



*California State Board of Equalization,
Legislative Division*

LEGISLATIVE BULLETIN



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

SPECIAL TAXES LEGISLATION

2004

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Assembly Bill 901 (Jackson) Chapter 84
Covered Electronic Waste Recycling Fee: Operative Date

Effective June 30, 2004. Amends Section 42464 of the Public Resources Code.

BILL SUMMARY

This bill revises the operative date for the imposition of the covered electronic waste recycling fee from July 1, 2004 to November 1, 2004.

Sponsor: Assembly Member Hannah Beth Jackson

LAW PRIOR TO AMENDMENT

Chapter 8.5 (commencing with Section 42460) to Part 3 of Division 30 of the Public Resources Code enacted the Electronic Waste Recycling Act of 2003 (the Act). Among other things, the Act imposes, **on and after July 1, 2004**, a covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer.

A retailer selling a covered electronic device to a consumer is required to collect a covered electronic waste recycling fee from the consumer for each covered device sold by the retailer in the following amounts:

- Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.
- Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

The Integrated Waste Management Board (IWMB) is authorized to collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). However, the IWMB may contract with the BOE or another party for collection of the covered electronic waste recycling fee.

AMENDMENT

This bill revises the imposition date for the covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer from “on and after **July 1, 2004,**” to “on and after **November 1, 2004.**”

The bill became effective immediately as an urgency statute.

BACKGROUND

In 2002, Senator Sher introduced Senate Bill 1523, which would have placed a \$10 advanced recycling fee on the sale of all new CRTs sold in California. Senate Bill 1523 passed both houses of the Legislature, but was vetoed by the Governor. In his veto statement, Governor Davis said he would rather see California legislation modeled after the product stewardship approach in the European Union, and that he was willing to sign legislation in 2003 that “challenges industry to assume greater responsibility for the recycling and disposal of electronic waste.” The veto statement also stated: “I challenge the industry to lead the way and devise an innovative solution for the source reduction, recycling and safe disposal of electronic waste . . . Moreover, we simply must demonstrate our leadership and compassion by making sure that California's electronic waste is not irresponsibly sent to underdeveloped nations.” In response to the Governor’s challenge, Senator Sher introduced Senate Bill 20.

Senate Bill 20 (Sher, Ch. 526, Stats. 2003) enacted the Electronic Waste Recycling Act of 2003. Among other things, the Act imposes a covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer. The Act authorizes the IWMB to contract with the BOE or another party for collection of the fee, however, the BOE has not entered into a contract as of the date of this analysis.

COMMENTS

1. **Purpose.** This bill is intended to postpone the implementation of the covered electronic waste recycling fee.
2. **The BOE could not administer a new fee program commencing on and after November 1, 2004, without substantial risk to its Revenue Database Consolidation (RDC) Project.** This measure alone would not affect the BOE since the BOE has not contracted with the IWMB to collect the covered electronic waste recycling fee. *However,* if this measure, along with **SB 50 (Sher)**, are signed by the Governor, the fee would be implemented by the IWMB on or before November 1, 2004 and collected by the BOE on and after January 1, 2005.

The two-agency approach to implement and collect the fee *appears* to address BOE concerns that it could not implement any new fee program with an operative date prior to January 1, 2005, due to the substantial risk to its multi-year, multi-phase RDC project. The RDC project involves extensive changes to the Integrated Revenue Information System (IRIS), the BOE’s primary tax administration system. The final phase of the RDC project (implementation and

stabilization efforts) began in April 2004 and will be completed by the end of the year. In addition, the BOE is currently in the process of developing, testing and implementing technology changes related to new legislatively mandated programs* enacted in 2002 and 2003. This effort has been included in the RDC project. Making any modifications at the end of the system development would jeopardize the BOE's RDC project, including the programming for the new legislatively mandated programs.

However, it would be **costly, inefficient and duplicative to have the IWMB commence a new fee program only to have it taken over by the BOE within two months.** In addition, BOE staff has serious concerns that the IWMB may not capture all feepayers, which could result in the BOE inheriting a program with incomplete registration information.

To address these concerns, it is suggested that AB 901 be amended to impose the covered electronic waste recycling fee operative **January 1, 2005**, and amend SB 50 to provide the BOE sole responsibility for implementing and collecting the fee.

3. **Could the state require out-of-state retailers to remit a covered electronic waste recycling fee?** Various Supreme Court cases have focused on states' ability to impose the use tax on out-of-state firms making sales to in-state customers. In 1967 the Supreme Court ruled in *National Bellas Hess, Inc. v. Illinois Department of Revenue*, 386 U.S. 753 (1967), that a firm that has no link to a state except mailing catalogs to state residents and filling their orders by mail cannot be subject to that state's sales or use tax. The Court ruled that these mail order firms lacked substantial physical presence, or nexus, required by the Due Process Clause and the Commerce Clause of the United States Constitution.

In the 1977 case of *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274 {51 L.Ed.2d 326, 97 S.Ct. 1076} the Court articulated that, in order to survive a Commerce Clause challenge, a tax must satisfy a four part test: 1) it must be applied to an activity with a substantial nexus with the taxing State, 2) it must be fairly apportioned, 3) it does not discriminate against interstate commerce, and 4) it must be fairly related to the services provided by the State.

North Dakota enacted anti-National Bellas Hess legislation with the expressed purpose of creating nexus with mail order firms selling to consumers in the state, in an attempt to compel out-of-state retailers to collect the use tax on mail order sales and test the continuing validity of the National Bellas Hess decision. The statute was challenged, and in 1992 the Supreme Court issued a ruling in *Quill Corporation v. North Dakota* (1992) 504 U.S. 298. The Court in *Quill* applied the Complete Auto Transit analysis and held that satisfying due process concerns does not require a physical presence, but rather requires only minimum contacts with the taxing state. Thus when a mail-order business purposefully directs its activities at residents of the taxing state, the Due Process Clause does not prohibit the state's requiring the retailer to collect the state's use tax. However,

*SB 1049 (Water Rights Fee), AB 71 (Cigarette and Tobacco Products Licensing Act), and SB 1701 (Alternative Cigarette and Tobacco Stamps)

the Court held further that physical presence in the state was required for a business to have a "substantial nexus" with the taxing state for purposes of the Commerce Clause. The Court therefore affirmed that in order to survive a Commerce Clause challenge, a retailer must have a physical presence in the taxing state before that state can require the retailer to collect its use tax.

Based on the above cases, it is questionable whether the state could require an out-of-state retailer of a covered electronic device, who has no physical presence in California, to remit a fee in order for that device to be sold to a consumer in this state. Furthermore, existing law (Section 42464) imposes the covered electronic waste recycling fee "upon the first sale **in the state** of a covered electronic device to a consumer by a retailer." Based on that language, it appears that the fee may not apply to out-of-state retailers (whether or not that retailer has a physical presence in the state) since the sale occurs at the time title to the property transfers to the buyer, which typically occurs **outside of the state**.

Assembly Bill 923 (Firebaugh, et al.) Chapter 707***California Tire Fee Increase***

Effective January 1, 2005. Among its provisions, amends, adds, and repeals Sections 42885 and 42889 of the Public Resources Code.

BILL SUMMARY

Among other things, this bill:

- Increases the California tire fee from one dollar (\$1.00) to one dollar and seventy-five cents (\$1.75) per tire, until December 31, 2006, and decreases the fee after that date to one dollar and fifty cents (\$1.50). Commencing January 1, 2015, the fee decreases to seventy-five cents (\$0.75) per tire.
- Requires the Board to transfer a specified amount of the California tire fee to the Air Pollution Control Fund, until December 31, 2014.
- Decreases a retail seller's reimbursement for any costs associated with the collection of the fee from 3 percent to 1.5 percent, until December 31, 2014.

