



*California State Board of Equalization,  
Legislative Division*

# LEGISLATIVE BULLETIN

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**SALES AND USE TAX LEGISLATION  
1999**

# SALES AND USE TAX LEGISLATION 1999

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**Assembly Bill 384 (Jackson, et al.) Chapter 484**  
*Revision of prepayment due dates and amounts*

*Effective January 1, 2000. Amends Sections 6471, 6472, and 6477 of the Revenue and Taxation Code.*

**This Board-sponsored measure eliminates some of the irregular sales and use tax prepayment reporting requirements. It requires that all prepayments include a payment of 90% of the previous month's liability and all are due on the 24th of the month. Taxpayers will continue to be required to include the first 15 days of June with the payment that becomes due on June 24th. Alternatively, if the taxpayer or its successor was engaged in the same business during all of the corresponding quarterly periods of the preceding year, one-third of the amount subject to tax for that same quarter in the previous year multiplied by the current tax rate is due for all of the prepayments for the first, third, and fourth quarters and the first prepayment for the second quarter. For the second quarter prepayment that is due in June, these taxpayers may pay an amount equal to one-half of the amount subject to tax for that same quarter in the previous year multiplied by the current tax rate.**

***Law Prior to Amendment:***

In general, under existing law, sales and use taxes are due and payable to the state on a quarterly basis, no later than the last day of the month following the end of the quarter. For example, applicable tax on sales made between January 1 through March 31 must be remitted to the Board on or before April 30.

If a taxpayer's estimated measure of tax liability averages \$17,000 or more per month, that taxpayer is required to report his or her tax liability on a quarterly basis, with two prepayments required within each quarter. In the first, third, and fourth quarters of the calendar year, the prepayment is due for the first two months of each quarter equal to 90% of the tax liability for each month. For example, in the first quarter, 90% of January's liability is due by February 24, and 90% of February's liability is due by March 24. There is no prepayment for the last month of the quarter. Rather, all tax liability for March, plus the remaining 10% liability for January and February is due by April 30. Alternatively, if the taxpayer or their successor was engaged in the same business during all of the corresponding quarterly periods of the preceding year, prepayments of one-third of the amount subject to tax for that same quarter in the previous year multiplied by the current tax rate are due.

In the second quarter, 95% of April's tax liability is due by May 24, and 95% of May's liability, plus either 95% of the tax liability for the first fifteen days of June or half of the prepayment for May is due by June 23. Alternatively, if the taxpayer or their successor was engaged in the same business during the entire quarter of the previous year, the first prepayment of one-third and the second prepayment of one-half of the amount subject to tax for the second quarter in the previous year multiplied by the current tax rate is due.

***Background:***

The second quarter had a higher and different prepayment schedule under existing law. AB 8X, AB 1253, and SB 1326 (Chapters 5, 115, and 327, respectively, of 1982) revised the prepayment schedule to require that the second prepayment in the second quarter include a payment of 90% of the taxes for the first 15 days in June, and extended all of the due dates from the 20th to the 23rd. AB 28X (Chapter 10, Statutes of 1983), sponsored by the Department of Finance, raised the second quarter minimum percentages from 90% to 95%, and extended the prepayment due dates from the 23rd to the 24th for months other than June. According to a committee analysis of AB 28X, the purpose of that bill was to increase state revenue collections in the 1982-83 fiscal year by increasing the amount of sales taxes held by retailers that must be remitted to the state before the last day of the fiscal year (June 30). Since then, the state's accounting methodology was switched to the accrual method, which basically allows revenues to be credited to the fiscal year when the transaction takes place, rather than when the cash is deposited into the state's coffers.

***Comments:***

1. **Purpose.** To eliminate the confusing, unnecessary, and irregular sales and use tax reporting and prepayment requirements for the second quarter reporting period.
2. **The odd prepayment reporting requirements for the second quarter create a burden on taxpayers.** Taxpayer errors related to the second quarter prepayment are common. Taxpayers must remember to file one day early and to report the additional five percent. These inconsistencies create a burden for taxpayers which often results in complaints to the Taxpayers' Rights Advocate's Office and Board Members' Offices.
3. **Given that the state's economy is stabilizing, the need to accelerate cash into the fiscal year has diminished.** The original purpose of the irregular second quarter reporting requirement was to accelerate cash during the budget crisis. Also, the more recent switch to the accrual accounting method means that, with the exception of the loss in interest income, the revenue picture will not change as a result of this bill.

**Assembly Bill 563 (Honda, et al.) Chapter 361**  
*Exclusion for pet adoptions through humane societies*

*Tax levy; effective September 7, 1999, but operative January 1, 2000. Adds Section 6010.40 to the Revenue and Taxation Code .*

**This bill excludes from the terms “sale” and “purchase” the transfer by a city, city and county, county, or other local government animal shelter or nonprofit animal welfare organization of any animal to an individual for use as a pet, or any charges made by the government shelter or nonprofit organization for services in connection with the transfer of that animal, including, but not limited to, the spaying or neutering or future spaying or neutering of the animal, or any vaccination, future vaccination, or similar service.**

**The bill defines “nonprofit animal welfare organization” as an organization that is formed and operated for the primary purpose of prevention of abuse, neglect, or exploitation of animals, and that qualifies for an exemption from income tax pursuant to Section 23701(d) of the Revenue and Taxation Code.**

*Sponsors: Humane Society of the United States  
California Agricultural Commissioners and Sealers Association*

***Law Prior to Amendment:***

Under existing law, all sales of tangible personal property are subject to tax, unless specifically exempted by law. Under the law, the transfer of title of tangible personal property constitutes a “sale.” In addition, all charges for services in connection with the sale of tangible personal property are includable in the measure of tax, unless specifically exempted or excluded by law. The Sales and Use Tax Law provides no general statutory exemptions from the sales or use tax merely because the seller is engaged in charitable activities, is a nonprofit organization, or enjoys certain privileges under property tax statutes or income tax statutes.

Animal shelters and humane societies generally provide pet adoption services for a fee. Fees typically consist of an adoption fee, plus fees for a wide range of services including spay/neuter surgery, vaccinations, de-worming, disease testing, obedience training, health exams, and microchip implants. These fees may be separately stated or charged as a lump sum adoption amount. While some services might be optional to the purchaser, most shelters require that certain services be performed prior to the animal being transferred to the new owner. Shelters are generally required by county ordinance to provide only healthy animals that are

spayed or neutered (or to collect a fee for the future spaying or neutering if the animal is too young).

Under the Sales and Use Tax Law, the transfer of title of animals to purchasers for a consideration constitutes a "sale." The fact that the amount received for the animal is designated "minimum donation," "adoption fee," or "placement fee" is irrelevant. The amount constitutes the consideration paid for the transfer of title or possession of tangible personal property. In addition, any fees which a humane society requires to be paid before the animal is released to the new owner are subject to tax. However, charges for optional services are not subject to tax.

