



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/18/05	Bill No:	AB 1765
Tax:	Sales and Use Tax 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 the special taxes and fees programs, which would do the following:

- Amend Section 16302.1 of the Government Code to increase from “\$10.00 or less” to “\$20.00 or less” the amount that is not required to be refunded absent a claim for refund to better reflect the increased cost of government services since the last increase.
- Amend Section 6479.3 of the Sales and Use Tax Law, and the various special taxes and fees laws to eliminate the requirement that persons voluntarily electing to remit amounts due by electronic funds transfers must do so for a minimum of one year, in order to encourage more voluntary participation.
- Amend Sections 9405, 9407, 9411, 9420 and 9432 of the Revenue and Taxation Code to properly reference the International Fuel Tax Agreement.
- Amend Section 30180 of the Cigarette and Tobacco Products Tax Law to allow for relief of penalty, consistent with other relief of penalty statutes.
- Amend Section 60043 of the Diesel Fuel Tax Law to eliminate the licensing and reporting requirements for government entities that use only tax-paid diesel fuel on the highway and have no tax liability, in order to ease their reporting requirements.
- Amend Section 60603 of the Diesel Fuel Tax Law to allow the state to designate an inspection site for diesel fuel, consistent with current practice.

Summary of Amendments

The amendments to this bill correct an inadvertent drafting error to Section 9411, which defines the term “IFTA.” The amendment is consistent with the language adopted by the Board as part of its 2004-05 Legislative package.

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.

ANALYSIS**Application of overpayments**
*Government Code Section 16302.1***Current Law**

Under existing provisions of the Government Code, a state agency is not required to refund an overpayment of tax, interest, penalties, license or other fees, or any other payment of \$10 or less, unless a claim for refund is filed within the time prescribed by law. Under this provision, amounts of \$10 or less for which a claim for refund is not filed may be disposed of by either 1) applying the amount of overpayment as a payment towards other amounts due to that state agency, or 2) requesting that the amount be deposited in the State Treasury.

Proposed Law

This bill would amend Section 16302.1 to increase from \$10 to \$20 the amount that is not required to be refunded absent a claim for refund.

Comment

Government Code Section 16302.1 was last updated in 1982 to increase the amount from \$5 to \$10 (Stats. 1982, Ch. 700). The Franchise Tax Board sponsored that change due to the fact that costs of refunding overpayments had increased, and the \$10 threshold would more realistically represent a cost efficient operation. The Board of Equalization voted to support the proposed change as well. In the 22 years since that 1982 change, the California Consumer Price Index (CCPI) has increased 94.4%. Applying the change in the CCPI to the existing \$10 threshold would create a new threshold of \$19.44, or \$20.00.

This provision is necessitated by the increasing costs for government to do business. Increasing the threshold would eliminate inefficiencies in accounting for these insignificant, unclaimed overpayments, and would allow resources to be re-directed to other high priority projects. In addition, it is important to note that the Board will refund amounts below the threshold if a valid claim for refund is filed within the statutory time frame.

Eliminate the requirement that persons voluntarily electing to remit amounts due by electronic funds transfers must do so for a minimum of one year

Revenue and Taxation Code Sections 6479.3, 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250

Current Law

Under existing law, Section 6479.3 of the Revenue and Taxation Code provides the statutory authority to require taxpayers with monthly tax liabilities averaging \$20,000 or more to remit their tax payments via an electronic funds transfer (EFT). Under the law, other taxpayers may voluntarily elect to remit their tax liabilities via the EFT method, but the law requires that these taxpayers continue this method of payment for a minimum of one year.

Proposed Law

This bill would amend the various business taxes statutes to delete the provision that requires those taxpayers who voluntarily remit their funds by the EFT method to continue that method for a minimum of one year.

Comment

In 1991, when the EFT provisions were added into the law, the process to transmit and accept payments via EFT was a relatively new concept. The one-year minimum requirement was incorporated into the provisions, because it was believed at the time that acceptance of payments in different forms from the same taxpayer could complicate matters. However, now with the frequency and familiarity with the EFT payment methodology, the one-year minimum requirement is no longer necessary. And, most taxpayers that voluntarily choose to remit their payments via EFT likely prefer that method, so there is no apparent reason to require volunteers to commit to the EFT program for a year or more at the outset. In fact, such a requirement could actually discourage taxpayers from volunteering for the EFT program.

Properly reference the International Fuel Tax Agreement
Revenue and Taxation Code Sections 9405, 9407, 9411, 9420, and 9432

Current Law

Under current law, Section 9405 of the Revenue and Taxation Code states that Chapter 2, Part 3.5, Division 2 of the Revenue and Taxation Code shall be administered in conjunction with the IFTA Articles of Agreement, the Use Fuel Tax Law, and the Diesel Fuel Tax Law. “IFTA” is defined in Section 9411 to mean the International Fuel Tax Agreement, which is a document that is comprised of three separate parts—the Articles of Agreement, the Procedures Manual and the Audit Manual.

Proposed Law

This bill would amend Sections 9405, 9407, 9411, and 9432 to clarify the definition and reference to the International Fuel Tax Agreement. The bill would also amend Section 9420 to clarify that the license for the IFTA is a license and not a permit.

Comments

By referencing only the IFTA Articles of Agreement in Section 9405, existing law too narrowly defines the governing document. To correct this, Section 9411 would be amended to properly define the International Fuel Tax Agreement. Also, Sections 9405, 9407, 9420 and 9432 would be amended to properly reference the International Fuel Tax Agreement. The reference to IFTA Articles of Agreement in current law does not completely identify the International Fuel Tax Agreement, which by its terms includes all of the governing documents (e.g. the Articles of Agreement, the Procedures Manual and the Audit Manual). These suggested changes are consistent with changes recommended in the Final Report (April 1999) prepared by the National Conference of State Legislatures titled “IFTA Legislation and State Constitutional Provisions Project”.

