) of Section 7273, consistent with subdivision (a)(1) of that section.

Comment

Purpose. These amendments would simply correct certain drafting errors that occurred with the enactment of a budget trailer bill enacted in July, 2006.

Clarify that the Board will Enforce Local Ordinances

Revenue and Taxation Code Section 7211

Current Law

Under the existing Bradley-Burns Uniform Local Sales and Use Tax Law, Section 7203.5 provides that the Board shall not administer and shall terminate its contract to administer any sales or use tax ordinance of a city, county, or city and county, if that city, county, or city and county imposes a sales or use tax in addition to the sales and use taxes imposed under an ordinance conforming to specified provisions of the Bradley-Burns law. Section 7211 of the Bradley-Burns law, however, makes an exception to Section 7203.5's restriction, by authorizing the Board to continue to administer the sales and use tax ordinance of any county which adopts a transactions and use tax ordinance pursuant to a specified provision in the Government Code. The exception provided in Section 7211 was added to the law when counties were given authorization in 1985 to levy district taxes for general purposes.

Under the law, aside from the local tax levied under the Bradley-Burns law (which is uniformly imposed by all cities and counties within the state) the Transactions and Use Tax Law authorizes local agencies to impose transactions and use taxes – often referred to as "district" taxes. These "district" taxes are authorized by statutes in various codes, but the Board administers all such taxes pursuant to Part 1.6 of the Revenue and Taxation Code (Sections 7251-7279.6).

When counties were given general authority to levy transactions and use taxes in 1985, the Legislature did not amend the Bradley-Burns Uniform Local Sales and Use Tax Law to make it clear that the Board may continue to administer district taxes that are imposed by counties through other provisions of law. In addition, when the Legislature began authorizing cities to levy their own district taxes, the Legislature did not amend the Bradley-Burns law to also clarify that the Board may continue to administer these city-imposed district taxes. Although the Board has interpreted Section 7211 as if it referred to cities as well as counties that levy a district tax outside the specific Government Code provision, by its own terms, Section 7211 does not extend to such district taxes. In reality, the safe harbor provided by Section 7211 applies only to one transit district tax which the Legislature authorized Sonoma County to levy (which was authorized under the specific Government Code provision referred to in Section 7211).

Proposed Law

This measure would amend Section 7211 of the Bradley-Burns Uniform Local Sales and Use Tax Law to clarify that the Board may continue to administer the sales and use tax ordinance of any city or county that imposes a district tax pursuant to the Transactions and Use Tax Law.

Comment

Purpose. These amendments are intended to clarify the law with respect to the Board's ability to administer the local tax ordinances of California's cities and counties.

"Districts" Definition Simplified

Revenue and Taxation Code Sections 7252, and 7252.5 through 7252.30

Current Law

Under existing law, the Transactions and Use Tax Law authorizes local agencies to impose transactions and use taxes – often referred to as "district" taxes. These "district" taxes are authorized by statutes in various codes, but the Board administers all such taxes pursuant to Part 1.6 of the Revenue and Taxation Code (Sections 7251-7279.6). Under this part, the term, "district" is defined in 16 separate sections. These definitions were added at the time the Legislature authorized a new local agency to levy a transactions and use tax.

In 1985, when counties were given the authority to levy district taxes, Section 7252.9 was added to the Transactions and Use Tax Law to define a county levying a district tax as a "district." When cities began to be added to the district tax system in 1990, no such provision was made for them.

Proposed Law

This measure is intended to 1) include cities within the term "district," and 2) eliminate the proliferation of definitions of the term "district" in the Transactions and Use Tax Law by providing one definition that would consider all entities levying district taxes as "districts." A "district" would be defined as any county or other governmental entity authorized to impose a tax administered by the Board pursuant to Part 1.6 of the Revenue and Taxation Code.