*Comments:*

1. **Purpose.** To eliminate the sales tax imposed upon pet adoptions and related services performed by nonprofit humane societies and animal shelters. The sponsors believe that these organizations are providing a worthwhile service in finding homes for pets, and the adoption fees should not be increased through the application of sales tax.
2. **The majority of these societies have not been reporting sales tax properly.** In surveying a number of humane societies and animal shelters, the Board has noted that these organizations have been confused with respect to their tax reporting obligations. Some shelters have reported taxes on all the fees they have collected, some have only reported tax on the adoption fees, and some have failed to report any taxes under the belief that they are providing exempt placement services. Enactment of this measure will resolve these organizations' apparent confusion with respect to their tax reporting obligations.
3. **Bill does not likely create a competitive disadvantage for retail pet shops and breeders.** When considering sales tax exemptions for nonprofit organizations, consideration is sometimes given to the impact the exemption would have on for-profit retailers selling similar property. Some argue that an exemption for nonprofit organizations, such as the exemption this bill is proposing, places for-profit organizations selling similar property at a competitive disadvantage, since they remain liable for the sales tax on their sales. However, most would concede that the application of sales tax on pet acquisitions would not be a determining factor in choosing a pet from a humane society or shelter over one offered at a pet shop or breeder. Often, pets are adopted through animal shelters solely for humanitarian reasons (it is interesting to note that a total of 276,789 dogs and 285,720 cats were actually euthanized in California shelters during 1996 as compared to adoptions of 95,947 dogs and 68,283 cats that same year).

4. **Humane societies will now be regarded as “consumers” of property used in connection with their services.** The effect of this measure is that the humane societies will no longer be required to hold sellers’ permits or report tax on their transfers of animals, unless the transfer is made for a consideration to someone other than an individual for use as a pet. With respect to animals transferred to individuals for use as a pet, the humane society will now be regarded as a consumer of any animal feed, medicines or other property used in the course of caring for that animal. As a consumer, the humane society will be required to pay tax on its cost of dog food, cat food, kitty litter, medicines, and any other items used in the course of their services.

**Assembly Bill 790 (Honda) Chapter 443**  
*Establishment of public record of top 12 tax delinquents*

*Effective January 1, 2000. Adds and repeals Article 1.5 (commencing with Section 7063) of Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code.*

**This Board-sponsored measure requires the Board until January 1, 2005 to make available as a matter of public record each quarter, a list of the 12 largest sales and use tax delinquencies in excess of one million dollars for which the person has received tax or tax reimbursement. A delinquency is described in the bill as an amount of tax that has been delinquent for more than 90 days for which a state tax lien has been filed, but does not include:**

- Any delinquency that is under litigation in a court of law
- Any delinquency under which the person has filed a petition for redetermination
- Any delinquency for which suitable payment arrangements have been made with the Board
- Any delinquency for which the taxpayer has filed bankruptcy

Prior to making a tax delinquency a matter of public record, however, the bill requires the Board to provide a preliminary written notice by first-class mail, return receipt required, to the person or persons held liable for the tax. If within 30 days of receipt of that written notice, the person or persons do not either remit the amount due, or otherwise make arrangements with the Board for payment of the amount due, the tax delinquency is required to be included on the list.

The bill specifies that the quarterly list include:

- The telephone number and address of the Board office to contact if a person believes placement of his or her name on the list is in error.
- The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.



The bill requires the Board to remove any delinquencies from the list, as promptly as feasible, but no later than five business days, if any of the following occur:

- The person liable for the tax has contacted the Board and resolution of the delinquency is or has been arranged
- The Board has verified that an active bankruptcy proceeding has been initiated
- The Board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount
- The Board has determined that the delinquency is uncollectible

The bill further specifies that any person whose delinquency appears on the quarterly list, and who satisfies that delinquency in whole, or in part, may request the Board to include in its quarterly list any payments the person made to satisfy the delinquency. Upon receipt of that request, the bill specifies that the Board shall include those payments on the list as promptly as feasible.

*Law Prior to Amendment:*

Under existing law, Section 7056 of the Sales and Use Tax Law prohibits the Board to make known in any manner whatever, the business affairs, operations, or any other information pertaining to any retailer or any other person required to report to the Board or pay a sales and use tax. However, some exceptions exist in current law where confidential tax information is released to the public. For example, an exception exists under the settlement provisions of Section 7093.5 where the Board settles tax matters in dispute that are the subject of protests, appeals or refund claims. The law requires that a public record be made with respect to a settlement whenever a reduction in tax in excess of \$500 is approved. The public record must include, among other things, the name of the taxpayer, the total amount in dispute, and the amount agreed to pursuant to the settlement. Another exception includes cases where a taxpayer is delinquent in his or her tax obligations and the Board files a lien. The recording of the tax lien pursuant to Section 6757 establishes a public record of the existence of the lien against all property belonging to the taxpayer and located in this state.

*Comments:*

1. **Purpose.** To serve as an inducement for delinquent sales and use taxpayers to clear their accounts with the Board and to achieve greater tax compliance.
2. **Sales tax should be held at a higher standard.** Unlike income taxes, the sales tax is regarded as a "trust tax" because the obligors (customers) pay the tax to third parties (retailers) designated by statute to collect, hold, and remit the money to

the State. These third parties hold the funds in trust for the State and thus can be held personally liable when the funds are not remitted. In other words, since the customer has reimbursed the retailer for the tax, then the retailer collecting the tax should not be allowed to divert these funds dedicated to public schools, safety, and other purposes to his or her private use, thereby making the state and customers unwilling business partners. The Legislature enacted these personal liability provisions in recognition of the fact that when cash flow difficulties arise for retailers, they are often tempted to use the sales tax they collect to assist them in their financial affairs and to pay the State later when their cash flow is better. When those individuals fail to perform their roles as trustees, the public, as well as other honest retailers, should be made aware. AB 790 provides the mechanism to publicize the most flagrant of these irresponsible taxpayers.

