

Regulations 1105, 1120, 1132, and 1161

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulations 1105, 1120, 1132, and 1161

Index

1. *Form 400 and Proposed Regulations 1105, 1120, 1132, and 1161*
2. *Statement of Explanation*
3. *Assembly Bill 3076*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 05/07/12*
- B. *Draft Minutes, 05/31/12*
- C. *Reporters Transcript, 05/31/12*

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JUL 12 2012

by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

**State of California
Office of Administrative Law**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1105, 1120, 1132, 1161

Repeal sections:

NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT

California Code of Regulations, Title 1,
Section 100

OAL File No. 2012-0613-05 N

This action makes changes without regulatory effect in the authority and reference citations and a grammatical correction. Specifically, the changes update the citations to account for a statutory consolidation that occurred in 2006 (AB 3076), effective January 1, 2007, wherein Revenue and Taxation Code sections 6106.5 and 6106.8 were repealed and subsumed by section 6106. The change also amends the regulation text of section 1120 to make a grammatical correction replacing "Returns" with "Return".

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 7/10/2012



Kevin D. Hull
Attorney

For: DEBRA M. CORNEZ
Director

Original: Kristine Cazadd
Copy: Richard Bennion

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JUL 13 2012

Board Proceedings

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk *[Signature]*
DATE: 7/11/2012
RE: Return of Approved Rulemaking Materials
OAL File No. 2012-0613-05N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2012-0613-05N regarding Tax-Paid Fuel and Ex-Tax Fuel/Returned Sales/Shipments Out-of-State).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

STD. 400 (REV. 01-09)

NON SUBSTANTIVE

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2012-0613-05N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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ENDORSED FILED
OFFICE OF
2012 JUN 10 PM 2:59

[Signature]
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Tax-Paid Fuel and Ex-Tax Fuel/Returned Sales/Shipments out of State	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1105, 1120, 1132, 1161
TITLE(S) 18	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
---	------------------------------------	---	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>[Signature]</i>	DATE June 12, 2012
TYPED NAME AND TITLE OF SIGNATORY Dann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 10 2012

Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1105. Tax-Paid Fuel and Ex-Tax Fuel.

(a) . . . (unchanged):

(1) . . . (unchanged), or

(2) . . . (unchanged), or

(3) . . . (unchanged).

(b) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7345, 7401, 7653, 8101 and 8106~~8106.8~~, Revenue and Taxation Code.

Regulation 1120. Returned Sales.

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) Conditions to Allow a Credit on a Tax Return~~Returns~~. . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged)..

(3) . . . (unchanged).

(4) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7315, 8101, 8102, 8105 and 8106~~8106~~.8, Revenue and Taxation Code.

Regulation 1132. Shipments out of the State.

(a) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged); or

(2) . . . (unchanged):

(A) . . . (unchanged),

(B) . . . (unchanged), or

(C) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7338, 7401, 7651, 8101, 8102, 8105, 8106~~8106~~.5, 8126, 8128, 8129, 8301 and 8303, Revenue and Taxation Code.

Regulation 1161. Tax Paid Twice on Motor Vehicle Fuel.

(a) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged);

(2) . . . (unchanged);

(3) . . . (unchanged);

(4) . . . (unchanged); and

(5) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1 . . . (unchanged); or

2 . . . (unchanged).

(B) . . . (unchanged):

1 . . . (unchanged); or

2 . . . (unchanged).

(C) . . . (unchanged).

1 . . . (unchanged).

2 . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

EXHIBIT A . . . (unchanged).

EXHIBIT B . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7362, 7363, 8101, 8102, 8105, 8106~~8106.8~~ and 8127.5, Revenue and Taxation Code.

File# 2012-0613-03
BOARD OF EQUALIZATION
Tax Paid Twice on Diesel Fuel/Returned Sales

These changes are without regulatory effect to the reference citations. Specifically, the changes update the reference citations to account for the 2009 repeal of Revenue and Taxation Code section 60508.4, permitting a supplier to take a credit on its tax return in lieu of claiming a refund, and the amendment of Revenue and Taxation Code section 60508 which, as amended, now permits a supplier to take a credit in lieu of claiming a refund (Stats. 2009, c 545 (A.B. 1547)).

Title 18
California Code of Regulations
AMEND: 1435, 1436
Filed 07/10/2012
Agency Contact:
Richard E. Bennion (916) 445-2130

File# 2012-0613-01
BOARD OF EQUALIZATION
Feepayer; Rebuttable Presumption/Liability for Fee/Records

This action makes changes without regulatory effect by replacing the two-word phrase "fee payer" with the one-word phrase "feepayer." Use of the one-word phrase "feepayer" makes the regulations consistent with the State Board of Equalization's style manual and is grammatical in nature.

Title 18
California Code of Regulations
AMEND: 1205, 1212, 1271
Filed 07/10/2012
Agency Contact:
Richard E. Bennion (916) 445-2130

File# 2012-0613-05
BOARD OF EQUALIZATION
Tax-Paid Fuel and Ex-Tax Fuel/Returned Sales/Shipments Out-of-State

This action makes changes without regulatory effect in the authority and reference citations and a grammatical correction. Specifically, the changes update the citations to account for a statutory consolidation that occurred in 2006 (AB 3076), effective January 1, 2007, wherein Revenue and Taxation Code sections 6106.5 and 6106.8 were repealed and subsumed by section 6106. The change also amends the regulation text of section 1120 to make a grammatical correction replacing "Returns" with "Return".

Title 18
California Code of Regulations
AMEND: 1105, 1120, 1132, 1161
Filed 07/10/2012
Agency Contact:
Richard E. Bennion (916) 445-2130

File# 2012-0628-01
BOARD OF FORESTRY AND FIRE PROTECTION
State Responsibility Fee, 2012 Emergency Regulation

This rulemaking action readopts, for an additional 90 days from the date of expiration of the original emergency regulations, the Board of Forestry and Fire Protection's emergency regulations concerning fire prevention fees on habitable structures in State Responsibility Areas.

Title 14
California Code of Regulations
ADOPT: 1665.1, 1665.2, 1665.3, 1665.4, 1665.5, 1665.6, 1665.7, 1665.8
Filed 07/09/2012
Effective 07/24/2012
Agency Contact: George Gentry (916) 653-8031

File# 2012-0611-01
BUREAU OF AUTOMOTIVE REPAIR
AB 2289 Penalties

The Director of Consumer Affairs is adopting regulations on behalf of the Bureau of Automotive Repair concerning the penalty schedule for specific violations by licensees. The adoption of these regulatory provisions provides for an Administrative Fine Schedule and minimum/maximum fine amounts for each identified violation. The adoption also provides that the director can order an extension of time within which an order of abatement can be completed.

Title 16
California Code of Regulations
ADOPT: 3394.25, 3394.26, 3394.27
Filed 07/10/2012
Effective 07/10/2012
Agency Contact: Steven Hall (916) 255-2135

File# 2012-0625-02
DEPARTMENT OF WATER RESOURCES
Implementation of Water Code Section 12585.7

The Department of Water Resources (DWR) amended seven title 23 sections that pertain to state cost-share funding of local flood management plans. The amendments make the state cost-share funding regulations consistent with changes in the Water Code as a result of AB 1788 (Stats. 2010, ch. 579). Existing law provides for state cooperation with the federal government in the construction of specified flood control

Regulations 1105, 1120, 1132, and 1161
Section 100

Index

1. *Form 400 and Proposed Regulations 1105, 1120, 1132, and 1161*
2. *Statement of Explanation*
3. *Assembly Bill 3076*

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2012-0613-05N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization			AGENCY FILE NUMBER (if any)

2012 JUN 13 A 11:15
OFFICE OF
ADMINISTRATIVE LAW

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Tax-Paid Fuel and Ex-Tax Fuel/Returned Sales/Shipments out of State	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1105, 1120, 1132, 1161
TITLE(S) 18	REPEAL
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmission of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmission of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> File & Print <input type="checkbox"/> Print Only
	<input type="checkbox"/> Other (Specify) _____
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State
	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect
	<input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130
FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE June 12, 2012
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

(4) . . . (unchanged).

(5) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7315, 8101, 8102, 8105 and 8106~~8106.8~~, Revenue and Taxation Code.

Regulation 1132. Shipments out of the State.

(a) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged); or

(2) . . . (unchanged):

(A) . . . (unchanged),

(B) . . . (unchanged), or

(C) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7338, 7401, 7651, 8101, 8102, 8105, 8106~~8106.5~~, 8126, 8128, 8129, 8301 and 8303, Revenue and Taxation Code.

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1105. Tax-Paid Fuel and Ex-Tax Fuel.

(a) . . . (unchanged):

(1) . . . (unchanged), or

(2) . . . (unchanged), or

(3) . . . (unchanged).

(b) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7345, 7401, 7653, 8101 and ~~8106.8~~8106.8, Revenue and Taxation Code.

Regulation 1120. Returned Sales.

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) Conditions to Allow a Credit on a Tax ~~Return~~Returns. . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged)..

(3) . . . (unchanged).

(4) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

Regulation 1161. Tax Paid Twice on Motor Vehicle Fuel.

(a) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged);

(2) . . . (unchanged);

(3) . . . (unchanged);

(4) . . . (unchanged); and

(5) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(B) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

EXHIBIT A . . . (unchanged).

EXHIBIT B . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7362, 7363, 8101, 8102, 8105, 8106~~8106.8~~ and 8127.5, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1105, *Tax-Paid Fuel and Ex-Tax Fuel*
Regulation 1120, *Returned Sales*
Regulation 1132, *Shipments out of the State*
Regulation 1161, *Tax Paid Twice on Motor Vehicle Fuel*

A. Factual Basis

Chapter 1 (commencing with section 1101) of division 2 of title 18 of the California Code of Regulations (chapter 1) contains regulations that implement, interpret, or make specific the provisions of the Motor Vehicle Fuel Tax Law (Law) (part 2 (commencing with section 7301) of division 2 of the Revenue and Taxation Code), which imposes excise taxes on “motor vehicle fuel,” including gasoline and aviation gasoline, and “aircraft jet fuel.” The State Board of Equalization (BOE) hereby proposes to change the provisions of chapter 1 listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in the regulations’ reference notes and to make a minor grammatical change to the text of one regulation, as described in detail below.

Section 8101 of the Law allows a supplier, as defined, to claim a refund of the tax paid on motor vehicle fuel under specific circumstances, including, but not limited to, where the supplier buys and uses the fuel for purposes other than operating motor vehicles upon the public highways of the state, exports the fuel for use outside the state, or delivers the fuel to a terminal and removes the fuel from the terminal, as provided. In addition, prior to January 1, 2007, suppliers were permitted to choose to take a credit, in lieu of a refund, under most of these same circumstances, and there were individual statutes that separately pertained to each situation in which a credit could be claimed in lieu of a refund under section 8101, including sections 8106.5 and 8106.8 of the Law.