Sponsor: Assembly Member Marco Firebaugh

LAW PRIOR TO AMENDMENT

Under existing law, Section 42885 of the Public Resources Code imposes a California tire fee of one dollar (\$1.00) per tire on every person who purchases a new tire, as defined, until December 31, 2006, and seventy-five cents (\$0.75) per tire after that date.

After deducting 3 percent of the total fees as reimbursement for costs associated with the collection of the fee, a retailer must remit the fees to the Board for deposit in the California Tire Recycling Management Fund.

The Board administers and collects the California tire fee on behalf of the California Integrated Waste Management Board (CIWMB) in accordance with the Fee Collection Procedures Law.

AMENDMENT

Among other things, this bill amends, repeals and adds Section 42885 of the Public Resources Code to increase the California tire fee from one dollar (\$1.00) to one dollar and seventy-five cents (\$1.75) per tire, until December 31, 2006, and decrease the fee after that date to one dollar and fifty cents (\$1.50). Of the revenues generated by the fee increase, the Board is required to transfer an amount equal to seventy-five cents (\$0.75) per tire on which the fee is imposed to the Air Pollution Control Fund, until December 31, 2007, and fifty cents (\$0.50) after that date. In addition, the percentage of the fee that a retail seller may retain as reimbursement for any costs associated with the collection of the fee decreases from

3 percent to 1.5 percent. These amendments remain in effect only until December 31, 2014, and as of that date are repealed unless a later enacted statute deletes or extends that date.

Operative January 1, 2015, this bill adds Section 42885 to the Public Resources Code as it reads under existing law. As such, Section 42885 imposes a California tire fee on every person who purchases a new tire of seventy-five cents (\$0.75) per tire. In addition, the percentage of the fee that a retailer seller may retain as reimbursement for any costs associated with the collection of the fee will be restored to 3 percent.

COMMENTS

1. **Purpose.** This bill is intended to provide substantial and long-term funding sources for air pollution reduction incentive programs that will cut smog forming pollution by up to seven tons per day and substantially lower children's exposure to toxic diesel particulate emissions.
2. **This bill would require that the Board's contract with the CIWMB be renegotiated.** This bill proposes to increase the California tire fee on and after January 1, 2005, which is in the middle of the Board's current contract with the CIWMB to administer the fee for fiscal year 2004-05. In order to begin to revise reporting forms and develop computer programs, the Board would need to renegotiate its contract with the CIWMB to cover the Board's start-up costs that are not already identified in the 2004-05 contract.
3. **Board staff does not foresee any administrative problems with this measure.** Enactment of this measure would not materially effect the Board's administration of the California Tire Fee Law.

Assembly Bill 1906 (Lowenthal) Chapter 774
Underground Storage Tank Maintenance Fee Increase

Effective January 1, 2004. Among its provisions, amends Section 25299.43 of the Health and Safety Code.

BILL SUMMARY

This bill increases the underground storage tank maintenance fee by an additional \$0.001 mill per gallon of petroleum stored, on or after January 1, 2005, and by an additional \$0.001 mill per gallon of petroleum stored, on or after January 1, 2006.

Sponsor: 7-Eleven

LAW PRIOR TO AMENDMENT

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. This fee is due to sunset on January 1, 2011.

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 State Water Resources Control Board (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.

AMENDMENT

This bill amends Section 25299.43 of the Health and Safety Code to increase the storage fee by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank, on and after January 1, 2005, for a total of thirteen mills (\$0.013) per gallon. On and after January 1, 2006, the storage fee increases by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

This bill also makes other non-substantive technical changes.

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) added Section 25299.43 to the Health and Safety Code to increase the storage fee as follows; 2 mills (\$0.002) effective January 1, 1996 through December 31, 1996; and an additional 3 mills (\$0.003) January 1, 1997 and thereafter.

COMMENTS

1. **Purpose.** This bill is intended to ensure that all claimants under the cleanup program would have a reasonable opportunity to have approved claims paid before the expiration of the cleanup program.
2. **This bill should contain a specific appropriation to the Board.** This bill proposes to increase the underground storage tank maintenance fee on and after January 1, 2005, which is in the middle of the state's fiscal year. In order to begin to revise reporting forms and develop computer programs, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not already be identified in the Board's 2004-05 budget.

As an alternative to an appropriation, the author may want to consider amending the bill to move the operative date of the initial fee increase from January 1, 2005 to July 1, 2005. This would allow the Board to obtain funding for administrative start-up costs through the Budget Change Proposal process.

3. **Board staff does not foresee any administrative problems with this measure.** Enactment of this measure would not materially effect the Board's administration of the Underground Storage Tank Maintenance Fee Law.

Assembly Bill 2030 (Cogdill) Chapter 634
Cigarette and Tobacco Products Tax Law

Effective January 1, 2005. Amends Section 30458.3 of, and adds Section 30459.8 to, the Revenue and Taxation Code.

BILL SUMMARY

This bill:

- Requires the Board to conduct at least two hearings per year before the full Board, as specified, to present proposals on changes to the Cigarette and Tobacco Products Tax Law that may further advance voluntary compliance and improve the relationship between taxpayers and government.
- Requires the Board to post on its Web site the amounts of cigarette and tobacco products revenues collected and disbursed, as described, for the previous calendar quarter.

Sponsor: California Distributors Association

LAW PRIOR TO AMENDMENT

Section 30458.3 of the Cigarette and Tobacco Products Tax Law requires the Board to conduct an annual hearing before the full Board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Cigarette and Tobacco Products Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government. Similar provisions are also contained in other tax and fee laws administered by the Board.

Section **30101**, **30123** and **30131.2** impose an excise tax of 43 1/2 mills per cigarette (87 cents per package of 20) on each cigarette distributed. Sections **30123** and **30131.2** also impose a surcharge on tobacco products at a rate to be annually determined by the Board. The tobacco products tax rate is equivalent to the combined rate of tax on cigarettes and based on the March 1 wholesale cost of cigarettes. Currently, the surcharge rate for fiscal year 2003-04 is 46.76 percent. The revenues for the cigarette and tobacco products tax are disbursed as follows:

Fund	Disposition of Revenue
Cigarette Tax	
General Fund	11.49%
Breast Cancer Fund	2.30%
Cigarette & Tobacco Products Surtax Fund	28.74%
California Children & Families First Trust Fund	57.47%
Total	100%
Tobacco Products Tax	
Cigarette & Tobacco Products Surtax Fund	63.51%
California Children & Families First Trust Fund	36.49%
Total	100%

Currently, the Board is not mandated to post revenue information related to the cigarette and tobacco products tax, or any other tax or fee collected by the Board, on its Web site. Cigarette and tobacco products tax revenue figures are included in the Board's Annual Report, which is posted to the Web site. However, that information does not reflect the amount of revenue disbursed to each of the cigarette and tobacco products tax funds or accounts.

AMENDMENT

This bill amends **Section 30458.3** to increase the number, from "at least one" to "at least two," hearings per year conducted before the full Board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Cigarette and Tobacco Products Tax Law.

This bill also adds **Section 30459.8** to the Cigarette and Tobacco Products Tax Law to require the Board to, in each calendar quarter, post on its Web site the amounts of cigarette and tobacco products revenues collected and disbursed for the previous calendar quarter to the General Fund, Breast Cancer Fund, Cigarette and Tobacco Products Surtax Fund, and the California Children and Families Trust Fund Account.

COMMENTS

1. **Purpose.** This bill is intended to make cigarette and tobacco products tax revenues collected and disbursed readily available to the nonprofit groups that depend on those taxes for their funding. This measure is also intended to provide a vehicle for cleanup to AB 71.
2. **This measure would not be problematic to administer.** Each year the Members of the Board hold public hearings in both Sacramento and Culver City, at which taxpayers are invited to express their ideas, concerns, and recommendations regarding the programs and laws administered by the Board. Since the Board already conducts two hearings per year, one in northern California and one in Southern California, this provision would not affect the Board.

