STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**05/23/08**	Bill No:	**AB 2344**
Tax:	**Cigarette and Tobacco Products Licensing Act**	Author:	**Beall**
Related Bills:			

BILL SUMMARY

This bill would make the following changes to the Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act):

- Require a retailer to pay annually a one-hundred eighty five dollar ($185) license fee to engage in the sale of cigarettes or tobacco products; and
- Increase the retailer reinstatement fee from one-hundred dollars ($100) to one hundred and eighty-five dollars ($185).

Summary of Amendments

Since the previous analysis, this bill was amended to (1) align the retailer license provisions to the annual licensure fee requirement, (2) clarify that the renewal fee must accompany the renewal application and the reinstatement fee is in addition to the annual retailer license fee, and (3) add a delayed operative date.

ANALYSIS

CURRENT LAW

Under existing law, the Licensing Act requires a retailer to have in place and maintain a license to engage in the sale of cigarettes or tobacco products for each retail location. A retailer that owns or controls more than one location is required to have a separate license for each retail location. A retailer license is valid for a 12-month period and must be renewed annually. In order to obtain a license, a retailer must file a license application accompanied by a one-time license fee of $100 for each retail location. Although a retailer license must be renewed annually, the $100 license fee per retail location is only paid once with the initial application. As a condition precedent to its reinstatement, a retailer is subject to a $100 reinstatement fee if they allow their license to expire.

The Licensing Act also requires every manufacturer and importer to maintain a license to engage in the sale of cigarettes or tobacco products and to pay a one-time license and/or administrative fee. In addition, every distributor and wholesaler must annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products. Every distributor and every wholesaler must file an initial application and a renewal application accompanied by a fee of $1,000 for each location. The fee is for a calendar year and may not be prorated.

All moneys collected pursuant to the Licensing Act are deposited in the Cigarette and Tobacco Products Compliance Fund (Compliance Fund) and are available for expenditure, upon appropriation by the Legislature, solely for the purpose of implementing, enforcing, and administering the Licensing Act.

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

PROPOSED LAW

This bill would amend the Licensing Act to impose a $185 per location annual license fee upon a retailer to engage in the sale of cigarettes or tobacco products. If a retailer allows a license to expire, the retailer would be required to pay a $185 reinstatement fee in addition to the annual license fee.

The bill would become operative on January 1, 2010.

BACKGROUND

In 2003, Assembly Bill 71 (J. Horton, Ch. 890) enacted the Licensing Act[1], which established a statewide licensure program administered by the Board to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. Currently, the Board has approximately 38,000 retailers and 1,000 distributors and wholesalers licensed to engage in the sale of cigarettes and tobacco products in California.

As AB 71 was developed and made its way through the Legislature, it was determined that the licensure fees would not permanently sustain the Licensing Act program. Since the Licensing Act enforces the Cigarette and Tobacco Products Tax Law and directly benefits the funds established pursuant to that program, the funding for the Licensing Act would eventually shift to the cigarette and tobacco products tax funds: General Fund, Breast Cancer Fund, Cigarette and Tobacco Products Surtax Fund (Prop. 99) and California Children and Families Trust Fund (Prop. 10). However, there was concern about the Licensing Act program and the impact it would have on the cigarette and tobacco products tax funds if the Licensing Act expenses were more than the revenues generated. To address this concern, a sunset date of January 1, 2010, was incorporated into the Licensing Act to make sure the Licensing Act would not harm the cigarette and tobacco products tax funds. Furthermore, AB 71 included uncodified language to clarify that all revenues and expenses generated by the Licensing Act are to be allocated in the same manner as those revenues and expenses are allocated under the Cigarette and Tobacco Products Tax Law to make sure no one cigarette and tobacco product fund benefited or was burdened when the funding shift took place.

In 2006, Assembly Bill 1749 (J. Horton, Ch. 501) repealed the sunset date for the Licensing Act due to the amount of additional excise tax revenues generated. The Board has estimated that the Licensing Act and enhanced cigarette tax stamp generates an additional $87.7 million in cigarette excise tax annually. The Licensing Act generates an additional $15.7 million in additional tobacco products tax. The resulting additional sales and use tax revenue is estimated to be $35.7 million annually. The breakdown by fund[2] is as follows:

[1] Division 8.6 (commencing with Section 22970) of the Business and Professions Code.

2 Assumptions: Cigarette revenues would have declined 3% per year without licensing or the new stamp. Tobacco products sales and revenues would not have changed without licensing. Thirty-month implementation period for both licensing and the new stamp (January 1, 2004 through June 30, 2006). Revenues are annual and ongoing. Tobacco products tax rate is for fiscal year 2007-08.