Comment

1. **Purpose.** These amendments are intended to simplify the tax code by clarifying that cities are considered "districts," and to delete unnecessary and outdated definitions in the law for the term, "districts."
2. **Technical correction.** In order to clarify that cities are regarded as "districts" in Section 7252, "city, county, city and county" should replace "county" on page 8, line 7.

Limitation on Redistributions of District Taxes

Revenue and Taxation Code Section 7269

Current Law

Under the existing Bradley-Burns Uniform Local Sales and Use Tax Law, counties are authorized to impose a local sales and use tax at a rate of one percent on the sales price of tangible personal property sold at retail in the county. Cities are also authorized to impose a local sales and use tax rate of up to 0.75 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed one percent. Under the Bradley-Burns Law, 0.25 percent of the one percent tax rate is earmarked for county transportation purposes, and 0.75 percent may be used for city and county general purposes. Cities and counties are required to contract with the Board to perform all functions in the administration and operation of their ordinances imposing the tax. All taxes collected by the Board under contract with cities and counties are transmitted to the cities and counties based on the location in which the sale is made (generally the place of business of the retailer).

Under the law, Section 7209 provides that when the Board determines that the Bradley-Burns Uniform local sales and use tax revenue has been misallocated to a county or city, the Board may redistribute that revenue, but shall not redistribute amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board made that determination.

Section 7209 was added to the law in 1959, as the Legislature realized that when the first local tax redistributions were proposed at that time, redistributing tax throughout the full length of the three-year applicable statute of limitations would cause severe financial hardship to jurisdictions to which local tax revenues had been improperly distributed. As a result, the Legislature enacted Section 7209 to limit the number of tax periods for which a redistribution could be made to the quarterly period for which the Board obtains knowledge of the improper distribution, and the two previous quarters.

Under the law, aside from the local tax levied under the Bradley-Burns law (which is uniformly imposed by all cities and counties within the state) the Transactions and Use Tax Law authorizes local agencies to impose transactions and use taxes – often referred to as “district” taxes. These “district” taxes are authorized by statutes in various codes, but the Board administers all such taxes pursuant to Part 1.6 of the Revenue and Taxation Code (Sections 7251-7279.6).

Under current law, no equivalent to Section 7209 exists for district taxes. While district tax redistributions do not take place with the frequency that they do with respect to the Bradley-Burns local taxes, the financial hardship to the district to which the revenue was improperly distributed can be great.

Proposed Law

This measure would provide the same relief to districts that has been available to local tax jurisdictions since 1959. It would limit the number of tax periods for which a redistribution could be made to the quarterly period for which the Board obtains knowledge of an improper distribution, and the two previous quarters.

Comment

Purpose. Due to the anticipated proliferation of city-wide district taxes, the Board anticipates an increase in errors in district tax reporting with a concomitant need to redistribute district taxes. Consequently, this amendment would place a limit on redistributions of district tax similar to that which now exists in local taxes.

Repeal of Outdated Sections

Revenue and Taxation Code Sections 7204.02, 7204.5, 7208, 7251.2 and 7271.05

Current Law

Sections 7204.02, 7204.5, and 7208 of the Bradley-Burns Uniform Local Sales and Use Tax Law (hereinafter referred to as Bradley-Burns law) and Sections 7251.2 and 7271.05 of the Transactions and Use Tax Law (hereinafter referred to as District tax law) were enacted to address specific issues. Those issues have been addressed and the statutes are no longer needed and should be repealed.

The following provides a summary of these sections:

Section 7204.02, added by Senate Bill 30 (Ch. 37, Stats. 1990 First Extraordinary Session), provides that, beginning July 1, 1992, and for each year through and until July 1, 1997, the Board shall reduce local sales tax revenues transmitted to affected cities, counties, and cities and counties by an amount to recover 1/5 of the amount transmitted to these local entities pursuant to Section 7204.01, plus interest. Section 7204.01, also added by SB 30, provided the procedures whereby the local entities could make a request to the Controller to receive an amount attributable to any reductions in local sales tax revenues as a result of the October 17, 1989 earthquake (known as The Loma Prieta Earthquake). Section 7204.01 was repealed effective January 1, 1992.