The bill would also require the Board to post on its Web site the amounts of cigarette and tobacco products revenues collected and disbursed for the previous calendar quarter, which would not materially affect the Board's workload.

Assembly Bill 2491 (Assembly Member Jerome Horton) Chapter 82
Cigarette and Tobacco Products Licensing Act Clean-up

Effective June 30, 2004. Amends Sections 22971, 22974.7, 22979, 22979.4, and 22980.2 of, and adds Sections 22972.1, 22978.8, and 22983 to, the Business and Professions Code, and amends Sections 30211 and 30437 of the Revenue and Taxation Code.

BILL SUMMARY

This bill:

- Authorizes the Board to issue a temporary cigarette and tobacco products license to a retailer. (*BPC §§22972.1*)
- Requires the Board to include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked under the Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act). (*BPC §22978.8*)
- Allows the Board to collect fees, civil fines, and penalties imposed pursuant to the Licensing Act in accordance with the Fee Collection Procedures Law. (*BPC §22983*)
- Revises the requirements for notice of the seizure and forfeiture of cigarettes and tobacco products. (*RTC §30437*)
- Makes other technical and clarifying changes to the Licensing Act and to the Cigarette and Tobacco Products Tax Law. (*BPC §§22971, 22974.7, 22979, 22979.4, 22980.2; RTC §30211*)

Sponsor: Assembly Member Jerome Horton

Authorize the Board to Issue Temporary Retailer Licenses
Business and Professions Code Section 22972.1

LAW PRIOR TO AMENDMENT

The Licensing Act requires a retailer to have in place a license to engage in the sale of cigarettes or tobacco products commencing June 30, 2004. The Board is required to issue a license to a retailer upon receipt of a completed application and payment of the one-time license fee of one hundred dollars (\$100), unless otherwise specified.

The Licensing Act prohibits a distributor, wholesaler or manufacturer and importer from selling cigarettes or tobacco products to a retailer who is not licensed. In addition, unlicensed persons are prohibited from selling cigarettes or tobacco products in this state.

AMENDMENT

This bill adds Section 22972.1 to the Business and Professions Code to allow the Board to issue to a retailer a temporary license with a scheduled expiration date. The Board will determine the expiration date, which occurs on or before September 30, 2004. A temporary license issued will be automatically terminated upon the issuance of a permanent license and will be subject to the same suspension, revocation, and forfeiture provisions that apply to permanent licenses.

COMMENTS

1. **Purpose.** This provision is intended to address the possible impact on distributor and wholesaler sales of cigarettes and tobacco products to retailers since a number of retailers may not be licensed by the June 30, 2004, deadline.
2. **Retailer licenses to date.** Despite the Board's extensive outreach effort to notify retailers of their obligation to have a cigarette and tobacco products license in place by June 30, 2004, only 32,602 retailers have been licensed to sell cigarettes and tobacco products in this state as of the date of this analysis.

Board staff agrees that this provision would provide additional assurance to distributors and wholesalers that the Licensing Act would not impede their sales of cigarettes and tobacco products to retailers come the June 30, 2004, deadline for retailers to have a license in place.

Specifically, this provision would allow a retailer to call the Board to request a retailer's license and the BOE could instantly issue a temporary license with a confirmation number, provided the retailer has a seller's permit number. Since the temporary license would be issued immediately, the sale by a distributor or wholesaler to the retailer could take place with the distributor or wholesaler using the retailer's seller's permit number as the temporary cigarette and tobacco products license number. After the issuance of a temporary license, the Board would mail or fax the temporary license to the retailer so that it could be displayed as required pursuant to the Licensing Act. The Board would also follow-up by sending that retailer an application for the 12-month retailer's license. Upon receipt of the completed application and the one-time license fee of one hundred dollars (\$100) per location, the Board would issue the license as provided in Section 22973.1 of the Business and Professions Code. At that time, the temporary license would automatically terminate.

This provision would facilitate sales by distributors and wholesalers to unlicensed retailers by instantly providing a temporary license to a retailer, provide an efficient means of identifying unlicensed retailers, and provide the Board a mechanism to follow-up on retailers who were issued a temporary license.

**Include on the Board Web site Wholesalers and Distributors whose License
has been Suspended or Revoked**
Business and Professions Code Section 22978.8

LAW PRIOR TO AMENDMENT

The Licensing Act prohibits a manufacturer, importer, distributor or wholesaler from **selling** cigarettes and/or tobacco products to any person who is not licensed or whose license has been suspended or revoked. In addition, no retailer, distributor, wholesaler, or importer may **purchase** cigarettes and/or tobacco products from any person required to be licensed but who is not licensed or whose license has been suspended or revoked.

Any violation of the Licensing Act by any person, except as provided, is a misdemeanor. Each offense is punishable as follows:

- A fine not to exceed five thousand dollars (\$5,000),
- Imprisonment not exceeding one year in a county jail, or
- Both the fine and imprisonment.

Currently, the Licensing Act requires the Board to notify all licensed distributors and wholesalers by electronic mail within 48 hours of a license suspension or revocation. However, no provision exists requiring the Board to notify retailers of distributor and wholesaler license suspension or revocation.

AMENDMENT

This bill adds Section 22978.8 to the Business and Professions Code to require the Board to include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked.

COMMENTS

1. **Purpose.** This provision is intended to provide retailers a manner in which to verify that the distributor or wholesaler from whom they purchase cigarette and tobacco products is licensed as required by the Licensing Act.
2. **Should the Web site information be expanded?** Staff notes that only listing the names of wholesalers and distributors whose license has been suspended or revoked could indicate to a retailer that an unlicensed wholesaler or distributor, whose name would not appear on the Board's Web site, is properly licensed.

To address this concern, the Board will update its current list of cigarette distributors and wholesalers properly licensed pursuant to the Cigarette and Tobacco Products Tax Law to include distributors and wholesalers properly licensed for both the Cigarette and Tobacco Products Tax Law and the Licensing Act.

Fee, Fine and Penalty Collected Pursuant to the Fee Collection Procedures Law
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Business and Professions Code Section 22983

LAW PRIOR TO AMENDMENT

The Licensing Act imposes various retailer, wholesaler and distributor license fees, civil fines, and penalties. Although the Board may suspend or revoke the license of a person that fails to make payment of amounts due and payable, it does not have the necessary authority to collect such amounts consistent with other taxes and fees collected by the Board.

AMENDMENT

This provision adds Section 22983 to the Licensing Act to allow the Board to collect fees, civil fines and penalties imposed in accordance with Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code.

IN GENERAL

The Fee Collection Procedures Law^{*} contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Chapter 4 (commencing with Section 55121) specifically provides administrative provisions for the collection of amounts due and payable, including, but not limited to judgement for fee amounts, warrant for collection and levies.

COMMENT

Purpose. This provision is intended to provide the Board with the necessary authority to collect fees, civil fines and penalties consistent with other taxes and fees administered by the Board.

^{*} Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code

Notice of the Seizure and Forfeiture of any Cigarettes and Tobacco Products

Revenue and Taxation Code Section 30437

LAW PRIOR TO AMENDMENT

Section 30437 of the Cigarette and Tobacco Products Tax Law requires the Board to provide a notice of the seizure and forfeiture of cigarette and tobacco products as follows:

- Notice must be given by personal service or by registered mail to all persons known by the Board to have any right, title or interest in the property.
- Notice of seizure and forfeiture must be given by one publication in a newspaper of general circulation in the county where the seizure was made, as specified. Newspaper publication is not required when the amount of cigarettes seized is less than 61 cartons of 200 cigarettes each or an equivalent amount of tobacco products.

The notice must include a description of the property, the reason for the seizure, and the time and place of the seizure.

