



*California State Board of Equalization,  
Legislative Division*

# LEGISLATIVE BULLETIN

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State Capitol Building (from the East) c.1945  
Photo courtesy of California State Archives

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## SPECIAL TAXES LEGISLATION 2001

**SPECIAL TAXES LEGISLATION 2001**  
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**Assembly Bill 86xx (Flores) Chapter 8 of the Second Extraordinary Session**  
***Partial Diesel Fuel Tax Exemption***

*Tax levy; effective October 3, 2001. Amends, repeals, and adds Sections 60022 and 60023 of the Revenue and Taxation Code.*

**BILL SUMMARY**

Amends the Diesel Fuel Tax Law to specifically exclude from the diesel fuel tax the water portion of a diesel fuel/water emulsion.

***Sponsor: Lubrizol***

**LAW PRIOR TO AMENDMENT**

Under existing Diesel Fuel Tax Law, Section 60022 defines "diesel fuel" to mean, in part, any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. Further, Section 60022 defines diesel fuel to include "any combustible liquid, by whatever name the liquid may be known or sold, when the liquid is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the tax imposed in Part 2 (commencing with Section 7301) or Part 3 (commencing with Section 8601).

Section 60023 of the Diesel Fuel Tax Law defines "blended diesel fuel" to mean any mixture of diesel fuel with respect to which tax has been imposed and any other liquid on which tax has not been imposed. A change of law operative January 1, 2002, provides that "blended diesel fuel" includes any conversion of a liquid into diesel fuel. "Conversion of a liquid into diesel fuel" occurs when any liquid that is not included in the definition of diesel fuel and that is outside the bulk transfer/terminal system is sold as diesel fuel, delivered as diesel fuel, or represented to be diesel fuel.

Under both current law and the law operative on January 1, 2002, a diesel fuel/water emulsion sold as diesel fuel is subject to the excise tax of \$0.18 per gallon on the total gallons sold as diesel fuel, even though the gallons subject to the tax include the approximately 20 percent water by volume plus an additive mixture that is added to the diesel fuel in a blending unit of a fuel blender.

## AMENDMENTS

Excludes from the definition of “diesel fuel” the water portion of a diesel fuel/water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board (CARB) until January 1, 2007. The state will continue to receive the excise tax on the diesel fuel portion of the fuel, plus the additive, but the water portion combined through the blending process will not be subject to the excise tax.

This bill also excludes, until January 1, 2007, from the definition of “blended diesel fuel” a diesel fuel/water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the CARB.

This bill also deletes contradictory and confusing language in the definition of diesel fuel concerning the manner of use of the fuel.

## IN GENERAL

The manufacturers of a diesel fuel/water emulsion sold under the trade name PuriNOx™ question whether the water portion is intended to be taxable within the meaning of the Diesel Fuel Tax Law. They argue that the purpose of the water is to reduce oxides of nitrogen (NOx) emissions and reduce particulate matter (PM) emissions, and the water does not contribute to the propulsion of the vehicle on the highway (which they believe is the basis for the excise tax on diesel fuel).

PuriNOx™ is created by combining commercially available diesel fuel, tap water and the requisite additive package, using a specially designed blending unit that involves water purification, precision metering and high shear mixing. The emulsion is then transported and/or stored before being pumped into the fuel supply tanks of centrally-fueled, fleet-operated, diesel-powered highway vehicles. Under the Diesel Fuel Tax Law, the excise tax is paid on the diesel fuel the blender uses when it is removed from the terminal rack. When PuriNOx™ is blended and then sold to fleet operators, the blender must report and pay the diesel fuel tax on the total gallons delivered, including the water and additive package.

The manufacturer touts the environmental benefits of its fuel. The CARB has verified that use of the PuriNOx™ diesel fuel/water emulsion results in a 14% reduction in NOx emissions and a 63% reduction in PM emissions. The air quality benefits are the main reason to use this fuel since there is no intrinsic economic value or business purpose other than attaining the state’s environmental policy goals. In fact, it requires up to 120 gallons of PuriNOx™ in order to achieve the energy output of 100 gallons of conventional diesel fuel. This is another reason that the manufacturer argues that taxing the water portion of its diesel fuel imposes an undue burden on the highway use of the fuel.

## BACKGROUND

In September 1997, the producers of a hydrocarbon emulsion fuel (diesel fuel, water, and an additive) came to the Board requesting clarification of their tax liability and reporting requirements. The current statutes basically make a distinction between fuel used in the engine of a diesel-powered highway vehicle (diesel fuel) and fuel used for propelling motor vehicles operated by the explosion-type engine (gasoline). Use fuel is generally defined as any fuel that is not covered by the gasoline tax or diesel fuel tax, including certain specified fuels (such as liquefied petroleum gas and ethanol). Under the current statute, a fuel emulsion could be taxed as gasoline, diesel fuel, or use fuel, depending upon the type of vehicle the fuel is used to propel on the highways, but the fuel can only be taxed at a rate of \$0.18 per gallon. Under current law, the state is collecting an excise tax on the water portion of the fuel that lowers the polluting effects of the fuel, but does not contribute to the propulsion of a vehicle on the roadway.

Different producers of fuel emulsions have argued that their product more closely resembles the specified use fuels and should therefore be taxed at an equitable rate. They reason that, compared to standard gasoline or diesel, anywhere from 20% to 50% more of their alternative diesel fuel is needed to travel the same distance. The producers cite the tax rate currently imposed on ethanol and methanol, which is half the rate for gasoline and diesel. Those fuels have been taxed at a lower rate since 1981 when a measure was enacted to stimulate the use of alcohol fuel. Proponents of that measure successfully argued that it takes twice as many gallons of ethanol or methanol to travel the same distance as a gallon of gasoline or diesel, thus justifying a tax rate at least half the rate imposed on fossil fuels. As previously stated, the Board has no authority to tax any alternative diesel fuel at a rate other than \$0.18 per gallon.

In 1998 the Board sponsored AB 2085 (Ortiz, et al) to tax alternative diesel fuels at a lower rate. That bill failed to pass out of the Assembly Appropriations Committee.

In 1999, Senator Ortiz introduced SB 448 which again contained an alternative diesel fuel rate reduction. That bill failed to pass out of the Senate Appropriations Committee.

In 2000, the Board co-sponsored AB 2061 (Lowenthal, Ch. 1072) which would have imposed a reduced excise tax rate of 9 cents per gallon on alternative diesel fuels from January 1, 2001 through December 31, 2005. That bill was gutted and amended to, among other things, appropriate \$500,000 from the General Fund to the State Air Resources Board for allocation for grants to air pollution control districts and air quality management districts for fiscal years 2000-01, 2001-02, and 2002-03.

## COMMENTS

1. **Purpose.** The intent of this bill is to reduce the use of traditional diesel fuel and provide a more equitable tax rate to expand the use of hydrocarbon fuel emulsions.

This bill is also intended to stretch the CARB funding for air emission reduction offsets applied to new power plants (NOx and PM Emissions Reduction Program). The sponsor believes that removing the state excise tax on the water portion of fuel would offset the awarded CARB dollars that could fund approximately an additional 1 million gallons of cleaner fuel in calendar year 2001.

- 2. This bill could make reporting for interstate users more difficult.** This bill exempts the water portion of a diesel fuel and water emulsion, as specified, from the diesel fuel tax. Interstate users would be burdened with additional record keeping and segregating for purposes of reporting the correct amount of tax on purchases of diesel fuel containing water emulsion. Further, if multiple types of water emulsion diesel fuel meet the standards set by the CARB. Further, this bill requires interstate users to complete more computations segregate purchases of water emulsion diesel fuel based on the percentage of water for purposes of imposing and reporting the interstate user tax on diesel fuel under the International Fuel Tax Agreement.

While California may exempt the water portion of the fuel from tax on diesel fuel, other jurisdictions in which the interstate user travels and reports and pays tax, may not. Accordingly, this measure could further complicate reporting for interstate users and could lead to additional reporting errors.

- 3. This bill could extend the CARB funding under the Emissions Reduction Program.** On July 29, 2001, the CARB awarded Lubrizol \$2.25 million under the NOx and PM Emissions Reduction Program to pay for the installation of two PuriNOx™ blending units and the incremental cost of PuriNOx™ over conventional diesel that is used in California. According to the sponsor, the award will provide up to \$0.25 per gallon subsidies for the purchase of a minimum of 8 million gallons of PuriNOx™ diesel emulsion fuel to reduce NOx and PM emissions in the south coast and central valley air basins.

The NOx and PM Emissions Reduction Program was developed by the CARB in accordance with Executive Order D-24-01 issued by Governor Davis on February 8, 2001. This program is designed to create NOx and PM emission reductions by controlling emissions from mobile and stationary sources to beyond what is required by any federal, state, local, or legally binding requirements. Emission reductions from this program will be used to “fund” an emission reduction credit (ERC) bank to offset increases in emissions resulting from new and peaking power plants that are operating to meet California’s energy demand.

The sponsor claims that “if the excise tax on water in fuels was removed, the existing ERC Bank commitment could provide the necessary subsidies for an additional 996,480\* gallons of PuriNOx™ fuel in 2001.”

4. **This measure allows water/diesel fuel emulsions to be introduced into the California fuel market at a lower tax cost to customers than the statutes currently allow.** That would provide an incentive for fuel consumers to use this type of fuel in their fleet of vehicles. To the extent that imposing a more equitable tax rate encourages use of an alternative diesel fuel, which may reduce air pollution, California would reap some of the benefits for which these fuels are being developed.



**Assembly Bill 173 (Chavez) Chapter 811**  
***Extension of Inert Waste Exemption***

*Effective January 1, 2002. Amends Section 48007 of, and adds Section 48007.5 to, the Public Resources Code.*

**BILL SUMMARY**

This bill extends the January 1, 2002, sunset date on the exemption for the use, disposal, or placement of solely inert waste on property where surface mining operations are being conducted.

***Sponsor: Waste Management, Inc.***

**LAW PRIOR TO AMENDMENTS**

Under current law, the Integrated Waste Management Fee is imposed on each operator of a disposal facility based on the amount, by weight or volumetric equivalent, as determined by the IWMB, of all solid waste disposed of at each disposal site. The fee is currently set at \$1.34 per ton of solid waste disposed.

Section 48007 of the Public Resources Code provides that recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing the Integrated Waste Management Fee. "Inert waste removed from the waste stream and not disposed of in solid waste landfills" is defined, until January 1, 2002, to include the use, disposal, or placement of solely inert waste on property where surface mining operations are being conducted, or have been conducted previously, as long as the use, disposal, or placement is for purposes of reclamation as defined.

Also until January 1, 2002, for purposes of Section 48007, "inert waste" is defined to mean rock, concrete, brick, sand, soil, and cured asphalt only. Inert waste does not include any waste that meets the definition of "designated waste" or "hazardous waste" as specified.

The Integrated Waste Management Fee is collected by the Board and, after payment of refunds and administrative costs of collection, deposited in the Integrated Waste Management Account.

**AMENDMENTS**

This bill extends the January 1, 2002, operative date on the exemption for the use, disposal, or placement of solely inert waste on property where surface mining operations are being conducted or have been conducted previously as long as the use, disposal, or placement is for purposes of reclamation. This bill repeals the exemption as of the January 1 following the operative date of the regulations adopted by the IWMB pursuant to Section 48007.5.

This bill also adds Section 48007.5 requiring the IWMB, on or before January 1, 2004, to adopt and file with the Secretary of State regulations that establish an appropriate level of oversight of the management of construction and demolition waste, and the management of inert waste at mine reclamation sites.

### BACKGROUND

Assembly Bill 939 (Chapter 1095, Statutes of 1989) added Section 48000 to the Public Resources Code to require each operator of a solid waste landfill to pay a quarterly fee to the Board based on all solid waste disposed of at each disposal site on or after January 1, 1990. That bill also added Section 48007 which provided that recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill were not to be included for the purpose of the fees.

In 1999, SB 515 (Chesbro, Chapter 600) amended Section 48007 to exempt from the disposal fee, until January 1, 2002, the placement of solely inert wastes on property where surface mining operations are conducted. "Inert waste" was defined for purposes of Section 48007 to mean rock, concrete, brick, sand, soil, and cured asphalt only.

Senate Bill 515 stated legislative findings and declarations that the amendments made to Section 48007 of the Public Resources Code did not constitute a change in, but constituted a clarification of, existing law. It was the intent of the Legislature, in enacting SB 515, to remedy any ambiguity in the applicability of the Integrated Waste Management Fee to any inert waste disposal facility that is issued a solid waste facility permit prior to January 1, 2002, and to set forth an equitable resolution of the fee applicability issue by establishing a date certain upon which the fee will become applicable to any permitted inert disposal facility.

### COMMENTS

1. **Purpose.** *This bill is intended to make it clear that, for purposes of fee assessments, the placement of inert wastes in mine reclamation facilities constitutes removal from the waste stream.*
2. **Board staff does not foresee any administrative problems with this measure.** Extending the current exemption for inert waste disposed of in surface mine reclamation sites until regulations adopted by the IWMB become operative would not be problematic for the Board.

**Assembly Bill 309 (Longville) Chapter 429**  
***Motor Vehicle Fuel Tax and Diesel Fuel Tax***

*Tax levy; effective October 2, 2001, but operative January 1, 2002. Amends Sections 6471.4, 6480, 6480.1, 6480.2, 6480.3, 6480.4, 6480.6, 6480.7, 7320, 7326, 7330, 7337, 7343, 7344, 7364, 7404, 7405, 7453, 7653, 7657, 7727, 8101, 8126, 60015, 60022, 60027, 60034, 60052, 60056, 60057, 60058, 60101, 60105, 60106.2, 60106.3, 60107, 60161, 60163, 60181, 60206, 60211, 60360, 60401, 60501, 60503.1, 60503.2, 60521, and 60605 of, adds Sections 7345, 7372, 7373, 7659.93, 8106.8, 60025, 60047, 60047.1, 60048, 60048.1, 60049, 60049.1, 60063, 60064, 60135, 60204.5, 60253, 60361.5, and 60508.4 to, repeals Sections 6480.5, 6480.8, 7652, 7654, and 60203 of, repeals and adds Sections 7486 and 7487 of, and repeals Article 1.6 (commencing with Section 6480.10) of Chapter 5 of Part 1 of Division 2 of, the Revenue and Taxation Code.*

### BILL SUMMARY

Specifically, with respect to Special Taxes, this bill makes various technical and housekeeping changes to the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law.