**3. Public disclosure of tax delinquencies is gaining interest.** The Internal Revenue Service Restructuring and Reform Act of 1998 required the Joint Committee on Taxation to study whether greater levels of compliance might be achieved by publicly disclosing taxpayers who have not filed their required federal tax returns. On August 24, 1999, the United States General Accounting Office issued its report. According to the 28-page report, practices of publicly disclosing tax delinquencies have already begun in 4 states (Connecticut, Illinois, Montana and New Jersey) and the District of Columbia. The report indicates that officials from these entities believe their programs have improved or will improve compliance. The following is a summary of these entities' public disclosure results:

- Connecticut - Since January 1997, the State of Connecticut has posted the top 100 delinquent taxpayers in its Internet site. Through June 1999, Connecticut has collected approximately \$52 million from accounts eligible for listing, and another \$12 million has been negotiated through payment plans.
- Illinois - The Illinois Legislature authorized its public disclosure program in August 1998, which became effective January 1, 1999. The Illinois Department of Revenue can now publicly disclose all delinquent taxpayers who have final liabilities greater than \$10,000 for longer than a period of 6 months. Currently, public disclosure is made through the medium of press releases. However, in September 1999, the Department of Revenue plans to disclose these delinquencies on the Internet. Since March 1999, Illinois collected \$2.9 million, and entered into payment agreements of \$918,000.
- Montana - In April 1998, the Montana Department of Revenue began publicly disclosing on the Internet and through press releases, the names of Montana's top 50 delinquent taxpayer accounts. Since the program's inception, as of June 1999, 23 taxpayers paid in full, 18 negotiated payment plans, 23 filed outstanding returns, and 2 filed amended returns. Montana has collected \$367,839 as a result of these actions.

- New Jersey - In May 1999, the New Jersey Division of Taxation began publicly disclosing on the Internet the names of New Jersey's top 100 delinquencies. As of July 27, 1999, New Jersey collected \$695,991 in response to this program.
- District of Columbia - In October 1997, the District of Columbia's Office of Tax and Revenue began publicly disclosing on the Internet the names of delinquent taxpayers that owe more than \$10,000. Although that Office has not conducted an overall evaluation of its disclosure program, the Office has collected \$699,912 for fiscal year 1999 after sending warning letters, and \$70,587 after disclosure on the Internet.

**Assembly Bill 990 (Floyd) Chapter 908**

*Authorization for local jurisdictions to obtain seller's permit information*

*Effective January 1, 2000. Adds and repeals Sections 6066.3 and 6066.4 of the Revenue and Taxation Code.*

**This bill does the following:**

- 1. Enables cities and counties to obtain seller's permit application information from retailers desiring to engage in business in their jurisdictions and to submit that information to the Board.**
- 2. Requires the Board to accept that information as a preliminary application for a seller's permit, and to accept that information also as notice to the Board for purposes of redistributing local tax under Section 7209.**
- 3. Requires the Board within 30 days of receiving the local jurisdiction information to issue a determination regarding the issuance of a seller's permit if that determination can be made based on the information provided, or within 120 days in cases where additional information is required.**
- 4. Requires the Board to consult with the League of California Cities and the California State Association of Counties to adopt standardized addressing and naming conventions for new registrants, and if feasible, for current accounts.**
- 5. Authorizes cities and counties to require taxpayers to provide their seller's permit number, if any.**
- 6. Requires the Board on or before January 1, 2003 to prepare a report for the Legislature of the amount of sales and use tax revenues collected from persons not previously registered by the Board and the Board's cost to administer the provisions of this act.**

These provisions will remain in effect until January 1, 2004.

*Sponsors: League of California Cities  
Municipal Business Tax Association*

***Law Prior to Amendment:***

Under existing law, California's sales tax is paid by retailers engaged in business in the state and applies to all retail transactions involving sales of tangible personal property, except those specifically exempted by law. The use tax generally applies to the storage, use or other consumption in this state of goods purchased from

retailers in transactions not subject to the sales tax. The statewide rate for both the sales and use tax is currently 7.25 percent, which is the combined state and local rates, excluding special district rates.

Under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, commencing with Section 7200, of Division 2 of the Revenue and Taxation Code), the Board collects and distributes local sales and use tax revenue to all California cities as well as counties. The 1.25 percent local sales and use tax, a component of the 7.25 percent combined statewide rate, is allocated to counties for sales made within unincorporated areas. Incorporated cities generally receive 1 percent of the local tax for sales made within their boundaries. The remaining .25 percent is allocated to the appropriate counties to fund transportation projects.

Under the law, every person desiring to engage in or conduct business within this state and making sales or leases of tangible personal property that is ordinarily subject to tax is required to file with the Board an application for a "seller's permit" for each place of business. A person who engages in business as a seller in this state without such a permit or permits, and each officer of any corporation which so engages in business, is guilty of a misdemeanor, punishable by a fine or imprisonment, or both.

***In General:***

Currently, persons desiring to engage in business in California are required to obtain a California seller's permit for each place of business when they intend to sell or lease tangible personal property that is ordinarily subject to sales tax. To obtain a seller's permit, an application must be filed with the Board. There is no fee charged for a seller's permit, and applications can be processed entirely through the mail.

The Board currently provides cities on a monthly basis with records of the businesses in their jurisdictions that have been issued seller's permits. The Board encourages cities through both written and oral communications to compare their lists of entities having business licenses with the Board's list of seller's permits issued, and to notify the Board of any businesses that have been issued a business license for sales of goods that are not on the seller's permit list. In addition, the Board's publication - Pamphlet 28 - "Tax Information for City and County Officials," instructs cities and counties how to compare the Board's seller's permit registration data to their business licensee data to not only ensure correct local tax allocation, but also to identify persons who should have sellers' permits.

*Comments:*

1. **Purpose.** To enable local jurisdictions to assist the Board in identifying unregistered sellers operating or desiring to operate in their jurisdictions. The author notes that by ensuring that all sellers of tangible personal property are properly registered, unreported taxable sales will diminish, thereby protecting the local, as well as the state, tax bases.
2. **The chaptered version is a result of a compromise agreement between sponsors and Board staff.** This measure establishes a cooperative working arrangement between the Board and local governments in ensuring that persons engaged in the business of selling tangible personal property are properly registered with the Board.

**Assembly Bill 1371 (Granlund) Chapter 110**  
*Transactions and use tax – Town of Yucca Valley*

*Effective January 1, 2000. Adds Chapter 2.95 (commencing with Section 7286.56) to Part 1.7 of Division 2 of the Revenue and Taxation Code.*

**This bill authorizes the Town of Yucca Valley, subject to voter approval, to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, not to exceed one percent for purposes of transportation and the town's parks.**

*Sponsor: Town of Yucca Valley*

***Law Prior to Amendment:***

The Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1.25 percent local tax.

Under this Bradley-Burns Uniform Local Sales and Use Tax Law, the 0.25 percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1.25 percent.

Under the existing Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of 0.25 percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under this law, the maximum allowable rate of transactions and use taxes levied by any district may not exceed 1.050 percent, with the exception of San Francisco and San Mateo, whose combined rates may not exceed 1.75 and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of 0.25 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits a county to form a special purpose authority which may levy a transactions and use tax at the rate of either 0.25 or 0.50 percent, with majority voter approval. Section 7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of 0.25 or 0.50 percent for purposes of funding drug abuse prevention, crime prevention, health care services,

and public education upon majority voter approval. (Board legal staff have taken the position that a special purpose authority may only impose a transactions and use tax if the authority meets the requirements of the section but obtains approval of two-thirds votes rather than a majority vote of the qualified electors of the authority.) Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of 0.125 or 0.25 percent for purposes of funding public libraries, upon two-thirds voter approval.