AMENDMENTS

This provision amends Section 30437 to instead require the Board to provide a notice of the seizure and forfeiture of cigarette and tobacco products as follows:

- Notice must be given by personal service or by **certified** mail to all persons known by the Board to have any right, title or interest in the property.
- Notice of seizure and forfeiture must be **published on the Board's Web site** for a period of six months from the notice of seizure.

The notice is still required to include a description of the property, the reason for the seizure, and the time and place of the seizure.

IN GENERAL

According to the United States Postal Service Web site, **Certified Mail™** provides the sender a receipt stamped with the date of mailing. In addition, a unique article number allows the sender to verify delivery online. As an additional security feature, the recipient's signature is obtained at the time of delivery and the Post Office™ maintains a record.

Registered Mail™ is designed to provide added protection for valuable mail. Items sent with Registered Mail are placed under tight security from the point of mailing to the point of delivery, and insured up to \$25,000 against loss or damage. The sender can verify online the date and time of delivery and the delivery attempts. This service provides maximum protection and security for valuables.

Both services are identical in that they provide the sender a mailing receipt and online access to the delivery status. The fees for the two services are as follows:

	Declared Value	Fee in Addition to Postage
Registered Mail with Insurance	\$0.00*	\$7.50
Certified Mail	N/A	\$2.30

COMMENTS

1. **Purpose.** This provision is intended to notify the public of the seizure and forfeiture of any cigarettes and tobacco products.
2. **Registered Mail appears unnecessary.** The added cost to give notice of seizure and forfeiture by Registered Mail appears unnecessary since such notice is not considered “property of monetary value.” Certified Mail would more than adequately serve the Board by providing a mailing receipt and online access to the delivery status.
3. **Provisions would not be problematic to administer.** Enactment of this provision would not affect staff’s time related to the administration and collection of the Cigarette and Tobacco Products Tax.

Make other technical and clarifying changes to the Licensing Act and to the Cigarette and Tobacco Products Tax Law

*Business and Professions Code §§22971, 22974.7, 22979, 22979.4 and 22980.2;
Revenue and Taxation Code §30211*

COMMENTS

Section 22971 of the Business and Professions Code defines various terms for purposes of the Licensing Act. This provision adds a definition for the term “brand family” to have the same meaning as that term is defined in Section 30165.1 of the Cigarette and Tobacco Products Tax Law.

Section 22974.7 provides that in addition to any other civil or criminal penalty provided by law, upon a finding that a retailer has violated any provision of the Licensing Act, the Board may take the following actions:

- In the case of the first offense, the Board may revoke or suspend the license or licenses of the retailer pursuant to the procedures applicable to the revocation of a license, as specified.

* Increases in the fee correspond with increases in the declared value of the property shipped.

- In the case of a second or any subsequent offense, in addition to the action authorized for the first offense, the Board may impose a civil penalty in an amount not to exceed the greater of either of the following:
1. Five times the retail value of the cigarettes or tobacco products.
 2. Five thousand dollars (\$5,000).

This provision clarifies that in the case of a second or any subsequent offense, the civil penalty may apply to the retail value of the seized cigarettes or tobacco products.

Section 22979 requires every manufacturer and every importer to obtain and maintain a license to engage in the sale of cigarettes. However, the Board may not grant or permit the maintenance of a license to any manufacturer or an importer of cigarettes that does not affirmatively certify, both at the time the license is granted and annually thereafter, that 1) all packages of cigarettes manufactured or imported by that person and distributed in this state fully comply with Cigarette and Tobacco Products Tax Law Section 30163, and 2) the cigarettes contained in those packages are the subject of filed reports that fully comply with all requirements of the federal Cigarette Labeling and Advertising Act.

This provision corrects the reference to the U.S. Code for the federal Cigarette Labeling and Advertising Act (Labeling Act), clarify that the term “cigarettes” does not include little cigars for purposes of the Labeling Act, and make a non-substantive technical correction. In addition, the bill provides that a manufacturer or importer license is not assignable or transferable and clarify that a manufacturer or importer is required to surrender its license, as specified, which is consistent with existing retailer, wholesaler and distributor license requirements.

Section 22979.4 requires all manufacturers and importers to retain purchase records that meet specified requirements for all cigarettes or tobacco products purchased and other records required by the Board. The records are required to be maintained for a period of one year from the date of purchase on the manufacturer's or importer's premises identified in the license, and thereafter, the records are to be made available for inspection by the Board or a law enforcement agency for a period of four years.

This provision deletes the requirement that manufacturers maintain purchase invoices for purposes of the Licensing Act. Purchase invoices are used by the Board to audit excise taxes and as an audit trail. However, manufacturers of cigarettes do not have purchase invoices for cigarettes or tobacco products since they *produce* such products. Manufacturers, however, are still be required to maintain records relating to the sale of cigarettes. Furthermore, a manufacturer is subject to the purchase record requirements as a wholesaler or distributor if they were to purchase cigarettes or tobacco products for the purpose of distribution.

Section 22980.2 provides that each day after notification by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed offers cigarette and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale constitutes a separate violation.

This provision clarifies that each day after notification, as specified, by the Board or by a law enforcement agency constitutes a separate violation.

Section 30211 of the Cigarette and Tobacco Products Law, in part, requires the Board to ascertain as best it may the amount of the cigarettes or tobacco products distributed, determine immediately the tax on that amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater, issue a jeopardy determination to the unlicensed person pursuant to Section 30241, and give the unlicensed person notice per Section 30244 of the Cigarette and Tobacco Products Tax Law.

This provision deletes an incorrect reference to a jeopardy determination issued pursuant to Section 30241 and makes the section consistent with a similar provision contained in the Diesel Fuel Tax Law.

This bill became effective immediately as an urgency statute.

Assembly Bill 3092 (J. Horton) Chapter 822
Cigarette and Tobacco Products Licensing Act of 2003 Amendments
Cigarette Stamps and Meter Impressions

Effective September 27, 2004. Among its provisions, amends Sections 22978.4 and 22980.1, and adds Section 22971.4 to the Business and Professions Code.

BILL SUMMARY

Among its provisions, this bill does the following:

- Specifies that any person that is exempt from regulation under the United States Constitution, the laws of the United States, or the California Constitution is exempt from the provisions of the Cigarette and Tobacco Products Licensing Act of 2003 (Act); that sales of cigarettes and tobacco products to such people are not prohibited under the Act; and change the wording required on invoices of tobacco product wholesalers and distributors.
- Clarifies that the Board may use regulatory authority with regard to cigarette stamps and meter impressions in a manner that does not affect commerce within this state.

Sponsor: Assembly Member Jerome Horton

Cigarette and Tobacco Products Licensing Act of 2003 Amendments
Revenue and Taxation Code Sections 22971.4, 22978.4 and 22980.1

LAW PRIOR TO AMENDMENT

The Cigarette and Tobacco Products Licensing Act of 2003 requires the Board to administer a statewide cigarette and tobacco products license program to regulate the sale of cigarettes and tobacco products in the state. The Act requires every distributor and every wholesaler to annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products. The Board is required to issue a license to a distributor or wholesaler upon receipt of a completed application and payment of the fees, unless otherwise specified.

Under the provisions of the Act, no distributor, wholesaler, or importer is permitted to sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to the Act, or to any person whose license has been suspended or revoked.

AMENDMENT

Among its provisions, this bill adds Section 22971.4 to the Business and Profession Code to specify that any person that is exempt from regulation under the United States Constitution, the laws of the United States, or the California Constitution is exempt from the provisions of the Cigarette and Tobacco Products Licensing Act of 2003.

This bill also amends Section 22978.4 of the Business and Professions Code to provide that each distributor or wholesaler shall include on each invoice for the sale of cigarette and tobacco products the following statement: "All California cigarette and tobacco product taxes are included in the total amount of this invoice." This newly required statement would be in place of the requirement to list the exact amount of excise taxes that current law requires.