***Sponsor: Western States Petroleum Association***

### LAW PRIOR TO AMENDMENTS

Under current law, an excise tax of \$0.18 per gallon is imposed on both motor vehicle fuel (gasoline) and diesel fuel. For use fuels such as liquefied petroleum gas, compressed natural gas, ethanol, and methanol, the excise tax rates are \$0.06, \$0.07, \$0.09 and \$0.09, respectively.

The revenues generated from these excise taxes are deposited in the Transportation Tax Fund.

### AMENDMENTS

This measure makes the following changes to the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law:

**Sections 7320, 7364 and 7727:** Conforms the Motor Vehicle Fuel Tax Law to the Diesel Fuel Tax Law for purposes of the definition of “highway vehicle operator/fueler”, the backup tax and the penalty for the backup tax.

**Sections 7326 and 60022:** Deletes the reference to inflammable/combustible liquid and explosion type engine in the definition of “motor vehicle fuel” and “diesel fuel.”

**Sections 7330, 7343, 7344, 60047, 60047.1, 60049, 60049.1, 60135, and 60204.5:** Adds definitions to the Diesel Fuel Tax Law and revise Motor Vehicle Fuel Tax Law definitions for the purpose of utilizing the Internal Revenue Service's Excise Summary Terminal Activity Reporting System (ExSTARS).

**Sections 7337, 7345, 60025, 60048 and 60048.1:** Adds definitions for the terms "tax-paid fuel" and "gallon", and revise the definition of "sale" in the Motor Vehicle Fuel Tax Law.

**Sections 7372 and 60063:** Allows the Board to accept from a person who receives motor vehicle fuel or diesel fuel removed at a refinery or terminal rack an amount equal to the tax due which is required to be paid by the refiner or position holder upon removal of the fuel from a refinery or terminal rack. This section will only be operative if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

**Sections 7373 and 60064:** Adds a presumption of removal or sale to prevent the evasion of the excise tax.

**Sections 7404, 60106.2 and 60503.1:** Corrects the process of the collection of the tax and penalty for the misuse of an exemption certificate.

**Sections 7405, 60106.3 and 60503.2:** Conforms and correct the penalty amount for misuse of exemption certificate.

**Sections 7453, 7486, 7487 and 60401:** Aligns the security requirement provisions in the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law and requires the Board to release security held after a three-year period in which the person has filed all returns and paid all tax to the state.

**Sections 7652 and 60203:** Repeals the requirement to file a throughput informational report.

**Section 7653:** Allows for a credit on the storage tax return or the supplier tax return for tax-paid motor vehicle fuel in the bulk transfer/terminal system on January 1, 2002. This provision assures that previously taxed fuel in the bulk/transfer system on January 1, 2002 is not subject to the floor stock tax.

**Sections 7654 and 7657:** Removes \$50 penalty for failure to file an information report and for filing an inaccurate or improper information report, and require the Board to establish criteria that provide for efficient resolution of requests for relief of penalty for failure to make a timely report, return or payment.

**Sections 7659.93 and 60253:** Allows the Board to accept and authenticate any return, report, declaration or statement filed using electronic media, and allow the Board to be provided with returns filed with ExSTARS if a terminal operator provides consent and authorization.

**Sections 8101, 8106.8, 60501 and 60508.4:** Allows a supplier to claim a refund or credit on its return for fuel on which the state excise tax has been paid twice, but only to the extent that the supplier can show that tax on the same amount of motor vehicle fuel has been paid more than one time by the same supplier.

**Sections 8126 and 60521:** Allows the Board to recommend a credit or a refund of amounts overpaid by any person, not just a licensed supplier.

**Sections 60015, 60052, 60107, 60211 and 60605:** Conforms the Diesel Fuel Tax Law to the Motor Vehicle Fuel Tax Law by adding a throughputter as a diesel fuel registrant, imposing the diesel fuel tax on the sale of diesel fuel in this state to an unregistered person, applying certain administrative provisions relating to a supplier upon a train operator, and adding relief of jeopardy interest in the case of a disaster.

**Sections 60027, 60056, 60101, 60161, 60163, 60181, 60206 and 60360:** Renames “highway vehicle operator” to “qualified highway vehicle operator” to allow for specified persons to use dyed diesel fuel on the highway and report the tax without being subject to the dyed fuel penalty, and requires qualified highway vehicle operators to pay the backup tax for the use of dyed diesel fuel on the highway. Under federal law, persons defined as qualified highway vehicle operators are allowed to use dyed diesel fuel on the highway.

**Sections 60034, 60057, 60058 and 60361.5:** Conforms the Diesel Fuel Tax Law to the Motor Vehicle Fuel Tax Law by adding the highway vehicle operator/fueler as the person liable for the backup tax, making certain sales subject to the backup tax, adding a penalty for the backup tax, and adding a determination for assessing the backup tax.

**Section 60105:** Updates Diesel Fuel Tax Law penalty provisions relating to dyed diesel fuel to conform to recently revised Federal Fuel Regulation definitions.

## BACKGROUND

In 2000, Assembly Bill 2114 (Longville, Chapter 1053) made significant revisions to the motor vehicle fuel tax law. Operative January 1, 2002, AB 2114 will revise the Motor Vehicle Fuel Tax Law to conform to the state Diesel Fuel Tax Law and Federal Fuel Tax Law by moving the collection point of the tax from the first distribution level to the refinery or terminal rack level. Additionally, AB 2114 will conform the Motor Vehicle Fuel Tax Law to the state Diesel Fuel Tax Law and Federal Fuel Tax Law with respect to definitions and exemptions.

**COMMENTS**

1. **Purpose.** The motor vehicle fuel and diesel fuel tax law provisions are intended to further align the motor vehicle fuel tax law, the diesel fuel tax law and the federal fuel tax law. WSPA states that these provisions would allow the state to enhance detection of tax evasion, increase compliance and lower the eventual costs for both the state and industry to accomplish these mutually desirable goals.
2. **The Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law provisions would not be problematic to administer.** Board staff provided technical assistance for the drafting of the excise tax amendments to make it possible for the Board to properly administer the tax law changes in the event this bill becomes law.

**Assembly Bill 585 (Nation) Chapter 704**  
*CPA Certification Requirements*

*Effective January 1, 2002. Amends Sections 5081, 5082, 5082.1, 5082.3, 5082.4, 5087, and 5088 of, amends and repeals Sections 5081.1, 5082.2, 5083, and 5084 of, and adds Sections 5076, 5082.5, 5090, 5091, 5092, 5093, 5094, and 5095 to, the Business and Professions Code.*

### BILL SUMMARY

This bill modifies the exam, education, and experience requirements for a certified public accountant (CPA) candidate and would create a peer review process for attest firms.

**Sponsors:** *Board of Equalization*  
*California Society of Certified Public Accountants*

### LAW PRIOR TO AMENDMENT

Under existing law, to be licensed as a CPA, a candidate must pass the Uniform CPA examination, meet specified experience requirements, pass a professional ethics exam and pay the appropriate fees. Once licensed, a CPA must also meet continuing education requirements.

The Uniform CPA examination is given twice each year; in the first week of May and November. The exam is a two-day exam, consisting of four subjects: Business Law and Professional Responsibilities, Auditing, Accounting and Reporting, and Financial Accounting and Reporting. Candidates may take the four subject parts in any order. Candidates who have not passed any subjects are required to take at least two subjects. The minimum passing score in each subject is 75.

A candidate who passes two or more subjects of the examination receives conditional credit for those subjects. Candidates with conditional credit can be re-examined in the remaining subject(s) within a period of three years (six subsequent exams). If the candidate passes the remaining subject(s) within the conditional period, the candidate is considered to have passed the examination. Candidates who fail to pass the remaining subject(s) within three years forfeit all conditional credit.

In California, a candidate must satisfy one of the following education requirements to be admitted to the exam. These are currently the only education requirements for the CPA license:

- Complete a baccalaureate degree (BA) that includes specific core courses of 35 semester units of business subjects and 10 semester units of accounting and/or auditing subjects.

- Complete 120 semester units of course work including the core course requirements (but no degree).
- Complete the equivalent of either of the first two requirements at a foreign college or university.
- Complete Board of Accountancy specified preliminary examinations or be a member of a Board recognized foreign accounting body.

The candidate must self certify that the education requirements have been met as of the date of application to the exam.

A candidate for licensure is required to meet both a time and experience requirement. Generally, a candidate for licensure must have three years' experience working in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing employment may be qualified experience provided that the work was performed under the direct supervision of an individual licensed as a CPA. One year of the experience may be waived for candidates that are graduates of accredited colleges. The experience must be performed in accordance with applicable professional standards.

Candidates must generally complete at least 500 hours of audit, review, or compilation experience. The experience must demonstrate an understanding of the requirements of planning and conducting an audit with minimum supervision which results in full-disclosure financial statements, including all of the following:

- Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records.
- Experience in preparing audit working papers covering examination of the accounts usually found in accounting records.
- Experience in planning the program of audit work including the selection of the procedures to be followed.
- Experience in preparing written explanations and comments on the finding of the examination and the content of the accounting records.
- Experience in preparing and analyzing financial statements together with explanations and notes thereon.

### AMENDMENTS

The provisions of this bill:

- **Modify the exam requirements.** This bill allows the Board of Accountancy to adopt regulations specifying the standards for passage of the examination and for reexamination. The education requirements for taking the exam remain the same. Transitional rules will be provided so that candidates who already have



conditional credit when the new law and regulations become effective will be allowed to pass the remaining parts under the prior law and regulations.

- **Increase the educational requirements.** Although the education requirements for taking the Uniform CPA Examination remain the same, under the provisions of this bill, candidates have two new education options to obtain a license. The first option requires the candidate to have a baccalaureate or higher degree including a minimum of 24 semester units in accounting and 24 semester units in business related subjects. The second option consists of the same requirements as the first option in addition to the requirement of completing at least 150 semester units of college education.
- **Modify the experience requirement.** The provisions of this bill no longer require attest experience for licensure. Candidates have the option of completing two years of general experience if they qualify under the first option for education, or only one year of general experience if they qualify under the second option for education. The general experience requirement consists of professional experience providing any type of services or advice using accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills performed in accordance with professional standards. The experience must be supervised and verified, under penalty of perjury, by a licensed CPA.
- **Provide transitional rules for the education and experience requirements.** Under the provisions of this bill, there is a four-year transition period where candidates could choose to qualify under either the old or new education and experience requirements. However, candidates are not permitted to combine the old education requirements with the new experience requirements.
- **Establish a peer review requirement for attest firms.** This bill requires firms that perform audits, reviews, or examinations of prospective financial information (attest services) to receive a comprehensive assessment of its reports, work papers, auditing procedures, and quality controls by a peer review. Acceptable peer reviews could be obtained from any provider as long as the peer review was performed in accordance with professional standards and the Board of Accountancy approves the provider.

## COMMENTS

1. **Purpose.** This bill is intended to remove some of the barriers to entry for CPA candidates by modifying the examination and experience requirements.
2. **This bill will allow more Board auditors to obtain licensure as a CPA.** For many CPA candidates, the attest experience is the most difficult to obtain since only 13 percent of CPAs consider audits to be their primary area of practice and auditing skills and knowledge must be frequently updated. For Board employees, the attest experience is very difficult to obtain. Typically, Board employees conduct audits to verify that specific taxes or fees administered by the Board are properly reported. Board auditors do not perform financial

statement audits that are part of the attest experience requirement. However, Board auditors may participate in the Board's CPA program in order to fulfill the attest experience requirement. This program allows Board auditors to perform financial statement audits under the supervision of a licensed CPA employed by the Board. Due to the constraints of finding taxpayers willing to participate in this voluntary program and the limited number of CPA supervisor/leads, it takes an extended period of time for candidates to gain the required experience. This bill would provide that the new experience requirement would consist of either 1 or 2 years of professional experience providing any type of services or advice using accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills performed in accordance with professional standards. The experience must be supervised and verified, under penalty of perjury, by a licensed CPA. Auditors with the Board should be able to obtain this type of experience conducting routine audits and examinations that are part of their normal duties.

3. **Provisions of this bill should improve recruitment and retention efforts.** When a student earns a degree in accountancy, employment opportunities may include public accounting and governmental accounting. Currently, public accounting offers the benefit of more easily obtaining the necessary attest experience to become licensed. While the attest experience can be obtained through employment with a governmental agency, it is generally more difficult and lengthy to obtain. Some employees have left the Board to complete the experience requirement at a public accounting firm. The provisions of this bill will allow students to choose governmental accounting for employment and remain on the same footing as those students who choose public accounting for employment. This bill should assist the Board's efforts to retain quality employees and recruit the best candidates for employment vacancies.
4. **Education requirements could increase.** Current law requires that a candidate must meet one of the four education requirement described earlier in this analysis. The provisions of this bill allow a candidate the option to complete 150 semester units with a baccalaureate or graduate degree from an accredited college or university. However, candidates may still qualify to take the exam with only 120 semester units and obtain the additional 30 semester units after taking the exam. This will allow candidates to choose a specialized field of study for their additional required coursework, such as tax, auditing, financial analysis, or any number of other related specialties. This should result in better educated candidates.

**Assembly Bill 1123 (Committee on Revenue and Taxation) Chapter 251**  
***Board-sponsored measure***

*Effective January 1, 2002. Amends Section 25205.6 of the Health and Safety Code, amends Sections 42886 and 42886.1 of the Public Resources Code, amends Sections 6593.5, 7285, 7285.5, 7288.3, 7655, 7657, 7658, 7658.1, 7659.2, 8878, 8878.5, 11409, 30014, 30016, 30104, 30108, 30176.1, 30181, 30283.5, 32255, 32256.5, 38455, 40103.5, 41097.5, 43152.9, 43158.5, 45156.5, 46157.5, 50112.4, 55046, and 60212 of, adds Article 2.5 (commencing with Section 7659.9) to Chapter 5 of Part 2 of Division 2 of, and repeals Section 30463 of, the Revenue and Taxation Code.*

### BILL SUMMARY

This bill contains Board of Equalization-sponsored housekeeping provisions that accomplish, specifically with respect to Special Taxes, the following:

1. Corrects erroneous code section references.
2. Clarifies the due date and late payment penalty for the California Tire Fee.
3. Clarifies the reference to "board" in the California Tire Fee.
4. Expands the circumstances under which relief of interest may be granted due to an unreasonable error or delay by the Board.
5. Amends Motor Vehicle Fuel License Tax Law to avoid chaptering out last year's Board-sponsored changes.
6. Confirms relief of interest provisions under the Use Fuel Tax Law with all other Board administered taxes and fees.
7. Adds conforming references to the Cigarette and Tobacco Products Tax Law in order to properly administer Proposition 10.
8. Deletes obsolete code section references.