Effective January 1, 2007, sections 2, 4, and 5 of Assembly Bill No. 3076 (Stats. 2006, ch. 364) repealed section 8106.5 permitting a supplier to claim a credit in lieu of a refund with respect to exported tax-paid fuel, and section 8106.8 permitting a supplier to claim a credit in lieu of a refund with respect to tax-paid fuel delivered to or removed from a terminal at the rack, and amended section 8106 to consolidate into one statute all of the statutory provisions under which a supplier may claim a credit in lieu of a refund and provide that a supplier may claim a credit in lieu of a refund under all of the circumstances under which a supplier would be entitled to claim a refund under section 8101. As a result, section 8106 now permits the credits in lieu of refunds previously permitted by sections 8106.5 and 8106.8, and section 8106 should replace sections 8106.5 and 8106.8 in the reference notes for the regulations listed above. Therefore, the BOE now proposes to change the Motor Vehicle Fuel Tax regulations listed above, and described in detail below, to replace the citations to sections 8106.5 and 8106.8 with citations to section 8106 in the regulations’ reference notes and to change the word “Returns” to the word “Return” in Regulation 1120 in order to make one nonsubstantive, grammatical correction, under Rule 100.

B. Proposed Changes

1. Rule 100 Change to Regulation 1105, *Tax-Paid Fuel and Ex-Tax Fuel*

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1105 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

2. Rule 100 Changes to Regulation 1120, *Returned Sales*

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1120 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

A Rule 100 change is also proposed to replace “Returns” with “Return” in the heading to subdivision (c) of Regulation 1120, to correct a grammatical error by making the term singular.

3. Rule 100 Change to Regulation 1132, *Shipments out of the State*

A Rule 100 change is proposed to replace “8106.5” with “8106” in the reference note for Regulation 1132 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

4. Rule 100 Change to Regulation 1161, *Tax Paid Twice on Motor Vehicle Fuel*

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1161 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to update the statutory references and to correct a grammatical error.

PROPOSED CHANGES

1. Change Regulation 1105 (Tax-Paid Fuel and Ex-Tax Fuel) to read as follows:

Regulation 1105. Tax-Paid Fuel and Ex-Tax Fuel.

(a) . . . (unchanged):

(1) . . . (unchanged), or

(2) . . . (unchanged), or

(3) . . . (unchanged).

(b) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7345, 7401, 7653, 8101 and ~~8106~~8106.8, Revenue and Taxation Code.

2. Change Regulation 1120 (Returned Sales) to read as follows:

Regulation 1120. Returned Sales.

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) Conditions to Allow a Credit on a Tax ~~Return~~Returns. . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged)..

(3) . . . (unchanged).

(4) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7315, 8101, 8102, 8105 and 81068406-8, Revenue and Taxation Code.

3. Change Regulation 1132 (Shipments out of the State) to read as follows:

Regulation 1132. Shipments out of the State.

(a) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged); or

(2) . . . (unchanged):

(A) . . . (unchanged),

(B) . . . (unchanged), or

(C) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7338, 7401, 7651, 8101, 8102, 8105, 81068406-5, 8126, 8128, 8129, 8301 and 8303, Revenue and Taxation Code.

4. Change Regulation 1161 (Tax Paid Twice on Motor Vehicle Fuel) to read as follows:

Regulation 1161. Tax Paid Twice on Motor Vehicle Fuel.

(a) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged);

(2) . . . (unchanged);

(3) . . . (unchanged);

(4) . . . (unchanged); and

(5) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1 . . . (unchanged); or

2 . . . (unchanged).

(B) . . . (unchanged):

1 . . . (unchanged); or

2 . . . (unchanged).

(C) . . . (unchanged).

1 . . . (unchanged).

2 . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

EXHIBIT A . . . [No Change]

EXHIBIT B . . . [No Change]

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7362, 7363, 8101, 8102, 8105, 8106~~8106.8~~ and 8127.5, Revenue and Taxation Code.

Assembly Bill No. 3076

CHAPTER 364

An act to amend Sections 61, 62, 69.5, 170, 6360.1, 8106, 9271, 30459.1, 32471, 40211, 41171, 43152.9, 43522, 45867, 46622, 50156.11, 55332, 60063, 60101, 60201.3, 60604, 60606, and 60636 of, to amend the heading of Part 2 (commencing with Section 7301) of Division 2 of, to add Sections 9152.2, 30178.3, 30459.15, 32402.2, 32471.5, 38800, 40112.2, 40211.5, 41101.2, 41171.5, 43452.2, 43522.5, 45652.2, 45867.5, 46502.2, 46628, 50140.2, 55222.2, 55332.5, 60522.2, and 60637 to, and to repeal Sections 8106.1, 8106.5, 8106.8, 60045, and 60046 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2006. Filed with
Secretary of State September 20, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3076, Committee on Revenue and Taxation. Taxation.

(1) The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. For purposes of these provisions, existing law specifies that taxable real property has changed ownership when that property is leased for 35 years or more, including renewal options. Existing law conclusively presumes that all homes that are eligible for the homeowners' exemption, other than specified manufactured homes, and that are on leased land are under a lease that have a renewal option of at least 35 years.

This bill would exclude floating homes from the conclusive presumption that homes eligible for the homeowners' exemption that are on leased land are under a lease that has a renewal option of at least 35 years.

(2) The California Constitution and existing property tax law authorize taxpayers that meet certain conditions to transfer the base year value, as defined, of property to replacement property. Existing law requires a taxpayer that seeks to transfer the base year value of property to replacement property to file a claim for this transfer within 3 years of purchasing or constructing the replacement property.

This bill would require the assessor to consider a base year value transfer application that is filed after that deadline and make conforming changes. This bill would also specify how the base year value of the replacement property described in the application would be determined.

(3) Existing property tax law authorizes counties to adopt ordinances that allow assesses whose property was damaged or destroyed to apply for a reassessment of that property if certain conditions, including the filing of an application for reassessment, are met. Existing law requires the assessor of a county that has adopted such an ordinance to notify the last known owner of property that the assessor has determined has been damaged or destroyed, but for which an application for reassessment was not filed. Existing law requires an assessee that received this notice from the assessor and that seeks to have the property reassessed to file an application for reassessment within 60 days of receiving the notice, but prohibits the assessee from submitting this application more than 12 months after the damage occurred.

This bill would eliminate this 60 day filing requirement to instead require that assesses file applications for base year value reductions within 12 months of the damage to the property.

(4) By changing the manner in which county assessors determine changes in ownership and process claims for base year value transfers and reassessments, this bill would impose a state-mandated local program.

(5) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for symbolic, impermanent lapel pins that memorialize United States military veterans killed in foreign wars, as provided.

This bill would correct an obsolete cross-reference in this provision.

(6) The Motor Vehicle Fuel Tax Law allows a supplier, as defined, to claim a refund of the license tax paid for the motor vehicle fuel under specific circumstances, including, but not limited to, where the supplier buys and uses the fuel for purposes other than operating motor vehicles upon the public highways of the state, exports the fuel, sells the fuel to a consulate officer or employee, or delivers the tax-paid fuel to a terminal and removes the fuel from the terminal, as provided. Under this law, a supplier entitled to a refund may elect to take a credit in lieu of a refund where the fuel was purchased for use off highway, exported, sold to a consulate officer or employee, or delivered and removed from a terminal, as specified.

This bill would consolidate the procedures for a supplier who chooses to claim a credit in lieu of a refund where the supplier exported, removed, sold or used the tax-paid motor vehicle fuel, as provided, and would make nonsubstantive changes to the heading of that law.

(7) The Use Fuel Tax Law, the Cigarette and Tobacco Products Tax Law, the Alcoholic Beverage Tax Law, the Energy Resources Surcharge Law, the Emergency Telephone Users Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Underground Storage Tank Maintenance Fee Law, the Fee Collection Procedures Law, and the Diesel Fuel Tax Law establish specified

limitation periods for the approval by the State Board of Equalization for any refund for an overpayment.

This bill would provide that, notwithstanding those provisions, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of a levy or by other enforcement procedures, shall be approved if the claim is filed within 3 years of the date of the overpayment.

(8) Existing law requires specified organizations that use, generate, store, or conduct activities in this state related to hazardous materials to pay a specified annual fee and file a return with the State Board of Equalization.

This bill would clarify that every limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship is subject to those filing provisions, as specified.

(9) The State Board of Equalization, as part of its administrative functions, is authorized to enter into settlement agreements for civil tax, or fee, or surcharge liability if it is determined that the settlement amount is consistent with a reasonable evaluation of the costs and risks associated with litigation, as provided. Existing law requires that whenever a reduction in tax, or fee, or surcharge in excess of \$500 is approved by the State Board of Equalization and the Franchise Tax Board, a public record containing specified information with regard to the settlement shall be placed on file in the office of the executive officer.

This bill would authorize the executive director and the chief counsel of the board to approve jointly the settlement of any tax, or fee, or surcharge matter in dispute involving a reduction of tax, or fee, or surcharge or penalties in settlement of \$5,000 or less. This bill would require that whenever a reduction of tax, or fee, or surcharge or penalties, or total tax, or fee, or surcharge and penalties in excess of \$500 is approved, a public record be kept at the executive director's office, as provided. This bill would also conform and clarify public record requirements.

(10) Existing law requires the State Board of Equalization to administer the Cigarette and Tobacco Products Tax Law, the Alcoholic Beverage Tax Law, the Timber Yield Tax Law, the Energy Resources Surcharge Law, the Emergency Telephone Users Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Fee Collection Procedures Law, and the Diesel Fuel Tax Law. Under these laws, when a liability is not paid when due, the board is authorized to use various procedures to collect the amounts due.

This bill would authorize the board to accept offers in compromise on a final tax, surcharge, or fee liability, as defined, under the various fee, surcharge, and tax programs, as provided. This bill would require a taxpayer, fee payer, or a surcharge payer, under specified circumstances, to file a statement under penalty of perjury and would additionally provide that the willful concealment or withholding of information, as specified, in connection with an offer of compromise is a felony, and would thereby impose a state-mandated local program.

(11) The Diesel Fuel Tax Law prohibits any person from operating or maintaining a motor vehicle on the public highway with dyed diesel fuel, except if dyed diesel fuel is used in a manner that is lawful under the Internal Revenue Code by a person who is registered in a specific capacity under the Diesel Fuel Tax Law, including an intercity bus operator, as provided.

This bill would remove that exception.

(12) The Diesel Fuel Tax Law imposes specified taxes with respect to diesel fuel and authorizes one taxpayer to pay another taxpayer's tax liability on fuel removed from the terminal rack, operative only if authorized by the IRS.

This bill would make technical, nonsubstantive changes to those provisions.

(13) Under the existing Diesel Fuel Tax Law, a customer who has failed to pay for diesel fuel when the supplier of the diesel fuel has been allowed a credit on the fuel, as specified, is liable for the fuel tax as an unlicensed supplier, as provided. Existing law further provides that the tax, penalties, and interest owed by the unlicensed supplier become immediately due and payable.