Further, this bill amends Section 22980.1 of the Business and Professions Code to provide that sales of cigarettes or tobacco products are permitted to a distributor, wholesaler, importer, or any other person that the state, pursuant to the United States Constitution, the laws of the United States, or the California Constitution, is prohibited from regulating.

This bill contains an urgency clause and becomes effective immediately.

BACKGROUND

In 2003, Assembly Bill 71 (J. Horton, Ch. 890) enacted the California Cigarette and Tobacco Products Licensing Act of 2003. Among its provisions, the bill established a statewide licensure program to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products that is administered by the Board. Under this licensure program, sales of cigarettes and tobacco products to retailers, distributors, or wholesalers is prohibited unless the buyer is licensed by the Board. However, some retailers are not subject to the provisions of the licensure program since they are exempt pursuant to the Constitution of the United States, laws of the United States, or the California Constitution. Examples of such retailers would include Indians on Indian reservations and stores operated by the United States Government on military bases. Even though these retailers are not required by law to obtain a license with the Board, cigarette and tobacco sellers are prohibited from selling to them.

COMMENTS

1. **Purpose.** The purpose of this bill is to make technical amendments to the Cigarette and Tobacco Products Licensing Act of 2003.
2. **Summary of amendments.** The **June 16** amendments pertained to provisions in this bill that would not be administered by the Board. The **August 23** amendments removed the provisions that would have authorized any Board employee granted limited peace officer status to issue citations for violations of Stop Tobacco Access to Kids Enforcement (STAKE) Act or Section 308 of the Penal Code and added provisions making technical amendments to the

California Cigarette and Tobacco Products Licensing Act of 2003. The **August 26** amendments made additional technical amendments to the licensure program provisions and removed other provisions from the bill not related to the Board.

3. **Exemption from the licensure program.** The technical amendments this bill makes to the licensure program allows for the sale of cigarettes and tobacco products to persons who are not required to be licensed, such as Indians on Indian reservations and retail outlets operated by the United States Government on military bases.

Cigarette Stamps and Meter Impressions

Uncodified Section

LAW PRIOR TO AMENDMENT

Current Cigarette and Tobacco Products Tax Law requires the Board, as of January 1, 2005, to replace stamps and meter impressions, currently required to be affixed to a package of cigarettes prior to distribution as evidence of payment of the tax imposed, with stamps and meter impressions that can be read with a scanning or similar device. The law requires the stamps and meter impressions to be encrypted with, at a minimum, the following information:

- The name and address of the wholesaler or distributor affixing the stamp or meter impression.
- The date the stamp or meter impression was affixed.
- The denominated value of the stamp or meter impression.

AMENDMENT

This bill includes an uncodified section that specifies it is the intent of the Legislature that the Board is authorized to exercise its regulatory authority with regard to cigarette stamps and meter impressions in a manner that does not affect commerce within this state.

This bill contains an urgency clause and becomes effective immediately.

BACKGROUND

In 2002, Senate Bill 1701 (Peace, Ch. 881) required the Board, as of January 1, 2005, to replace stamps and meter impressions, currently required to be affixed to a package of cigarettes prior to distribution as evidence of payment of the tax imposed, with stamps and meter impressions that can be read with a scanning or similar device.

The Board's Investigations Division has identified several evasion schemes involving counterfeit cigarette stamps. Production methods of such stamps include, in part, offset printing, silkscreen, lithography, flexo printing, laser printing and personal

computer. Currently, counterfeit stamps are typically of such good quality that they appear identical to an authentic stamp, therefore making it virtually impossible to identify counterfeit stamps by visual inspection. The provisions of SB 1701 addressed the identification of counterfeit stamps by requiring the use of a stamp that is capable of being read by a scanning or similar device. Each stamp would be a unique, encrypted digital signature. An on-site decryption through the use of a scanning or similar device would instantly reveal the unique digital signature, which would verify the authenticity of the stamp. A duplicate or wrong message would indicate a counterfeit stamp.

To implement the provisions of SB 1701, the Board accepted bids from vendors interested in providing the new tax stamp. On August 9, 2004, the Board awarded the contract for the new tax stamps to one of the bidders. The new tax stamps are expected to be in place as of January 1, 2005, as required by law.

COMMENT

Purpose. This bill is intended to clarify that the Board may exercise its regulatory authority with regard to cigarette tax stamps and meter impressions in a manner that does not affect commerce in this state. As the Board has awarded a contract to a company to carry out this task, it is anticipated that the new tax stamps will be in place as of January 1, 2005. However, in the unlikely event the new stamps would not be available state-wide, this bill clarifies that the Board may exercise its regulatory authority to work around any potential delays so as to not affect distributors, wholesalers, manufacturers and retailers of cigarettes and tobacco products.

Senate Bill 50 (Sher) Chapter 863
Covered Electronic Waste Recycling Fee

Effective September 29, 2004. Among its provisions, adds Section 25214.10.1 to the Health and Safety Code, and amends Sections 42463, 42464, 42465.3, 42476, and 42485 of, adds Sections 42464.4, 42464.6, 42486, and 48000 to, and repeals and adds Section 42464.2 of, the Public Resources Code.

BILL SUMMARY

Among other things, this bill:

- Requires the State Board of Equalization (BOE) to collect the covered electronic waste recycling fees, and
- Revises the operative date for the imposition of the covered electronic waste recycling fee from November 1, 2004 to January 1, 2005.

Sponsor: Senator Sher

LAW PRIOR TO AMENDMENT

Covered Electronic Waste Recycling Fee

Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code enacted the Electronic Waste Recycling Act of 2003 (the Act). Among other things, the Act imposes, **on and after November 1, 2004**, a covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer.

A retailer selling a covered electronic device to a consumer is required to collect a covered electronic waste recycling fee from the consumer for each covered device sold by the retailer in the following amounts:

- Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.
- Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

The CIWMB is authorized to collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). However, the California Integrated Waste Management Board (CIWMB) may contract with the BOE or another party for collection of the covered electronic waste recycling fee.

The Act also provides that a civil liability in an amount of up to two thousand five hundred dollars (\$2,500) per offense may be administratively imposed by the *CIWMB* for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid. In addition, a civil penalty in an amount of up to five thousand dollars (\$5,000) per offense may be imposed by a *superior court* for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid.

Integrated Waste Management Fee

Under current law, Section 48000 of the Public Resources Code imposes an integrated waste management fee on each operator of a disposal facility based on the amount, by weight or volumetric equivalent, as determined by the *CIWMB*, of all solid waste disposed of at each disposal site. The fee is currently set at \$1.34 per ton of solid waste disposed.

The integrated waste management fee is collected by the BOE and, after payment of refunds and administrative costs of collection, deposited in the Integrated Waste Management Account.

Section 40121 defines "disposal facility" to mean any facility or location where disposal of solid waste occurs.

Section 40200 defines a "transfer station" to include those facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport, and those facilities utilized for transformation.

AMENDMENT

This bill revises the imposition of the covered electronic waste recycling fee to require, on and after **January 1, 2005**, a consumer to pay a covered electronic waste recycling fee upon the purchase of a new or refurbished covered electronic device in amounts specified in existing law. A retailer is required to collect the covered electronic waste recycling fee from the consumer at the time of the retail sale and to separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale. A retailer may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and transmit the remainder of the fee to the state, as specified.

A retailer could elect to make the covered electronic waste recycling fee payment on behalf of the consumer. In such case, the retailer must provide an express statement to that effect on the receipt given to the consumer at the time of sale. If a retailer pays the covered electronic waste recycling fee on behalf of the consumer, the fee becomes a debt owed by the retailer to the state, and the consumer will not be liable for the fee.

Collection and Administration

This bill requires the BOE to collect covered electronic waste recycling fees from retailers and deposit those fees in the Electronic Waste Recovery and Recycling Account. The BOE will collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code. For purposes of the Fee Collection Procedures Law, a retailer and a consumer are deemed to be a feepayer.