Correct an erroneous code reference

### LAW PRIOR TO AMENDMENTS

Under current law, Section 25205.6 of the Health and Safety Code (added by Chapter 269, Statutes of 1989) refers to hazardous material as that term is defined in subdivision (k) of Section 25501. However, Section 25501 (as amended by Chapter 639, Statutes of 1995, and again by Chapter 664, Statutes of 1997) was revised and renumbered so that the definition of hazardous material is now contained in subdivision (o) of Section 25501.

**COMMENT**

In order to correct the reference and avoid future cross-referencing issues, Section 25205.6 should be amended to refer to the definition of hazardous material as defined in Section 25501, rather than in subdivision (k) of Section 25501.

Clarify ambiguous language regarding the reporting of the California Tire Fee and delete language requiring a 20% penalty that is in conflict with the applicable Fee Collections Procedures Law

**LAW PRIOR TO AMENDMENTS**

Under existing law, Section 42886(a) of the Public Resources Code provides the payment due date for California Tire Fee returns filed on a quarterly basis. However, the current language is confusing because it refers to a yearly reporting period. The payment due date for returns filed on a yearly basis is contained in Section 42886.1.

Existing law provides that the Integrated Waste Management Board (IWMB) may contract with or cooperate with any state agency where an existing state agency performs functions of a similar nature to the IWMB's functions. The IWMB currently contracts with the Board of Equalization (Board) to collect the California Tire Fee. Senate Bill 718 (Chapter 555, Statutes of 1995) amended Section 42882 of the Public Resources Code to provide the Board with administrative authority to collect the California Tire Fee pursuant to the Fee Collection Procedures Law.

Although SB 718 provided the Board the statutory authority to impose interest and penalties or to engage in collection activities, it inadvertently resulted in two penalties for the late payment of fees. One penalty is contained in Section 55042 of the Revenue and Taxation Code (Fee Collection Procedures Law), which the Board uses to impose a penalty of 10 percent of the amount of the fee if the fee is not paid to the Board within the time prescribed. The second penalty is contained in Public Resources Code Section 42886, which provides a 20 percent penalty for the late payment of the fee. Accordingly, current law provides conflicting penalties for late payment of the California Tire Fee.

**COMMENT**

This amendment removes the confusing reference to the yearly reporting period from Section 42886 and eliminate the 20 percent penalty contained in Section 42886(b) of the Public Resources Code, and leaves the 10 percent penalty for late payment of the fee. The Board collects the California Tire Fee pursuant to the Fee Collection Procedures Law, in which the 10 percent penalty is contained. The 10 percent penalty is also consistent with other late payment penalties imposed under all other Board-administered tax and fee programs.

Clarify that references to "board"  
mean State Board of Equalization

#### **LAW PRIOR TO AMENDMENTS**

Under existing law, Section 42886.1 of the Public Resources Code provides the Board with statutory authority to require returns and payment of the California Tire Fee on an annual basis. In addition, Section 42886.1 requires that the return be filed with the Board for the preceding designated yearly period on or before the 15th day of the month following each designated yearly period.

Effective January 1, 2000, Section 42886.1 was amended by Senate Bill 1231 (Chapter 941, Statutes of 1999), a Board-sponsored measure to, among other things, provide it with the authority to require tire recycling fee payers to report and pay their fees on other than, but not sooner than, a quarterly basis. However, the references to "board" throughout Section 42886.1 do not refer to the Board of Equalization. "Board" is defined in the Section 40110 of the Public Resources Code to mean the California Integrated Waste Management Board (CIWMB). Accordingly, SB 1231 inadvertently provides the CIWMB, rather than the Board of Equalization, with the statutory authority to require returns and payment of the California Tire Fee on an annual basis.

#### **COMMENT**

This amendment clarifies that the Board of Equalization, rather than the CIWMB, has the authority to require returns and payment of the California Tire Fee on other than, but not sooner than, a quarterly basis. However, as currently drafted, some confusion could still arise because "board" is defined under the Public Resources Code to mean the Integrated Waste Management Board. All references to the Board of Equalization in this code section should be explicitly spelled out.

Provide the Board with the authority  
to grant relief of interest imposed due to an audit  
determination, provided the relief is granted due to an  
unreasonable error or delay by an employee of the Board

#### **LAW PRIOR TO AMENDMENTS**

Under existing law, tax payments made after the due date are subject to interest. Current law allows the Board to relieve the taxpayer of interest when the reason for late payment is due to a disaster or due to an unreasonable error or delay by an employee of the Board acting in his or her official capacity.

**COMMENT**

The provision to allow the Board to grant relief from interest was added by AB 821 (Chapter 612, Statutes of 1998). The purpose of that Board-sponsored bill was to address situations where interest was imposed upon the taxpayer due to unreasonable errors or delays by Board employees. However, the bill inadvertently omitted situations where interest is imposed due to an audit determination or a late prepayment of sales tax on diesel or other fuels by not including the appropriate code sections that address those situations.

These amendments provide the Board the authority to grant relief of interest in all applicable instances, including an audit determination and late prepayment of sales tax on diesel and other fuels, provided the reason for late payment is due to unreasonable error or delay by an employee of the Board.

For example, in the situation where an audit determination is made, an unreasonable error or delay by an employee of the Board could include delays due to an unexpected lengthy absence from work by the auditor which results in a significant delay in completion of the audit. However, it would not include situations where the completion of the audit is delayed due to delays requested by the taxpayer, delays due to normal verification procedures used in an audit, or due to the Board not selecting the taxpayer's account for audit until a later date.

Incorporate provisions in last year's Board-sponsored bills due to be chaptered out by AB 2114 on January 1, 2002

**LAW PRIOR TO AMENDMENTS**

In the 1999-2000 Legislative Session, the Board sponsored two bills with provisions that affected the Motor Vehicle Fuel License Tax Law. Among other things, AB 2894 (Chapter 923, Statutes of 2000) added Article 1.2 (commencing with Section 7659.9) to Chapter 5 of Part 2 of Division 2 of the Revenue and Taxation Code to require persons whose estimated tax liability averages \$20,000 or more per month to submit payment by electronic funds transfer (EFT) for certain Special Taxes accounts. The Board also sponsored AB 2898 (Chapter 1052, Statutes of 2000) to enable the Board to establish criteria that would allow for a more efficient process to provide relief of penalty by eliminating the requisite written statement under penalty of perjury from the person seeking relief under the established criteria.

Operative January 1, 2002, AB 2114 (Chapter 1053, Statutes of 2000) will conform the Motor Vehicle Fuel License Tax Law to the state Diesel Fuel Tax Law and Federal Fuel Tax Law by moving the collection point of the excise tax on gasoline from the first distribution level to the refinery or terminal rack level. On January 1, 2002, AB 2114 amends Sections 7655, 7657, 7658 and 7659.2, and repeals the EFT provisions in Chapter 5, thereby chaptering out the provisions of last year's AB 2894 and AB 2898.

**COMMENT**

These amendments incorporate the existing provisions contained in Board-sponsored bills AB 2894 and AB 2898 into the Motor Vehicle Fuel Law effective January 1, 2002 and ensure that those changes will not be chaptered out by the provisions of AB 2114 when it becomes operative on that date.

Conform relief of interest provisions in the Use Fuel Tax Law with the other tax and fee laws administered by the Board

**LAW PRIOR TO AMENDMENTS**

Under existing Sales and Use Tax Law, Section 6593 provides that if the Board finds that a person's failure to make a timely return or payment was due to a disaster, the person may be relieved of interest provided, in part, by Section 6459. Section 6459 provides that the Board for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid. However, any person to whom an extension is granted is required to pay interest in addition to the tax from the date on which the tax would have been due without the extension until the date of payment. Several other tax and fee programs administered by the Board contain identical provisions to Sales and Use Tax Law Section 6593.

Section 8878 of the Use Fuel Tax Law contains similar provisions to Section 6593, except it does not reference Section 8754, which is similar to Sales and Use Tax Law Section 6459. It appears the reference to Section 8754 was inadvertently overlooked when Section 8878 of the Use Fuel Tax Law, along with similar sections in other tax and fee laws administered by the Board, were added to the Revenue and Taxation Code by AB 357 (Chapter 947, Statutes of 1981).

**COMMENT**

This amendment allows the Board to relieve interest where a person has failed to make a timely return or payment due to a disaster, which would be consistent with the Sales and Use Tax Law and other Board-administered tax and fee laws.

Add conforming references to the Cigarette and Tobacco Products Tax Law in order to properly administer Proposition 10

### LAW PRIOR TO AMENDMENTS

Under current law, as amended by Proposition 10 in November, 1998, the California Children and Families First Act of 1998 imposes an additional excise tax on cigarettes and tobacco products under Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of the Revenue and Taxation Code. As a result, certain sections of the Cigarette and Tobacco Products Tax Law do not currently reference the new sections created by Proposition 10. This lack of reference to the Proposition 10 sections results in an inconsistent application of administrative provisions.

### COMMENT

In order for the Board to properly administer the surtax in a manner consistent with the other excise taxes imposed on cigarettes and tobacco products, these amendments add conforming and necessary code section references to the sections added by Proposition 10. Specifically, these amendments:

- Reference the additional tax in the definition of “transporter” to include any person transporting into or within this state tobacco products upon which the tobacco products surtax imposed by Proposition 10 has not been paid.
- Allow common carriers engaged in interstate or foreign passenger service to be exempted from the Proposition 10 surtax.
- Require distributors engaged in business in this state and selling and accepting orders for cigarettes and tobacco products to collect the tax from the purchaser, if the purchaser is other than a licensed distributor, at the time the purchaser becomes obligated to pay the tax.
- Require every person engaged in business in this state and making gifts of untaxed cigarettes and tobacco products as samples to collect the tax from the donee, if the donee is other than a licensed distributor, at the time the donee becomes obligated to pay the tax.
- Allow refunds on tobacco products exported to a point outside California.
- Require a distributor to report and pay a surtax liability on a return if the tax has not been paid through the purchase of stamps or meter impressions.



Delete an obsolete section reference

### LAW PRIOR TO AMENDMENTS

Under existing law, Section 32255 of the Revenue and Taxation Code provides the Board with the authority to relieve persons of the penalty imposed for a person's failure to make a timely return or payment when the Board finds that the failure was due to reasonable cause. To be relieved of the penalty, the law requires that the person seeking relief file a statement under penalty of perjury setting forth the facts upon which his or her claim for relief is based.

Board-sponsored legislation, AB 2894 (Chapter 923, Statutes of 2000) combined the provisions for failure to pay tax and failure to file a return into one statute. AB 2894 resulted in the repeal of Section 32292 and therefore made obsolete the references to that section in Section 32255.

### COMMENT

This amendment deletes an obsolete section reference in order to avoid confusion for taxpayers. The Board will continue to relieve persons of the penalty or interest imposed for a person's failure to pay tax when the Board finds that the failure was due to unreasonable error or delay by an employee of the Board acting in his or her official capacity.

Correct a referencing error

### LAW PRIOR TO AMENDMENTS

Under current law, Section 43152.9 of the Revenue and Taxation Code provides that the fee imposed pursuant to Section 25205.6 of the Health and Safety Code (environmental fee), which is collected and administered under Section 43053, is due and payable on the last day of the second month following the end of the calendar year.

However, the environmental fee is no longer collected and administered under Section 43053 of the Revenue and Taxation Code, therefore making its reference in Section 43152.9 obsolete. Operative July 1, 1998, SB 660 (Chapter 870, Statutes of 1997) moved the section under which the environmental fee is collected and administered from Section 43053 to Section 43054 of the Revenue and Taxation Code.

### COMMENT

In order to avoid taxpayer confusion, this amendment corrects the reference error contained in Section 43152.9 of the Revenue and Taxation Code.

|                                 |
|---------------------------------|
| Delete an obsolete code section |
|---------------------------------|

### **LAW PRIOR TO AMENDMENTS**

Under current law, Section 30463 of the Revenue and Taxation Code (as added by Chapter 1472, Statutes of 1967) contains language to appropriate cigarette tax revenues imposed pursuant to Article 3 (commencing with Section 30131) of Chapter 2 (as added by Chapter 963, Statutes of 1967). However, Section 30463 became obsolete when Article 3 was repealed by Chapter 454, Statutes of 1982.

The current Article 3 (commencing with Section 30131), as added by Proposition 10 in November, 1998, imposes a tax on cigarette and tobacco products, the funds of which are dedicated to early childhood development programs. The appropriation of this portion of the excise taxes imposed on cigarettes and tobacco products is contained in Section 30131.3.

### **COMMENT**

This amendment repeals Section 30463, which pertains to an obsolete disposition of cigarette tax revenues, and thereby avoid any conflict with the current Article 3 (commencing with Section 30131) as added by Proposition 10 in 1998.

**Assembly Bill 1465 (Nation) Chapter 154**  
***Underground Storage Tank Fee***

*Effective January 1, 2002. Amends Sections 25284.1, 25299.13, 25299.24, 25299.37, 25299.52, 25299.56, 25299.57, 25299.58, 25299.62, 25299.78, and 25299.81 of the Health and Safety Code.*

**BILL SUMMARY**

This bill adds non-farm, non-residential heating oil tanks to the definition of "underground storage tank" for purposes of imposing the Underground Storage Tank Maintenance Fee.

This bill also provides that the State Water Resources Control Board (SWRCB) can pay a claim for corrective action or reimbursement for those costs related to the compensation of third parties for bodily injury and property damages only if it finds that the claimant has paid all underground storage tank fees, interest, and penalties.

***Sponsor: State Water Resources Control Board***

**LAW PRIOR TO AMENDMENTS**

**Non-farm, non-residential heating oil tanks.** Under existing law, Section 25299.41 of the Health and Safety Code requires every owner of an underground storage tank to pay a storage fee of six mills (\$0.006) for each gallon of petroleum (including both gasoline and diesel) placed in an underground storage tank which he or she owns. Section 25299.43 imposes an additional fee of six mills (\$0.006) for a total underground storage fee of twelve mills (\$0.012) per gallon.

Section 25299.24 of the Health and Safety Code, which is in the chapter that imposes the fee, defines underground storage tank to have the same meaning as defined in Section 25281, except that it means only those tanks that are defined as petroleum underground storage tanks under the federal act.