This bill would require the board to give the customer notice of the determination of tax liability within 3 years after the date the credit was taken or the date on which a refund was paid.

(14) The Diesel Fuel Tax Law requires specified persons that are involved in the sale, removal, transportation, or storage of diesel fuel to keep and maintain specified records, including highway vehicle operator/refuelers.

This bill would change this reference to highway vehicle operator/fuelers to conform with existing provisions.

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 61 of the Revenue and Taxation Code is amended to read:

61. Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:

(a) The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the

period during which the right may be exercised. The balance of the property, other than the mineral rights, shall not be reappraised pursuant to this section.

(b) The creation, renewal, extension, or assignment of a taxable possessory interest in tax exempt real property for any term. For purposes of this subdivision:

(1) “Renewal” and “extension” do not include the granting of an option to renew or extend an existing agreement pursuant to which the term of possession of the existing agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto.

(2) Any “renewal” or “extension” of a possessory interest during the reasonably anticipated term of possession used by the assessor to value that interest does not cause a change in ownership until the end of the reasonably anticipated term of possession used by the assessor to value that interest. At the end of the reasonably anticipated term of possession used by the assessor, a new base year value, based on a new reasonably anticipated term of possession, shall be established for the possessory interest.

(3) “Assignment” of a possessory interest means the transfer of all rights held by a transferor in a possessory interest.

(c) The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options), and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options); or (2) any transfer of a lessor’s interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

Only that portion of a property subject to that lease or transfer shall be considered to have undergone a change in ownership.

For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners’ exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800) and floating homes subject to taxation pursuant to Section 229, that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(d) (1) (A) A sublease of a taxable possessory interest in tax-exempt real property for a term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(B) The termination of a sublease of a taxable possessory interest in tax-exempt property with an original term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(C) Any transfer of a sublessee's interest with a remaining term, including renewal options, that exceeds half of the remaining term of the leasehold.

(2) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that does not exceed half the remaining term of the leasehold, including renewal options.

(e) The creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, and in Section 63 and Section 65.

(f) The creation, transfer, or termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62 and in Section 63.

(g) Any vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63.

(h) Any interests in real property that vest in persons other than the trustor (or, pursuant to Section 63, his or her spouse) when a revocable trust becomes irrevocable.

(i) The transfer of stock of a cooperative housing corporation, vested with legal title to real property that conveys to the transferee the exclusive right to occupancy and possession of that property, or a portion thereof. A "cooperative housing corporation" is a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.

(j) The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

SEC. 1.1. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800) and floating homes subject to taxation pursuant to Section 229, that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative that was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975, to March 1, 1981, between coowners in any property that was held by them as coowners for all or part of that period, and which was eligible for a homeowner's

exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980–81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of these corporations, or any combination thereof (including any transfer from one entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(l) Any transfer, that would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, “eligible dwelling unit” means the dwelling unit that was the principal place of residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

(n) Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward, or wards have been disabled, as provided in subdivision (e) of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if the child, children, ward, or wards have adjusted gross income that, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars (\$20,000) in the year in which the transfer occurs. As used in this subdivision, “child” or “ward” includes a minor or an adult. As used in this subdivision, “eligible dwelling unit” means the dwelling unit that was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984–85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later

than 30 days after the later of either the transferee's receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984–85 fiscal year.

(o) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(p) Commencing with the lien date for the 2006–07 fiscal year, any transfer between registered domestic partners, as defined in Section 297 of the Family Code, including, but not limited to:

(1) Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.

(2) Transfers that take effect upon the death of a registered domestic partner.

(3) Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or decree of dissolution of a registered domestic partnership or legal separation.

(4) The creation, transfer, or termination, solely between registered domestic partners, of any coowner's interest.

(5) The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation.

SEC. 1.2. Section 69.5 of the Revenue and Taxation Code is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowners' exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions

of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with all of the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base year value.

(D) It provides that its provisions are operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowners' exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowners' exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement

dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated that is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section, except that this paragraph shall not apply to any person who becomes severely and permanently disabled subsequent to being granted, as a claimant, the property tax relief provided by this section for any person over the age of 55 years. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format that is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A manufactured home or a manufactured home and any land owned by the claimant on which the manufactured home is situated. For purposes of this paragraph, "land owned by the claimant" includes a pro rata interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(A) If the manufactured home or the manufactured home and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the

base year value of the manufactured home or the base year value of the manufactured home and the land on which it is situated, as appropriate. If the manufactured home dwelling that constitutes the original property of the claimant includes an interest in a resident-owned mobilehome park, the assessor shall transfer to the claimant's replacement dwelling the base year value of the claimant's manufactured home and his or her pro rata portion of the real property of the park. No transfer of base year value shall be made by the assessor of that portion of land that does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g).

(B) If the manufactured home or the manufactured home and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base year value of the claimant's original property either to the manufactured home or the manufactured home and the land on which it is situated, as appropriate. If the manufactured home dwelling that constitutes the replacement dwelling of the claimant includes an interest in a resident-owned mobilehome park, the assessor shall transfer the base year value of the claimant's original property to the manufactured home of the claimant and his or her pro rata portion of the park. No transfer of base year value shall be made by the assessor to that portion of land that does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of the original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership that either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section, Section 69, or Section 69.3 because the property qualifies under this section, Section 69, or Section 69.3 as a replacement dwelling or property.

(f) (1) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form that shall be designed by the State Board of Equalization and that the assessor shall make available upon request, the following information:

(A) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(B) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(i) A certification, signed by a licensed physician or surgeon of appropriate specialty that identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(ii) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(C) The address and, if known, the assessor's parcel number of the original property.

(D) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(E) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(F) Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed subject to subdivision (k) or (m).

(2) A claim for transfer of base year value under this section that is filed after the expiration of the filing period set forth in subparagraph (F) of paragraph (1) shall be considered by the assessor, subject to all of the following conditions:

(A) Any base year value transfer granted pursuant to that claim shall apply commencing with the lien date of the assessment year in which the claim is filed.

(B) The full cash value of the replacement property in the assessment year described in subparagraph (A) shall be the base year value of the real property in the assessment year in which the base year value was transferred, factored to the assessment year described in subparagraph (A) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property that does not qualify for property tax relief pursuant to the criteria set forth in subparagraphs (A) and (B) of paragraph (4) of subdivision (h).

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of the original property.

(2) "Base year value of the original property" means its base year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant, or in the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, determined as of the date immediately prior to the misfortune or calamity.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base year value of the original property" shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(3) “Replacement dwelling” means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size that is used as a site for a residence, and “land owned by the claimant” includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling. For purposes of this paragraph, “area of reasonable size that is used as a site for a residence” includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site. For purposes of this paragraph, “land owned by the claimant” includes an ownership interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(4) “Original property” means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of the original property includes only that area of reasonable size that is used as a site for a residence, and “land owned by the claimant” includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property. For purposes of this paragraph, “area of reasonable size that is used as a site for a residence” includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site. For purposes of this paragraph, “land owned by the claimant” includes an ownership interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(5) “Equal or lesser value” means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the “replacement dwelling is purchased or newly constructed” is the date of purchase or the date of completion of construction, whichever is later.

(6) “Full cash value of the replacement dwelling” means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) “Full cash value of the original property” means, either:

(A) Its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(B) In the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, its full cash value, as determined in accordance with Section 110, immediately prior to its substantial damage or destruction by misfortune or calamity, as determined by the county assessor of the county in which the property is located, without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1, for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) “Sale” means any change in ownership of the original property for consideration.

(9) “Claimant” means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has been met.

(10) “Property that is eligible for the homeowners’ exemption” includes property that is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) “Person” means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) “Severely and permanently disabled” means any person described in subdivision (b) of Section 74.3.

(13) For the purposes of this section property is “substantially damaged or destroyed by misfortune or calamity” if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior

to the misfortune or calamity. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature.

(h) (1) Upon the timely filing of a claim described in subparagraph (F) of paragraph (1) of subdivision (f), the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

- (A) The date the original property is sold.
- (B) The date the replacement dwelling is purchased.
- (C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes that were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), and the assessor shall grant the rescission, if a written notice of rescission is delivered to the office of the assessor as follows:

(1) A written notice of rescission signed by the original filing claimant or claimants is delivered to the office of the assessor in which the original claim was filed.

(2) (A) Except as otherwise provided in this paragraph, the notice of rescission is delivered to the office of the assessor before the date that the

county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(B) Notwithstanding any other provision in this division, any time the notice of rescission is delivered to the office of the assessor within six years after relief was granted, provided that the replacement property has been vacated as the claimant's principal place of residence within 90 days after the original claim was filed, regardless of whether the property continues to receive the homeowners' exemption. If the rescission increases the base year value of a property, or the homeowners' exemption has been incorrectly allowed, appropriate escape assessments or supplemental assessments, including interest as provided in Section 506, shall be imposed. The limitations periods for any escape assessments or supplemental assessments shall not commence until July 1 of the assessment year in which the notice of rescission is delivered to the office of the assessor.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3) or (4), shall apply to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, except as provided in paragraph (4), this section shall apply to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(4) The amendments made to subdivision (e) by the act adding this paragraph shall apply only to replacement dwellings under Section 69 that are acquired or newly constructed on or after October 20, 1991, and shall apply commencing with the 1991-92 fiscal year.

(k) (1) In the case in which a county adopts an ordinance pursuant to paragraph (2) of subdivision (a) that establishes an applicable date which is more than three years prior to the date of adoption of the ordinance, those potential claimants who purchased or constructed replacement dwellings more than three years prior to the date of adoption of the ordinance and who would, therefore, be precluded from filing a timely claim, shall be deemed to have timely filed a claim if the claim is filed within three years after the date that the ordinance is adopted. This paragraph may not be construed as a waiver of any other requirement of this section.

(2) In the case in which a county assessor corrects a base year value to reflect a pro rata change in ownership of a resident-owned mobilehome park that occurred between January 1, 1989, and January 1, 2002, pursuant to paragraph (4) of subdivision (b) of Section 62.1, those claimants who purchased or constructed replacement dwellings more than three years prior to the correction and who would, therefore, be precluded from filing a timely claim, shall be deemed to have timely filed a claim if the claim is filed within three years of the date of notice of the correction of the base year value to reflect the pro rata change in ownership. This paragraph may not be construed as a waiver of any other requirement of this section.

(3) This subdivision does not apply to a claimant who has transferred his or her replacement dwelling prior to filing a claim.

(4) The property tax relief provided by this section, but filed under this subdivision, shall apply prospectively only, commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.

(l) No escape assessment may be levied if a transfer of base year value under this section has been erroneously granted by the assessor pursuant to an expired ordinance authorizing intercounty transfers of base year value.