Since the requirements under Section 7204.02 have been accomplished, it appears that the statute is no longer needed, and, therefore should be repealed.

Section 7204.5, added by SB 1102 (Ch. 620, Stats. 1997), provided certain offset provisions for the County of Napa and any cities located in Napa County. It allowed Napa County and cities to take up to three years to repay the Board for refunds of the local tax on oak barrels purchased for making wine. The provisions required the Board to notify the city or county of amounts subject to offset and, upon request of a city or county, to remit to the city or county that offset portion of the refund deducted from tax revenue transmittals by the Board which exceeded $50,000 in a calendar quarter. The Board, thereafter, would deduct a pro rata share of that offset portion from future transmittals of tax revenues, over a period not to exceed three years, until the entire amount of the offset portion had been repaid.

In 1996, information submitted to the Board supported the fact that oak wine barrels were purchased primarily for the purpose of incorporating oak into the wine to be sold, and not purchased as containers for aging wine. Effective April 3, 1996, sales and use tax Regulation 1525 was amended to recognize that oak wine barrels purchased for such purposes were purchased for resale based on existing law. The amendment to Regulation 1525 had retroactive treatment and applied to overpayments of tax on sales or purchases of oak wine barrels within the statute of limitation period (i.e. three years from the due date of the return for the period for which the overpayment was made).

As a result of this regulatory change, any overpayments of local sales taxes to be refunded to taxpayers had to be deducted from future transmittals of local taxes to local entities. The refund of local taxes posed a financial hardship for certain local entities, such as Napa County. SB 1102, effective January 1, 1998, sought to ease the financial hardship on the County of Napa and the cities located within Napa County by providing a three-year period for Napa and any cities to repay the local taxes. Since the repayment has been completed, Section 7204.5 is no longer needed.

Section 7208, added by SB 636 (Ch. 1785, Stats. 1959) and took effect September 18, 1959, provides that in the case of tangible personal property purchased from a retailer whose place of business was located in a county which, following purchase, imposes a tax pursuant to Bradley-Burns law operative on or after July 1, 1959, but not later than July 1, 1960, a notice of determination of tax shall be issued within four months of the end of the quarterly period during which the storage, use, or other consumption of the property became taxable.

Section 7208 provided a special statute of limitation period on the issuance of a notice of determination of local use tax where all of the following conditions existed:

1. The purchaser purchases the property from a retailer whose place of business was in a county which at the date of the purchase was not imposing a Bradley-Burns tax.
2. The purchaser used the property in a county which imposed a Bradley-Burns tax.
3. After the date of the purchase, the county in which the retailer's place of business was located began imposing a Bradley-Burns tax.
4. The newly imposed Bradley-Burns tax went into effect for the first time between July 1, 1959, through and until July 1, 1960.

Bradley-Burns law was enacted in 1955. By 1961, all 58 counties had elected to opt into the Bradley-Burns system. Section 7208 was enacted in 1959 and took effect September 18, 1959. At that time, eight counties (Alpine, Amador, Fresno, Plumas, San Mateo, Santa Barbara, Siskiyou, and Tehema) did not have a Bradley-Burns tax in effect. However, three counties (Amador, Fresno, and Tehema) had adopted a Bradley-Burns tax which became operative on October 1, 1959.

As previously stated, all counties adopted the Bradley-Burns tax by 1961. Therefore, the provisions of Section 7208 are no longer applicable and the statute should be deleted.

