



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	06/05/07	Bill No:	SB 554
Tax:	Cigarette and Tobacco Products	Author:	Migden
Related Bills:			

BILL SUMMARY

This bill would declare the intent of the Legislature to enact legislation that would create a uniform definition of a “cigarette” for purposes of the Cigarette Tax Law and other provisions of law.

SUMMARY OF AMENDMENTS

The previous version of this bill contained provisions co-sponsored by the Board with the Attorney General’s Office which would have revised the definition of “cigarette” for purposes of the Cigarette and Tobacco Products Tax Law to be consistent with that term as defined in the Master Settlement Agreement (MSA) and its two implementing statutes (except that it would not have included roll-your-own (RYO) tobacco).

ANALYSIS

CURRENT LAW

Cigarette and Tobacco Products Tax Law

Under existing law, Cigarette and Tobacco Products Tax Law Section 30003 defines “cigarette” to mean any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco and such roll weighs over three pounds per thousand.

For purposes of the Cigarette and Tobacco Products Surtax, which was adopted by voters as Proposition 99 in November 1988, the term “cigarette” is defined in Section 30121(a) to have the same meaning as in Section 30003, as it read on January 1988. Section 30130 provides that the provisions contained in Article 2, of Part 13, of Division 2 (Cigarette and Tobacco Products Surtax), including Section 30121, may be amended only by vote of four-fifths of the membership of both houses of the Legislature. All amendments must be consistent with its purposes.

The term “cigarette” is also defined in Section 30131.1(a) for purposes of the California Children and Families First Trust Fund Account, which was adopted by voters as Proposition 10 in December 1998, to have the same meaning as in Section 30003, as it read on January 1, 1997. The California Children and Families First Act of 1998 may be amended only by a vote of two-thirds of the membership of both houses of the Legislature. All amendments to this act must be to further the act and must be consistent with its purposes.

The current excise tax on cigarettes is 87 cents per package of 20 (43 ½ mills per cigarette). The different components of the cigarette taxes and the disposition of the revenues are as follows:

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.

- 10 cents per pack (5 mills per cigarette) is allocated to the General Fund (Sections 30101 and 30462 of the Revenue and Taxation Code);
- 2 cents per pack (1 mil per cigarette) is allocated to the Breast Cancer Fund (Sections 30101 and 30461.6);
- 25 cents per pack (12 ½ mills per cigarette) is allocated to the Cigarette and Tobacco Products Surtax Fund (Sections 30122 and 30123); and
- 50 cents per pack (25 mills per cigarette) is allocated to the California Children and Families Trust Fund (Sections 30131.2 and 30131.3).

For tobacco products (which are defined in Sections 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 2006-07 is 46.76 percent.

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 California Children and Families Trust Fund.

Licensing Act

The Licensing Act requires the Board to administer a statewide cigarette and tobacco products license program to regulate the sale of cigarettes and tobacco products in the state. For purposes of the Licensing Act, Business and Professions Code Section 22971 defines a cigarette to mean a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

Master Settlement Agreement (MSA)

The MSA, and the two laws that implement the MSA, the Model Statute¹ and the Complementary Legislation² (Tobacco Directory Law), define “cigarette” to mean the following:

Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (2) tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in this section.

¹ Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.

² Section 30165.1 of the Revenue and Taxation Code.

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.

"Cigarette" also includes "roll-your-own" tobacco, meaning any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

PROPOSED LAW

This bill contains uncodified language that states it is the intent of the Legislature to enact legislation that would create a uniform definition of a "cigarette" for purposes of the Cigarette Tax Law and other provisions of law.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to help bring consistency to the multiple definitions of cigarette contained in California law.
2. **Summary of amendments.** The **June 5, 2007, amendments** delete the previous provisions of the bill and add language to state it is the intent of the Legislature to enact legislation that would create a uniform definition of a "cigarette" for purposes of the Cigarette Tax Law and other provisions of law.

The **April 11, 2007, amendments** clarified that the definition of "cigarette" for purposes of the Licensing Act means a cigarette as defined in the Cigarette and Tobacco Products Tax Law, as that definition read on January 1, 2008. This was a technical amendment intended to clarify that the Licensing Act definition of "cigarette" references that term as defined by this bill and not as it previously read at the time the Licensing Act was enacted in 2003.

The **March 26, 2007, amendments** deleted RYO from the proposed definition of cigarette.

Analysis prepared by: Cindy Wilson (916) 445-6036 06/06/07

Contact: Margaret S. Shedd (916) 322-2376

ls

0554-3cw.doc

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.