Section 25281, which is in the chapter that requires tanks to be permitted, defines an underground storage tank to mean any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. Specifically excluded from the definition, in part, is a tank which is located on a farm or at the residence of a person, which has a capacity of 1,100 gallons or less, and which stores home heating oil for consumptive use on the premises where stored.

The federal act defines underground storage tank to mean any one or combination of tanks that is used to contain an accumulation of regulated substances, and the volume of which is 10 percent or more beneath the surface of the ground. The term underground storage tank does not include, in part, a tank used for storing heating oil for consumptive use on the premises where stored.

The underground storage tank fees, which are reported and paid to the Board, are deposited into the Underground Storage Tank Cleanup Fund. The money in the fund may be expended by the SWRCB, upon appropriation by the Legislature, for various purposes, including payment of a California regional water quality control board's or local agency's corrective action costs, and the payment of claims to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks.

**Eligibility for SWRCB resources.** Under existing law, Sections 25299.57 and 25299.58 of the Health and Safety Code do not require that a claimant pay all underground storage tank fees, interest and penalties to be eligible for reimbursement for corrective action or for the costs related to the compensation of third parties for bodily injury and property damage.

### AMENDMENTS

**Non-farm, non-residential heating oil tanks.** Revises the definition of "underground storage tank" to specifically include tanks that contain only petroleum, or consistent with the federal act, a mixture of petroleum with de minimis quantities of other regulated substances. In short, this bill deletes the current reference to the federal act and thereby would impose the fee upon tanks used for storing heating oil for consumptive use on the premises where stored unless such tanks have a capacity of 1,100 gallons or less and are located on a farm or at the residence of a person.

**Eligibility for SWRCB resources.** Provides that The SWRCB can pay a claim for corrective action and costs related to the compensation of third parties for bodily injury and property damages only if it finds that, among other things, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) of the Health and Safety Code and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

This bill also makes other technical changes to the Barry Keene Underground Storage Tank Cleanup Trust Act of 1989. However, those changes do not affect the Board.

### IN GENERAL

**Non-farm, non-residential heating oil tanks.** Under existing law, non-farm, non-residential heating oil tanks are included within Section 25281's definition of an underground storage tank for purposes of permitting, but are not included in the federal law and Section 25299.24 definitions of an underground storage tank for purposes of imposing the underground storage tank fee. Therefore, no fee is due for petroleum placed in such tanks. However, the SWRCB has paid claims for corrective actions concerning these tanks. Corrective action includes, but is not limited to, evaluation and investigation of an unauthorized release of petroleum, initial corrective action measures, and any actions necessary to investigate and remedy any residual effects remaining after the initial corrective action.

Consequently, the Board does not collect the tank fee on non-farm, non-residential heating oil tanks, but the SWRCB has paid claims for corrective action for such tanks

In November 2000, the SWRCB amended its regulatory definition of “underground storage tank” to make it consistent with the statutory definition the Board relies upon to collect the storage tank fee. Therefore, the SWRCB no longer considers non-farm, non-residential heating oil tanks to be eligible for corrective action reimbursement.

**Eligibility for SWRCB resources.** Current law requires an owner of an underground storage tank, for which a permit is required, to pay a storage fee for each gallon of petroleum placed in the tank. However, there is no express statutory requirement that a tank owner or operator demonstrate that fees imposed under current law have been paid in order to be eligible for resources from the Underground Storage Tank Cleanup Fund.

### BACKGROUND

In 1989, Senate Bill 299 (Ch. 1442, Keene) added Section 25299.24 to the Health and Safety Code. In addition, SB 299 required an owner or operator of an underground storage tank containing petroleum to pay an annual \$200 fee to the Board.

Senate Bill 2004 (Ch. 1366, 1990, Keene), among other things, repealed the annual \$200 maintenance fee and required an owner of an underground storage tank to pay a quarterly storage fee of six mills (\$0.006) for each gallon of petroleum placed into an underground storage tank.

In 1994, SB 1764 (Ch. 1191, Thompson) increased the storage fee for petroleum placed in an underground storage tank, which ultimately increased the fee by an additional 6 mills (\$0.006) effective January 1, 1997.

### COMMENTS

1. **Purpose.** This bill is intended, in part, to clarify that non-farm, non-residential heating oil tanks are included under the definition of “underground storage tank” applicable to the storage tank fee, and the owners of such tanks are therefore required to pay the underground storage tank fee. In turn, such tank owners are liable for reimbursement of their cleanup costs should the tanks leak. In addition, this bill is intended to provide an incentive for underground storage tank owners to pay outstanding storage fees, interest and penalties in order to access underground storage tank cleanup fund benefits.
2. **This measure ensures that non-farm, non-residential tank owners are eligible for reimbursement from the Underground Storage Tank Cleanup Fund.** Prior to November 2000, the SWRCB paid reimbursement claims for the cleanup of at least five leaking non-farm, non-residential heating oil tanks although the owners of such tanks were not subject to the underground storage tank fee. This occurred because the SWRCB reimbursed cleanup costs

associated with tanks that met the definition of a tank for permitting purposes, while the Board collected the fee from owners of tanks that met the definition of a tank for fee purposes.

In November 2000, the SWRCB's regulatory definition for "underground storage tank" was amended to be consistent with the statutory definition the Board relies upon to collect the underground storage tank fee. Accordingly, the SWRCB no longer considers non-farm, non-residential heating oil tanks to be eligible for corrective action reimbursement as of the effective date of the regulation. The SWRCB has had to deny at least one owner's request for reimbursement for the cleanup of leaking non-farm, non-residential heating oil tank since November 2000.

This bill redefines the term "underground storage tank" for purposes of imposing the underground storage fee, thereby subjecting the owners of non-farm and non-residential heating oil tanks to the underground storage tank fee. In turn, such owners are eligible for reimbursement of up to \$1.5 million in cleanup costs for leaking tanks. In a sense, this measure serve as an "insurance policy" for owners of underground storage tanks that hold heating oil against fees assessed or incurred for cleanup in the event of an tank leak.

**3. How will the Board notify owners of tanks storing heating oil of the fee?**

This bill requires every owner of an underground storage tank storing heating oil for consumptive use on the premises where stored, other than owners of tanks storing 1,100 gallons or less located on a farm and or a residence, to pay the underground storage tank maintenance fee. If this bill were signed into law, the Board would need to notify all potential registrants.

With respect to the current fee, the Board has utilized several types and forms of notification to reach potential registrants including, but not limited to:

- The *Tax Information Bulletin*, which is mailed to all taxpayers with a Sales and Use Tax Permit.
- An Important Notice addressed to all "Fuel Sellers", which is mailed to all sales and use tax accounts with permits designated with a "G" code (fuel sellers); and
- An article in the *Environmental Fees Newsletter*, which is mailed to all environmental fee registrants.

The Board will use the same methods to notify potential registrants. However, it will be difficult for the Board to notify an owner of a tank storing heating oil if that owner does not hold a Sales and Use Tax account, a Fuel Taxes account, or an Environmental Fee account.

Based on discussions with SWRCB staff, they expect that most of the potential registrants will be hospitals and schools located in rural areas without access to natural gas. Because hospitals usually hold a Sales and Use Tax Account, they could easily be notified of the fee. Schools could be notified by obtaining a listing of the schools in this state from the Department of Education. However,

owners of tanks with a capacity of more than 1,100 gallons that store heating oil at a residence or farm would be difficult to notify because they most likely do not have a Sales and Use Tax Account.

4. **What is the Board's role in payment verification?** This bill provides that a claim for corrective action and costs related to the compensation of third parties for bodily injury and property damages may be paid by the SWRCB if, among other things, the claimant has paid all underground storage tank fees, interest, and penalties for the underground storage tank that is the subject of the claim.

According to the SWRCB, the SWRCB will ask the Board to verify that a claimant has paid all underground storage tank fees, interest and penalties. Responding to the SWRCB's request for payment verification will result in additional collection and audit activities for tank locations that the Board had not previously identified. Board Fuel Division staff has estimated locating an additional fifty previously unregistered accounts annually based on this provision.

**Senate Bill 73 (Dunn, et al) Chapter 668**  
*Low-income Housing Insurance Tax Credit*

*Tax levy; effective October 10, 2001. Amends Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code.*

### BILL SUMMARY

This bill, for purposes of existing low-income housing tax credits, provides a \$70 million maximum aggregate dollar amount for the 2001 calendar year and each calendar year, thereafter. In addition, this bill would provide for the 2002 calendar year and each calendar year thereafter an adjustment for inflation measured by an increase in the Consumer Price Index (CPI).

***Sponsor: California State Treasurer, the Western Center on Law and Poverty, and the California Rural Legal Assistance Foundation***

### LAW PRIOR TO AMENDMENTS

Under current law, Section 12206 of the Revenue and Taxation Code authorizes insurance companies that invest in low-income housing to compete for a gross premiums tax credit granted by the California Tax Credit Allocation Committee. The tax credit is also available under the Personal Income Tax Law and the Bank and Corporation Tax Law, but the tax credit is limited to an aggregate of \$50 million under all three tax laws combined.

Under Section 12221 of the Revenue and Taxation Code, an annual tax is imposed on the gross premiums, less return premiums, of insurers doing business in this state, but not transacting title insurance.

In the case of insurers transacting title insurance, under Section 12231 a tax is imposed on all income except interest and dividends, rents from real property, profits from the sale of investments, and income from investments.

Under Section 12202 of the Revenue and Taxation Code, the rate of the insurance tax is 2.35 percent, except for specified premiums which are taxed at 0.50 percent. Under Section 12204 of the Revenue and Taxation Code, the insurance tax is imposed on insurers and their property in lieu of all other state, county, and municipal taxes and licenses, including income taxes, with specified exceptions.

Current law also provides for a gross premiums tax credit in an amount equal to the amount of the gross premiums tax due from the insurer on account of pilot project insurance for previously uninsured motorists under Section 12208 of the Revenue and Taxation Code. Additionally, Section 12209 allows as a credit against the amount of tax an amount equal to 20 percent of the amount of each qualified deposit made by an insurance company during the year into a community development financial institution that lends to urban, rural, or reservation-based communities in this state.



## AMENDMENTS

Among other things, this bill amends Section 12206 of the California Tax on Insurers to increase to \$70 million for calendar year 2001, and each calendar year thereafter, the aggregate housing credit that may be allocated annually by the California Tax Credit Allocation Committee for investments in qualified low-income housing projects. This bill also provides for the 2002 calendar year and each calendar year thereafter an adjustment for inflation measured by an increase in the CPI.

In addition, this bill adds an uncodified section to require the California Tax Credit Allocation Committee to review and evaluate the geographic apportionment methodology of the low-income housing tax credit program, as provided, and report back to the Legislature no later than June 30, 2002.

## BACKGROUND

Prior to the enactment of Assembly Bill 1438 (Ch. 1222, 1993), the state low-income housing credit was strictly an income tax credit available only under the Personal Income Tax Law and the Bank and Corporation Tax Law. Since insurance companies pay the gross premiums tax in lieu of all other state, county, and municipal taxes and licenses, including income taxes, they were not able to take advantage of the tax credit as an incentive to invest in low-income housing.

Assembly Bill 1438 (Caldera) was sponsored by Housing California with the intent of expanding the base of low-income housing investors. By including the tax credit in the insurance tax law, insurance companies were able to compete for a portion of the \$35 million tax credit available each year.

In 1998, Assembly Bill 168 (Torlakson, Ch. 9) increased the aggregate tax credit granted by the California Tax Credit Allocation Committee for qualifying low-income housing project investments from \$35 million to \$50 million for calendar years 1998 and 1999 only. This bill was intended to stimulate more investment in low-income housing by increasing the amount of the available tax credit. Assembly Bill 1626 (Ch. 3, Stats. 2000, Torlakson) permanently increased the aggregate housing credit that may be allocated by the California Tax Credit Allocation Committee to \$50 million annually.

## COMMENTS

1. **Purpose.** This bill is intended to stimulate more investment in low-income housing by increasing the amount of the available tax credit.
2. **The Board staff does not foresee any administrative problems with this measure.** The Board of Equalization, the State Controller, and the Department of Insurance share administrative responsibility for the insurance tax program. Section 28 of Article XIII of the California Constitution states that the Board shall assess taxes under the Insurance Tax Law. Upon recommendation from the Department of Insurance, the Board also issues deficiency assessments in cases of underpayment of the tax by an insurer. The Office of the Controller has

the responsibility to collect the tax and issue refunds. Audit verification work is the responsibility of the Department of Insurance.

As the law is currently administered, the Department of Insurance will be responsible for the verification of the tax credit. It is anticipated that the increase in the tax credit as proposed by this measure will have a minimal impact on the Board's current functions under the Insurance Tax Law.

**Senate Bill 133 (Figueroa) Chapter 718**  
*CPA Certification Requirements*

*Effective January 1, 2002. Amends Sections 5000, 5015.6, 5020, 5081, 5082, 5082.1, 5082.3, 5082.4, 5087, 5088, and 5134 of, amends and repeals Sections 5081.1, 5082.2, 5083, and 5084 of, and adds Sections 5076, 5082.5, 5090, 5091, 5092, 5093, 5094, and 5095 to, the Business and Professions Code.*

### BILL SUMMARY

This bill extends the sunset date for the existence of the Board of Accountancy, modify the exam, education, and experience requirements for a certified public accountant (CPA) candidate, creates a peer review process for attest firms, modifies the contingent fund reserve balance the Board of Accountancy maintains and modifies the maximum fee the Board of Accountancy may impose for specified services.

SPONSOR: JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

### LAW PRIOR TO AMENDMENTS

Existing law provides for the licensing and regulation of accountants by the State Board of Accountancy (BOA) in the Department of Consumer Affairs. The provisions creating the BOA and authorizing the BOA to appoint an executive officer will become inoperative on July 1, 2002, and will be repealed on January 1, 2003. Existing law also requires that the board maintain a reserve balance in its contingent fund equal to approximately 3 months of annual authorized expenditures

Under existing law, to be licensed as a CPA, a candidate must pass the Uniform CPA examination, meet specified experience requirements, pass a professional ethics exam and pay the appropriate fees. Once licensed, a CPA must also meet continuing education requirements.