(m) (1) The amendments made to subdivisions (b) and (g) of this section by Chapter 613 of the Statutes of 2001 shall apply:

(A) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(B) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but not to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

(C) With respect to the transfer of base year value by a severely and permanently disabled person, to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(2) The property tax relief provided by this section in accordance with this subdivision shall apply prospectively only commencing with the lien

date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.

(n) A claim filed under this section is not a public document and is not subject to public inspection, except that a claim shall be available for inspection by the transferee and the transferor or their respective spouse, the transferee's legal representative, the transferor's legal representative, and the executor or administrator of the transferee's or transferor's estate.

SEC. 1.3. Section 170 of the Revenue and Taxation Code is amended to read:

170. (a) Notwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein. The ordinance may also specify that the assessor may initiate the reassessment where the assessor determines that within the preceding 12 months taxable property located in the county was damaged or destroyed.

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph, "damage" includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.

(2) A misfortune or calamity.

(3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government, has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, "misfortune or calamity" includes a drought condition such as existed in this state in 1976 and 1977.

The application for reassessment may be filed within the time specified in the ordinance or within 12 months of the misfortune or calamity, whichever is later, by delivering to the assessor a written application requesting reassessment showing the condition and value, if any, of the property immediately after the damage or destruction, and the dollar amount of the damage. The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit.

An ordinance may be made applicable to a major misfortune or calamity specified in paragraph (1) or to any misfortune or calamity specified in paragraph (2), or to both, as the board of supervisors determines. An ordinance may not be made applicable to a misfortune or calamity specified in paragraph (3), unless an ordinance making paragraph (2) applicable is operative in the county. The ordinance may specify a period of time within which the ordinance shall be effective, and, if no period of time is specified, it shall remain in effect until repealed.

(b) Upon receiving a proper application, the assessor shall appraise the property and determine separately the full cash value of land, improvements and personalty immediately before and after the damage or destruction. If the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by ten thousand dollars (\$10,000) or more, the assessor shall also separately determine the percentage reductions in value of land, improvements and personalty due to the damage or destruction. The assessor shall reduce the values appearing on the assessment roll by the percentages of damage or destruction computed pursuant to this subdivision, and the taxes due on the property shall be adjusted as provided in subdivision (e). However, the amount of the reduction shall not exceed the actual loss.

(c) The assessor shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall state that the applicant may appeal the proposed reassessment to the local board of equalization within six months of the date of mailing the notice. If an appeal is requested within the six-month period, the board shall hear and decide the matter as if the proposed reassessment had been entered on the roll as an assessment made outside the regular assessment period. The decision of the board regarding the damaged value of the property shall be final, provided that a decision of the local board of equalization regarding any reassessment made pursuant to this section shall create no presumption as regards the value of the affected property subsequent to the date of the damage.

Those reassessed values resulting from reductions in full cash value of amounts, as determined above, shall be forwarded to the auditor by the assessor or the clerk of the local equalization board, as the case may be. The auditor shall enter the reassessed values on the roll. After being entered on the roll, those reassessed values shall not be subject to review, except by a court of competent jurisdiction.

(d) (1) If no application is made and the assessor determines that within the preceding 12 months a property has suffered damage caused by misfortune or calamity that may qualify the property owner for relief under an ordinance adopted under this section, the assessor shall provide the last known owner of the property with an application for reassessment. The property owner shall file the completed application within 12 months after the occurrence of said damage. Upon receipt of a properly completed, timely filed application, the property shall be reassessed in the same manner as required in subdivision (b).

(2) This subdivision does not apply where the assessor initiated reassessment as provided in subdivision (a) or (1).

(e) The tax rate fixed for property on the roll on which the property so reassessed appeared at the time of the misfortune or calamity, shall be applied to the amount of the reassessment as determined in accordance with this section and the assessee shall be liable for: (1) a prorated portion of the taxes that would have been due on the property for the current fiscal year had the misfortune or calamity not occurred, to be determined on the

basis of the number of months in the current fiscal year prior to the misfortune or calamity; plus, (2) a proration of the tax due on the property as reassessed in its damaged or destroyed condition, to be determined on the basis of the number of months in the fiscal year after the damage or destruction, including the month in which the damage was incurred. For purposes of applying the preceding calculation in prorating supplemental taxes, the term “fiscal year” means that portion of the tax year used to determine the adjusted amount of taxes due pursuant to subdivision (b) of Section 75.41. If the damage or destruction occurred after January 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year. However, if the property is fully restored during the next fiscal year, taxes due for that year shall be prorated based on the number of months in the year before and after the completion of restoration.

(f) Any tax paid in excess of the total tax due shall be refunded to the taxpayer pursuant to Chapter 5 (commencing with Section 5096) of Part 9, as an erroneously collected tax or by order of the board of supervisors without the necessity of a claim being filed pursuant to Chapter 5.

(g) The assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value.

If partial reconstruction, restoration, or repair has occurred on any subsequent lien date, the taxable value shall be increased by an amount determined by multiplying the difference between its factored base year value immediately before the calamity and its assessed value in its damaged condition by the percentage of the repair, reconstruction, or restoration completed on that lien date.

(h) (1) When the property is fully repaired, restored, or reconstructed, the assessor shall make an additional assessment or assessments in accordance with subparagraph (A) or (B) upon completion of the repair, restoration, or reconstruction:

(A) If the completion of the repair, restoration, or reconstruction occurs on or after January 1, but on or before May 31, then there shall be two additional assessments. The first additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll. The second additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value to be enrolled on the roll being prepared.

(B) If the completion of the repair, restoration, or reconstruction occurs on or after June 1, but before the succeeding January 1, then the additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll.

(2) On the lien date following completion of the repair, restoration, or reconstruction, the assessor shall enroll the new taxable value of the property as of that lien date.

(3) For purposes of this subdivision, “new taxable value” shall mean the lesser of the property’s (A) full cash value, or (B) factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70.

(i) The assessor may apply Chapter 3.5 (commencing with Section 75) of Part 0.5 in implementing this section, to the extent that chapter is consistent with this section.

(j) This section applies to all counties, whether operating under a charter or under the general laws of this state.

(k) Any ordinance in effect pursuant to Section 155.1, 155.13, or 155.14 shall remain in effect according to its terms as if that ordinance was adopted pursuant to this section, subject to the limitations of subdivision (b).

(l) When the assessor does not have the general authority pursuant to subdivision (a) to initiate reassessments, if no application is made and the assessor determines that within the preceding 12 months a property has suffered damage caused by misfortune or calamity, that may qualify the property owner for relief under an ordinance adopted under this section, the assessor may, with the approval of the board of supervisors, reassess the particular property for which approval was granted as provided in subdivision (b) and notify the last known owner of the property of the reassessment.

SEC. 1.4. Section 6360.1 of the Revenue and Taxation Code is amended to read:

6360.1. There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, a “Buddy Poppy” or any other symbolic, impermanent lapel pin that memorializes United States military veterans killed in foreign wars of the United States, by any corporation established by the Congress of the United States pursuant to Chapter 2301 (commencing with Section 23101) of Title 36 of the United States Code, or any of that corporation’s subordinate state or territorial subdivisions, local chapters, posts, or auxiliaries.

SEC. 1.5. The heading of Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code is amended to read:

PART 2. MOTOR VEHICLE FUEL TAX LAW

SEC. 2. Section 8106 of the Revenue and Taxation Code is amended to read:

8106. In lieu of the collection and refund of the tax on tax-paid motor vehicle fuel exported, removed, sold, or used by a supplier in a manner that would entitle the supplier to claim a refund under Section 8101, credit

may be given the supplier upon the supplier's tax return, and the determination of the amount of tax shall be determined in accordance with any rules and regulations the board may prescribe.

SEC. 3. Section 8106.1 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 8106.5 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 8106.8 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 9152.2 is added to the Revenue and Taxation Code, to read:

9152.2. Notwithstanding Section 9152, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 7. Section 9271 of the Revenue and Taxation Code is amended to read:

9271. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 9255.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 8. Section 30178.3 is added to the Revenue and Taxation Code, to read:

30178.3. Notwithstanding Section 30178, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 9. Section 30459.1 of the Revenue and Taxation Code is amended to read:

30459.1. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 30455.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 10. Section 30459.15 is added to the Revenue and Taxation Code, to read:

30459.15. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 13 (commencing with Section 30001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by the following:

(1) A business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) A taxpayer that has purchased untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(d) Offers in compromise shall not be considered under the following conditions:

(1) The taxpayer has been convicted of felony tax evasion under this part during the liability period.

(2) The taxpayer has filed a statement under paragraph (3) of subdivision (c) and continues to purchase untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer’s present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(3) For liabilities generated in the manner described in paragraph (2) of subdivision (c), the taxpayer shall file with the board a statement, under penalty of perjury, that he or she will no longer purchase untaxed cigarettes or tobacco products from out-of-state vendors for his or her own use or consumption.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 30455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(I) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 11. Section 32402.2 is added to the Revenue and Taxation Code, to read:

32402.2. Notwithstanding Section 32402, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 12. Section 32471 of the Revenue and Taxation Code is amended to read:

32471. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review

the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the

same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 32455.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 13. Section 32471.5 is added to the Revenue and Taxation Code, to read:

32471.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 14. Section 38800 is added to the Revenue and Taxation Code, to read:

38800. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of

seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 18.5 (commencing with Section 38101), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from persons who no longer harvest timber, or property owners that no longer harvest their property, except where the taxpayer making the offer has their primary residence located on the property that generated the timber tax liability.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer’s present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the taxpayer.
- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 38705. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

- (1) The board determines that any person did any of the following acts regarding the making of the offer:
 - (A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.
 - (B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.
- (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

- (1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.
- (2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or

financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 15. Section 40112.2 is added to the Revenue and Taxation Code, to read:

40112.2. Notwithstanding Section 40112, a refund of an overpayment of any surcharge, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 16. Section 40211 of the Revenue and Taxation Code is amended to read:

40211. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General’s written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil surcharge matter in dispute involving a reduction of surcharge or penalties in settlement, the total of which reduction of surcharge and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of surcharge, or penalties, or total surcharge and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record

with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 17. Section 40211.5 is added to the Revenue and Taxation Code, to read:

40211.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final surcharge liability” means any final surcharge liability arising under Part 19 (commencing with Section 40001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer’s present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(i) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(j) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or

financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, “person” means the taxpayer, any member of the surcharge payer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

SEC. 18. Section 41101.2 is added to the Revenue and Taxation Code, to read:

41101.2. Notwithstanding Section 41101, a refund of an overpayment of any surcharge, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 19. Section 41171 of the Revenue and Taxation Code is amended to read:

41171. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief

counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil surcharge matter in dispute involving a reduction of surcharge or penalties in settlement, the total of which reduction of surcharge and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of surcharge, or penalties, or total surcharge and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 20. Section 41171.5 is added to the Revenue and Taxation Code, to read:

41171.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final surcharge liability” means any final surcharge liability arising under Part 20 (commencing with Section 41001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(i) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(j) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 41131. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, “person” means the surcharge payer, any member of the surcharge payer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

SEC. 21. Section 43152.9 of the Revenue and Taxation Code is amended to read:

43152.9. (a) The fee imposed pursuant to Section 25205.6 of the Health and Safety Code, which is collected and administered under Section 43054, is due and payable on the last day of the second month following the end of the calendar year.