In addition to county authorization to levy a tax, through specific legislation, some cities have received authorization to impose a transactions and use tax. The following cities are so authorized: Avalon, Calexico, Clearlake, Clovis, Fort Bragg, Fresno (and its sphere of influence), Lakeport, Madera, North Lake Tahoe (within boundaries established in legislation), Placerville, Truckee, and Woodland (the cities of Clearlake, Calexico, Placerville, and Truckee are currently imposing a tax). Fresno had imposed a tax for the period 7/1/93 through 3/21/96, however, this tax ceased to be operative, as it was declared unconstitutional in *Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority* (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a.

The Town of Yucca Valley is located in San Bernardino county, which imposes a 0.50 percent transactions and use tax for county transportation purposes. Under the Bradley-Burns Law, the Town of Yucca Valley imposes a sales and use tax rate of one percent, which is credited against San Bernardino County's one percent rate. Therefore, the current state and local tax rate in San Bernardino county is 7.75 percent.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

***In General:***

Many special districts in California impose an additional tax that is administered by the Board. These taxes are commonly referred to as transactions and use taxes. In Sacramento County, for example, a transactions and use tax of 0.50 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the County of Stanislaus imposes the lowest transactions and use tax rate of 0.125 percent. San Francisco City and County has the highest transactions and use tax rate of 1.25 percent. The remaining districts impose rates in between these ranges. There have been several bills in prior years that would authorize cities to impose transactions and use taxes. The Board is generally opposed to extending this authorization to



cities, arguing that multiple rates covering multiple jurisdictions within a single county make record-keeping for retailers more complex, resulting in a larger margin of error. During the 1997-98 Legislative Session, the Board voted to oppose SB 355 (Monteith), which allows the city of Madera to levy a 0.25 percent sales tax for public safety services; AB 1472 (Thomson), which allows the City of Woodland to impose a transactions and use tax rate of 0.25 or 0.50 percent, upon voter approval, for general revenue purposes; SB 1424 which allows the City of Clovis to levy a 0.3 percent sales tax for police and fire facilities; and SB 781 which allows the City of Placerville to levy a 0.125 or 0.25 percent sales tax for police services. However, the Governor signed those bills: SB 355 (Chapter 409), AB 1472 (Chapter 712), SB 1424 (Chapter 158), and SB 781 (Chapter 234).

*Comments:*

1. **Purpose.** To enable the Town of Yucca Valley to raise additional revenues for local transportation and parks.
2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. The retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, the retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, twelve cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

3. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Uniform Local Tax Law.** There are over 470 cities in California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes exceedingly complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Uniform Local Sales and Use Tax Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered (unlike the state and Bradley-Burns uniform local sales and use tax, the transactions tax does not apply to gross receipts from the sale of property to be used outside the district when the property is shipped to a point outside the district). This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.
4. **It may not be cost effective for some cities to impose a transactions and use tax.** The Board's total administrative costs are driven by the workload involved in processing returns, and are relatively fixed. The cost of administering these taxes is not related to the revenue generated by the tax. However, the ratio of such costs to the amount of revenue generated by a tax varies widely. Therefore, if the tax rate or volume is very low, the ratio will be high. Revenue and Taxation Code Section 7273, as amended by Chapter 890, Statutes of 1998 (AB 836, Sweeney, et al.) requires the Board to cap administrative costs based on the lesser of the ratio during the first year the tax is in effect, or a predetermined amount based on the tax rate and applied to the revenues generated in the taxing jurisdiction.

**Assembly Bill 1638 (Committee on Revenue and Taxation) Chapter 929***Board-sponsored taxpayers' bill of rights*

*Effective January 1, 2000. Adds Section 15620.5 to the Government Code; amends Sections 8262, 8269, 9262, 9269, 9275, 30458.2, 30458.9, 30459.5, 32462, 32469, 32475, 38621, 40202, 40209, 40215, 41162, 41169, 41175, 43513, 43520, 43526, 45858, 45865, 45871, 46613, 46620, 46626, 50112.2, 50156.2, 50156.9, 50156.15, 55323, 55330, 55336, 60623, and 60630 of, adds Sections 6832.5, 6902.4, 7658.1, 8174, 8878.5, 9033, 9184, 9272.1, 11253, 11254, 11409, 30283.5, 30354, 30384, 30459.2A, 32256.5, 32389, 32432, 32472.1, 38455, 38504, 38505, 38624, 40103.5, 40167, 40212.5, 41097.5, 41127.6, 41172.5, 43158.5, 43448, 43484, 43523.5, 45156.5, 45609, 45752, 45868.5, 46157.5, 46464, 46544, 46623.5, 50112.4, 50138.6, 50150.5, 50156.17, 55046, 55209, 55262, 55333.5, 60212, 60493, 60564, 60632.1, 60633.1, and 60633.2 to, the Revenue and Taxation Code.*

**This Board-sponsored measure strengthens and updates the California Taxpayers' Bill of Rights for the taxes and fees administered by the Board. Specifically, with respect to the sales and use tax program, this bill:**

- **Allows the Board to establish a uniform policy regarding a postal delay date in its processing of tax and fee return filings.**
- **Conforms the law, where appropriate, with the Internal Revenue Service Restructuring and Reform Act of 1998 in two areas:**
  - (1) **suspends the statute of limitations on filing refund claims during periods of disability, and**
  - (2) **requires the Board to provide annual statements to taxpayers who have entered into installment payment agreements summarizing the payment and liability information.**

***Law Prior to Amendment (Government Code Section 15620.5):***

Existing law, Section 11003 of the Government Code, provides that if an application, tax return or claim for credit or refund required by law to be filed with the State or state agency on or before a specified date is filed with a state agency through the United States mail, properly addressed with postage prepaid, it shall be deemed filed on the date shown by the post office cancellation mark stamped on the envelope containing it, or on the date it was mailed *if satisfactory proof that the mailing occurred on an earlier date is provided.*

Under the provisions of the Revenue and Taxation Code relative to the various taxes and fees administered by the Board, the law prescribes specified dates in which

payments, returns, and other information are required to be submitted to the Board. In cases where taxpayers or fee payers fail to timely submit payments or information required, the law may provide for the imposition of interest and penalties. Pursuant to Section 11003 of the Government Code, if the post office cancellation mark shows a date after the due date prescribed by law, and if the taxpayer submits satisfactory proof that the mailing occurred on an earlier date, the Board is authorized to recognize the mailing as being timely and can relieve a taxpayer of any interest and penalty that may have been imposed. The Board's policy permits satisfactory proof of timely mailing through a declaration under penalty of perjury, and has developed a form entitled, "Declaration of Timely Mailing" which is provided to taxpayers for purposes of submitting proof of a timely mailing.