Section 7251.2 was enacted in 1990 (Assembly Bill 3736, Ch. 1490, Stats. 1990) to specify that if two local district tax measures submitted to the voters of Los Angeles County at the November 6, 1990 general election were approved, that the rate of each tax would be limited to 0.25 percent. Both of these measures were to impose a district tax at a rate of 0.50 percent each. However, if both measures would have passed, Los Angeles County would have exceeded the combined district rate limitation of 1 percent (rate limitation in effect in 1990). The enactment of Section 7251.2 resolved this issue by specifying that if both measures pass, then each ordinance would impose only a 0.25 percent tax rate, instead of a 0.50 percent.

Known as the "Los Angeles County Transportation Commission 1990 Fast-Track Anti-Gridlock Transit Improvement Proposition" and the "Local Communities Safety Act – Los Angeles County Regional Justice Facilities Financing Agency," the Los Angeles Transportation Commission tax passed and became operative on April 1, 1991, and the Los Angeles County Regional Justice Facilities Financing Agency failed.

Since Section 7251.2 applies only to the two district tax measures that were submitted to the voters of Los Angeles County at the November 6, 1990 general election, it seems that the statute is no longer needed, and, therefore should be repealed.

Section 7271.05, added by SB 30 (Ch. 37, Stats. 1990 First Extraordinary Session), provides that, beginning July 1, 1992, and for each year through and until July 1, 1997, the Board shall reduce district taxes transmitted to the Santa Cruz Metropolitan Transit District by an amount to recover 1/5 of the amount transmitted to the district pursuant to Section 7271.03, plus interest. Section 7271.03, also added by SB 30, provided the procedures whereby the district could make a request to the Controller to receive an amount representing reductions in district tax revenues directly attributable to the October 17, 1989 earthquake (known as The Loma Prieta Earthquake). Section 7271.03 was repealed effective January 1, 1992.

Since the requirements of Section 7271.05 have been accomplished, it appears that the statute is no longer needed, and, therefore should be repealed.

Proposed Law

This measure would repeal Sections 7204.02, 7204.5, and 7208 of the Bradley-Burns law and Sections 7251.2 and 7271.05 of the District tax law that have become obsolete.

Comment

Purpose. The repeal of these sections is intended to clean up the tax code. These statutes were enacted to serve a specific purpose and that purpose has been accomplished. As such, these statutes are no longer used and, therefore, should be repealed.

Repeal of Redundant Provisions

Revenue and Taxation Code Sections 7286.28, 7286.40, 7286.47, 7286.56, and 7286.65

Current Law

Senate Bill 566 (Ch. 709, Stats. 2003), effective January 1, 2004, authorizes cities to levy transactions and use taxes for general or special purposes, subject to voter approval. Prior to the enactment of SB 566, cities needed specific legislative approval in order to place a sales tax ordinance before the voters of that city. SB 566 provided cities with the same authority that exists for counties and eliminated the need for all of the special "city" legislation.

SB 566 added both Sections 7285.9 and 7285.91 to the Transactions and Use Tax Law. Section 7285.9 authorizes a city to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for general purposes, if the ordinance imposing that tax is approved by a majority of the local electorate. Section 7285.91 authorizes a city to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for special purposes, if the ordinance imposing that tax is approved by a two-thirds vote of the local electorate.

Under existing law, Section 7286.47 authorizes the City of Redding to levy a transactions and use tax at a rate of 0.25 percent for general purposes, subject to a majority voter approval. Since City of Redding can levy a general purpose tax at a rate of 0.25 percent under the general statute (Section 7285.9), this special statute is no longer needed. Similarly, Sections 7286.28 (City of Salinas), 7286.40 (City of Lakeport), 7286.56 (Town of Yucca Valley), and 7286.65 (City of Madera) authorize specified cities to impose a special tax at a rate of 0.25 percent, or multiples of 0.25 percent, subject to two-thirds voter approval. These cities can levy a special purpose tax at a rate of 0.25 percent, or multiples of 0.25 percent, under the general statute (Section 7285.91).

Proposed Law

This measure would repeal Sections 7286.28, 7286.40, 7286.47, 7286.56, and 7286.65 of the Transactions and Use Tax Law to eliminate special statutes that are now redundant due to subsequent legislation that authorized any city to levy a transactions and use tax for general or special purposes, subject to the required voter approval.