(b) Every corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship

subject to the fee imposed pursuant to Section 25205.6 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 22. Section 43452.2 is added to the Revenue and Taxation Code, to read:

43452.2. Notwithstanding Section 43452, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 23. Section 43522 of the Revenue and Taxation Code is amended to read:

43522. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute which arises under Section 105190 or 105310 of the Health and Safety Code.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 43651.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 24. Section 43522.5 is added to the Revenue and Taxation Code, to read:

43522.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 22 (commencing with Section 43001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the taxpayer.
- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 43651. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

- (1) The board determines that any person did any of the following acts regarding the making of the offer:
 - (A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.
 - (B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.
- (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 25. Section 45652.2 is added to the Revenue and Taxation Code, to read:

45652.2. Notwithstanding Section 45652, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 26. Section 45867 of the Revenue and Taxation Code is amended to read:

45867. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement

submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential information for purposes of Section 45982.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 27. Section 45867.5 is added to the Revenue and Taxation Code, to read:

45867.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 23 (commencing with Section 45001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the fee payer.

(2) The amount of unpaid fees and related penalties, additions to fee, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 45855. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the fee payer or other person liable in respect of the fee.

(m) For purposes of this section, “person” means the fee payer, any member of the fee payer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

SEC. 28. Section 46502.2 is added to the Revenue and Taxation Code, to read:

46502.2. Notwithstanding Section 46502, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 29. Section 46622 of the Revenue and Taxation Code is amended to read:

46622. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fee, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation of settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon

approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 30. Section 46628 is added to the Revenue and Taxation Code, to read:

46628. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 24 (commencing with Section 46001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred,

where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the fee payer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the fee payer or other person liable in respect of the fee.

(m) For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

SEC. 31. Section 50140.2 is added to the Revenue and Taxation Code, to read:

50140.2. Notwithstanding Section 50140, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be

approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 32. Section 50156.11 of the Revenue and Taxation Code is amended to read:

50156.11. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or

organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 33. Section 55222.2 is added to the Revenue and Taxation Code, to read:

55222.2. Notwithstanding Section 55222, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 34. Section 55332 of the Revenue and Taxation Code is amended to read:

55332. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a

reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is

not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential information for purposes of Section 55381.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 35. Section 55332.5 is added to the Revenue and Taxation Code, to read:

55332.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 30 (commencing with Section 55001), or

related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director

of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the fee payer.
- (2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 55381. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate fee.

(m) For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

SEC. 36. Section 60045 of the Revenue and Taxation Code is repealed.

SEC. 37. Section 60046 of the Revenue and Taxation Code is repealed.

SEC. 38. Section 60063 of the Revenue and Taxation Code is amended to read:

60063. (a) The board may accept from the person who receives diesel fuel removed at a refinery or terminal rack an amount equal to the tax due and required to be paid by the refiner or positionholder upon the removal of the diesel fuel from a refinery or terminal rack, as if the amount were payment of the tax by the refiner or positionholder under Section 60051 or 60052, as the case may be, if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

(b) The refiner or positionholder shall remain primarily liable for payment of the tax imposed by Section 60051 or 60052 for diesel fuel removed at the refinery or terminal rack, as the case may be, plus any penalty or interest, until the amount is finally paid and credited to the account of the responsible refiner or positionholder; provided, however, that the board, at its discretion, may relieve the refiner or positionholder from primary liability for payment of tax imposed by Section 60051 or 60052 and hold another person primarily liable for the tax if (i) the Internal Revenue Service authorizes payment of fuel taxes by the receiving party under a two-party exchange agreement, and (ii) under the Internal Revenue Service approach to a two-party exchange agreement, another person is primarily liable for payment of the tax, and (iii) the board elects to follow the Internal Revenue Service approach.

(c) The board may adopt those regulations as it deems appropriate to carry out this section.

SEC. 39. Section 60101 of the Revenue and Taxation Code is amended to read:

60101. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue Service, including, but not limited to, requirements respecting type, dosage, and timing.

(b) Marking shall meet the marking requirements of the Internal Revenue Service.

(c) No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity.

SEC. 40. Section 60201.3 of the Revenue and Taxation Code is amended to read:

60201.3. (a) A supplier is relieved from liability for diesel fuel tax insofar as the sales of the diesel fuel are represented by accounts which have been found worthless and charged off for income tax purposes. If the

supplier has previously paid the amount of the tax, he or she may, under the rules and regulations prescribed by the board, take a credit in that amount. If those accounts are thereafter in whole or in part collected by the supplier, the gallons of diesel fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the tax thereon shall be paid with the return. The board may, at its option, require the supplier to submit periodic reports listing accounts delinquent for a 90-day period or more.

(b) Any customer of a supplier who has failed to pay for diesel fuel purchased and for which the supplier has been allowed a credit under subdivision (a) is liable to the state for the diesel fuel tax as an unlicensed supplier and the tax, applicable penalties, and interest become immediately due and payable under the unlicensed persons provisions contained in Article 6 (commencing with Section 60360) of Chapter 6. The notice of determination issued under Section 60361 shall be given to the customer within three years of the last day of the calendar month following the reporting period for which the supplier took a credit for the tax previously paid on the customer's account or within three years after the date a refund of the tax was paid.

SEC. 41. Section 60522.2 is added to the Revenue and Taxation Code, to read:

60522.2. Notwithstanding Section 60522, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 42. Section 60604 of the Revenue and Taxation Code is amended to read:

60604. Every interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, and every person dealing in, removing, transporting, or storing diesel fuel in this state shall keep those records, receipts, invoices, and other pertinent papers with respect thereto in that form as the board may require. Failure to maintain records will constitute a misdemeanor punishable as provided in Section 60706.

SEC. 43. Section 60606 of the Revenue and Taxation Code is amended to read:

60606. The board or its authorized representative may examine the books, records, and equipment of any interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, or person dealing in, removing, transporting, or storing diesel fuel and may investigate the character of the disposition that the interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, or person

makes of the diesel fuel in order to ascertain whether all taxes due under this part are being properly reported and paid.

SEC. 44. Section 60636 of the Revenue and Taxation Code is amended to read:

60636. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or

organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 60609.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 45. Section 60637 is added to the Revenue and Taxation Code, to read:

60637. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or

disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 31 (commencing with Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer’s present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not

limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the taxpayer.
- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 60609. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 46. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: May 7, 2012

From: Randy Ferris, Chief Counsel 
David Gau, Deputy Director 
Property and Special Taxes Department

Subject: **Board Meeting, May 30-31, 2012**
Chief Counsel Matters - Item J - Rulemaking
Proposed Rule 100 Changes to Specified Special Tax and Fee Regulations

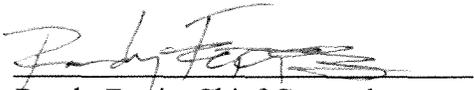
We request your authorization to complete the Rule 100 changes to ten Special Tax and Fee regulations. These changes are proposed to be made to regulations pertaining to: the Diesel Fuel Tax Law; the Integrated Waste Management Fee Law; the Motor Vehicle Fuel Tax Law; and the Underground Storage Tank Maintenance Fee Law.

Each of the attached Statements of Explanation includes a detailed description of the proposed changes to each regulation and strikeout and underlined versions of each regulation illustrating the proposed changes. The changes replace repealed statutory references with more current statutory references, replace the two-word terms "fee payer" and "fee payers" with the one-word terms "feepayer" and "feepayers," respectively, and make grammatical changes. The changes are appropriate for processing under Rule 100 without the normal notice and public hearing process because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

If you have any questions regarding this request, please let me know or contact Ms. Carolee Johnstone, at (916) 323-3142.

Recommendation by:

Approved:


Randy Ferris, Chief Counsel


Kristine Cazadd, Executive Director

Approved:

BOARD APPROVED
At the 5/31/12 Board Meeting


David Gau, Deputy Director
Property and Special Taxes Department


Joann Richmond, Chief
Board Proceedings Division

Attachments

Statements of Explanation for Changes to Diesel Fuel Tax Regulations 1435, *Tax Paid Twice on Diesel Fuel*, and 1436, *Returned Sales*.

Statement of Explanation for Changes to Integrated Waste Management Fee Regulation 3301, *Records*.

Statements of Explanation for Changes to Motor Vehicle Fuel Tax Regulations 1105, *Tax-Paid Fuel and Ex-Tax Fuel*, 1120, *Returned Sales*, 1132, *Shipments out of the State*, and 1161, *Tax Paid Twice on Motor Vehicle Fuel*.

Statements of Explanation for Changes to Underground Storage Tank Maintenance Fee Regulations 1205, *Fee Payer; Rebuttable Presumption*, 1212, *Liability for Fee*, and 1271, *Records*.

cc (with attachments):

- Ms. Joann Richmond MIC:80
- Ms. Christine Bisauta MIC:82
- Mr. Steve Smith MIC:82
- Mr. Bradley Heller MIC:82
- Ms. Carolee Johnstone MIC:82
- Ms. Lynn Bartolo MIC:57
- Mr. Lou Feletto MIC:31
- Mr. Robert Zivkovich MIC:57

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1435, *Tax Paid Twice on Diesel Fuel*
Regulation 1436, *Returned Sales*

A. Factual Basis

Chapter 3 (commencing with section 1411) of division 2 of title 18 of the California Code of Regulations (chapter 3) contains regulations that implement, interpret, or make specific the provisions of the Diesel Fuel Tax Law (Law) (part 31 (commencing with section 60001) of division 2 of the Revenue and Taxation Code), which generally imposes an excise tax on diesel fuel sold in this state. Section 60601 of the Diesel Fuel Tax Law requires the State Board of Equalization (BOE) to enforce the excise tax and authorizes the BOE to prescribe, adopt, and enforce regulations relating to its administration and enforcement. The BOE hereby proposes to change the Diesel Fuel Tax regulations listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in their reference notes.

Section 60501 of the Law allows a supplier, as defined, to claim a refund of the tax paid on diesel fuel under specific circumstances. For example, and as relevant here, section 60501, subdivision (a)(4)(J), permits a supplier to claim a refund for tax paid on diesel fuel if the fuel was “[r]emoved from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.”

Section 60508 of the Law was amended, effective January 1, 2010 (Stats. 2009, ch. 545 (Assem. Bill No. (AB) 1547)), to permit a supplier to take a credit in lieu of a refund of tax paid on diesel fuel that is exported, removed, sold, or used by the supplier in a manner that would entitle the supplier to a refund under article 1 (commencing with section 60501) of chapter 8 of the Law, including, but not limited to, section 60501, subdivision (a)(4)(J). At the same time, section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of a refund under the circumstances set forth in section 60501, subdivision (a)(4)(J), was repealed by AB 1547, effective January 1, 2010.