The covered electronic waste recycling fee is due and payable quarterly on or before the last day of the month following each calendar quarter. The payments are required to be accompanied by a return in the form as prescribed by the BOE, including, but not limited to, electronic media. The BOE is authorized to require the payment of the fee and the filing of returns for other than quarterly periods.

The BOE is prohibited from accepting or considering a petition for redetermination of fees determined (billed) if the petition is founded upon the grounds that an item is or is not a covered electronic device. The BOE is also prohibited from accepting or considering a claim for refund of fees paid if the claim is founded upon the grounds that an item is or is not a covered electronic device. The BOE will forward to the Department of Toxic Substances Control (DTSC) any appeal of a determination or claim for refund that is based on the grounds that an item is or is not a covered electronic device.

The Electronic Waste Recovery and Recycling Account

This bill requires that all fees collected pursuant to the Electronic Waste Recycling Act of 2003 be deposited into the Electronic Waste and Recovery and Recycling Account (Account). The funds in the Account will be continuously appropriated without regard to fiscal year for the following purposes:

- To pay refunds of the covered electronic waste recycling fee.
- To make electronic waste recovery payments to an authorized collector of covered electronic waste, as provided.
- To make electronic waste recycling payments to covered electronic waste recyclers.
- To make payments to manufacturers that take back a covered electronic device from a consumer in this state for purposes of recycling the device at a processing facility.

The money in the Account could also be expended for the following purposes, only upon appropriation by the Legislature in the annual Budget Act:

- For the administration of the Act by the CIWMB and the DTSC.
- To reimburse the BOE for its administrative costs of registering, collecting, making refunds, and auditing retailers and consumers in connection with the covered electronic waste recycling fee.
- To provide funding to the DTSC to implement and enforce hazardous waste control laws, as described.

- To establish the public information program to educate the public in the hazards of improper covered electronic device storage and disposal and on the opportunities to recycle covered electronic devices.

Definitions

For purposes of the Act, this bill revises and adds definitions for the following terms:

- "Consumer" means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies, as specified.
- "Covered electronic device" means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the DTSC, as specified.

A "covered electronic device" does not include (1) a video display device that is a part of a motor vehicle, as defined, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle, (2) a video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment, (3) a video display device that is contained within specified appliances, or (4) an electronic device, on and after the date that it ceases to be a covered electronic device.

- "Person" is defined to mean an individual, trust firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, "person" also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.
- "Refurbished" means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.
- "Retailer" means a person who makes a retail sale of a new or refurbished covered electronic device. "Retailer" also includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.
- "Retail sale" has the same meaning as retail sale is defined under Section 6007 of the Revenue and Taxation Code. A retail sale does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

Miscellaneous

This bill requires, on or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the CIWMB, in collaboration with the DTSC, to review, at a public hearing, the covered electronic waste recycling fee and make adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to the Act. Adjustments to the fee that are made on or before August 1 apply to the calendar year beginning the following January 1.

Section 42485 prohibits the CIWMB or the DTSC from implementing the Act if federal law changes, as provided, or a court holds that the law is invalid. This bill adds Section 42486 to provide the necessary authority to collect fees, make refunds or deposit funds for fees related to liabilities which accrued prior to the inoperative date of the Act.

This bill requires the Director of Finance to transfer, as a loan, up to five million dollars (\$5,000,000) from the General Fund, and up to twenty-five million dollars (\$25,000,000) from any special fund authorized by law, to the CIWMB, to implement the changes made to the Act. Any loan made must be repaid on or before November 1, 2005, and prior to making any expenditure from the Electronic Waste and Recovery and Recycling Account for refunds, recovery payments to collectors, recycling payments to recyclers, or payments to manufacturers.

Health and Safety Code Provisions

This bill adds Section 25214.10.1 to the Health and Safety Code to require the DTSC to adopt regulations that identify electronic devices that the DTSC determines are presumed to be, when discarded, a hazardous waste.

On or before October 1, 2004, and every April 1 thereafter, a manufacturer is required to send a notice, as specified, to any retailer that sells that electronic device manufactured by the manufacturer. The notice will identify the electronic device, inform the retailer that the electronic device is a covered electronic device and is subject to the covered electronic waste recycling fee. The manufacturer is also be required to send a copy of that notice to the BOE. With respect to a refurbished covered electronic device, the manufacturer is required to comply with the notice requirements only if that manufacturer directly supplies the refurbished covered electronic device to the retailer.

A covered electronic device identified in the regulations adopted on or before July 1, 2004, by the DTSC are subject to the covered electronic waste recycling fee on and after January 1, 2005. Thereafter, a covered electronic device identified in the regulations adopted by the DTSC will be subject to the covered electronic waste recycling fee on and after July 1 of the year subsequent to the year in which the covered electronic device is first identified in the regulations.

Section 25214.10.1 also provides that if the manufacturer of an electronic device, as specified, obtains the concurrence of the DTSC that an electronic device, when discarded, would not be a hazardous waste, the electronic device ceases to be a covered electronic device. Such an electronic device is not subject to the covered

electronic waste recycling fee on the first day of the quarter that begins not less than 30 days after the date that the DTSC provides the manufacturer with a written non-hazardous concurrence for the electronic device. No later than ten (10) days after the date that the DTSC issues a written non-hazardous concurrence to the manufacturer, the DTSC is required to do both of the following:

- Post on the DTSC's Web site a copy of the non-hazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies.
- Send a copy of the non-hazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies, to the CIWMB and the BOE.

And lastly, Section 25214.10.1 provides immunity from civil penalties imposed by the CIWMB or superior court to a retailer who unknowingly sells, or offers for sale, in this state a covered electronic device for which the covered electronic waste recycling fee has not been collected or paid. The immunity applies if the failure to collect the fee were due to the failure of the BOE to inform the retailer that the electronic device was subject to the fee.

Integrated waste management fee

Section 48000 requires the CIWMB and the BOE to ensure that all the integrated waste management fees for solid waste imposed that are collected at a transfer station are paid to the BOE, as specified.

The bill became effective immediately as an urgency statute.

BACKGROUND

In 2002, Senator Sher introduced Senate Bill 1523, which would have placed a \$10 advanced recycling fee on the sale of all new CRTs sold in California. Senate Bill 1523 passed both houses of the Legislature, but was vetoed by the Governor. In his veto statement, Governor Davis said he would rather see California legislation modeled after the product stewardship approach in the European Union, and that he was willing to sign legislation in 2003 that "challenges industry to assume greater responsibility for the recycling and disposal of electronic waste." The veto statement also stated: "I challenge the industry to lead the way and devise an innovative solution for the source reduction, recycling and safe disposal of electronic waste . . . Moreover, we simply must demonstrate our leadership and compassion by making sure that California's electronic waste is not irresponsibly sent to underdeveloped nations." In response to the Governor's challenge, Senator Sher introduced Senate Bill 20.

Senate Bill 20 (Sher, Ch. 526, Stats. 2003) enacted the Electronic Waste Recycling Act of 2003. Among other things, the Act imposes, on and after July 1, 2004, a covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer. The Act authorizes the CIWMB to contract with the BOE or another party for collection of the fee.

Assembly Bill 901 (Jackson, Ch. 84, Stats. 2004) extended the operative for the fee from July 1, 2004, to November 1, 2004.

COMMENTS

1. **Purpose.** This bill is intended to clarify certain terms, exemptions and reporting and fee requirements in the Act, and to mandate the BOE to collect the covered electronic waste recycling fee.

The provision requiring the CIWMB and BOE to ensure collection of the integrated waste management fees collected at transfer stations is intended to address a concern that transfer stations, which are not subject to the integrated waste management fee, may be collecting the additional fee and not remitting those additional amounts collected to the BOE.