Comment

Purpose. Because cities can levy a transactions and use tax under Sections 7285.9 (general purpose) or 7285.91 (special purpose), these special enabling statutes are no longer necessary, and, therefore, these proposed amendments are intended to repeal these redundant provisions.

Correction of Reference to Motor Vehicle Fuel Tax Law

Revenue and Taxation Code Sections 9304 and 60653

Current Law

Under the existing Use Fuel Tax Law and the Diesel Fuel Tax Law, the State Controller is required to transfer moneys from the Motor Vehicle Fuel Account to the Highway Users Tax Account at the same time the Controller transfers money to the Highway Users Tax Account of moneys received under the Motor Vehicle Fuel License Tax Law. Operative January 1, 2002, the Motor Vehicle Fuel License Tax Law was repealed and replaced by the Motor Vehicle Fuel Tax Law pursuant to AB 2114 (Ch. 1053, Stats. 2000). However, the reference to the name of the law was not changed in Sections 9304 and 60653.

Proposed Law

This measure would delete the word “License” from the reference to the Motor Vehicle Fuel License Tax Law used in Sections 9304 and 60653 to correct the wording to refer to the Motor Vehicle Fuel Tax Law.

Comment

Purpose. These amendments would simply change the references to the “Motor Vehicle Fuel License Tax Law” that are contained in other provisions of law to the correct name – the Motor Vehicle Fuel Tax Law.

Due Date Change for Cigarette Distributors

Revenue and Taxation Code Section 30182

Current Law

Under existing Cigarette and Tobacco Products Tax Law, a distributor may elect to pay on a monthly, twice-monthly or weekly basis for amounts owing for stamps and meter register settings purchased on a deferred basis. If a distributor elects a monthly basis, payment is required to be remitted on or before the 25th day of the month following the month in which the stamps and meter register settings were purchased. A distributor electing a weekly payment basis is required to remit payment on or before Wednesday following the week in which the stamps and meter register settings were approved and released. And a distributor electing a twice-monthly payment basis is required to remit payment based on the following schedule:

- The first monthly remittance is due on or before the 5th day of the month. The amount due is equal to either one-half of the total amount of those purchases of stamps and meter register settings made during the preceding month or the total amount of those purchases of stamps and meter register settings made between the first day and the 15th day of the preceding month, whichever is greater.
- The second monthly remittance is due on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

In regards to the accompanying report, a distributor that elects to make deferred payments on a monthly or weekly basis is required to file a report on or before the 25th day of each month respecting his or her distributions of cigarettes and purchases of stamps and meter register settings; however, a distributor that elects to make deferred payments on a twice-monthly basis is required to file a report on or before the 5th day of the month.

Proposed Law

This measure would change the due date of the monthly report filed by distributors on twice-monthly basis to the 25th day of the month to conform to the reporting due date of distributors on a monthly and weekly payment basis.

Background

In 2003, the Legislature approved and the Governor signed AB 1666 (Ch. 867, Cogdill) which authorizes a cigarette distributor to elect a twice-monthly deferred payment option for amounts owing for stamps and meter register settings purchased on a deferred basis. This election, which was to remain in effect until January 1, 2007, was extended indefinitely in 2006 pursuant to AB 2001 (Ch. 70, Cogdill). As originally incorporated into law, the first monthly remittance for a twice-monthly payment basis election is due on or before the 5th day of the month. To correspond to this due date, the due date for a distributor's report respecting his or her distributions of cigarettes and purchases of stamps and meter register settings is the same date as the due date for the first monthly remittance.

Comments

Purpose. Delaying the report due date for a distributor electing a twice-monthly payment basis to be consistent with the report due date for a distributor electing a monthly or weekly payment basis is intended to provide a distributor more time to prepare the report, which could possibly eliminate reporting errors. Currently, distributors on a twice-monthly payment basis only have 5 days to prepare and submit their report. In addition, having the different due date for cigarette reports and tobacco returns may be confusing and burdensome for a distributor of both cigarettes and tobacco products.

