STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**02/10/10**	Bill No:	**SBx8 41**
Tax:	**Cigarette and Tobacco Products Tax**	Author:	**Cox**
Related Bills:	**SB 1109 (Cox)**		

This analysis will only address the bill's provisions which impact the State Board of Equalization (BOE).

BILL SUMMARY

Among other things, this bill would require the BOE to determine, on a biennial basis, the effect that additional taxes imposed on cigarettes and tobacco products by Proposition 10 (California Children and Families First Act of 1998) has on the consumption of cigarettes and tobacco products in this state.

CURRENT LAW

Cigarette and Tobacco Products Tax. Pursuant to Revenue and Taxation Code Section 30101 (Cigarette and Tobacco Products Tax Law), an excise tax of 6 mills (or 12 cents per package of 20) is imposed on each cigarette distributed. In addition, Sections 30123 and 30131.2 impose a surtax of 12 1/2 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).

For other tobacco products (which are defined in Section 30121 and 30131.1 to include cigars, smoking tobacco, chewing tobacco, snuff, and other products containing at least 50 percent tobacco), Section 30123 (Proposition 99) imposes a tax on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the combined rate of tax imposed on cigarettes. In addition, Section 30131.2 (Proposition 10) imposes an additional tax on tobacco products based on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the 50-cent per pack tax on cigarettes also imposed by Section 30131.2. The tobacco products tax rate is determined annually by the Board and based on the March 1 wholesale cost of cigarettes. Currently, the surcharge rate for fiscal year 2009-10 is 41.11 percent.

Of the 87 cent excise tax imposed on a package of 20 cigarettes, 2 cents is deposited into the Breast Cancer Fund, 10 cents into the General Fund, 25 cents into the Cigarette and Tobacco Products Surtax Fund, and 50 cents into the California Children and Families Trust Fund (CCF Trust Fund). The other tobacco products surtax imposed under Section 30123 (Proposition 99) is deposited into the Cigarette and Tobacco Products Surtax Fund (including any revenues that result from an indirect increase in the other tobacco products tax triggered by a cigarette tax increase), while the surtax imposed under Section 30131.2 (Proposition 10) is deposited into the CCF Trust Fund.

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

Effects of Proposition 10 on Cigarette and Tobacco Products Consumption. Health and Safety Code Section 130105 (added by Proposition 10) requires the Board to determine the revenue reductions to any Proposition 99 state health-related education and research programs and Breast Cancer Fund programs that are a direct result of the additional taxes imposed by Proposition 10's additional taxes, and backfill these amounts from the tax revenues received from Proposition 10 at any times as determined necessary.

Distribution of CCF Trust Fund Proceeds. The moneys in the CCF Trust Fund are allocated and appropriated from the CFF Trust Fund, as follows:

State Commission. Twenty percent of the moneys are allocated and appropriated to separate accounts of the California Children and Families Commission (state commission), established by Proposition 10, for expenditure according to the following formula:

- 30 percent → **Mass Media Communications Account** for expenditures for communications to the general public on childhood development, child care, health and social services; the prevention and cessation of tobacco, alcohol, and drug use by pregnant women; the detrimental effects of secondhand smoke on early childhood development; to ensure that children are ready to enter school.
- 25 percent → **Education Account** for expenditures to develop educational materials; provide professional and parental education and training; provide technical support for county commissions.
- 15 percent → **Child Care Account** for expenditures to educate and train child care providers; develop educational materials and guidelines for child care workers.
- 15 percent → **Research and Development Account** for expenditures to ensure best practices and assessment of early childhood development programs and services.
- 5 percent → **Administration Account** for expenditures for the administrative functions of the state commission.
- 10 percent → **Unallocated Account** for expenditure by the state commission for any of the purposes of the California Children and Families First Act of 1998 (Act), as provided.

County Commissions. The remaining eighty percent of the moneys are allocated and appropriated to 58 county commissions to provide, sponsor, or facilitate programs relating to early childhood development; measure outcomes; integrate childhood development programs, services, and projects into a consumer-oriented and easily accessible system.

Amendments to Proposition 10. The Act may be amended only by the voters, or by a vote of two-thirds of the membership of both houses of the Legislature, which must further the act and be consistent with its purposes.

PROPOSED LAW

Among other things, this bill would amend Section 130105 of the Health and Safety Code to remove the existing allocation of moneys deposited into the CCF Trust Fund and instead require those amounts be transferred to the General Fund for appropriation by the Legislature for purposes of the Healthy Families Program and the Medi-Cal program.

Section 130105 would also require the BOE to determine, on a biennial basis, the effect that additional taxes imposed on cigarettes and tobacco products by Proposition 10 has on the consumption of cigarettes and tobacco products in this state.

The Board's method of determining the fiscal effect any decrease in consumption has on the funding of any Proposition 99 state health-related education or research programs and Breast Cancer Fund programs would not be impacted by this measure. Similarly, there would be no change to the existing provisions relating to transfers from the CCF Trust Fund to those affected Proposition 99 or Breast Cancer Fund programs (backfill) as necessary to offset the revenue decrease directly resulting from the imposition of additional taxes.

Section 130105 would remain operative until 90 days after the date the bill is approved by voters, and as of that date would be repealed, along with the bill's amendments that would abolish the state commissions and county commissions, and repeal related provisions. The repealed provisions of Section 130105 would be added back to the Health and Safety Code as Section 130100, which would become operative 90 days after the date the bill is approved by voters.