***Background:***

During a 47-year period from 1950 through 1997, the Board's administrative policy was to in essence allow a 1-day grace period in cases where a mailing was postmarked one day after the due date. For example, if a remittance was due by law on April 30, but was postmarked May 1, the payment was nevertheless deemed to have been made timely. This policy recognized the complications in the U.S. Postal Service and gave the taxpayer the benefit of the doubt that the mailing was actually made timely, but that the postmark did not reflect the actual date in which the mailing was placed in the mail. However, the Board's legal staff reviewed this policy and opined that there was no legal basis in which the Board could legally provide this 1-day grace period. The Board therefore eliminated the 1-day grace period policy.

***Comments:***

As a consequence to the Board's change in policy, staff workload has increased significantly. This change has resulted in a large increase in late billings, followed by hundreds of taxpayers filing Declarations of Timely Mailing requesting that the penalty and interest be cancelled. And over half of the declarations filed are attributable a mailing that was postmarked only one day after the due date.

This change in policy has also had a negative impact with taxpayers who are usually otherwise in compliance with the law. Many taxpayers are required to file returns on a monthly basis, or a quarterly basis, or on a quarterly basis with two prepayments within each quarter. Due to the frequency of the return filings, it seems logical to authorize the Board to adopt a uniform policy of acceptance of returns based on considerations such as current U.S. Postal Service and technology available for filing. It is interesting to note that the U.S. Postal Service makes special provisions for accepting state and federal income tax filings by remaining open until midnight on the April 15 due date.

***Law Prior to Amendment (Section 6902.4):***

The Internal Revenue Service Restructuring and Reform Act of 1998 (the Act) permits equitable tolling of the statute of limitations for refund claims during any period in which an individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months. Under the Act, tolling would not apply, however, for periods in which the taxpayer's spouse or another person are authorized to act on the taxpayer's behalf on financial matters.

Under California's Sales and Use Tax Law, Section 6902 specifies the period in which claims for refund are required to be filed for any overpayments. Under this section, claims for refund are required to be filed no later than three years from the due date of the return, or six months from the date of the overpayment, whichever period expires later. Current law does not provide for equitable tolling under any circumstances.

***Comment:***

The Board's conformance to the Act will provide equitable relief for those taxpayers that qualify, and will not likely result in a significant increase in staff workload or loss in revenues.

***Law Prior to Amendment (Section 6832.5):***

The Internal Revenue Service Restructuring and Reform Act of 1998 (the Act) requires the IRS to provide an annual statement to every taxpayer with an installment agreement indicating the initial balance at the beginning of the year, the payments made during the year, and the remaining balance at the end of the year.

***Comment:***

Through the enactment of AB 821 (Ch. 612) of the 1998 Legislative Session, effective January 1, 1999, the Board gained authorization to enter into installment payment agreements with taxpayers. Conformance with the Act will enhance the Board's services to taxpayers that have entered into these agreements by requiring the Board to provide clear explanations of accrued interest and penalties on their respective tax liabilities. It will also allow taxpayers to clearly track their remaining outstanding liabilities to the Board of Equalization.

**Senate Bill 319 (Burton) Chapter 306**  
*Strike Force extension*

*Effective January 1, 2000. Amends Section 106 of the Labor Code and amends Section 329 of the Unemployment Insurance Code.*

Extends the Joint Enforcement Strike Force on the Underground Economy from the scheduled sunset date of January 1, 2000 to January 1, 2006.

***Sponsor: California State Council of Laborers***

***Law Prior to Amendments:***

Under current law, Section 329 of the Unemployment Insurance Code designates the Director of the Employment Development Division (EDD) as Chairperson of the Joint Enforcement Strike Force on the Underground Economy (Strike Force). The section also requires the Strike Force to include representatives of the EDD, Department of Consumer Affairs, the Department of Industrial Relations, and the Office of Criminal Justice Planning. Other agencies such as the Franchise Tax Board, the State Board of Equalization, and the Department of Justice are encouraged to participate. However, the statute will remain in effect only until January 1, 2000.

Under current law, the Strike Force is given the following duties:

- Facilitate and encourage the development and sharing of information by the participating agencies necessary to combat the underground economy.
- Improve the coordination of activities among the participating agencies.
- Develop methods to pool, focus, and target the enforcement resources of the participating agencies in order to deter tax evasion and maximize recoveries from blatant tax evaders and violators of cash-pay reporting laws.
- Reduce enforcement costs wherever possible by eliminating duplicative audits and investigations.

***In General:***

The Board of Equalization is a core member of the multiagency Strike Force. The Strike Force was created by Executive Order W-66-93 on October 26, 1993 and subsequently codified through Senate Bill 1490 (Ch. 1117) in 1994. The Strike Force has achieved significant enforcement results in all phases of its efforts. Joint efforts among the different agencies have proven to be very effective. Collective enforcement capability allows participating agencies to address multiple rather than single violations of law, such as the Employment Enforcement Task Force efforts as explained in the Revenue Estimate comments. The multiple enforcement efforts with associated citations, penalties, and assessments has had a significant effect on

underground economy businesses. The effect has been to drive these businesses into the legitimate economy or to put them out of business. This reduces the pressure of unlawful competition on honest businesses.

*Comments:*

1. **Purpose.** According to the author's office, this bill is simply intended to extend the life of the successful Strike Force for another six years.
2. **The Board has benefited from its participation in the Task Force.** As detailed in the Revenue Estimate, the Board was able to enhance its presence among a certain segment of bars, restaurants, and clubs which were seriously underreporting their sales tax liabilities. Without the presence of the Department of Alcoholic Beverage Control and local law enforcement agencies, Board auditors would not have been as successful in obtaining the purchase invoices and cash register tapes necessary to establish the large underreporting of taxes discovered in those stings.