2. **Could the state require out-of-state retailers to remit a covered electronic waste recycling fee?** Various Supreme Court cases have focused on states' ability to impose the use tax on out-of-state firms making sales to in-state customers. In 1967 the Supreme Court ruled in *National Bellas Hess, Inc. v. Illinois Department of Revenue*, 386 U.S. 753 (1967), that a firm that has no link to a state except mailing catalogs to state residents and filling their orders by mail cannot be subject to that state's sales or use tax. The Court ruled that these mail order firms lacked substantial physical presence, or nexus, required by the Due Process Clause and the Commerce Clause of the United States Constitution.

In the 1977 case of *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274 {51 L.Ed.2d 326, 97 S.Ct. 1076} the Court articulated that, in order to survive a Commerce Clause challenge, a tax must satisfy a four part test: 1) it must be applied to an activity with a substantial nexus with the taxing State, 2) it must be fairly apportioned, 3) it does not discriminate against interstate commerce, and 4) it must be fairly related to the services provided by the State.

North Dakota enacted anti-National Bellas Hess legislation with the expressed purpose of creating nexus with mail order firms selling to consumers in the state, in an attempt to compel out-of-state retailers to collect the use tax on mail order sales and test the continuing validity of the National Bellas Hess decision. The statute was challenged, and in 1992 the Supreme Court issued a ruling in *Quill Corporation v. North Dakota* (1992) 504 U.S. 298. The Court in *Quill* applied the Complete Auto Transit analysis and held that satisfying due process concerns does not require a physical presence, but rather requires only minimum contact with the taxing state. Thus when a mail-order business purposefully directs its activities at residents of the taxing state, the Due Process Clause does not prohibit a state from requiring the retailer to collect the state's use tax. However, the Court held further that physical presence in the state was required for a business to have a "substantial nexus" with the taxing state for purposes of the Commerce Clause. The Court therefore affirmed that in order to survive a Commerce Clause challenge, a retailer must have a physical presence in the taxing state before that state can require the retailer to collect its use tax.

Based on the above cases, it is questionable whether the state could require an out-of-state retailer of a covered electronic device, who has no physical presence in California, to remit a fee in order for that device to be sold to a consumer in this state. In such case, this bill would require the consumer to remit the covered electronic waste recycling fee to the BOE by making that consumer a “feepayer” pursuant to the Fee Collection Procedures Law.

3. **Bill should define “industrial, commercial, or medical equipment”.** In order for the exclusion of industrial, commercial, or medical equipment from the definition of covered electronic device to be administered consistently with the author’s intent, and to simply clarify what this term means, it is suggested that “industrial, commercial, or medical equipment” be defined in the bill. Without a definition, the statute could require interpretation through the regulatory process.
4. **Penalty immunity.** This bill would relieve a retailer from the penalties imposed pursuant to Public Resources Code Section 42474 *if the BOE failed to inform the retailer that the electronic device was subject to the fee.*

The BOE uses several different methods to inform and notify tax and fee payers of tax and fee information. These methods include, but are not limited to, news releases, important and special notices, tax information bulletins, newsletters, and its Web site. As such, notification may be provided directly or indirectly to retailers depending as to whether or not the retailer is registered as a feepayer for purposes of the covered electronic waste recycling fee. It would be difficult, and in some cases impossible for the BOE to directly notify all retailers of the covered electronic devices subject to the fee. For example, a retailer that fails to register with the BOE for purposes of the covered electronic waste fee program would likely not be mailed a notice of electronic devices subject to the fee. In such case, that retailer would be informed indirectly through news releases, Sales and Use Tax Information Bulletins, Excise Taxes newsletters, or the BOE’s Web site.

With respect to electronic devices deemed to be a covered electronic device and subject to the fee, the BOE would inform retailers of those *types* of electronic devices that are listed in the regulations adopted by the DTSC. The BOE could also notify retailers that a specific electronic device is subject to the fee. However, the BOE’s ability to notify retailers whether a specific electronic device is subject to the fee solely depends on whether a manufacturer sends the BOE a copy of a retailer notice identifying a electronic device manufactured by that manufacturer as a covered electronic device and subject to the fee.

5. **Does the integrated waste management fee provision impact the BOE?** This bill would require the CIWMB and the BOE to ensure that all integrated waste management fees collected at a transfer station be remitted to the BOE.

However, the integrated waste management fee is imposed on each operator of a disposal facility, and not on a transfer station. Since a transfer station does not fall within the definition of a “fee payer,” the BOE cannot require a transfer

* Pursuant to Section 25214.10.1(c)(2)

STATE BOARD OF EQUALIZATION

station to return amounts collected to the customer or remit amounts collected to the BOE as “excess fee reimbursement” pursuant to Revenue and Taxation Code Section 45651.5. As such, this provision would not impact the BOE.

Senate Bill 1881 (Senate Revenue and Taxation Committee) Chapter 527***Board-Sponsored Measure***

Effective January 1, 2005. Among its provisions, amends Sections 43152.14, 43201, 43350, 45351, 46156, 46301, 50120.1, 55061 and 55101 of the Revenue and Taxation Code

BILL SUMMARY

This bill contains **Board of Equalization-sponsored** provisions for the special taxes and fees programs, which do the following:

- Amends Section 43152.14 of the Revenue and Taxation Code to delete the requirement to file a return for the Childhood Lead Poisoning Prevention Fee.
- Amends Sections 43201 and 55061 of the Revenue and Taxation Code to make it clear that when the Board collects a tax or fee assessed by another state agency, that it is appropriate for the Board to issue a notice of determination as the billing mechanism.
- Amends Sections 43350, 45351, 46301, 50120.1, and 55101 of the Revenue and Taxation Code to delete obsolete section references.
- Amends Section 46156 of the Oil Spill Response, Prevention, and Administration Fee Law to authorize the Board to grant relief of the penalty for failure to file an information report for the Oil Spill Response Fee.

Childhood Lead Poisoning Prevention Fee Return Clarification

Revenue and Taxation Code Section 43152.14

LAW PRIOR TO AMENDMENT

Under the existing Hazardous Substances Tax Law, Section 43152.14 provides that the Childhood Lead Poisoning Prevention Fee is due and payable on April 1 of each year and that a feepayer shall file a return in the form as prescribed by the Board. The Hazardous Substance Tax Law contains the administrative and collection provisions for the Childhood Lead Poisoning Prevention Fee, which is imposed pursuant to Section 105310 of the Health and Safety Code. The fee is administered and collected by the Board in cooperation with the Department of Health Services (DHS).

AMENDMENT

This bill amends Section 43152.14 of the Revenue and Taxation Code to delete the requirement to file a return for the Childhood Lead Poisoning Prevention Fee.

BACKGROUND

In 2002, Assembly Bill 1936 (Ch. 450) amended Section 43152.14 to authorize a feepayer to file an electronic return, and for returns to be authenticated as prescribed by the Board. However, the DHS subsequently adopted regulations that changed the method of collecting the Childhood Lead Poisoning Prevention Fee from a return, where a feepayer self-reports the amount of the fee due, to a bill of the fee amount.

COMMENT

This provision deletes the requirement for filing a return and the methods for authenticating such returns for purposes of the Childhood Lead Poisoning Prevention Fee in order to conform to DHS regulations.

Notice of Determination

Revenue and Taxation Code Sections 43201 and 55061

LAW PRIOR TO AMENDMENT

Existing Hazardous Substances Tax Law (Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code) is utilized by the Board to administer and collect many different taxes or fees, including the Childhood Lead Poisoning Prevention Fee assessed by the DHS, and various "activity fees" (including permit application fees, permit modification fees and site remediation oversight fees) assessed by the Department of Toxic Substances Control. The terms "fee" and "tax" are used interchangeably in the collection provisions of the Hazardous Substances Tax Law.