This bill would require approval by a majority of the California voters to take effect. If approved by both houses of the Legislature, this bill would be put on the next statewide ballot.

BACKGROUND

Proposition 99, passed on the November 1988 ballot, effective January 1, 1989, imposed a surtax of 25 cents per package of 20 cigarettes, and also created an equivalent tax on tobacco products. Proceeds from the taxes fund health education, disease research, hospital care, fire prevention, and environmental conservation. Assembly Bill 478 (Ch. 660, 1993) and Assembly Bill 2055 (Ch. 661, 1993), effective January 1, 1994, added an excise tax of 2 cents per package of 20 cigarettes for breast cancer research and early detection services.

Proposition 10, passed November 3, 1998, effective January 1, 1999, imposed an additional surtax of 50 cents per package of 20 cigarettes. Additionally, the measure imposed an additional excise tax on the distribution of tobacco products equivalent to the additional cigarette tax, and imposed an equivalent compensating floor stock tax. The revenues from the additional tax are deposited into the CCFF Trust Fund and are used to: (1) fund early childhood development programs, and (2) offset any revenue losses to certain Proposition 99 Programs as a result of the additional tax imposed by Proposition 10.

There have been several measures proposing to revise or eliminate allocations from the CCF Trust Fund, including SBx3 25 (Cox, 2008), SBx1 5 (Cox, 2008), SB 593 (Cox, 2007), and AB 2150 (McCarthy, 2006). Most recently, Proposition 1D appeared on the May 19, 2009, special election ballot and proposed to temporarily redirect a significant portion of Proposition 10 funds to achieve budgetary savings and to make permanent

changes to state and local commission operations, including changes in the allocation of state commission funds. The proposition was defeated.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to provide a funding mechanism for the Healthy Families Program and the Medi-Cal program.

2. **Board staff does not foresee any administrative problems with this measure.** Since the inception of Proposition 10, BOE Legislative and Research Division staff has annually determined the effects Proposition 10 has had on cigarette and tobacco products consumption for transfer of backfill amounts to the specified Proposition 99 and Breast Cancer Fund programs. Requiring the BOE to make this determination on a biennial basis would not be problematic for BOE staff. It should be noted, however, that this bill would result in backfill amounts being transferred every two years, rather than annually, to the specified Proposition 99 and Breast Cancer Fund programs.

3. **Suggested amendments.** Proposition 10 added Article 3 (commencing with Section 30131) to Chapter 2 of Part 13 of the Revenue and Taxation Code, titled the California Children and Families First Trust Fund Account, to impose the additional tax on cigarettes and tobacco products and to provide for the disposition and use of moneys raised pursuant to the additional taxes. The provisions related to the disposition and use of funds, specifically Sections 30131.3 and 30131.4, are inconsistent with the amendments to the Health and Safety Code, as proposed by this measure. The following amendments are suggested to address the inconsistency:

   30131.3. <u>(a)</u> Except for payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the taxes imposed by Section 30131.2, and transfers of funds in accordance with subdivision (c) of Section 130105 of the Health and Safety Code, all moneys raised pursuant to the taxes imposed by Section 30131.2 shall be deposited in the California Children and Families Trust Fund and are continuously appropriated for the exclusive purpose of the California Children and Families Program established by Division 108 (commencing with Section 130100) of the Health and Safety Code.

   <u>(b) This section shall remain operative until 90 days after the date the act that amends this subdivision is approved by the voters, and as of that date is repealed.</u>

   30131.3. <u>(a) Except for payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the taxes imposed by Section 30131.2, and transfers of funds in accordance with subdivision (d) of Section 130100 of the Health and Safety Code, all moneys raised pursuant to the taxes imposed by Section 30131.2 shall be deposited in the California Children and Families Trust Fund.</u>

   <u>(b) This section shall become operative 90 days after the date the act is approved by the voters.</u>

30131.4. (a) All moneys raised pursuant to taxes imposed by Section 30131.2 shall be appropriated and expended only for the purposes expressed in the California Children and Families Act, and shall be used only to supplement existing levels of service and not to fund existing levels of service. No moneys in the California Children and Families Trust Fund shall be used to supplant state or local General Fund money for any purpose.

(b) Notwithstanding any other provision of law and the designation of the California Children and Families Trust Fund as a trust fund, the Controller may use the money raised pursuant to Section 30131.2 for the California Children and Families Trust Fund and all accounts created pursuant to subdivision (d) of Section 130105 of the Health and Safety Code for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. Any such loan shall be repaid from the General Fund with interest computed at 110 percent of the Pooled Money Investment Account rate, with the interest commencing to accrue on the date the loan is made from the fund or account. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which this fund or those accounts were created.

(c) This section shall remain operative until 90 days after the date the act that amends this subdivision is approved by the voters, and as of that date is repealed.

4. **Related legislation.** SB 1109, also authored by Senator Cox, contains substantially similar provisions to this bill.

COST ESTIMATE

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

REVENUE ESTIMATE

This bill would not affect cigarette and tobacco products tax revenues.

Analysis prepared by:	Cindy Wilson	916-323-7169	03/03/10
Contact:	Margaret S. Shedd	916-322-2376	

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