Furthermore, reports received on the 5th day of the month by distributors electing a twice-monthly payment basis are manually processed by Board staff. Because of the limited number of distributors electing a twice-monthly payment basis, Board computers were not programmed to accept reports on or before the 5th day of the month. However, if more distributors elect the twice-monthly payment basis in the future, the Board would be forced to program computers to accept those reports. As such, the measure could result in a cost savings related to this computer programming (Board computers are already programmed to accept reports on or before the 25th day of the month for distributors electing a monthly or weekly payment basis).

And lastly, delaying the report due date for distributors electing a twice-monthly payment basis would not affect the Board's administration of the cigarette tax program.

Consistent Due Dates

Revenue and Taxation Code Section 30187

Current Law

Under current law, Section 30101 of the Cigarette and Tobacco Products Tax Law imposes an excise tax of 6 mills (or 12 cents per package of 20) on each cigarette distributed. In addition, Sections 30123 and 30131.2 impose a surtax of 12 ½ mills (25 cents per package of 20) and 25 mills (50 cents per package of 20), respectively, on each cigarette distributed. The current total tax on cigarettes is 43 ½ mills per cigarette (87 cents per package of 20).

Sections 30123 and 30131.2 also impose a surcharge on tobacco products at a rate to be annually determined by the Board. The tobacco products tax rate is equivalent to the combined rate of tax on cigarettes. The surcharge rate for fiscal year 2006-07 is 46.76 percent.

Section 30187 requires every consumer or user subject to the excise tax resulting from the use or consumption of untaxed cigarettes or tobacco products in this state from whom the cigarette and/or tobacco products tax has not been collected to file with the Board, on or before the 25th day of the month following receipt of cigarettes or tobacco products, a report of the amount of cigarettes received by him or her in the preceding calendar month, submitting with the report the amount of tax due.

Under current Sales and Use Tax Law, sales and use tax is required to be remitted and reported to the Board quarterly on or before the last day of the month next succeeding each quarterly period. In order to facilitate the collection of taxes, the Board may require reporting periods other than a quarterly basis, such as monthly or yearly.

Proposed Law

This measure would make the due date for the excise tax return consistent with the use tax return for consumers reporting under the Cigarette and Tobacco Product Internet Program.

Comments

Purpose. The Board recently implemented the Cigarette and Tobacco Product Internet Program to collect the California state excise taxes and use taxes from California consumers purchasing untaxed cigarettes and/or tobacco products from out-of-state Internet retailers, and/or by way of mail or telephone, for self-consumption in California.

Under the federal Jenkins Act, the Board receives information from out-of-state sellers who ship cigarettes to California customers. The seller is required to provide the buyer's name and address, and the brand and quantity of cigarettes sold or transferred. These records from out-of-state retailers show that purchasers received a shipment of cigarettes and/or tobacco products purchased through the Internet, phone, or mail, and, have not paid the state excise and use tax due.

As such, the Board registers these purchasers as cigarette and/or tobacco consumers and sends them returns to pay the state and local taxes owed. Every registered consumer receives two returns (a quarterly excise tax return and a use tax return) to report out-of-state purchases and pay the excise tax and the use tax due on the purchase. (The use tax is the equivalent rate of the sales tax but it is owed by the purchaser instead of the retailer.) However, the due dates for the payment of tax and

the two returns differ, which is confusing to the taxpayer and could result in late tax returns and payments upon which a 10 percent penalty and interest may be imposed. This provision is intended to make the due dates of the taxes consistent, thereby eliminating confusion and increasing compliance in remitting the taxes timely.

COST ESTIMATE

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

REVENUE ESTIMATE

The provisions of this bill would not materially affect the state's or local governments' revenues.

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