California State Board of Equalization,
Legislative and Research Division

LEGISLATIVE BULLETIN

State Capitol Building (from the East) c.1945
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SPECIAL TAXES AND FEES LEGISLATION 2009

SPECIAL TAXES LEGISLATION
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Assembly Bill 274 (Portantino) Chapter 318
Solid Waste Postclosure Fee

Effective January 1, 2010, but operative January 1, 2012, if the CIWMB receives letters of participation in the Fund from landfill operators representing at least 50 percent of the total volume of waste disposed of in 2010. Amends Sections 48000 and 48001 of, and adds Section 48001.5 to, and adds Article 2.1 (commencing with Section 48010) to Chapter 2 of Part 7 of Division 30 of, the Public Resources Code, and amends Section 45901 of the Revenue and Taxation Code.

BILL SUMMARY

On and after January 1, 2012, this bill would increase the integrated waste management (IWM) fee by an additional 12 cents per ton upon each operator of a solid waste landfill that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund (Fund).

Sponsor: Assembly Member Portantino

LAW PRIOR TO AMENDMENT

Under current law, Division 30 (commencing with Section 40000) of the Public Resources Code, known as the *California Integrated Waste Management Act of 1989* (Act), imposes an IWM fee on each operator of a disposal facility based on the amount, by weight or volumetric equivalent, as determined by the California Integrated Waste Management Board (CIWMB), of all solid waste disposed of at each disposal site. Existing law provides that the use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, is not considered disposal for purposes of the Act.

The amount of the fee is established by the CIWMB at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed $1.40 per ton. The fee is currently set at $1.40 per ton of solid waste disposed.

The IWM fee is collected by the Board and, after payment of refunds and administrative costs of collection, deposited in the Integrated Waste Management Account. The money in the account is used by the CIWMB, upon appropriation by the Legislature, for the following purposes:

- The administration and implementation of the Act, and
- The state water board's and regional water board's administration and implementation of the *Porter-Cologne Water Quality Control Act* at solid waste disposal sites.

AMENDMENT

Among other things, this bill adds Article 2.1 (commencing with Section 48010) to Chapter 2 of Part 7 of Division 30 of the Public Resources Code to establish the Fund, which this bill creates in the State Treasury to pay for corrective action and postclosure activities not performed by the owner or operator of a solid waste landfill.

Participation in the Fund would be voluntary, and an operator electing to participate would be required to submit a written notice to the CIWMB on or before July 1, 2011.

This bill also amends Section 48000 of the Public Resources Code to increase, on and after January 1, 2012, the amount of the IWM fee by 12 cents per ton upon each operator of a solid waste landfill that notifies the CIWMB that it elects to participate in the Fund. Proceeds from the fee would be deposited, after payment of refunds and administrative costs of collection, in the Fund. The fees, revenues, and all interest earned would be available to the CIWMB, upon appropriation by the Legislature, to carry out the purposes of the Fund program.

The increased fee would only become operative if the CIWMB receives, on or before July 1, 2011, letters of participation in the Fund from landfill operators representing at least 50 percent of the total volume of waste disposed of in 2010. On or before August 31, 2011, the CIWMB would be required to notify the Board if the increased fee will become operative, and if so, provide the Board the name, address, and any other information necessary to administer and collect the increased fee, of every operator of a landfill electing to participate in the Fund.

This bill is effective January 1, 2010, but the increased fee would become operative as of January 1, 2012, if the CIWMB receives letters of participation in the Fund from landfill operators representing at least 50 percent of the total volume of waste disposed of in 2010.

BACKGROUND

Assembly Bill 939 (Chapter 1095, Statutes of 1989) enacted the Act. Among other things, AB 939 added Section 48000 to the Public Resources Code to require each operator of a solid waste landfill to pay a quarterly fee, in addition to the solid waste fee, to the Board based on all solid waste disposed of at each disposal site on or after January 1, 1990. The fee was initially set at $0.50 per ton of waste disposed of during the period of January 1, 1990, through June 30, 1990. The fee for waste disposed of during the period of July 1, 1990, through June 30, 1991, was to be set by the CIWMB at an amount sufficient to generate revenues equivalent to the approved budget for the 1990-91 fiscal year, including a prudent reserve, but not to exceed $0.75 per ton.