Under the current law, Section 9420 states that all interstate users who choose to obtain an IFTA permit from the Board shall apply for a license and secure decals for their vehicles. The rest of the section uses the term license instead of permit. A license is what is issued to an IFTA licensee. Therefore, the term IFTA “permit” should be changed to IFTA “license” to conform with the rest of the law and the IFTA Agreement.

Relief of Penalty

Revenue and Taxation Code Sections 30180 and 30283

Current Law

Under existing law, distributors of cigarettes can purchase cigarette stamps on either a cash or deferred basis. Those distributors who purchase stamps on a deferred basis are not required to pay the state until the 25th day of the following month.

Section 30171 requires any distributor who fails to pay any amount owing for the purchase of stamps or meter register settings within the time required, to pay a penalty of 10 percent of the amount due in addition to the amount plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the amount became due and payable until the date of payment.

Article 6 of Chapter 4 (commencing with Section 30281) contains provisions that relieve a person of the tax, interest or penalty under specified conditions. These provisions include:

- Section 30282 provides that if the Board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the **penalty** provided by specified sections, including Sections 30171.
- Section 30283 provides that if the Board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the **interest** provided by specified sections, not including Section 30171.
- Section 30283.5 provides that the Board, in its discretion, may relieve all or any part of the **interest** imposed on a person under the Cigarette and Tobacco Products Tax Law where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the Board acting in his or her official capacity.
- Section 30284 provides that if the Board finds that a person's failure to make a timely report, return, or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the **taxes** imposed under the Cigarette and Tobacco Products Tax Law and **any penalty or interest** thereto.

Unfortunately current law contains conflicting statutes. Section 30180 specifically states that Article 6 of Chapter 4 (which contains Section 30282, 30283.5 and 30284) does not apply to amounts due or paid with respect to purchases of stamps, thereby creating conflict between Section 30180 and Sections 30282, 30283.5 and 30284.

Proposed Law

This bill would amend Section 30180 to delete the reference to Article 6 (commencing with Section 30281) of Chapter 4 and allow the Board to continue to relieve a cigarette stamp purchaser of the tax, interest and/or penalty under Section 30282, 30283.5, and 30284.

In addition, this bill would amend Section 30283 to grant the Board the authority to relieve a person from the payment of interest imposed under Section 30171 if the person's failure to make a timely return or payment was due to a disaster, as provided.

Comment

This relief of penalty provisions is consistent with other relief of penalty provisions in the cigarette tax program and all other tax and fee programs administered by the Board.

Tax Paid Diesel Fuel Used by Governmental Entities *Revenue and Taxation Code Section 60043*

Current Law

Under the existing Diesel Fuel Tax Law, all government entities that operate a diesel-powered highway vehicle upon the state's highways are required to have a diesel fuel tax license and to file monthly tax returns. However, only government entities that use dyed (untaxed) diesel fuel in a diesel-powered highway vehicle on state highways pay tax on the tax return and the tax is based upon each gallon of dyed diesel fuel used on the highway.

Proposed Law

This bill would amend Section 60043 to eliminate the need for a government entity to obtain a license and file tax returns when that entity only uses tax-paid diesel fuel on the highway.

Comment

A number of government entities purchase only tax-paid diesel fuel for use on the highway and owe no additional tax on the tax return. The licensing and reporting requirements place an additional burden on these governmental entities that have no tax liability. Some government entities are questioning the need for a license, including the obligation to file monthly tax returns, when they only purchase tax-paid diesel fuel and therefore owe no additional tax.

State designated diesel fuel inspection site
Revenue and Taxation Code Section 60603

Current Law

Under the existing Diesel Fuel Tax Law, officers or employees of the state are authorized to conduct inspections at any designated inspection site where evidence of activities of diesel fuel tax evasion may be discovered. A designated inspection site includes any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Internal Revenue Service (IRS) to be used as a diesel fuel inspection site.

Proposed Law

This bill would amend Section 60603 to clarify the state's authority to specify that either the IRS or the state may designate an inspection site at an "other location". In addition, this would update existing law to be consistent with the current practice of state, rather than IRS, conducted inspections.

Comment

When the diesel fuel tax law was enacted in 1995, only the IRS was conducting diesel fuel inspections. Thus, the inspection site language was drafted to authorize the IRS to designate an inspection site at a location other than the specified fixed sites controlled by the state. However, both the Board and the IRS now contract with the California Air Resources Board (CARB) to do inspections to check for diesel fuel tax evasion. Since the IRS designates the inspection sites where the CARB is to conduct inspections, such inspection sites qualify as IRS-designated.

However, a question has arisen as to the state's authority to designate an inspection site other than at one of the listed sites when such an inspection does not involve the IRS. A narrow interpretation of the statute could conclude that inspections could not be conducted at a site other than those specified in statute if the Board contracts with a state agency independent of the IRS. Since the law currently authorizes officers or employees of the state to conduct inspections at listed sites, and since state agencies currently conduct inspections at other locations designated by the IRS, it follows that the law should include a provision for the state, as well as the IRS, to designate an "other location" inspection site.

COST ESTIMATE

The Board would incur insignificant costs to implement the provisions of this bill.

REVENUE ESTIMATE

This bill would not impact state revenues.

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