**Senate Bill 330 (Wright) Chapter 799**  
*Exclusion for transfers of artwork at social gatherings*

*Tax levy; effective October 10, 1999, but operative April 1, 2000. Adds Section 6010.30 to the Revenue and Taxation Code.*

**This bill excludes from the terms “sale” and “purchase” the transfer of original drawings, sketches, illustrations, or paintings by an artist or designer at a social gathering for entertainment purposes if all of the following requirements are met:**

- **Substantially all (80 percent or more) of the drawings, sketches, illustrations, or paintings are delivered by the artist or designer to a person or persons other than the purchaser.**
- **Substantially all (80 percent or more) of the drawings, sketches, illustrations, or paintings are received by a person or persons, other than the purchaser, at no cost to the person or persons who become the owner of the drawings or sketches.**
- **The charge for the drawings, sketches, illustrations or paintings is based on a preset fee.**
- **The fee charged for the drawings, sketches, illustrations, or paintings is contingent upon a minimum number of at least three drawings, sketches, illustrations or paintings to be produced by the artist or designer at the social gathering.**

*Sponsor: Senator Cathie Wright*

*Law Prior to Amendment:*

Under existing law, the sale of tangible personal property for consideration is subject to tax unless that property is specifically exempted. The sales tax is based on the total gross receipts of retailers for the sale of tangible personal property, without any deduction on account of the cost of materials used, labor, or services that are a part of the sale of the property.

The Board’s Sales and Use Tax Regulation 1501, “Services Enterprises Generally,” provides that the basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the *true object of the contract*; that is, is the real object sought by the buyer the service per se or the property produced by the service. If the true object of the contract is the service per



se, the transaction is not subject to tax, even though some tangible personal property is incidentally transferred.

*Comments:*

1. **Purpose.** To codify a specific ruling on a case that was heard by Members of the Board of Equalization. The case involved an artist who is hired for an hourly fee by a host or hostess to draw caricatures of guests at parties. The artist receives the fee regardless of the number of guests who requested that a caricature be drawn. The Board concluded that the entertainment value the artist provides was the true object of the contract and that any artwork transferred is merely incidental.
2. **Bill has little impact on Board.** This measure will not materially impact the Board's administration of the sales and use tax program, as the provisions of this measure are consistent with the Board's interpretation of the law.

**Senate Bill 331 (Wright) Chapter 455***Report to Legislature – graphic artists*

*Effective January 1, 2000. Adds an uncodified section.*

**This bill requires the Board, on or before January 15, 2000, to report to the Legislature on the sales or use tax revenue collected from any graphic artist, cartoonist, illustrator, commercial photographer, and advertising agency. The bill requires the report to additionally include the amount of sales or use tax assessed by the Board in any audits covering the reporting period for the 1997 calendar year that are attributable to unreported transactions of these taxpayers. The bill requires that the report itemize according to each of these categories of taxpayers.**

*Sponsor: Graphic Artists Guild*

***Law Prior to Amendment:***

Under existing law, the sale of tangible personal property for consideration is subject to tax unless that property is specifically exempted or excluded from the computation of tax. The sales tax is based on the total gross receipts of retailers for the sale of tangible personal property, without any deduction on account of the cost of materials used, or any labor or services that are a part of the sale of the property. "Sale" is defined in Section 6006 to include, among other things, any transfer of title or possession for consideration. Therefore, when tangible personal property is transferred, such as a photograph, even temporarily, to a person and a charge is made granting the person the right to reproduce the tangible personal property (such as in a newspaper), the entire charge is subject to tax. However, in order for tax to apply, there must be a tangible item of property transferred. Therefore, if a photograph, for example, is transferred modem to modem, no tax would apply to that transfer.

Under existing law, when a sale of tangible personal property includes a charge for an intangible right to reproduce that property, the entire charge is generally subject to tax. This interpretation has been supported by case law. Specifically, in the matter of *Simplicity Pattern Company v. State Board of Equalization* (1980) 27Cal.3d 900, the Supreme Court held that the transfer of certain master film negatives to be used for reproduction purposes was a sale of tangible personal property and that the tax on the transfer was measurable by what the taxpayer received for the property as a whole, without any deduction for amounts paid for the intellectual or other intangible components.

There are some exceptions to the general law that imposes tax on the entire transaction amount without a deduction for the intangible element of the transfer. For example, under Sections 6011(c)(10) and 6012 (c)(10), "sales price" and "gross receipts" do not include the amount charged for intangible personal property transferred with tangible personal property under a "technology transfer agreement" in which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest. Another example includes the exemption under Section 6362.5 attributable to the amounts paid for the copyrightable, artistic or intangible elements in connection with the sale and purchase of master tapes and records. With regard to this exemption, only the actual tangible personal property incorporated into the tape or record is subject to tax.

***Background:***

During the 1997-98 Legislative Session, SB 664 (Wright) was before the Legislature to provide a sales and use tax exemption for charges for reproduction rights – similar to this measure prior to the June 1 amendments. As that measure was originally drafted, the Board estimated state and local revenue losses in the range \$110 million annually. Proponents asserted that the revenue loss was about half that identified by the Board.

To attempt to resolve these differences, the Legislative Analyst's Office (LAO) was asked to evaluate both estimates, but the LAO's findings did not lead to an agreement. It was concluded that making a more precise estimate of the revenue loss would be difficult, because specific data that were needed to definitively answer the question were not directly available. However, pursuant to a request by the LAO, Board staff reviewed sales tax accounts of 118 advertising agencies and graphic artists, and, based on the auditors' knowledge of the specific business activities of those accounts, estimated that those companies alone reported \$14 million in state and local sales and use tax on transactions that included the granting of a right to reproduce an original work of art.

Board staff met with proponents and, based on additional information they provided, revised some of its assumptions and revised its estimated state and local revenue loss to \$57 million annually. The sponsors of the bill also revised their estimate and concluded that the bill would result in a state and local revenue loss of approximately \$9 million annually.

This significant discrepancy has been repeatedly discussed, debated, and reviewed by Board staff, the bill's sponsors, and the Legislative staff assigned to analyze the bill. However, specific data needed to definitively resolve the question are not directly available.

*Comments:*

1. **Purpose.** To resolve the revenue disagreement by requiring the Board to conduct a study of the total sales and use tax collected and assessed by the Board from the taxpayers.
2. **The report required by the bill will not require additional resources.** The data required for the report is accumulated by the Board and the costs to conduct such a study will be minimal.

**Senate Bill 963 (Monteith) Chapter 289**  
*Exemption for oxygen administered to food animals*

*Tax levy; effective September 1, 1999, but operative January 1, 2000. Amends Section 6358 of the Revenue and Taxation Code.*

**This bill includes oxygen within the exemption for sales and purchases of drugs and medicines administered to food animals in subdivision (e) of Section 6358.**

*Sponsor: California Aquaculture Association*

***Law Prior to Amendment:***

Under existing law, Section 6358 of the Sales and Use Tax Law provides a sales and use tax exemption for the sale or use of any form of animal life the kind of which ordinarily constitutes food for human consumption (food animals). The sale of a cow, for example, is exempt from tax since the products from cows ordinarily constitute food for human consumption.

In addition, the sale or use of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption is also exempt from tax (such as alfalfa for cows), as well as feed for any form of animal life that is to be sold in the regular course of business (such as feed sold to a person in the business of raising and selling earthworms).