	Tax Rate or Price	Millions
Cigarettes		
Distributions (Millions of Packs)	n.a	100.8
Excise Taxes	$0.87	$87.7
General Fund	$0.10	$10.1
Breast Cancer	$0.02	$2.0
Proposition 99	$0.25	$25.2
Proposition 10	$0.50	$50.4
Sales and Use Taxes		
Average Retail Price Per Pack	$4.00	
Retail Value of Cigarette Sales	n.a	$403.3
Sales and Use Taxes, Total	7.94%	$32.0
State	5.25%	$21.2
Local	2.00%	$8.1
Transit	0.69%	$2.8
Tobacco Products		
Wholesale Sales	n.a.	$34.7
Excise Taxes	45.13%	$15.7
Proposition 99	28.66%	$10.0
Proposition 10	16.47%	$5.7
Sales and Use Taxes		
Retail Mark-Up Over Wholesale Price	35%	n.a.
Estimated Value of Retail Sales	n.a.	$46.9
Sales and Use Taxes, Total	7.94%	$3.7
State	5.25%	$2.5
Local	2.00%	$0.9
Local Districts	0.69%	$0.3
Total Excise and Sales and Use Taxes		**$139.1**

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to offset the Board's costs to enforce and administer the Licensing Act, which is funded, in part, by the cigarette and tobacco products tax funds (General Fund, Breast Cancer Fund, Cigarette and Tobacco Products Surtax Fund and California Children and Families Trust Fund).

2. **Summary of amendments. The May 23, 2008, amendments** add Board-suggested language to (1) align the retailer license provisions to the annual licensure fee requirement, (2) clarify that the renewal fee must accompany the renewal application and the reinstatement fee is in addition to the annual retailer license fee, and (3) add a delayed operative date of January 1, 2010.

   The **April 8, 2008, amendments** (1) increased the amount of the proposed annual retailer fee from $100 to $185 and retailer reinstatement fee from $100 to $185, and (2) deleted the provision that would have increased the annual license fee amount for distributors and wholesalers from $1,000 to $1,500.

3. **How is the Board funded under the Licensing Act?** The Board's costs to enforce and administer the Licensing Act are funded with revenues deposited into the Compliance Fund, which includes license fee revenues, penalties and fines. The Compliance Fund fully reimbursed those costs through fiscal year 2005-06. In 2006-07, the Board's administrative costs were partially offset with cigarette and tobacco products tax revenues. As of 2007-08, substantially all of the Board's costs will be funded in this manner in order to cover the difference between Compliance Fund revenues and expenses. Below is a funding summary for the Licensing Act program, as reflected in the 2008-09 Governor's Budget:

Fund	2006-07	2007-08	2008-09
General Fund	$378,000	$973,000	$922,000
Breast Cancer Fund	57,000	195,000	185,000
Cigarette and Tobacco Products Surtax Fund	687,000	2,432,000	2,304,000
CA Children and Families First Trust Fund	1,375,000	4,864,000	4,604,000
Cigarette and Tobacco Products Compliance Fund	6,716,000	1,198,000	1,129,000
Total	$9,213,000	$9,662,000	$9,147,000

4. **Would the fees generated by this measure fully offset Compliance Fund shortfall?** The Board estimates this bill would generate approximately $7,067,000 in additional revenue that would be deposited into the Compliance Fund (see the Revenue Estimate below). Since the annual shortfall amount appears to be approximately $8 million beginning in fiscal year 2007-08, this bill would not fully eliminate the Compliance Fund shortfall.

5. **Are there additional retailer licensing requirements?** Many local cities and counties in California have adopted local tobacco retailer licensing laws, which require a retailer to pay an annual licensing fee and to be subject to suspension or revocation of that license if they are found selling tobacco to minors. Therefore, California retailers engaged in the sale of cigarettes or tobacco products <u>and</u> located in a city or county that has adopted local tobacco retailer licensing laws have two licenses (state <u>and</u> city/county). While the local city and county licensing laws generally require an annual licensing fee, the state's Licensing Act currently imposes only a one-time retailer license fee.

COST ESTIMATE

Unabsorbable administrative costs would be incurred in notifying retailers, rewriting computer programs, processing additional payments, revising applications and publications, and answering inquires from licensees. A detailed estimate of these costs is pending; however, these costs are anticipated to be substantial (over $250,000 and under $1 million).

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

According to the Board's Excise Taxes Division, there are approximately 38,200 licensed retail locations selling cigarettes or tobacco products in California. This figure has been fairly stable since the inception of the Licensing Act. Accordingly, the annual fees would total about $7,067,000 ($185 x 38,200).

REVENUE SUMMARY

Fees would increase by $7,067,000 annually under this measure.

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