The Uniform CPA examination is given twice each year; in the first week of May and November. The exam is a two-day exam, consisting of four subjects: Business Law and Professional Responsibilities, Auditing, Accounting and Reporting, and Financial Accounting and Reporting. Candidates may take the four subject parts in any order. Candidates who have not passed any subjects are required to take at least two subjects. The minimum passing score in each subject is 75.

A candidate who passes two or more subjects of the examination receives conditional credit for those subjects. Candidates with conditional credit can be re-examined in the remaining subject(s) within a period of three years (six subsequent exams). If the candidate passes the remaining subject(s) within the conditional period, the candidate is considered to have passed the examination. Candidates

who fail to pass the remaining subject(s) within three years forfeit all conditional credit.

In California, a candidate must satisfy one of the following education requirements to be admitted to the exam. These are currently the only education requirements for the CPA license:

- Complete a baccalaureate degree (BA) that includes specific core courses of 35 semester units of business subjects and 10 semester units of accounting and/or auditing subjects.
- Complete 120 semester units of course work including the core course requirements (but no degree).
- Complete the equivalent of either of the first two requirements at a foreign college or university.
- Complete BOA specified preliminary examinations or be a member of a BOA recognized foreign accounting body.

The candidate must self certify that the education requirements have been met as of the date of application to the exam.

A candidate for licensure is required to meet both a time and experience requirement. Generally, a candidate for licensure must have three years' experience working in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing employment may be qualified experience provided that the work was performed under the direct supervision of an individual licensed as a CPA. One year of the experience may be waived for candidates that are graduates of accredited colleges. The experience must be performed in accordance with applicable professional standards.

Candidates must generally complete at least 500 hours of audit, review, or compilation experience. The experience must demonstrate an understanding of the requirements of planning and conducting an audit with minimum supervision which results in full-disclosure financial statements, including all of the following:

- Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records.
- Experience in preparing audit working papers covering examination of the accounts usually found in accounting records.
- Experience in planning the program of audit work including the selection of the procedures to be followed.
- Experience in preparing written explanations and comments on the finding of the examination and the content of the accounting records.
- Experience in preparing and analyzing financial statements together with explanations and notes thereon.

## AMENDMENTS

This bill:

- **Modifies the exam requirements.** This bill allows the BOA to adopt regulations specifying the standards for passage of the examination and for reexamination. The education requirements for taking the exam remains the same. Transitional rules will be provided so that candidates who already have conditional credit when the new law and regulations become effective would be allowed to pass the remaining parts under the prior law and regulations.
- **Increases the educational requirements.** Although the education requirement for taking the Uniform CPA Examination remain the same, under the provisions of this bill, candidates have two new education options to obtain a license. The first option requires the candidate to have a baccalaureate or higher degree including a minimum of 24 semester units in accounting and 24 semester units in business related subjects. The second option consists of the same requirements as the first option in addition to the requirement of completing at least 150 semester units of college education.
- **Modifies the experience requirement.** The provisions of this bill no longer require attest experience for licensure. Candidates have the option of completing two years of general experience if they qualify under the first option for education, or only one year of general experience if they qualify under the second option for education. The general experience requirement consists of professional experience providing any type of services or advice using accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills performed in accordance with professional standards. The experience must be supervised and verified, under penalty of perjury, by a licensed CPA.
- **Provides transitional rules for the education and experience requirements.** Under the provisions of this bill, there is a four-year transition period where candidates could choose to qualify under either the old or new education and experience requirements. However, candidates are not permitted to combine the old education requirements with the new experience requirements.
- **Establishes a peer review requirement for attest firms.** This bill requires firms that perform audits, reviews, or examinations of prospective financial information (attest services) to receive a comprehensive assessment of its reports, work papers, auditing procedures, and quality controls by a peer review. Acceptable peer reviews could be obtained from any provider as long as the peer review was performed in accordance with professional standards and the BOA approves the provider.
- **Extends the sunset date for the Board of Accountancy.** This bill extends the current sunset date for the existence of the BOA from July 1, 2002 until July 1, 2006.

- **Modifies the contingent fund reserve balance.** This bill allows the BOA to maintain its contingent fund reserve balance equal to six months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur.

## COMMENTS

1. **Purpose.** This bill is intended to extend the existence of the BOA and also to remove some of the barriers to entry for CPA candidates by modifying the examination and experience requirements.
2. **This bill will allow more Board of Equalization (Board) auditors to obtain licensure as a CPA.** For many CPA candidates, the attest experience is the most difficult to obtain since only 13 percent of CPAs consider audits to be their primary area of practice and auditing skills and knowledge must be frequently updated. For Board employees, the attest experience is very difficult to obtain. Typically, Board employees conduct audits to verify that specific taxes or fees administered by the Board are properly reported. Board auditors do not perform financial statement audits that are part of the attest experience requirement. However, Board auditors may participate in the Board's CPA program in order to fulfill the attest experience requirement. This program allows Board auditors to perform financial statement audits under the supervision of a licensed CPA employed by the Board. Due to the constraints of finding taxpayers willing to participate in this voluntary program and the limited number of CPA supervisor/leads, it takes an extended period of time for candidates to gain the required experience. This bill provides that the new experience requirement would consist of either 1 or 2 years of professional experience providing any type of services or advice using accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills performed in accordance with professional standards. The experience must be supervised and verified, under penalty of perjury, by a licensed CPA. Auditors with the Board should be able to obtain this type of experience conducting routine audits and examinations that are part of their normal duties.
3. **Provisions of this bill should improve recruitment and retention efforts.** When a student earns a degree in accountancy, employment opportunities may include public accounting and governmental accounting. Currently, public accounting offers the benefit of more easily obtaining the necessary attest experience to become licensed. While the attest experience can be obtained through employment with a governmental agency, it is generally more difficult and lengthy to obtain. Some employees have left the Board to complete the experience requirement at a public accounting firm. The provisions of this bill will allow students to choose governmental accounting for employment and remain on the same footing as those students who choose public accounting for employment. This bill should assist the Board's efforts to retain quality employees and recruit the best candidates for employment vacancies.

4. **Education requirements could increase.** Current law requires that a candidate must meet one of the four education requirements described earlier in this analysis. The provisions of this bill allow a candidate the option to complete 150 semester units with a baccalaureate or graduate degree from an accredited college or university. However, candidates may still qualify to take the exam with only 120 semester units and obtain the additional 30 semester units after taking the exam. This will allow candidates to choose a specialized field of study for their additional required coursework, such as tax, auditing, financial analysis, or any number of other related specialties. This should result in better educated candidates.
5. **Renewal fees.** Current law provides that the BOA set the renewal fee so that the reserve balance in the contingent fund will cover three months of estimated annual authorized expenditures. Current law also provides that the renewal fee is not to exceed \$250. This bill allows the BOA more flexibility in setting the renewal fees since the BOA will have a more accurate six month figure to work with, rather than a three month figure. The current renewal fee imposed by the BOA is \$200, and that amount is not expected to change.
6. **Examination fees.** The current Uniform CPA examination is offered only twice each year and consists of a four part written examination. The American Institute of Certified Public Accountants (AICPA) has determined that in order for the Uniform CPA Examination to continue to protect the public interest and to maintain the confidence of its various constituencies, it should provide a comprehensive assessment of the entry-level knowledge and skills required by CPAs in a changing business and financial environment. Revising and computerizing the Uniform CPA Examination is the most efficient and cost-effective way to accomplish these goals. The AICPA acknowledges that computer-based testing results in an examination that is more expensive than the current paper-based test but less expensive than a more comprehensive paper-based examination that tests all the entry-level knowledge and skills required by CPAs.

Current law provides that the BOA set fees every two years by regulation based on actual costs. This bill revises the maximum amount the BOA may impose for sitting for the CPA exam. Due to anticipated changes in the exam, the cost to the BOA is expected to increase beyond the amount allowable under current law. Current law allows a maximum fee of \$250, while the amount actually imposed by the BOA consists of a \$60 registration fee plus \$31 for each part of the exam taken (a candidate sitting for all four parts of the exam would pay a total fee of \$184). The new fee ceiling proposed in this bill is \$600, and the BOA anticipates the actual cost of the new exam should not to exceed \$575.

**Senate Bill 312 (Alpert) Chapter 426**  
***Returned Tobacco Products***

*Tax levy; effective October 2, 2001. Amends Sections 30005.5, 30123, 30131.2, 30177, and 30178.2 of, and adds Section 30176.2 to, the Revenue and Taxation Code.*

**BILL SUMMARY**

Among other things, this bill clarifies that a distributor may exclude the wholesale cost of tobacco products returned by a customer from the wholesale cost used to calculate the tax, or may claim a refund of the excise tax paid on the distribution of the tobacco products or take a credit on its return in lieu of a refund.

SPONSOR: CALIFORNIA DISTRIBUTORS ASSOCIATION

**LAW PRIOR TO AMENDMENTS**

Under existing law, Section 30123 of the Cigarette and Tobacco Products Tax Law imposes an excise tax on the distribution of tobacco products, based on the wholesale cost of the tobacco products, at a rate which is equivalent to the combined rate of tax imposed on cigarettes. Section 30131.2 imposes an *additional* tax on tobacco products based on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the additional 50-cent per pack tax on cigarettes also imposed by this section. The tax rate on tobacco products, which is set annually by the Board, is currently set at 54.89 percent for the period July 1, 2000 through June 30, 2001.

Section 30177 of the Cigarette and Tobacco Products Law requires the Board to refund or credit the tax paid on the distribution of tobacco products if the products have become unfit for use or unsaleable and have been returned to the distributor for credit or have been replaced. A distributor must provide the Board with proof of that return or destruction.

**AMENDMENTS**

This bill amends Sections 30123 and 30131.2 to provide that the wholesale cost used to calculate the amount of tax due does not include the wholesale cost of tobacco products if:

- The tobacco products were returned by a customer during the same reporting period the tobacco products were distributed, and
- The distributor refunds the entire amount the customer paid for the tobacco products in either cash or credit.

This bill also amends Section 30177 by removing existing refund and credit provisions for returned tobacco products and incorporates similar provisions into new Section 30176.2. Section 30176.2 requires the Board to refund or credit a



distributor the excise tax paid on the distribution of tobacco products when the distributor refunds the entire amount the customer paid for the tobacco products in either cash or credit. In addition, Section 30178.2 allows a distributor eligible for a refund to claim a credit against tax owed on its return. Therefore, this bill requires the Board to refund or credit a distributor the tax paid for tobacco products that are returned for *any* reason, whether or not such products have become unfit for use or unsalable.

A refund or credit of the entire amount is deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer.

In addition, this bill amends Section 30005.5 to revise the definition of “untaxed tobacco product” to include any tobacco product that was distributed in a manner that resulted in a tax liability, but that was returned to the distributor after the tax was paid and for which the distributor has claimed a deduction, refund or credit.

### BACKGROUND

In November 1988, California voters approved Proposition 99, the *Tobacco Tax and Health Protection Act*. Proposition 99 added Section 30123, effective January 1, 1989, which imposes an excise tax upon the distribution of tobacco products based on the wholesale cost of those tobacco products at a rate that is equivalent to the combined rate of tax imposed on cigarettes. Proposition 99 also added Section 30126, which requires the Board to annually determine the tobacco products tax rate. The measure enacted by the voters was intended to provide *equitable tax treatment* of cigarettes and tobacco products.

Proposition 10, the *California Children and Families First Act of 1998*, was passed by California voters on November 3, 1998. Proposition 10 added Section 30131.2, which imposes an *additional* excise tax on the distribution of cigarettes and a corresponding additional tax on the distribution of tobacco products at a rate that is equivalent to the additional cigarette tax.

In 1998, Assembly Bill 2075 (Chapter 815, Granlund) amended Section 30177 of the Cigarette and Tobacco Products Tax Law to require the Board to refund or credit the excise tax previously paid by a distributor on tobacco products which become unfit for use or unsalable. As intended by Proposition 99, AB 2075 eliminated a disparity between cigarettes and tobacco products by authorizing distributors of the latter to also receive a tax refund or credit for excise tax paid on tobacco products that have become unfit for sale or use. Assembly Bill 2075 was sponsored by the California Distributors Association.

### COMMENTS

1. **Purpose.** This bill is intended to correct an oversight in the drafting of the refund provisions for tobacco products that were added to the Revenue and Taxation Code pursuant to AB 2075 (Chapter 815, Statutes of 1998).

2. **This measure clarifies existing practice concerning tobacco products returned by a customer.** Under existing law, the tax is imposed upon every distributor upon the distribution of untaxed tobacco products. Therefore, once tobacco products have been distributed, they are always considered taxed - even if the customer subsequently returns them. Returned tobacco products considered fit for use or salable are typically resold to another customer. However the tax is technically not imposed upon that subsequent sale because it is not a “distribution”. “Distribution” is defined, in part, to include the sale or use or consumption of untaxed tobacco products in this state.

It is Board staff’s understanding that it is the practice of distributors to refund the tax to a customer for tobacco products returned and to reimburse itself for the tax from a new customer when the returned tobacco products are subsequently resold. For purposes of reporting, distributors have been deducting the wholesale cost of tobacco products returned from the wholesale cost used to calculate the amount of tax, and reporting the tax when the returned product is resold.

However, current law technically does not authorize this practice because a distributor cannot take a deduction on its return, nor can it claim a refund, for those tobacco products returned by a customer that are fit for use and salable. Nor does current law impose the tobacco tax on the subsequent sale since it is not a distribution of “untaxed” tobacco products. The Board has been allowing distributors to report in this manner because the timing difference between the distribution and redistribution of returned tobacco products is considered immaterial.

When Assembly Bill 2075 incorporated refund and credit provisions for tobacco products into law, tobacco products returned by customers that are fit for use and salable were inadvertently overlooked. This measure would correct an oversight in drafting the credit and refund provisions contained in AB 2075.

In addition, Assembly Bill 2075 incorporated provisions for a refund of the excise tax paid on tobacco products, which is reported and paid on an excise tax return based on the wholesale cost of the tobacco products, into Revenue and Taxation Code Section 30177. Section 30177 was written to provide for a refund of the excise tax on cigarettes, which is paid through the application of a cigarette tax stamp to each package of cigarettes. While cigarette distributors report to the Board the number of cigarettes sold during a reporting period, the tax has already been paid through the application of the tax stamps. The excise tax on tobacco products, on the other hand, is paid through the use of a return on which the distributor reports the wholesale cost of the tobacco products distributed and calculates the tax due. The tobacco products distributor should be able to deduct, from the wholesale cost on which the tax is based the cost of any returned tobacco products, rather than following the procedure established for cigarettes, on which tax is paid through the use of stamps rather than returns. In addition, the tobacco products distributor should be able to take a credit on the return, in lieu of claiming a refund, for taxes which were paid on tobacco

products that were returned to the distributor. A similar credit in lieu of refund is available in most of the other tax programs administered by the Board.