The sale and use of drugs or medicines administered to “food animals” is also exempt from sales and use tax when the primary purpose of those drugs or medicines is the prevention or control of disease. Through the Board’s Regulation 1587, *Animal Life, Feed, Drugs and Medicines*, drugs and medicines are defined as any “livestock” drug defined and registered pursuant to specified provisions of the California Food and Agricultural Code. “Livestock” is defined in the Food and Agricultural Code to include all animals, poultry, bees, and *aquatic* and amphibian species which are raised, kept, or used for profit. Therefore, sales of drugs and medicines (pharmaceuticals) that are administered to fish, the products of which are ordinarily food for human consumption, currently qualify for the exemption from sales and use tax in Section 6358.

Section 6358.4 also provides a sales and use tax exemption for the sale and use of drugs and medicines, the primary purpose of which is the prevention and control of disease, and administered to “food animals” or animals held for resale when the drug or medicine is administered as an additive through either their feed or water.

***Background:***

In recent years, legislation has been enacted to modify the sales and use tax laws relative to medications administered to animals. During the 1996 Session, SB 38 (Ch. 954), amended Section 6358 to incorporate an exemption for sales and purchases of drugs or medicines that are administered to “food animals” when the primary purpose is the prevention or control of disease. This exemption was sponsored by the California Cattlemen’s Association in an effort to extend the same tax treatment to the livestock industry that had been afforded to the poultry industry the year before. The poultry industry had received some relief from the sales and use tax the year before through the enactment of AB 694 (Ch.620, Stats. 1995). That measure added Section 6358.4 to the Sales and Use Tax Law to exempt sales of medicines administered to animals as additives to feed or drinking water, when the primary purpose of the medicine is the prevention and control of disease of “food animals”, or of nonfood animals which are to be resold. The livestock industry argued that, unlike poultry where medicines are administered as additives to feed or drinking water, other animals, such as cattle and sheep, are usually treated with pharmaceuticals through injections, implants, drenches, pour-ons and boluses. Now, the exemption for sales of drugs and medicine administered to poultry and livestock are parallel.

***Comments:***

1. **Purpose.** To extend the existing drug and medicine exemption for food animals to oxygen purchased for maintaining fish raised in fish farms. The author notes that fish farming is one of the fastest growing sectors of agriculture and is responsible for stocking recreational lakes, restoring impacted fisheries, and raising the only source of commercially available abalone, sturgeon, hybrid striped bass, catfish and tilapia. The author points out that oxygen is a vital element to sustain the fish and reduce stress and the onset of disease, and it should be given the same tax treatment as drugs and medicines are given in the livestock and poultry industries.
2. **Bill will not be problematic to administer.** Currently, drugs and medicines administered to fish, the products of which ordinarily constitute food for human consumption, qualify for the exemption from tax under Section 6358. This additional exemption for sales of oxygen will not materially affect the Board’s administration of the sales and use tax.

**Senate Bill 1210 (Baca) Chapter 758***Exemption for containers used for shipping food products*

*Tax levy; effective October 10, 1999, but operative April 1, 2000. Amends Section 6364 of the Revenue and Taxation Code.*

**This bill provides an exemption from sales and use tax for the sale or purchase of any container, when sold without the contents to persons who place food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged for sale.**

*Sponsor: CHEP, a third party pallet and container pooling company based in New York*

***Law Prior to Amendment:***

Under existing law, sales or use tax applies to all sales or purchases of tangible personal property, unless otherwise exempted or excluded from the computation of sales or use tax.

Section 6364 of the Sales and Use Tax Law provides an exemption from sales and use tax for sales and purchases of the following containers:

- Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container (e.g., a detergent manufacturer who purchases cardboard boxes for purposes of packaging the detergent for subsequent sale would not be required to pay tax on the purchase of that packaging material).
- Containers when sold with the contents if the sales price of the contents is not taxable (e.g., egg cartons sold with eggs are not subject to tax).
- Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling (e.g., a returnable soft drink bottle sold with the soft drink is not subject to tax).

The Board's Regulation 1630, *Packers, Loaders, and Shippers*, addresses the application of tax to containers used by persons engaged in business of preparing goods for shipment (packers) when those persons are not the sellers of the goods. Generally, when the packer is not the seller of the contents, the packer is regarded as a consumer of the packing materials and containers, and the sale of the containers or

packaging materials to the packer is taxable, unless the packer expressly contracts with his or her customer for the sale to that customer of the container or packaging materials, making a separate charge of those items, with title passing from the packer to the customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the packer for reuse. However, the regulation further specifies that sales tax *does not apply* to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale. Therefore, nonreturnable produce boxes, for example, sold to packers who place a grower's produce in the container for subsequent sale are currently not subject to tax. If the produce boxes are "returnable" (meaning they are customarily returned to the packer for reuse) the containers would be subject to tax.

***Background:***

The provision in the Board's Regulation 1630 regarding packers of food products was added late in 1996 in response to concerns raised by fruit trade associations. Representatives of the industry pointed out that in many cases, some growers pack their own fruits and vegetables as well as pack the produce of others. Consequently, in such cases, the packaging materials purchased by a grower to pack his or her own produce *was not* taxable under Section 6364(a), but the same packaging material purchased to pack another grower's produce *was* taxable. The change to the regulation therefore exempted all such packaging material from the tax in order to eliminate this inconsistent tax treatment.

***Comments:***

1. **Purpose.** To obtain an exemption for leases of pallets/containers to manufacturers who use the returnable pallets/containers to transport agricultural products to their customers - similar to how nonreturnable packaging materials purchased by produce packers are treated under the Board's regulation. CHEP, the sponsor of the bill, points out that the returnable aspect of its containers reduces waste - CHEP pallets in the grocery industry eliminate approximately 65% of the wasted lumber or 3 billion pounds - and should be given the same tax treatment as the nonreturnable containers are given that are used by produce packers.
2. **Why does tax currently apply to these containers?** The containers manufactured by CHEP are returnable, in that they are customarily returned to CHEP for reuse. As a "returnable" container, in order to meet the conditions of the exemption provided in the current Section 6364, the container must either have been sold (or leased) with exempt contents or sold (or leased) with the contents in connection with a retail sale of the contents, or resold (or re-leased) for refilling. Since CHEP does not sell or lease the containers with the contents (they are leased to manufacturers who place the contents in them), the only condition upon which an exemption would apply would be cases in which the



containers are resold by CHEP for refilling. Therefore, under the law prior to this measure, tax applied to the charges by CHEP for the initial lease of the container, but the subsequent lease of the container for refilling was exempt from tax.