Regulation 1435, *Tax Paid Twice on Diesel Fuel*, and Regulation 1436, *Returned Sales*, of chapter 3 were both adopted on March 27, 2002, to, among other things, implement, interpret, and make specific the provisions of section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of claiming a refund under section 60501, subdivision (a)(4)(J). Accordingly, the BOE included citations to section 60508.4 in Regulation 1435’s and Regulation 1436’s reference notes. Therefore, the BOE has concluded that, as a result of the amendments made to section 60508 and the repeal of section 60508.4 by AB 1547, it is necessary to replace the citations to section 60508.4 with citations to section 60508 in the reference notes for these two regulations and the BOE proposes to make the changes under Rule 100.

B. Proposed Changes

1. Rule 100 Changes to Regulation 1435, *Tax Paid Twice on Diesel Fuel*

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1435 to replace a repealed statutory reference with a more current statutory reference.

2. Rule 100 Changes to Regulation 1436, *Returned Sales*

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1436 to replace a repealed statutory reference with a more current statutory reference.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to replace a repealed statutory reference with a more current statutory reference and account for amendments to the Law made by AB 1547.

PROPOSED CHANGES

1. Change Regulation 1435 (Tax Paid Twice on Diesel Fuel) to read as follows:

Regulation 1435. Tax Paid Twice on Diesel Fuel.

(a) A supplier who removes diesel fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the Board or in lieu of a refund take a credit on its tax return.

(b) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

(1) A tax imposed on the diesel fuel by Revenue and Taxation Code Sections 60051 and 60052 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the “first tax” or “first taxpayer”);

(2) After imposition of the first tax, another tax was imposed on the diesel fuel by Revenue and Taxation Code Sections 60051 and 60052 and was paid to the state by reporting the gallons on a tax return (the “second tax” or “second taxpayer”);

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) Reporting Requirements.

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Revenue and Taxation Code Section 60051 and 60052 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Revenue and Taxation Code Section 60051 (removal at a terminal rack), Revenue and Taxation Code Section 60052(b)(2) (nonbulk entries into the state), or Revenue and Taxation Code Section 60052(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be

imposed under Revenue and Taxation Code Sections 60051 and 60052 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) By Person Required to File First Taxpayer's Report.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

1. The person to whom the first taxpayer sells the diesel fuel within the bulk transfer/terminal system; or
2. The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) By Person Filing Optional First Taxpayer's Report.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

1. The person to whom the first taxpayer sells the diesel fuel; or
2. The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) By Person Receiving First Taxpayer's Report.

1. Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

2. Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Revenue and Taxation Code Sections 60051 and 60052 with respect to the diesel fuel.

(D) Form of Statement.

A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) Sale to Multiple Buyers.

If the first taxpayer's report relates to diesel fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the diesel fuel is divided and each buyer must be given a copy of the report.

(d) Claim for Refund.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the Board to recover the tax.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

(1) The information required in Revenue and Taxation Code Section 60501.

(2) Volume and type of diesel fuel.

(3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.

(5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the diesel fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.

(6) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.

(7) If the diesel fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that diesel fuel.

EXHIBIT A . . . [No Change]

EXHIBIT B . . . [No Change]

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60051, 60052, 60501, 60507, ~~60508~~60508.4 and 60521.5, Revenue and Taxation Code.

2. Change Regulation 1436 (Returned Sales) to read as follows:

Regulation 1436. Returned Sales.

(a) When diesel fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into a refinery or an approved terminal's storage tank, the supplier may either file a claim for refund with the Board or in lieu of

the refund take a credit on its tax return. The credit memorandum covering the return of the diesel fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the diesel fuel tax.

(b) It shall be presumed that the supplier purchased the diesel fuel that was returned as tax-paid diesel fuel if the credit memorandum includes diesel fuel tax. For the purpose of a refund or credit, it also shall be presumed that the subsequent removal of the diesel fuel from a terminal rack by the supplier that received the returned diesel fuel is made in the month that the diesel fuel was returned.

(c) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

- (1) The returned diesel fuel was delivered into a refinery or an approved terminal storage tank.
- (2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the diesel fuel is returned.
- (3) The supplier prepares a first taxpayer's report (as identified in Regulation 1435) when the diesel fuel is returned.
- (4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.

(d) If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the diesel fuel was returned, the supplier may only file a claim for refund with the Board to recover the tax. Each claim for a refund must contain the following information with respect to the diesel fuel covered by the claim:

- (1) The information required in Revenue and Taxation Code Section 60501.
- (2) Volume and type of diesel fuel.
- (3) Date on which the claimant received the returned diesel fuel.
- (4) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.
- (5) A copy of the credit memorandum that returned the diesel fuel.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60025, 60501 and ~~60508-4~~ 60508-4, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues
Regulation 3301, *Records*

A. Factual Basis

Chapter 8.3 (commencing with section 3301) of division 2 of title 18 of the California Code of Regulations (chapter 8.3) contains regulations that implement, interpret, or make specific the provisions of the Integrated Waste Management Fee Law (Law) (part 23 (commencing with section 45001) of division 2 of the Revenue and Taxation Code), pursuant to which the State Board of Equalization (BOE) administers the solid waste disposal fee imposed under section 48000 of the Public Resources Code. The BOE hereby proposes to change Regulation 3301, *Records*, of chapter 8.3 under California Code of Regulations, title 1, section (Rule) 100 to update the manner in which the BOE refers to persons that are liable for payment of the solid waste disposal fee in the regulation.

The Law was enacted in 1987 (Assem. Bill No. 2448, (Stats. 1987, ch. 1319)). Section 45009 of the Law defines the two-word term “fee payer” to mean “any person who is liable for the fee imposed pursuant to Section 48000 of the Public Resources Code and the two-word term “fee payer” is used throughout the Law. As a result, when the BOE adopted Regulation 3301 on February 5, 2003, the same two-word form of the term, “fee payer,” was used. However, since the adoption of Regulation 3301, the BOE has stopped using the two-word term “fee payer” to refer to a person that is liable for the payment of a BOE-administered fee in its forms and publications, and the BOE has adopted a uniform policy requiring its staff to use the single word “feepayer” in place of the two-word term “fee payer.” (See the direction regarding the word “feepayer” in the BOE Style A-Z section of BOE Publication 384, “A Style Guide for BOE Forms and Publications” (May 2011), Introduction and page 3 from the BOE’s internal website, attached.) Therefore, the BOE now proposes to change Regulation 3301 in order to replace the two-word terms “fee payer” and “fee payers” with the single-word terms “feepayer” and “feepayers,” respectively, under Rule 100, in order to make the use of the terms in the BOE’s regulation consistent with the use of the terms in all of the BOE’s forms and publications.

B. Proposed Changes

Rule 100 Changes to Regulation 3301, *Records*

Rule 100 changes are proposed to replace the term “fee payer” with “feepayer” in the first and second sentences of subdivision (a) and the second sentence of subdivision (b) of Regulation 3301, and to replace the term “fee payers” with “feepayers” in the first sentence of subdivision (b) of Regulation 3301, to update the form of the terms.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to make the use of the relevant terms in the BOE's regulation consistent with the use of the same terms in all of the BOE's forms and publications.

PROPOSED CHANGES

Change Regulation 3301 (Records) to read as follows:

Regulation 3301. Records.

(a) General. A ~~feepayer~~~~fee payer~~ shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901. Notwithstanding the record keeping requirements of the Department of Resources Recycling and Recovery set forth at California Code of Regulations, Title 14, Section 17414, for fee collection purpose the ~~feepayer~~~~fee payer~~ shall retain and preserve records for a period of not less than four years except as provided in Section 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), ~~feepayers~~~~fee payers~~ shall comply with the following requirements. A ~~feepayer~~~~fee payer~~ shall keep complete records, including but not limited to:

(1) Weight tickets or other source documents recording amounts of waste entering the landfill.

(2) Documentation supporting the validity of volumetric conversion factors used as an alternative to actual weight to report waste tonnage.

(3) Reports to other local and state agencies of waste tonnage disposed.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Section 45852, Revenue and Taxation Code.

Introduction

This house style guide has been developed by the Board of Equalization's (BOE) Editorial Services Section. As style changes over time, publication units, publishers, and newspapers generally decide to use one dictionary and one published style manual (in our case we use *Merriam Webster's Collegiate Dictionary* and *The Gregg Reference Manual*). In addition to the standard references, we have also developed this house style guide.

A team of editors, forms analysts, and Customer Service and Publishing Division managers developed this style guide to promote consistency in BOE forms and publications. This team discussed every item in this guide and agreed on how we should treat each individual entry.

If an example is not listed, please refer to *The Gregg Reference Manual, Eleventh Edition* for usage or *Merriam Webster's Collegiate Dictionary, Eleventh Edition*.

E

e.g., etc.	avoid; use for example, among others
enclosed (vs. attached)	to insert in the same envelope (see "attached")
ex tax	don't use; write out "without tax"

F

fax	lowercase
faxback	one word
federal	don't capitalize
feepayer	one word
fewer vs. less	use with things that are counted (fewer buckets, less water)
fine-tune	always hyphenated
firsthand	one word
fiscal year	lower case
follow-up (n., adj.)	<i>Example:</i> She was in charge of follow-up.(n) She did the follow-up work.(adj.)
follow up (v.)	<i>Example:</i> Please follow up with her as the deadline approaches.
form	avoid using before form identifier (BOE-770)
full-time	always hyphenated
fundraising	one word, no hyphen
FY (fiscal year)	capitalize when referring to fiscal year

G

Governor (the)	capitalize when referring specifically to the Governor of California
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H

handicap accessible	avoid; use wheelchair accessible
hard copy (n.)	<i>Example:</i> Please give it to Legal in hard copy.
hard-copy (adj.)	<i>Example:</i> Legal wants it in hard-copy format.
he/she; he or she; him/her; him or her	avoid both; use their or our
headquarters	a singular or plural noun
Headquarters	capitalized when referring to 450 N Street location
homepage	one word
Honorable	capitalized when used before name (the Honorable

Attachment

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1105, *Tax-Paid Fuel and Ex-Tax Fuel*

Regulation 1120, *Returned Sales*

Regulation 1132, *Shipments out of the State*

Regulation 1161, *Tax Paid Twice on Motor Vehicle Fuel*

A. Factual Basis

Chapter 1 (commencing with section 1101) of division 2 of title 18 of the California Code of Regulations (chapter 1) contains regulations that implement, interpret, or make specific the provisions of the Motor Vehicle Fuel Tax Law (Law) (part 2 (commencing with section 7301) of division 2 of the Revenue and Taxation Code), which imposes excise taxes on “motor vehicle fuel,” including gasoline and aviation gasoline, and “aircraft jet fuel.” The State Board of Equalization (BOE) hereby proposes to change the provisions of chapter 1 listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in the regulations’ reference notes and to make a minor grammatical change to the text of one regulation, as described in detail below.