3. **Board staff does not foresee any administrative problems with this measure.** Allowing a distributor to claim a deduction, credit or refund for returned tobacco products will not affect the Board's administration of the Cigarette and Tobacco Products Tax Law.

**Senate Bill 394 (Sher, et al.) Chapter 343**  
***Internet Tax Freedom Act***

*Effective January 1, 2002. Amends and repeals Section 65004 of the Revenue and Taxation Code.*

**BILL SUMMARY**

This bill extends California's Internet Tax Freedom Act for an additional one or two years, depending on when the California Commission on Tax Policy in the New Economy submits a specified report.

SPONSOR: SENATOR SHER

**LAW PRIOR TO AMENDMENTS**

**State law:** Part 32 (commencing with section 65001) of Division 2 of the Revenue and Taxation Code was added by AB 1614 (Ch. 351, Stats. 1998) to create the "California Internet Tax Freedom Act." Subdivision (h) of section 65002 states the legislative intent that no existing or future state taxes or state fees be imposed by the state in a discriminatory manner upon Internet access or online computer services.

Subdivision (a) of section 65004 specifies that for the period January 1, 1999 through January 1, 2002, no local government may impose, assess, or attempt to collect any tax or fee on: 1) Internet access, online computer services, or the use of either; 2) a bit tax or bandwidth tax; or 3) any discriminatory tax on Internet access or online computer services. Subdivision (b) of section 65004 provides that this prohibition does not include any new or existing tax of general application, including but not limited to any sales and use tax, business license tax, or utility user tax that is imposed or assessed in a uniform and nondiscriminatory manner, as specified.

Under existing law, Part 18.3 (commencing with Section 38061) of the Revenue and Taxation Code, as added by SB 1933 (Stats. 2000, Ch. 619), the California Commission on Tax Policy in the New Economy was created to examine the impact of the Internet and other forms of electronic technology on the sales and use tax, telecommunications taxes, property taxes, and income taxes, as specified. Section 38066 requires the Commission to submit an interim report to the Governor and the Legislature not later than 12 months from the date of the Commission's first public meeting and a final report with recommendations not later than 24 months from the date of the Commission's first public meeting.

**Federal law:** Under Title XI and XII of the Omnibus Appropriations Act of 1998, approved as H.R. 4328 by Congress on October 20, 1998 and signed as Public Law 105-277 on October 21, 1998, the federal "Internet Tax Freedom Act" was created to do the following:

- Prohibit state and local governments from taxing Internet access from October 1, 1998 until October 21, 2001.
- Prohibit state and local governments from imposing taxes that would subject buyers and sellers of electronic commerce to taxation in multiple states and protect against the imposition of new tax liability for consumers and vendors involved in commercial transactions over the Internet, including the application of discriminatory tax collection requirements imposed on out-of-state businesses through strained interpretations of “nexus.”
- Establish a commission to study electronic commerce tax issues and report back to Congress after 18 months on whether electronic commerce should be taxed, and if so, how such commerce can be taxed in a manner that ensures that it will not be subject to special, multiple, or discriminatory taxes.
- Specify that it is the Sense of Congress that there should be no federal taxes on Internet access or electronic commerce.
- Declare that the Internet should be a tariff-free zone.

### AMENDMENTS

This bill amends subdivision (d) of Section 65004 of the Revenue and Taxation Code to provide that the Internet Tax Freedom Act would remain in effect until January 1, 2004, unless the California Commission on Tax Policy in the New Economy fails to submit a specified report, in which case the California Internet Tax Freedom Act would be repealed on January 1, 2003

The bill becomes operative January 1, 2002.

### BACKGROUND

A measure to extend the sunset date was considered during the 2000 Legislative Session. That measure, AB 1784 (Lempert, et al.) was enacted into law (Chapter 618). However, the bill never became operative because the bill also contained an uncodified section that provided that AB 1784 would only become operative if Assembly Bill 2412 was enacted and became effective on or before January 1, 2001. Since Assembly Bill 2412 was vetoed by the Governor, the provisions of AB 1784 never became operative. (Assembly Bill 2412, Migden and Aroner, would have required certain out-of-state dot-com retailers to collect the applicable use tax if they were related to a substantially similar retailer operating in California, as specified.)

### COMMENTS

1. **Purpose.** The measure is intended to continue a responsible tax policy regarding the taxation of the Internet so as to avoid any potential burdens placed on this evolving medium.

2. **There is pending federal legislation to also extend the federal Internet Tax Freedom Act.** Several bills pertaining to Federal Internet taxation have been introduced in Congress before to either make the federal moratorium permanent, or to extend it. These include: S. 245, S. 246, and S. 589 (Robert Smith), S. 288 (Wyden and Leahy), S. 512 (Dorgan, et al.), S. 777 (Allen & Burns), H.R. 1410 (Istook, et al.), HR 1552 (Cox, et al.) and HR 1675 (Cox).
3. **Board supported both federal and state legislation.** The Board unanimously supported the 1998 federal "Internet Tax Freedom Act" as well as California's Internet Tax Freedom Act of 1998.

**Senate Bill 409 (Vincent) Chapter 535**  
***Extension of CDFI Insurance Tax Credit***

*Tax levy; effective October 5, 2001. Amends Sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code.*

**BILL SUMMARY**

This bill extends until January 1, 2007, the insurance tax credit for insurers that invest in a community development financial institution (CDFI) that lends to urban, rural, or reservation-based communities in this state.

SPONSOR: DEPARTMENT OF INSURANCE

**LAW PRIOR TO AMENDMENTS**

Section 12201 of the Revenue and Taxation Code imposes an annual tax on all insurers doing business in this State. For insurers other than title insurers, Section 12221 of the Revenue and Taxation Code specifies that the basis of the annual tax is gross premiums, less return premiums, received by the insurer on business done in this State. For insurers transacting title insurance, Section 12231 of the Revenue and Taxation Code specifies that the basis of the annual tax is all income from business done in this State except interest and dividends, rents from real property, profits from the sale of investments, and income from investments.

Section 12204 of the Revenue and Taxation Code sets the rate of the annual tax at 2.35 percent, except for specified premiums that are taxed at 0.50 percent. Under Section 12204 of the Revenue and Taxation Code, the tax imposed on insurers is in lieu of all other state, county, and municipal taxes and licenses, including income taxes, with specified exceptions.

Section 12209 of the Revenue and Taxation Code allows as a credit against the amount of insurance tax an amount equal to 20 percent of the amount of each qualified deposit made by an insurer during the year into a CDFI that lends to urban, rural, or reservation-based communities in this state. Section 12209 will remain in effect only until December 31, 2002, and as of that date is repealed.

Current law also provides for a gross premiums tax credit in an amount equal to the amount of the gross premiums tax due from the insurer on account of the pilot project insurance for previously uninsured motorists under Section 12208 of the Revenue and Taxation Code. In addition, Section 12206 of the Revenue and Taxation Code authorizes insurers that invest in low-income housing to compete for a gross premiums tax credit granted by the California Tax Credit Allocation Committee. Similar tax credits are also available under the Personal Income Tax Law and the Bank and Corporation Tax Law. The tax credit available under these three laws is limited to a combined total of \$50 million per year.

## AMENDMENTS

This bill extends until January 1, 2007, the operation of the insurance tax credit for insurers that invest in a CDFI that lends to urban, rural, or reservation-based communities in this state.

This bill redefines "qualified investment" to mean a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions fund, or its successor. All qualified investments are required to be equal to or greater than fifty thousand dollars (\$50,000) and made for a minimum duration of 60 months.

Additionally, this bill requires the Board, as requested by the Department of Insurance, California Organized Investment Network or its successor, to advise and assist in the administration of Section 12209 of the Insurance Tax Law. This bill also makes other non-substantive technical amendments.

## BACKGROUND

In 1998, Assembly Bill 168 (Torlakson, Ch. 9) increased the annual aggregate tax credit granted by the California Tax Credit Allocation Committee for qualifying low-income housing project investments from \$35 million to \$50 million for calendar years 1998 and 1999 only. Assembly Bill 1626 (Ch. 3, Stats. 2000, Torlakson) permanently increased the annual aggregate housing credit that may be allocated by the California Tax Credit Allocation Committee to \$50 million.

During the 1999-2000 Legislative Session, three bills allowing credits against the amount of insurance tax were introduced. Assembly Bill 145 (Ch. 821, Stats. 1999, Vincent), which created the credit proposed to be extended by this bill, added Section 12209 to the California Tax on Insurers Law to allow a credit against the amount of insurance tax in an amount equal to 20 percent of the amount of each qualified deposit made by a taxpayer during the year into a CDFI. Assembly Bill 145 simply allowed the credit available under the Personal Income Tax Law and the Bank and Corporation Tax Law to be available under the Tax on Insurers Law. The Board was neutral on AB 145.

Assembly Bill 1432 (Ch. 808, Stats. 1999, Oller) added Section 12208 to the Revenue and Taxation Code to provide a gross premiums tax credit in an amount equal to the amount of the gross premiums tax due from an insurer on account of pilot project insurance for previously uninsured motorists.

Assembly Bill 1080 (Villaraigosa, et al) would have added Section 12207 to the Revenue and Taxation Code to create an insurance tax credit for insurers that contribute to an eligible community development corporation. AB 1080 was amended in the Senate Appropriations Committee to delete the insurance tax credit provisions.

Also during the 1999-2000 Legislative Session, two bills which would have allowed a 50 percent credit against the gross premiums tax were introduced. Senate Bill 1465



(Polanco) was held in the Senate Rules Committee and SB 1151 (Polanco) was held under submission in Assembly Revenue and Taxation Committee.

## COMMENTS

1. **Purpose.** This bill is intended to extend the current credit for investments in Community Development Financial Institutions.
2. **What does “advise and assist in the administration of this section” entail?** This bill requires the Board, as requested by the Department of Insurance, California Organized Investment Network or its successor, to advise and assist in the administration of Section 12209. According to the bill’s sponsor, this provision will simply allow the Department of Insurance, California Organized Investment Network to consult with the Board on issues or questions related to the CDFI credit where the Board has had prior experience with similar issues through the administration of its tax programs.

The bill’s sponsor stated there has been only one occasion in the prior year and a half that this provision under the Personal Income Tax Law and Bank and Corporation Tax Law would have applied, but was addressed informally by the Franchise Tax Board. The bill’s sponsor was not aware of an instance to date where the Department of Insurance, California Organized Investment Network would have needed the Board’s assistance on a CDFI credit related issue.

3. **The Board staff does not foresee any administrative problems with this measure.** The Board of Equalization, the State Controller, and the Department of Insurance share administrative responsibility for the insurance tax program. Section 28 of Article XIII of the California Constitution states that the Board shall assess taxes under the Insurance Tax Law. Upon recommendation from the Department of Insurance, the Board also issues deficiency assessments in cases of underpayment of the tax by an insurer. The Office of the Controller has the responsibility to collect the tax and issue refunds. Audit verification work is the responsibility of the Department of Insurance.

As the law is currently administered, the Department of Insurance will be responsible for the verification of the tax credit. It is anticipated that the increase in the tax credit as proposed by this measure will have a minimal impact on the Board’s current functions under the Insurance Tax Law.

4. **The annual listings should also be sent to the Department of Insurance.** This bill requires a CDFI to send to the Board an annual listing of taxpayers who made withdrawals of qualified deposits. This bill also requires the California Organized Investment Network of the Department of Insurance to provide the Board with, among other information, the amount of the qualified deposits. Since the Department of Insurance has a major role in the verification of the tax credit, that agency should also receive a copy of these reports.

**Senate Bill 896 (Poochigian) Chapter 638**  
***Federal Telecommunication Act Conformity***

*Effective January 1, 2002, but operative August 1, 2002. Adds Section 247.1 to the Public Utilities Code and amends Section 41020 of the Revenue and Taxation Code.*

**BILL SUMMARY**

Revises the Emergency Telephone Users Surcharge Law to conform to the Federal Mobile Telecommunications Sourcing Act (Act) with respect to the taxation of mobile telecommunications services.

**Sponsor: WorldCom, Inc.**

**LAW PRIOR TO AMENDMENT**

Under existing law, Section 41020 of the Revenue and Taxation Code imposes a surcharge on amounts paid by every person in the state for intrastate telephone communication services in this state.

Section 41011 defines charges for services to mean all charges billed by a service supplier to a service user for intrastate telephone communication services. Intrastate telephone communication services means all local or toll services where the point or points of origin and the point or points of destination of the service are all located in this state and includes monthly service flat-rate charges for usage, message unit charges, and intra-state-wide area telephone service charges. Charges for services, however, do not include charges for intrastate toll calls where bills for such calls originate out of California.

The current surcharge is 0.72 percent of the amounts paid for intrastate telephone services in this state.

The surcharge is paid to the Board and deposited in the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund.

**AMENDMENT**

Provides that the surcharge does not apply to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. "Place of primary use" is defined to mean the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, that must be:

- The residential street address or the primary business street address of the customer.
- Within the licensed service area of the home service provider.

These changes conform the Emergency Telephone Users Surcharge Law and the Public Utilities Code to the Federal Act to create a single, uniform sourcing rule for the purpose of state and local taxation.

In accordance with the Act, the provisions of this bill apply to customer bills issued on or after August 1, 2002.

### IN GENERAL

The methodology for applying tax to mobile telecommunication services has become increasingly complex because service users are typically never in the same place. Users of mobile telecommunications services can originate a call in one state or local jurisdiction and travel through another state or local jurisdiction(s) during the course of the call. These circumstances make it difficult to track the separate state and local jurisdiction(s) segments of a particular call. In addition, expanded home calling areas, bundled service offerings and other marketing advances make it increasingly difficult to assign each transaction to a specific taxing jurisdiction.

As a result, state and local taxes are not consistent and subject consumers, businesses and others engaged in interstate commerce to multiple, confusing and burdensome state and local taxes. The result is higher costs to consumers and the industry. In addition, services that are not taxed consistently among jurisdictions can result in some telecommunications revenues inadvertently escaping state and local taxation altogether.