3. **Bill will not be problematic to administer.** The law prior to enactment of this measure applicable to the taxation of containers that CHEP sells or leases set up an almost illogical result (the initial lease was taxable, the re-lease was exempt). Exempting the sale and lease of these containers will actually simplify the tax law.

**Senate Bill 1302 (Committee on Revenue and Taxation) Chapter 865**  
*Board-sponsored housekeeping measure*

*Effective January 1, 2000. Amends Sections 6203, 6452, 6454, 6479.3, 6480.1, 6480.6, 6480.16, 6592, 7273, 7354, and 8101 of, and adds Sections 6479.31, 8106.7, and 8127.6 to, the Revenue and Taxation Code.*

**This Board-sponsored measure accomplishes the following:**

- 1. Deletes from the definition of “engaged in business in this state” language that could be susceptible to constitutional challenge (§6203).**
- 2. Authorizes the Board to accept electronic filing of sales and use tax returns (§§6452, 6454, and 6479.31).**
- 3. Clarifies that the maximum penalty with respect to electronic funds transfers of prepayments shall be limited to 6% (§6479.3).**
- 4. Authorizes the Board to compute the jet and diesel fuel sales tax prepayment rates independently of the sales tax prepayment rate calculated for gasoline in order to eliminate excess prepayments (§6480.16).**
- 5. Makes technical corrections to the provisions that allow the Board to relieve a taxpayer from penalties under certain circumstances (§6592).**
- 6. Extends the time period in which the Board is required to furnish a report to the Legislature on the amounts the Board charges for administering a local special taxing jurisdiction’s transactions and use taxes (§7273).**

*In addition to the Board-sponsored provisions, this bill allows qualified distributors to convert taxpaid gasoline gallons purchased from nonqualified distributors to ex-tax gallons. This bill provides a qualified distributor either of two options: 1) obtain a refund of the prepaid sales tax and excise tax on purchases from a nonqualified distributor; or, 2) claim a tax credit on their tax returns for the tax paid to a nonqualified distributor.*

*Sponsor: Western States Petroleum Association (qualified distributor provisions)*

***Law Prior to Amendment (qualified distributor provisions):***

Under existing law, an excise tax of \$0.18 per gallon is imposed on the distribution (sale) of motor vehicle fuel (gasoline) in this state. Certain “qualified” distributors are authorized by the Board to sell and trade gasoline among themselves without incurring an excise tax liability provided they meet the security deposit requirements contained in Section 7401. Upon distribution to an unqualified distributor, the excise tax is due and payable to the Board. Any distributor that redistributes taxpaid gasoline is allowed to claim an offsetting credit for taxes paid to the previous distributor.

Under existing law, Section 6480.1 of the Sales and Use Tax Law requires the prepayment of the sales tax on the first distribution of gasoline in this state. Qualified distributors are also allowed to sell gallons among themselves without incurring the prepaid sales tax liability. Otherwise, the prepaid sales tax is collected and paid by each distributor and wholesaler (with offsetting credits allowed for amounts paid to the previous distributor or wholesaler) until claimed as a final credit by the retailer of the gasoline as an offset to the sales tax due on the retail selling price at the pump. The prepaid sales tax rate for April 1, 1999 through March 31, 2000 is \$0.07 per gallon.

***Background:***

When all the distributors in the chain of distribution are qualified, the fuel is bought and sold tax-free and the tax collection system operates smoothly. Occasionally, however, a nonqualified distributor will sell gasoline to a qualified distributor and pass on both the excise and prepaid sales taxes. The gasoline purchased from the nonqualified distributor becomes taxpaid gallons to the qualified distributor and the gasoline remains taxpaid on each subsequent sale to another distributor.

In recent years errors have occurred when qualified distributors have sold or traded gallons among themselves believing the transfer to be extax, when in fact they were taxpaid transactions due to the involvement of a nonqualified distributor in the chain. The distributors take incorrect deductions or credits on their returns because of the taxpaid gallons. In some cases, the qualified distributor has been unable to receive a credit or refund for taxes paid on fuel because the qualified distributor failed to claim a credit or file a claim for refund in a timely manner.

***Comments:***

This bill is intended to simplify the administration of the gasoline tax collection system by allowing qualified distributors to treat all gasoline they purchase as tax-free. The Board does not anticipate any reporting or compliance problems from this change.

## TABLE OF SECTIONS AFFECTED

SECTIONS	BILL AND CHAPTER NUMBER		SUBJECT
<b>Revenue &amp; Taxation Code</b>			
§6010.30 Add	SB 330	Ch. 799	Transfers of artwork for entertainment
§6010.40 Add	AB 563	Ch. 361	Pet adoptions
§6066.3Add	AB 990	Ch. 908	Cities and counties permit information
§6066.4 Add	AB 990	Ch. 908	Seller's permit number requirement
§6203 Amend	SB 1302	Ch. 865	Definition of engaged in business in this state
§6358 Amend	SB 963	Ch. 289	Oxygen administered to food animals
§6364 Amend	SB 1210	Ch. 758	Containers for food products
§6452 Amend	SB 1302	Ch. 865	Returns
§6454 Amend	SB 1302	Ch. 865	Filing return
§6471 Amend	AB 384	Ch. 484	Revision of prepayment requirements
§6472 Amend	AB 384	Ch. 484	Revision of prepayment requirements
§6477 Amend	AB 384	Ch. 484	Revision of prepayment requirements
§6479.3 Amend	SB 1302	Ch. 865	Electronic funds transfer payment
§6479.31 Add	SB 1302	Ch. 865	Electronic filing of return
§6480.1 Amend	SB 1302	Ch. 865	Prepayment
§6480.6 Amend	SB 1302	Ch. 865	Refund of prepayment
§6480.16 Amend	SB 1302	Ch. 865	Prepayment rate
§6592 Amend	SB 1302	Ch. 865	Waiver of penalties

**TABLE OF SECTIONS AFFECTED (CONTINUED)**

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
<b>Revenue &amp; Taxation Code</b>				
§6832.5	Add	AB 1638	Ch. 929	Installment payment agreement
§6902.4	Add	AB 1638	Ch. 929	Claim for refund limitation period
§7063	Add & Repeal	AB 790	Ch. 443	Top 12 tax delinquents
§7273	Amend	SB 1302	Ch. 865	Charges for administering transactions and use taxes
§7286.56	Add	AB 1371	Ch. 110	Transactions and use tax - Yucca Valley
<b>Government Code</b>				
§15620.5	Add	AB 1638	Ch. 929	Postal delay date
<b>Labor Code</b>				
§106	Amend	SB 319	Ch. 306	Joint Enforcement Strike Force on the Underground Economy
<b>Unemployment Code</b>				
§329	Amend	SB 319	Ch. 306	Joint Enforcement Strike Force on the Underground Economy