Section 8101 of the Law allows a supplier, as defined, to claim a refund of the tax paid on motor vehicle fuel under specific circumstances, including, but not limited to, where the supplier buys and uses the fuel for purposes other than operating motor vehicles upon the public highways of the state, exports the fuel for use outside the state, or delivers the fuel to a terminal and removes the fuel from the terminal, as provided. In addition, prior to January 1, 2007, suppliers were permitted to choose to take a credit, in lieu of a refund, under most of these same circumstances, and there were individual statutes that separately pertained to each situation in which a credit could be claimed in lieu of a refund under section 8101, including sections 8106.5 and 8106.8 of the Law.

Effective January 1, 2007, sections 2, 4, and 5 of Assembly Bill No. 3076 (Stats. 2006, ch. 364) repealed section 8106.5 permitting a supplier to claim a credit in lieu of a refund with respect to exported tax-paid fuel, and section 8106.8 permitting a supplier to claim a credit in lieu of a refund with respect to tax-paid fuel delivered to or removed from a terminal at the rack, and amended section 8106 to consolidate into one statute all of the statutory provisions under which a supplier may claim a credit in lieu of a refund and provide that a supplier may claim a credit in lieu of a refund under all of the circumstances under which a supplier would be entitled to claim a refund under section 8101. As a result, section 8106 now permits the credits in lieu of refunds previously permitted by sections 8106.5 and 8106.8, and section 8106 should replace sections 8106.6 and 8106.8 in the reference notes for the regulations listed above. Therefore, the BOE now proposes to change the Motor Vehicle Fuel Tax regulations listed above, and described in detail below, to replace the citations to sections 8106.5 and 8106.8 with citations to section 8106 in the regulations’ reference notes and to change the word “Returns” to the word “Return” in Regulation 1120 in order to make one nonsubstantive, grammatical correction, under Rule 100.

B. Proposed Changes

1. Rule 100 Change to Regulation 1105, *Tax-Paid Fuel and Ex-Tax Fuel*

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1105 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

2. Rule 100 Changes to Regulation 1120, *Returned Sales*

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1120 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

A Rule 100 change is also proposed to replace “Returns” with “Return” in the heading to subdivision (c) of Regulation 1120, to correct a grammatical error by making the term singular.

3. Rule 100 Change to Regulation 1132, *Shipments out of the State*

A Rule 100 change is proposed to replace “8106.5” with “8106” in the reference note for Regulation 1132 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

4. Rule 100 Change to Regulation 1161, *Tax Paid Twice on Motor Vehicle Fuel*

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1161 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to update the statutory references and to correct a grammatical error.

PROPOSED CHANGES

1. Change Regulation 1105 (Tax-Paid Fuel and Ex-Tax Fuel) to read as follows:

Regulation 1105. Tax-Paid Fuel and Ex-Tax Fuel.

(a) "Tax-paid fuel" is the gallonage of motor vehicle fuel acquired with the California motor vehicle fuel tax paid. An acquisition of motor vehicle fuel will be considered tax-paid only if it can be supported by one of the following:

(1) A sales invoice or a contract which clearly states that the motor vehicle fuel tax is included in the invoice or contract and proof that the amount representing motor vehicle fuel tax has been paid, or

(2) A motor vehicle fuel purchase receipt showing that the amount paid for the fuel included the motor vehicle fuel tax, or

(3) Other documentation showing that the motor vehicle fuel tax has been paid to the state.

(b) "Ex-tax fuel" is the gallonage of motor vehicle fuel acquired without the California motor vehicle fuel tax paid.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7345, 7401, 7653, 8101 and ~~8106-8~~8106-8, Revenue and Taxation Code.

2. Change Regulation 1120 (Returned Sales) to read as follows:

Regulation 1120. Returned Sales.

(a) When motor vehicle fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into a refinery or an approved terminal's storage tank, the supplier may either file a claim for refund with the State Controller or in lieu of the refund take a credit on its tax return. The credit memorandum covering the return of the motor vehicle fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the motor vehicle fuel tax.

(b) It shall be presumed that the supplier purchased the motor vehicle fuel that was returned as tax-paid motor vehicle fuel if the credit memorandum includes motor vehicle fuel tax. For purposes of a refund or credit, it also shall be presumed that the subsequent removal of the motor vehicle fuel from a terminal rack by the supplier that received the returned motor vehicle fuel is made in the month that the motor vehicle fuel was returned.

(c) Conditions to Allow a Credit on a Tax ~~Return~~Returns.

The credit will be allowed only if:

(1) The returned motor vehicle fuel was delivered into a refinery or an approved terminal storage tank.

(2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel is returned.

(3) The supplier prepares a first taxpayer's report (as identified in Regulation 1161) when the motor vehicle fuel is returned.

(4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.

(d) If the supplier fails to take credit on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel was returned, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of return of the fuel.

Each claim for a refund must contain the following information with respect to the motor vehicle fuel covered by the claim:

(1) The information required in Revenue and Taxation Code Section 8102.

(2) Volume and type of motor vehicle fuel.

(3) Date on which the claimant received the returned motor vehicle fuel.

(4) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.

(5) A copy of the credit memorandum that returned the motor vehicle fuel.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7315, 8101, 8102, 8105 and ~~8106-8106.8~~, Revenue and Taxation Code.

3. Change Regulation 1132 (Shipments out of the State) to read as follows:

Regulation 1132. Shipments out of the State.

(a) Definitions.

(1) Export. An export of motor vehicle fuel is the delivery or shipment of fuel by the supplier from a point in this state to a point outside of this state. The fuel is not exported if it is diverted in transit or for any reason is not actually delivered out of this state, regardless of documentary evidence held by the supplier respecting delivery of the fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.

(2) Carrier. A carrier means a person or firm who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. The carrier may be hired by either the purchaser or the supplier.

(b) Requirements. A supplier may not claim an export exemption from motor vehicle fuel tax under Revenue and Taxation Code Section 7401(a)(3) unless the motor vehicle fuel is in fact exported and the export is accomplished in the manner specified in either (1) or (2) below:

(1) The supplier claiming the exemption from tax shows that it delivered the motor vehicle fuel to any vessel clearing from a port of this state for a port outside of this state and the fuel was actually exported from this state in the vessel; or

(2) The supplier claiming the exemption from tax shows that it exported the motor vehicle fuel from this state pursuant to a written contract requiring delivery by the supplier of the fuel to:

(A) the out-of-state point by facilities operated by the supplier,

(B) a carrier for shipment to a consignee at the out-of-state point, or

(C) a customs broker or forwarding agent for shipment to a location outside of this state.

(c) Exports of Ex-tax Fuel. The tax does not apply to the export of ex-tax motor vehicle fuel actually exported.

A supplier must claim the exemption for the export of ex-tax fuel on the return filed for the period in which the export was made. If a supplier fails to claim the exemption on the return and tax is erroneously paid on ex-tax export of fuel, a timely claim for refund must be filed with the Board pursuant to Section 8128 of the Motor Vehicle Fuel Tax Law in order to obtain a refund of the amount of taxes so overpaid.

(d) Exports of Tax-paid Fuel. In lieu of claiming a refund of tax for exports of tax-paid fuel with the State Controller as provided by section 8101(b) of the Revenue and Taxation Code, a supplier may take a credit on its return for tax-paid fuel when the fuel is exported to a point outside the state. The credit must be claimed on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported. If the credit exceeds the taxable gallons of motor vehicle fuel for the period in which the credit may be taken, refund of the tax on the excess gallonage can only be obtained by filing a claim for refund with the State Controller.

Failure to take credit on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported does not give rise to a right to file a claim for refund with the Board pursuant to section 8126 of the Revenue and Taxation Code. Instead, claims for refund for tax-paid fuel exported must be filed with the State Controller within three years from the date of purchase of the fuel.

(e) Documentation required for support. All shipments of motor vehicle fuel to points outside of the state for which tax exemption is claimed on a tax return shall be reported on a schedule accompanying the return for the period for which the exemption or credit is claimed.

The supplier must retain documentation to support the delivery of the fuel by the supplier at an out-of-state location for all exemptions or credits. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, or meter readings. The supplier has the burden of providing the proper substantiation and documentation to support the exemption or credit.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7338, 7401, 7651, 8101, 8102, 8105, ~~8106-5~~, 8126, 8128, 8129, 8301 and 8303, Revenue and Taxation Code.

4. Change Regulation 1161 (Tax Paid Twice on Motor Vehicle Fuel) to read as follows:

Regulation 1161. Tax Paid Twice on Motor Vehicle Fuel.

(a) A supplier who removes motor vehicle fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the State Controller or in lieu of a refund take a credit on its tax return.

(b) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

(1) A tax imposed on the motor vehicle fuel by Revenue and Taxation Code Sections 7362 and 7363 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the “first tax” or “first taxpayer”);

(2) After imposition of the first tax, another tax was imposed on the motor vehicle fuel by Revenue and Taxation Code Sections 7362 and 7363 and was paid to the state by reporting the gallons on a tax return (the “second tax” or “second taxpayer”);

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) Reporting Requirements.

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Revenue and Taxation Code Section 7362 and 7363 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Revenue and Taxation Code Section 7362 (removal at a terminal rack), Revenue and Taxation Code Section 7363(b)(2)

(nonbulk entries into the state), or Revenue and Taxation Code Section 7363(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under Sections 7362 and 7363 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) By Person Required to File First Taxpayer's Report.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

1. The person to whom the first taxpayer sells the motor vehicle fuel within the bulk transfer/terminal system; or
2. The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) By Person Filing Optional First Taxpayer's Report.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

1. The person to whom the first taxpayer sells the motor vehicle fuel; or
2. The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) By Person Receiving First Taxpayer's Report.

1. Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

2. Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Revenue and Taxation Code Sections 7362 and 7363 with respect to the motor vehicle fuel.

(D) Form of Statement.

A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This

statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) Sale to Multiple Buyers.

If the first taxpayer's report relates to motor vehicle fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the motor vehicle fuel is divided and each buyer must be given a copy of the report.

(d) Claim For Refund.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of purchase of the motor vehicle fuel.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

- (1) The information required in Revenue and Taxation Code Section 8102.
- (2) Volume and type of motor vehicle fuel.
- (3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).
- (4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.
- (5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the motor vehicle fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.
- (6) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.
- (7) If the motor vehicle fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that motor vehicle fuel.