To address this problem, Congress exercised its power to provide a reasonable solution to otherwise insoluble problems of multi-jurisdictional commerce by introducing the Mobile Telecommunications Sourcing Act (HR 4391). The Act included a nexus requirement designed to provide a uniform and fair way to determine how state and local jurisdictions tax wireless communications. On July 28, 2000, President Clinton signed the Act into law.

As the centerpiece and major change in the taxing methodology, the Act assigned all telecommunications taxes on consumers to *one location*: the customer's Place of Primary Use. The Place of Primary Use provides a single address for state and local taxation for all wireless telecommunications services, including roaming charges from anywhere in the United States. It must be either the customer's home or business address.

### BACKGROUND

In 1972, Assembly Bill 515 (Chapter 1005) mandated the establishment of a statewide universal emergency telephone number to be used by all public safety and emergency agencies, thereby allowing citizens a single easy-to-remember number to dial for emergency aid regardless of location or the nature of the emergency.

In order to generate funds necessary for subventions to local public agencies to implement the emergency telephone systems, Assembly Bill 416 (Chapter 443, Statutes of 1976) imposed a telephone users tax on every person in the state using

intrastate telephone communication services. That tax, the Emergency Telephone Users Surcharge, is imposed on charges made for intrastate telephone communication services and is paid by the service user.

## COMMENTS

1. **Purpose.** This bill is intended to conform state law to the Federal Act, thereby creating a single, uniform sourcing rule for the purpose of taxing mobile telecommunication services.
2. **This measure simply clarifies existing law.** Pursuant to Section 41011 of the Revenue and Taxation Code, charges billed by a service supplier to a service user for intrastate telephone communication services do not include charges for intrastate toll calls where bills for such calls originate out of California. The Board interprets this statute to mean that the surcharge does not apply to intrastate telephone communication services where the bill for such services is sent to an out-of-state location. Accordingly, this measure simply clarifies existing law.
3. **Board staff does not foresee any administrative problems with this measure.** Because the Board currently administers the provisions of this bill, no administrative problems are anticipated.

**Senate Bill 1185 (Committee on Revenue and Taxation) Chapter 543**  
**Board-sponsored measure**

*Effective January 1, 2002. Amends Section 25205.5 of the Health and Safety Code, amends Sections 7096, 9274, 17037, 17062, 17276, 18417, 18633.5, 19104, 19191, 19192, 19306, 19311, 19378, 19443, 19604, 19607, 19705, 21006, 21027, 23001, 23040.1, 23051.7, 23055, 23182, 23608.2, 23609, 23610.5, 23622.8, 23630, 23645, 23646, 23649, 23772, 24416, 24453, 24472, 30459.4, 32402, 32474, 40214, 41174, 43525, 45652, 45870, 46502, 46625, 50140, 50156.14, 55222, 55335, and 60633.1 of, amends the heading of Part 11 (commencing with Section 23001) of Division 2 of, and amends the heading of Chapter 2 (commencing with Section 23101) of Part 11 of Division 2 of, and adds Section 55053 to, the Revenue and Taxation Code.*

Among other things, this bill contains Board of Equalization-sponsored provisions for the sales and use tax and the special taxes and fees programs, which do the following:

- Change the hazardous waste generators' refund application dates.
- Allow reimbursements to taxpayers for third party check charges.
- Clarify claim for refund time period.

Change the refund application date until after the  
 Department of Toxic Substances Control has  
 determined surplus funds are available

#### LAW PRIOR TO AMENDMENT

Under existing law, Section 25205.5 of the Health and Safety Code imposes a fee on a generator for each generator site for each calendar year unless the generator has paid a facility fee or received a credit per Section 25205.2(i) for each specific site for the calendar year for which the fee is due. The fee is divided into different tiers based on the tonnage of waste generated, with a significant incremental increase in the fee as a generator produces more waste and moves from one tier to the next.

Section 25205.5 also provides that a generator of hazardous waste is eligible for a refund of all or part of the state generator fee paid if all of the following apply:

- The generator paid an inspection fee to a Certified Unified Program Agency, which imposed the fee as part of a single fee system and fee accountability program in compliance with Section 25404.5;
- The generator received a credit for the generator fee or generator surcharge, as provided in Section 43152.7 or 43152.11, respectively, for fees paid to a local hazardous waste management program pursuant to a Memorandum of

Understanding filed with the Department of Toxic Substances Control (DTSC) for waste generated in 1996; and,

- The DTSC certifies that funds are available to pay all or part of the refund.

Section 25205.9 of the Health and Safety Code requires the DTSC, on or before June 30 of each year, to determine if there are surplus funds in the Hazardous Waste Control Account and allocate the surplus, upon appropriation by the Legislature, to pay the refunds provided by Sections 25205.5(h) and 25205.5(i).

To be eligible for a refund, a generator must submit an application for refund to the Board of Equalization by March 31 of the fiscal year during which the generator paid the generator fee. Accordingly, a generator must submit an application to the Board for a possible refund of state generator fees paid approximately 3 months before the DTSC determines whether or not there are surplus funds available to pay the refunds. An application received after March 31 is void, not processed by the Board, and returned to the applicant. In 1999 and 2000, the Board has denied all claims for refunds because the DTSC did not certify that there were surplus funds available for refunds.

## COMMENT

By postponing the filing date until after the DTSC determines whether surplus funds are available to pay the refunds, this amendment allows a generator to ascertain, prior to submitting a refund application, whether refunds will be issued. This amendment is intended to save feepayers and the Board the expense of preparing and processing claims for those fiscal years when surplus funds are determined not to be available. This change eliminates a time consuming and unnecessary refund claim process for both feepayers and the Board in those years when funds will not be available for refunds.

|                                                                                                                |
|----------------------------------------------------------------------------------------------------------------|
| Allow reimbursement of any reasonable third party check charges imposed on a taxpayer due to an erroneous levy |
|----------------------------------------------------------------------------------------------------------------|

## LAW PRIOR TO AMENDMENTS

Under current law, Revenue and Taxation Code Section 7096 provides that a taxpayer may file a claim with the Board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold issued by the Board. Bank charges include a financial institution's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution. However, the current law contains no provisions for reimbursement of other check charge fees imposed on the taxpayer.

Taxpayers are routinely reimbursed for bank charges related to erroneous levies, but not for related third party charges, such as bounced check charges imposed by

daycare centers, retailers, or utility companies. While the amounts involved are relatively minor (approximately \$40 each for the 10 or so cases each year), the Board has disallowed third party reimbursements because those charges are not covered by Section 7096.

## COMMENT

These amendments add reasonable third party check charges to the amount that the Board is authorized to reimburse a taxpayer from charges they incur due to an erroneous levy or notice to withhold by the Board. It is fair and equitable to reimburse taxpayers for third party charges and this proposed change is well within the intent of the original legislation that authorized the Board to reimburse taxpayers for Board errors.

|                                                                      |
|----------------------------------------------------------------------|
| Clarify the time period in which<br>a claim for refund may be filed. |
|----------------------------------------------------------------------|

## LAW PRIOR TO AMENDMENTS

Under existing law, Section 6902 of the Revenue and Taxation Code provides that the Board shall not approve a refund of the sales and use tax: (1) within three years after the due date of the payment for the period for which the overpayment was made; or, (2) with respect to determined amounts after six months from the date the determinations become final; or (3) after six months from the date of overpayment, whichever period expires later, unless a claim for refund is filed with the Board within that period. Several other tax and fee programs administered by the Board contain identical provisions.

However, Sections 45652 (Integrated Waste Management Fee Law), 46502 (Oil Spill Response, Prevention and Administration Fee Law), 50140 (Underground Storage Tank Fee Law), and 55222 (Fee Collection Procedures Law) are similar, except that the phrase “after six months from the date the determinations become final” is replaced by “within six months after the determinations have become final”. There appears to be no apparent reason for this difference, and the language is difficult to interpret and apply. For example, this may be interpreted to mean that the taxpayer may file a claim for refund at any time after six months after the determination becomes final, in effect eliminating the statute of limitations.

Under current law, Section 32402 (Alcoholic Beverage Tax Law) also includes the phrase “within six months after the determinations become final” rather than “after six months from the date the determinations become final”. In addition, Section 32402 does not contain the third option, the filing of a claim for refund after six months from the date of overpayment, thus imposing a more restrictive statute of limitations on the filing of claims for refund in this tax program.

**COMMENT**

These amendments provide claim for refund language consistent with the Sales and Use Tax Law and the other tax and fee laws administered by the Board. These amendments also make the Alcoholic Beverage Tax Law consistent with the claim for refund provisions of the Sales and Use Tax Law and the other tax and fee laws administered by the Board.