In addition, under the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) the Board administers and collects the California Tire Fee, Ballast Water Management Fee, and the Natural Gas Surcharge. Effective January 1, 2004, the Fee Collection Procedure Law may also be used to administer and collect the Covered Electronic Waste Recycling Fee, Water Rights Fee, and the manufacturer and importer administration fee imposed under the Cigarette and Tobacco Products Licensing Act of 2003.

AMENDMENT

This bill amends Sections 43201 and 55061 of the Revenue and Taxation Code to make it clear that when the Board collects a tax or fee assessed by another state agency, that it is appropriate for the Board to issue a notice of determination as the billing mechanism.

BACKGROUND

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board.

The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to be collected by the Board to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as provides the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Currently, the Hazardous Substances Tax Law and the Fee Collection Procedures Law specify in Sections 43201 and 55061, respectively, that a determination may be made if the Board is dissatisfied with the return filed or the amount of the fee paid to the state by any feepayer, or if no return has been filed or no payment of the fee has been made. This language assumes that the tax or fee will be remitted and reported on a return, and does not expressly allow the Board to issue a notice of determination when the amount to be collected is based on an assessment by another state agency, on a calculation by the Board, or on a fee amount fixed by statute for which no return is required to be filed.

COMMENT

These provisions clarify that, under circumstances when the Board is authorized to collect a tax or fee that is either assessed by another state agency or calculated by the Board and collected for another state agency, or fixed by statute and collected by the Board without the requirement to file a return, it is appropriate for the Board to issue a notice of determination or other similar billing document for that purpose. This provision also corrects typographical errors.

Delete Obsolete Section References

Revenue and Taxation Code Sections 43350, 45351, 46301, 50120.1 and 55101

LAW PRIOR TO AMENDMENT

Under existing law, Sections 43350, 45351, 46301, and 55101 of the Revenue and Taxation Code provide that if the amount of tax, interest, and penalty specified in a jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest shall attach to the amount of tax specified. These jeopardy determination statutes in the Hazardous Substance Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee law, Underground Storage Tank Maintenance Fee Law, and Fee Collections Procedures Law reference Sections 43156, 45154, 46155, 50112.1, and 55043, respectively, for purposes of imposing delinquency interest.

AMENDMENT

This bill amends Sections 43350, 45351, 46301, 50120.1, and 55101 of the Revenue and Taxation Code to delete obsolete section references.

BACKGROUND

In 2000, AB 2894 (Chapter 923) combined the delinquency penalty and interest provisions into one statute. As such, AB 2894 resulted in the repeal of Sections 43156, 45154, 46155, 50112.1, and 55043 and therefore made obsolete the references to those sections in Section 43350, 45351, 46301, and 55101.

COMMENT

These provisions delete the obsolete section references in order to avoid confusion for taxpayers. The Board will continue to impose the delinquency penalty and interest as provided in existing law.

Relief of Penalty

Revenue and Taxation Code Section 46156

LAW PRIOR TO AMENDMENT

Under the existing Oil Spill Response, Prevention, and Administration Fee Law, Section 46154.1 of the Revenue and Taxation Code allows for a penalty of five hundred dollars (\$500) if the annual information return for the Oil Spill Response Fee is not filed on time.

Section 46156 of the Oil Spill Response, Prevention, and Administration Fee Law provides that if the Board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty as provided in specified sections.

AMENDMENT

This bill amends Section 46156 of the Oil Spill Response, Prevention, and Administration Fee Law to authorize the Board to grant relief of the penalty for failure to file an information report for the Oil Spill Response Fee.

BACKGROUND

In 2000, when Section 46154.1 was added to the Oil Spill Response, Prevention, and Administration Fee Law, Section 46156 should have been amended to include a reference to Section 46154.1 among the penalties that may be relieved by the Board.

COMMENT

Consistent with other fees and taxes administered by the Board, this provision allows the Board, under certain circumstances, to relieve the feepayer of the penalty for failure to make a timely information return when such failure is due to reasonable cause and circumstances beyond the persons control.

TABLE OF SECTIONS AFFECTED

SECTION	BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code			
<i>Cigarette and Tobacco Products Tax Law</i>			
§30211	Amend	AB 2491	Ch. 82
			Penalty
§30437	Amend	AB 2491	Ch. 82
			Notice of seizure and forfeiture
§30458.3	Amend	AB 2030	Ch. 634
			Annual hearing with taxpayers
§30459.8	Add	AB 2030	Ch. 634
			Revenues collected and disbursed: Web site posting
Uncodified		AB 3092	Ch. 822
			Design: manner of affixing
<i>Hazardous Substances Tax Law</i>			
§43152.14	Amend	SB 1881	Ch. 527
			Fee: due and payable
§43201	Amend	SB 1881	Ch. 527
			Notice of determination
§43350	Amend	SB 1881	Ch. 527
			Jeopardy determinations
<i>Integrated Waste Management Fee Law</i>			
§45351	Amend	SB 1881	Ch. 527
			Jeopardy determinations
<i>Oil Spill Response, Prevention, and Administration Fees Law</i>			
§46156	Amend	SB 1881	Ch. 527
			Relief of penalty
§46301	Amend	SB 1881	Ch. 527
			Jeopardy determinations
<i>Underground Storage Tank Maintenance Fee Law</i>			
§50120.1	Amend	SB 1881	Ch. 527
			Jeopardy determinations
<i>Fee Collection Procedures Law</i>			
§55061	Amend	SB 1881	Ch. 527
			Notice of determination
§55101	Amend	SB 1881	Ch. 527
			Jeopardy determinations

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Business and Professions Code				
<i>Cigarette and Tobacco Products Licensing Act of 2003</i>				
§22971	Amend	AB 2491	Ch. 82	“Brand Family”
§22971.4	Add	AB 3092	Ch. 822	Constitutional exemption
§22972.1	Add	AB 2491	Ch. 82	Temporary retailer license
§22974.7	Amend	AB 2491	Ch. 82	Penalty for violation
§22978.4	Amend	AB 3092	Ch. 822	Invoice requirements
§22978.8	Add	AB 2491	Ch. 82	Suspended or revoked license: Web site posting
§22979	Amend	AB 2491	Ch. 82	Manufacturer and importer license
§22979.4	Amend	AB 2491	Ch. 82	Purchase records
§22980.1	Amend	AB 3092	Ch. 822	Prohibitions
§22980.2	Amend	AB 2491	Ch. 82	Penalty for unlicensed persons
§22983	Add	AB 2491	Ch. 82	Administration
Health and Safety Code				
<i>Covered Electronic Waste Recycling Fee</i>				
§25214.10.1	Add	SB 50	Ch. 863	Covered electronic device identification
<i>Underground Storage Tank Maintenance Fee</i>				
§25299.43	Amend	AB 1906	Ch. 774	Additional fee

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Public Resources Code				
<i>Covered Electronic Waste Recycling Fee</i>				
§42463	Amend	SB 50	Ch. 863	Definitions
§42464	Amend	AB 901	Ch. 84	Imposition of fee
§42464	Amend	SB 50	Ch. 863	Imposition of fee
§42464.2	Repeal Add	SB 50	Ch. 863	Administration
§42464.4	Add	SB 50	Ch. 863	Returns and payments
§42464.6	Add	SB 50	Ch. 863	Petition for Redetermination and Claim for Refund
§42476	Amend	SB 50	Ch. 863	Disposition of Proceeds
§42485	Amend	SB 50	Ch. 863	Implementation termination
§42486	Add	SB 50	Ch. 863	Savings Clause
<i>California Tire Fee</i>				
§42885	Amend Add Repeal	AB 923	Ch. 707	Disposal fee; seller reimbursement
§42889	Amend Add Repeal	AB 923	Ch. 707	Expenditure of funds
<i>Integrated Waste Management Fee</i>				
§48000	Amend	SB 50	Ch. 863	Quarterly fee; rate