EXHIBIT A . . . [No Change]

EXHIBIT B . . . [No Change]

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7362, 7363, 8101, 8102, 8105, ~~8106-8~~ and 8127.5, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 1205, *Fee Payer; Rebuttable Presumption*

Regulation 1212, *Liability for Fee*

Regulation 1271, *Records*

A. Factual Basis

Chapter 1.5 (commencing with section 1201) of division 2 of title 18 of the California Code of Regulations (chapter 1.5) contains regulations that implement, interpret, or make specific the provisions of the Underground Storage Tank Maintenance Fee Law (Law) (part 26 (commencing with section 50101) of division 2 of the Revenue and Taxation Code), pursuant to which the State Board of Equalization (BOE) administers the petroleum storage fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code.¹ The BOE hereby proposes to change the provisions of chapter 1.5 listed above under California Code of Regulations, title 1, section (Rule) 100 to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

The Law was enacted in 1989 (Sen. Bill No. 299 (Stats. 1989, ch. 1442)). Section 50107 of the Law defines the two-word term “fee payer” to mean “any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code” and the two word term “fee payer” was originally used throughout the Law and in chapter 1.5.

However, amendments made to the Law since 2000 have used the one-word term “feepayer,” rather than the two-word term “fee payer.” (See, e.g., Assem. Bill No. 2894 (Stats. 2000, ch. 923) [adding the one-word term “feepayer” to section 50112 and replacing the two-word term “fee payer” with the one-word term “feepayer” in section 50112.4, subd. (b)].) Furthermore, the BOE has stopped using the two-word term “fee payer” to refer to a person that is liable for the payment of a BOE-administered fee in its forms and publications, and the BOE has adopted a uniform policy requiring its staff to use the one-word term “feepayer” in place of the two-word term “fee payer.” (See the direction regarding the word “feepayer” in the BOE Style A-Z section of BOE Publication 384, “A Style Guide for BOE Forms and Publications” (May 2011), Introduction and page 3 from the BOE’s internal website, attached.)

¹ The BOE jointly administers the fees imposed under Health and Safety Code sections 25299.41 and 25299.43 under the Law in accordance with section 50108 of the Law and Health and Safety Code section 25299.43, subdivision (g), respectively. Chapter 1.5 was adopted to implement, interpret, and make specific the fees imposed by both sections 25299.41 and 25299.43 and the term “fee payer,” as currently used in chapter 1.5, refers to a person that is liable for the payment of the fees imposed by both sections.

The BOE-adopted regulations listed above use the two-word term “fee payer”. Therefore, the BOE now proposes to change the regulations listed above, and described in detail below, to replace the two-word term “fee payer” with the one-word term “feepayer” under Rule 100, in order to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

B. Proposed Changes

1. Rule 100 Change to Regulation 1205, *Fee Payer; Rebuttable Presumption*

A Rule 100 change is proposed to replace the two-word term “Fee Payer” with the one-word term “Feepayer” in the title of Regulation 1205.

2. Rule 100 Changes to Regulation 1212, *Liability for Fee*

A Rule 100 change is proposed to replace the two-word term “fee payer” with the one-word term “feepayer” in the second sentence of subdivision (d) of Regulation 1212.

3. Rule 100 Change to Regulation 1271, *Records*

A Rule 100 change is proposed to replace the two-word term “fee payer” with the one-word term “feepayer” in subdivision (a) of Regulation 1271.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary in order to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

PROPOSED CHANGES

1. Change Regulation 1205 (Fee Payer; Rebuttable Presumption) to read as follows:

Regulation 1205. ~~Fee Payer~~ Fee Payer; Rebuttable Presumption.

The fee is due from the owner of an underground storage tank for which a permit is required pursuant to Section 25284 of the Health and Safety Code. There is a rebuttable presumption that the owner of the real property is the owner of the underground storage tank located on the property, even if the property is leased to another person. This presumption may be overcome by showing that ownership of the tank rests with someone other than the real property owner. Evidence to rebut the presumption may include, but is not limited to, the following:

(a) The lessee installed the underground storage tank at the location, and the lease agreement gives the lessee the right to remove the tank at the termination of the lease, regardless of whether the lessor's approval of the removal is required.

(b) The lessee installed the underground storage tank at the location, and the lease agreement states that any improvements installed by the lessee are the property of the lessee during the term of the lease.

(c) Documentation, such as a bill of sale, shows the transfer of ownership of the tank to a person other than the real property owner.

(d) The underground storage tank is depreciated on the state or federal income tax returns of a person other than the real property owner.

(e) The underground storage tank existed at the premises at the time the lease agreement was signed, and the lease agreement specifies that the underground storage tank is owned by and title thereto is vested in the lessee during the term of the lease.

Note: Authority cited: Section 50152, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code. Reference: Section 50107, Revenue and Taxation Code; and Sections 25299.21, 25299.41 and 25299.43, Health and Safety Code.

2. Change Regulation 1212 (Liability for Fee) to read as follows:

Regulation 1212. Liability for Fee.

(a) The fee is imposed upon the owner of an underground storage tank for each gallon of petroleum placed into the tank. The owner of the tank is liable for payment of the fee regardless of whether the owner is the operator of the underground storage tank and is liable for the fee even if the owner and operator have entered into an agreement that requires the operator to pay the fee to the board.

(b) The fee is due regardless of whether the fee has previously been paid for gallons of petroleum that were removed from an underground storage tank and placed into another underground storage tank or redeposited into the same tank in which they were previously stored.

(c) An owner is liable for the fee on all gallons placed in the underground storage tank(s) he or she owns. Where the owner requires a certain brand of fuel to be placed in a tank and the operator also places a different brand of fuel in the tank, the owner is liable for the fee on the gallons of both brands of fuel, even if placing fuel of a different brand in the tank violates the lease between the operator and owner.

(d) An owner is liable for the fee even though the owner claims he or she did not know the fee was due or was unable to obtain information from an operator as to the gallons placed into the underground storage tank(s). As provided by subdivision (c) of Section 50159 of the Revenue and Taxation Code, the board may provide to the ~~feepayer~~~~fee payer~~ otherwise confidential information obtained from the operator of an underground storage tank to the extent that this information is necessary for assessment, administration, and verification of the fee.

Note: Authority cited: Section 50142, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code. Reference: Sections 50107, 50109 and 50159, Revenue and Taxation Code; and Sections 25299.41 and 25299.43, Health and Safety Code.

3. Change Regulation 1271 (Records) to read as follows:

Regulation 1271. Records.

(a) General. A ~~feepayer~~~~fee payer~~ shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), owners of underground storage tanks shall comply with the following requirements.

An owner of underground storage tanks shall maintain complete records of all tanks owned and all purchases of petroleum products placed into underground storage tanks. Such records include but are not limited to:

- (1) Federal Income Tax Return Depreciation Schedules or fixed asset and improvement listing.
- (2) Property Tax Statements.
- (3) Underground storage tank installation records.
- (4) Lease agreements.
- (5) Petroleum products purchase invoices.
- (6) Copy of local agency permit and application for permit filed with the local agency.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50109 and 50153, Revenue and Taxation Code.

Introduction

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This house style guide has been developed by the Board of Equalization's (BOE) Editorial Services Section. As style changes over time, publication units, publishers, and newspapers generally decide to use one dictionary and one published style manual (in our case we use *Merriam Webster's Collegiate Dictionary* and *The Gregg Reference Manual*). In addition to the standard references, we have also developed this house style guide.

A team of editors, forms analysts, and Customer Service and Publishing Division managers developed this style guide to promote consistency in BOE forms and publications. This team discussed every item in this guide and agreed on how we should treat each individual entry.

If an example is not listed, please refer to *The Gregg Reference Manual, Eleventh Edition* for usage or *Merriam Webster's Collegiate Dictionary, Eleventh Edition*.

E

e.g., etc.	avoid; use for example, among others
enclosed (vs. attached)	to insert in the same envelope (see "attached")
ex tax	don't use; write out "without tax"

F

fax	lowercase
faxback	one word
federal	don't capitalize
feepayer	one word
fewer vs. less	use with things that are counted (fewer buckets, less water)
fine-tune	always hyphenated
firsthand	one word
fiscal year	lower case
follow-up (n., adj.)	<i>Example:</i> She was in charge of follow-up.(n) She did the follow-up work.(adj.)
follow up (v.)	<i>Example:</i> Please follow up with her as the deadline approaches.
form	avoid using before form identifier (BOE-770)
full-time	always hyphenated
fundraising	one word, no hyphen
FY (fiscal year)	capitalize when referring to fiscal year

G

Governor (the)	capitalize when referring specifically to the Governor of California
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H

handicap accessible	avoid; use wheelchair accessible
hard copy (n.)	<i>Example:</i> Please give it to Legal in hard copy.
hard-copy (adj.)	<i>Example:</i> Legal wants it in hard-copy format.
he/she; he or she; him/her; him or her	avoid both; use their or our
headquarters	a singular or plural noun
Headquarters	capitalized when referring to 450 N Street location
homepage	one word
Honorable	capitalized when used before name (the Honorable

Attachment

2012 MINUTES OF THE STATE BOARD OF EQUALIZATION

Thursday, May 31 2012

CHIEF COUNSEL MATTERS**RULEMAKING****J1 Section 100 Changes to Specified Special Taxes and Fees Regulations**

Bradley Heller, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, requested authorization to complete Rule 100 changes to amend specified Diesel Fuel Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, and Underground Storage Tank Maintenance Fee Law regulations (Exhibit 5.4).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the section 100 changes as recommended by staff.

J2 Section 100 Changes to Property Tax Rule 263, *Roll Corrections*

Bradley Heller, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, requested authorization to complete Rule 100 changes to incorporate amendments made to Revenue and Taxation Code section 4831 by Senate Bill No. 947 (2011) (Exhibit 5.5).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the section 100 changes as recommended by staff.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MAY 31, 2012

CHIEF COUNSEL MATTERS

ITEM J1

SPECIFIED SPECIAL TAXES AND FEES REGULATIONS

Reported by: Juli Price Jackson

No. CSR 5214

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Michelle Steel
Vice-Chairwoman

Betty T. Yee
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John
Chiang, State
Controller (per
Government Code
Section 7.9)

Joann Richmond
Chief, Board
Proceedings Division

For Staff:

Bradley Heller
Tax Counsel IV
Tax and Fee Division
Legal Department

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450 N STREET
SACRAMENTO, CALIFORNIA
MAY 31, 2012

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MR. HORTON: Ms. Richmond, what is our next case?

MS. RICHMOND: Our next item is Chief Counsel Matters, J, Rulemaking, J1, Specified Special Taxes and Fees Regulations.

MR. HORTON: Members, Mr. Heller will introduce the issues -- as he comes.

MR. HELLER: Good afternoon, Chairman Horton, Members of the Board. I'm Bradley Heller from the Board's Legal Department.

I'm just here to request the Board's authorization to Complete Rule 100 changes to ten special tax and fee regulations. The changes update citations and make a few solely grammatical changes.

MR. HORTON: May I have a motion?

MS. STEEL: So moved.

MR. HORTON: Moved by Member Steel, second by Member Yee. Without objection, such will be the order.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on MAY 31, 2012 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 3 constitute a complete and accurate transcription of the shorthand writing.

Dated: June 7, 2012





JULI PRICE JACKSON
Hearing Reporter