**TABLE OF SECTIONS AFFECTED**

| SECTION                           |       | BILL AND CHAPTER NUMBER |         | SUBJECT                                                                      |
|-----------------------------------|-------|-------------------------|---------|------------------------------------------------------------------------------|
| Revenue and Taxation Code         |       |                         |         |                                                                              |
| <i>Motor Vehicle Fuel Tax Law</i> |       |                         |         |                                                                              |
| §7320                             | Amend | AB 309                  | Ch. 429 | Conform to Diesel Fuel Tax Law                                               |
| §7326                             | Amend | AB 309                  | Ch. 429 | Delete reference to inflammable/combustible liquid and explosion type engine |
| §7330                             | Amend | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS                                    |
| §7337                             | Amend | AB 309                  | Ch. 429 | Revise definition of "sale"                                                  |
| §7343                             | Amend | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS                                    |
| §7344                             | Amend | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS                                    |
| §7345                             | Add   | AB 309                  | Ch. 429 | Add definition of "tax paid fuel" and "tax paid"                             |
| §7364                             | Amend | AB 309                  | Ch. 429 | Conform to Diesel Fuel Tax Law                                               |
| §7372                             | Add   | AB 309                  | Ch. 429 | Two party exchange                                                           |
| §7373                             | Add   | AB 309                  | Ch. 429 | Add presumption to prevent evasion of tax                                    |
| §7404                             | Amend | AB 309                  | Ch. 429 | Misuse of an exemption certificate                                           |
| §7405                             | Amend | AB 309                  | Ch. 429 | Correct and conform penalty for misuse of exemption certificate              |
| §7453                             | Amend | AB 309                  | Ch. 429 | Security                                                                     |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                                                                              |               | BILL AND CHAPTER NUMBER |                    | SUBJECT                                                                  |
|--------------------------------------------------------------------------------------|---------------|-------------------------|--------------------|--------------------------------------------------------------------------|
| Revenue and Taxation Code                                                            |               |                         |                    |                                                                          |
| <i>Motor Vehicle Fuel Tax Law continued</i>                                          |               |                         |                    |                                                                          |
| §7486                                                                                | Repeal<br>Add | AB 309                  | Ch. 429            | Security – dollar amount and release                                     |
| §7487                                                                                | Repeal<br>Add | AB 309                  | Ch. 429            | Security deemed as payment                                               |
| §7652                                                                                | Repeal        | AB 309                  | Ch. 429            | Throughputter informational report                                       |
| §7653                                                                                | Amend         | AB 309                  | Ch. 429            | Storage tax return credit                                                |
| §7654                                                                                | Repeal        | AB 309                  | Ch. 429            | Failure to file informational report                                     |
| §7655                                                                                | Amend         | AB 1123                 | Ch. 251            | Avoid chaptering out prior year Board-sponsored provisions               |
| §7657                                                                                | Amend         | AB 309<br>AB 1123       | Ch. 429<br>Ch. 251 | Relief of penalty for failure to make a timely report, return or payment |
| §7658                                                                                | Amend         | AB 1123                 | Ch. 251            | Avoid chaptering out prior year Board-sponsored provisions               |
| §7658.1                                                                              | Amend         | AB 1123                 | Ch. 251            | Relief of interest expansion                                             |
| §7659.2                                                                              | Amend         | AB 1123                 | Ch. 251            | Avoid chaptering out prior year Board-sponsored provisions               |
| Article 2.5<br>(commencing with Section 7659.9) to Chapter 5 to Part 2 of Division 2 | Add           | AB 1123                 | Ch. 251            | Avoid chaptering out prior year Board-sponsored provisions               |
| §7659.93                                                                             | Add           | AB 309                  | Ch. 429            | Electronic media                                                         |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                                       | BILL AND CHAPTER NUMBER |                 | SUBJECT                                  |
|-----------------------------------------------|-------------------------|-----------------|------------------------------------------|
| Revenue and Taxation Code                     |                         |                 |                                          |
| <i>Motor Vehicle Fuel Tax Law continued</i>   |                         |                 |                                          |
| §7727                                         | Amend                   | AB 309 Ch. 429  | Conform to Diesel Fuel Tax Law           |
| §8101                                         | Amend                   | AB 309 Ch. 429  | Refund for tax paid twice                |
| §8106.8                                       | Add                     | AB 309 Ch. 429  | Supplier credit                          |
| §8126                                         | Amend                   | AB 309 Ch. 429  | Credit or refund for overpayment         |
| <i>Use Fuel Tax Law</i>                       |                         |                 |                                          |
| §8878                                         | Amend                   | AB 1123 Ch. 251 | Conforming relief of interest provisions |
| §8878.5                                       | Amend                   | AB 1123 Ch. 251 | Relief of interest expansion             |
| §9274                                         | Amend                   | SB 1185 Ch. 543 | Third party check charges                |
| <i>Insurance Tax Law</i>                      |                         |                 |                                          |
| §12206                                        | Amend                   | SB 73 Ch. 668   | Low-income housing credit                |
| §12209                                        | Amend                   | SB 409 Ch. 535  | CDFI Credit                              |
| <i>Cigarette and Tobacco Products Tax Law</i> |                         |                 |                                          |
| §30005.5                                      | Amend                   | SB 312 Ch. 426  | Returned tobacco products                |
| §30014                                        | Amend                   | AB 1123 Ch. 251 | Conforming references – Prop. 10         |
| §30016                                        | Amend                   | AB 1123 Ch. 251 | Conforming references – Prop. 10         |
| §30104                                        | Amend                   | AB 1123 Ch. 251 | Conforming references – Prop. 10         |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                                                 |        | BILL AND CHAPTER NUMBER |         | SUBJECT                          |
|---------------------------------------------------------|--------|-------------------------|---------|----------------------------------|
| Revenue and Taxation Code                               |        |                         |         |                                  |
| <i>Cigarette and Tobacco Products Tax Law continued</i> |        |                         |         |                                  |
| §30108                                                  | Amend  | AB 1123                 | Ch. 251 | Conforming references – Prop. 10 |
| §30123                                                  | Amend  | SB 312                  | Ch. 426 | Returned tobacco products        |
| §30131.2                                                | Amend  | SB 312                  | Ch. 426 | Returned tobacco products        |
| §30176.1                                                | Amend  | AB 1123                 | Ch. 251 | Conforming references – Prop. 10 |
| §30176.2                                                | Add    | SB 312                  | Ch. 426 | Returned tobacco products        |
| §30177                                                  | Amend  | SB 312                  | Ch. 426 | Returned tobacco products        |
| §30178.2                                                | Amend  | SB 312                  | Ch. 426 | Returned tobacco products        |
| §30181                                                  | Amend  | AB 1123                 | Ch. 251 | Conforming references – Prop. 10 |
| §30283.5                                                | Amend  | AB 1123                 | Ch. 251 | Relief of interest expansion     |
| §30459.4                                                | Amend  | SB 1185                 | Ch. 543 | Third party check charges        |
| §30463                                                  | Repeal | AB 1123                 | Ch. 251 | Delete obsolete references       |
| <i>Alcoholic Beverage Tax Law</i>                       |        |                         |         |                                  |
| §32255                                                  | Amend  | AB 1123                 | Ch. 251 | Delete obsolete references       |
| §32256.5                                                | Amend  | AB 1123                 | Ch. 251 | Relief of interest expansion     |
| §32402                                                  | Amend  | SB 1185                 | Ch. 543 | Claim for refund period          |
| §32474                                                  | Amend  | SB 1185                 | Ch. 543 | Third party check charges        |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                                                                   |       | BILL AND CHAPTER NUMBER |         | SUBJECT                      |
|---------------------------------------------------------------------------|-------|-------------------------|---------|------------------------------|
| Revenue and Taxation Code                                                 |       |                         |         |                              |
| <b><i>Energy Resources Surcharge Law</i></b>                              |       |                         |         |                              |
| §40103.5                                                                  | Amend | AB 1123                 | Ch. 251 | Relief of interest expansion |
| §40214                                                                    | Amend | SB 1185                 | Ch. 543 | Third party check charges    |
| <b><i>Emergency Telephone Users Surcharge Law</i></b>                     |       |                         |         |                              |
| §41020                                                                    | Amend | SB 896                  | Ch. 638 | Federal Act conformity       |
| §41097.5                                                                  | Amend | AB 1123                 | Ch. 251 | Relief of interest expansion |
| §41174                                                                    | Amend | SB 1185                 | Ch. 543 | Third party check charges    |
| <b><i>Hazardous Substances Tax Law</i></b>                                |       |                         |         |                              |
| §43152.9                                                                  | Amend | AB 1123                 | Ch. 251 | Erroneous code reference     |
| §43158.5                                                                  | Amend | AB 1123                 | Ch. 251 | Relief of interest expansion |
| §43525                                                                    | Amend | SB 1185                 | Ch. 543 | Third party check charges    |
| <b><i>Integrated Waste Management Fee Law</i></b>                         |       |                         |         |                              |
| §45156.5                                                                  | Amend | AB 1123                 | Ch. 251 | Relief of interest expansion |
| §45652                                                                    | Amend | SB 1185                 | Ch. 543 | Claim for refund period      |
| §45870                                                                    | Amend | SB 1185                 | Ch. 543 | Third party check charges    |
| <b><i>Oil Spill Response, Prevention, and Administration Fees Law</i></b> |       |                         |         |                              |
| §46157.5                                                                  | Amend | AB 1123                 | Ch. 251 | Relief of interest expansion |
| §46502                                                                    | Amend | SB 1185                 | Ch. 543 | Claim for refund period      |
| §46625                                                                    | Amend | SB 1185                 | Ch. 543 | Third party check charges    |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                                                    |                        | BILL AND CHAPTER NUMBER |                                                 | SUBJECT                                            |
|------------------------------------------------------------|------------------------|-------------------------|-------------------------------------------------|----------------------------------------------------|
| <b>Revenue and Taxation Code</b>                           |                        |                         |                                                 |                                                    |
| <b><i>Underground Storage Tank Maintenance Fee Law</i></b> |                        |                         |                                                 |                                                    |
| §50112.4                                                   | Amend                  | AB 1123                 | Ch. 251                                         | Relief of interest expansion                       |
| §50140                                                     | Amend                  | SB 1185                 | Ch. 543                                         | Claim for refund period                            |
| §50156.14                                                  | Amend                  | SB 1185                 | Ch. 543                                         | Third party check charges                          |
| <b><i>Fee Collection Procedures Law</i></b>                |                        |                         |                                                 |                                                    |
| §55046                                                     | Amend                  | AB 1123                 | Ch. 251                                         | Relief of interest expansion                       |
| §55053                                                     | Add                    | SB 1185                 | Ch. 543                                         | Electronic media                                   |
| §55222                                                     | Amend                  | SB 1185                 | Ch. 543                                         | Claim for refund period                            |
| §55335                                                     | Amend                  | SB 1185                 | Ch. 543                                         | Third party check charges                          |
| <b><i>Diesel Fuel Tax Law</i></b>                          |                        |                         |                                                 |                                                    |
| §60015                                                     | Amend                  | AB 309                  | Ch. 429                                         | Add throughputter as diesel fuel registrant        |
| §60022                                                     | Amend<br>Repeal<br>Add | AB 86XX                 | CH. 8 OF<br>the 2nd<br>Extraordinary<br>Session | Partial diesel fuel tax exemption                  |
| §60022                                                     | Amend                  | AB 309                  | CH. 429                                         | Delete reference to inflammable/combustible liquid |
| §60023                                                     | Amend<br>Repeal<br>Add | AB 86XX                 | CH. 8 OF<br>the 2nd<br>Extraordinary<br>SESSION | Partial diesel fuel tax exemption                  |
| §60025                                                     | Add                    | AB 309                  | Ch. 429                                         | Add definition for "gallon"                        |
| §60027                                                     | Amend                  | AB 309                  | Ch. 429                                         | "Qualified" highway vehicle operator               |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                              |       | BILL AND CHAPTER NUMBER |         | SUBJECT                                           |
|--------------------------------------|-------|-------------------------|---------|---------------------------------------------------|
| Revenue and Taxation Code            |       |                         |         |                                                   |
| <i>Diesel Fuel Tax Law continued</i> |       |                         |         |                                                   |
| §60034                               | Amend | AB 309                  | Ch. 429 | Highway vehicle operator/fueler                   |
| §60047                               | Add   | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS         |
| §60047.1                             | Add   | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS         |
| §60048                               | Add   | AB 309                  | Ch. 429 | Add definition for "sale"                         |
| §60048.1                             | Add   | AB 309                  | Ch. 429 | Add definition for "tax paid fuel" and "tax paid" |
| §60049                               | Add   | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS         |
| §60049.1                             | Add   | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS         |
| §60052                               | Amend | AB 309                  | Ch. 429 | Imposition of tax: unregistered person            |
| §60056                               | Amend | AB 309                  | Ch. 429 | Qualified highway vehicle operator: backup tax    |
| §60057                               | Amend | AB 309                  | Ch. 429 | Highway vehicle operator: backup tax              |
| §60058                               | Amend | AB 309                  | Ch. 429 | Highway vehicle operator: backup tax              |
| §60063                               | Add   | AB 309                  | Ch. 429 | Two-party exchange                                |
| §60064                               | Add   | AB 309                  | Ch. 429 | Add presumption to prevent evasion of tax         |
| §60101                               | Amend | AB 309                  | Ch. 429 | Dyed diesel fuel                                  |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                              |        | BILL AND CHAPTER NUMBER |         | SUBJECT                                                         |
|--------------------------------------|--------|-------------------------|---------|-----------------------------------------------------------------|
| Revenue and Taxation Code            |        |                         |         |                                                                 |
| <i>Diesel Fuel Tax Law continued</i> |        |                         |         |                                                                 |
| §60105                               | Amend  | AB 309                  | Ch. 429 | Penalty relating to dyed diesel fuel                            |
| §60106.2                             | Amend  | AB 309                  | Ch. 429 | Misuse of an exemption certificate                              |
| §60106.3                             | Amend  | AB 309                  | Ch. 429 | Correct and conform penalty for misuse of exemption certificate |
| §60107                               | Amend  | AB 309                  | Ch. 429 | Train operator report                                           |
| §60135                               | Add    | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS                       |
| §60161                               | Amend  | AB 309                  | Ch. 429 | Qualified highway vehicle operator license                      |
| §60163                               | Amend  | AB 309                  | Ch. 429 | License to report the backup tax                                |
| §60181                               | Amend  | AB 309                  | Ch. 429 | Revocation of license                                           |
| §60203                               | Repeal | AB 309                  | Ch. 429 | Throughputter informational report                              |
| §60204.5                             | Add    | AB 309                  | Ch. 429 | Revise definition for purposes of ExSTARS                       |
| §60206                               | Amend  | AB 309                  | Ch. 429 | Qualified highway vehicle operator return                       |
| §60211                               | Amend  | AB 309                  | Ch. 429 | Relief of jeopardy interest due to disaster                     |
| §60212                               | Amend  | AB 1123                 | Ch. 251 | Relief of interest expansion                                    |
| §60253                               | Add    | AB 309                  | Ch. 429 | Electronic media                                                |



**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                              |                 | BILL AND CHAPTER NUMBER |         | SUBJECT                                                         |
|--------------------------------------|-----------------|-------------------------|---------|-----------------------------------------------------------------|
| <b>Revenue and Taxation Code</b>     |                 |                         |         |                                                                 |
| <i>Diesel Fuel Tax Law continued</i> |                 |                         |         |                                                                 |
| §60360                               | Amend           | AB 309                  | Ch. 429 | Immediately due and payable                                     |
| §60361.5                             | Add             | AB 309                  | Ch. 429 | Determination for backup tax                                    |
| §60401                               | Amend           | AB 309                  | Ch. 429 | Security – dollar amount and release                            |
| §60501                               | Amend           | AB 309                  | Ch. 429 | Refund for tax paid twice                                       |
| §60503.1                             | Amend           | AB 309                  | Ch. 429 | Misuse of exemption certificate                                 |
| §60503.2                             | Amend           | AB 309                  | Ch. 429 | Correct and conform penalty for misuse of exemption certificate |
| §60508.4                             | Add             | AB 309                  | Ch. 429 | Supplier credit                                                 |
| §60521                               | Amend           | AB 309                  | Ch. 429 | Credit or refund for overpayment                                |
| §60605                               | Amend           | AB 309                  | Ch. 429 | Terminal operator information                                   |
| §60633.1                             | Amend           | SB 1185                 | Ch. 543 | Third party check charges                                       |
| <i>Internet Tax Freedom Act</i>      |                 |                         |         |                                                                 |
| §65004                               | Amend<br>Repeal | SB 394                  | Ch. 343 | Internet Tax Freedom Act                                        |
| <b>Business and Professions Code</b> |                 |                         |         |                                                                 |
| §5000                                | Amend           | SB 133                  | Ch. 718 | CPA Certification Requirements                                  |
| §5015.6                              | Amend           | SB 133                  | Ch. 718 | CPA Certification Requirements                                  |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                              |                 | BILL AND CHAPTER NUMBER |                    | SUBJECT                        |
|--------------------------------------|-----------------|-------------------------|--------------------|--------------------------------|
| <b>Business and Professions Code</b> |                 |                         |                    |                                |
| §5020                                | Amend           | SB 133                  | Ch. 718            | CPA Certification Requirements |
| §5076                                | Add             | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5081                                | Amend           | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5081.1                              | Amend<br>Repeal | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5082                                | Amend           | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5082.1                              | Amend           | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5082.2                              | Amend<br>Repeal | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5082.3                              | Amend           | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5082.4                              | Amend           | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5082.5                              | Add             | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5083                                | Amend<br>Repeal | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |
| §5084                                | Amend<br>Repeal | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                              |       | BILL AND CHAPTER NUMBER |                    | SUBJECT                                     |
|--------------------------------------|-------|-------------------------|--------------------|---------------------------------------------|
| <b>Business and Professions Code</b> |       |                         |                    |                                             |
| §5087                                | Amend | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements              |
| §5088                                | Amend | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements              |
| §5090                                | Add   | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements              |
| §5091                                | Add   | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements              |
| §5092                                | Add   | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements              |
| §5093                                | Add   | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements              |
| §5094                                | Add   | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements              |
| §5095                                | Add   | AB 585<br>SB 133        | Ch. 704<br>Ch. 718 | CPA Certification Requirements              |
| §5134                                | Amend | SB 133                  | Ch. 718            | CPA Certification Requirements              |
| <b>Health and Safety Code</b>        |       |                         |                    |                                             |
| §25205.5                             | Amend | SB 1185                 | Ch. 543            | Generator Fee: refund application dates     |
| §25205.6                             | Amend | AB 1123                 | Ch. 251            | Environmental Fee: erroneous code reference |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                       |       | BILL AND CHAPTER NUMBER |         | SUBJECT                                                                          |
|-------------------------------|-------|-------------------------|---------|----------------------------------------------------------------------------------|
| <b>Health and Safety Code</b> |       |                         |         |                                                                                  |
| §25284.1                      | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: prevention of unauthorized releases    |
| §25299.13                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: definition of "claim"                  |
| §25299.24                     | Amend | AB 1465                 | Ch. 154 | Definition of "Underground Storage Tank"                                         |
| §25299.37                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: claim for corrective action and costs  |
| §25299.52                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: awarding claims                        |
| §25299.56                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: eligibility for a claim for corrective |
| §25299.57                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: claim for corrective action and costs  |
| §25299.58                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: claim for corrective action and costs  |
| §25299.62                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: reimbursement requests                 |
| §25299.78                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: administration                         |
| §25299.81                     | Amend | AB 1465                 | Ch. 154 | Underground Storage Tank Maintenance Fee: sunset                                 |

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

| SECTION                      |       | BILL AND CHAPTER NUMBER |         | SUBJECT                                                |
|------------------------------|-------|-------------------------|---------|--------------------------------------------------------|
| <b>Public Resources Code</b> |       |                         |         |                                                        |
| §42886                       | Amend | AB 1123                 | Ch. 251 | California Tire Fee: due date and late payment penalty |
| §42886.1                     | Amend | AB 1123                 | Ch. 251 | California Tire Fee: clarify reference to "board"      |
| §48007                       | Amend | AB 173                  | Ch. 811 | Extension of inert waste exemption                     |
| §48007.5                     | Add   | AB 173                  | Ch. 811 | Extension of inert waste exemption                     |