In 1993, AB 1220 (Chapter 656) consolidated the solid waste fee and the IWM fee into a single IWM fee. The IWM fee was set at $1.34 per ton for the 1994-95 fiscal year. That bill also provided that, commencing with the 1995-96 fiscal year, the amount of the fee established by the CIWMB be an amount sufficient to generate adequate revenues, as specified, but in an amount not to exceed $1.40 per ton.

AB 1647 (Chapter 978, Statutes of 1996), among other things, added Section 41781.3 to the Public Resources Code to state that the use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed, constitutes diversion through recycling and is not considered disposal for purposes of the Act.

IN GENERAL

Effective July 1, 1994, the IWM fee was set at $1.34, pursuant to AB 1220. The CIWMB approved an increase in the fee at its June 2001 board meeting to $1.40 per ton, the maximum allowed by statute, effective July 1, 2002.

COMMENTS

1. **Purpose.** This bill is intended to create a dedicated funding mechanism to protect the General Fund from expenditures resulting from the failure of the owner or operator of a closed solid waste landfill, who was required to maintain evidence of financial ability, to comply with a final order from the CIWMB related to compliance with postclosure and corrective action requirements.
2. **Key amendments.** The **September 4, 2009, amendments** revised the date by which the CIWMB is required to notify the Board if the increased fee will become operative. The **September 1, 2009, amendments** allowed for the solid waste postclosure fee to be imposed as an increase to the existing IWM fee and collected pursuant to the IWM Fee Law. The amendments also require the CIWMB to notify the Board if the fee will become operative and provide the names, addresses, and any other information necessary, of all operators electing to participate in the Fund.
3. **Board staff does not foresee any administrative problems with this bill.** Increasing the current IWM fee would not be problematic for the Board.
4. **Is the Board required to collect back fees and penalties?** Section 48010(b) provides that an operator electing to participate in the Fund after the fee goes into effect must pay all back fees and a 5 percent penalty before being allowed to participate. The bill does not, however, specify the agency responsible for collecting the back fees and penalty. In its current form, it appears the fees and penalty would be paid to the CIWMB at the time of the operator's election.

Assembly Bill 1188 (Ruskin) Chapter 649
Underground Storage Tank Fee Increase

Urgency measure, effective November 5, 2009, but operative January 1, 2010. Among its provisions, amends Sections 25299.43, 25299.50.3, 25299.57, 25299.62 of, and adds Section 25299.51.2 to, the Health and Safety Code.

BILL SUMMARY

Among other things, this bill temporarily increases the underground storage tank maintenance fee by an additional $0.006 per gallon of petroleum stored, between January 1, 2010, and December 31, 2011.

Sponsor: California Independent Oil Marketers Association (CIOMA)

LAW PRIOR TO AMENDMENT

Under current Section 25299.41 in Article 5 (commencing with Section 25299.40) of Chapter 6.75 of Division 20 of the Health and Safety Code, an owner of an underground storage tank is required to pay a storage fee of six mills ($0.006) for each gallon of petroleum (including, but not limited to, gasoline and diesel fuel) placed in an underground storage tank which he or she owns. Section 25299.43 imposes an additional fee of eight mills ($0.008) for a total underground storage fee of fourteen mills ($0.014) per gallon of petroleum stored in the tank. The fees, which are reported and paid to the Board of Equalization (Board), are deposited into the Underground Storage Tank Cleanup Fund and are earmarked for the cleanup of leaking tanks. This fee is due to sunset on January 1, 2016.

AMENDMENT

This bill amends Health and Safety Code Section 25299.43 to temporarily increase the storage fee by an additional six mill ($0.006) for each gallon of petroleum placed in an underground storage tank, on and after January 1, 2010, for a total of twenty mills ($0.020) per gallon. The increase is effective until December 31, 2012, at which time the fee will revert back to the previous rate of fourteen mills ($0.014).

The bill is effectively November 5, 2009, but the temporary rate increase is not operative until January 1, 2010.

BACKGROUND

The Underground Storage Tank Cleanup Fund was originally established in 1989 by SB 299 (Keene). Subsequent legislation affected fees, fund accounts, repeal dates, and various other provisions.

AB 1906 (Stats. 2004, Ch. 774) was the last bill that increased the UST fee. The fee was increased by one mill ($0.001) on January 1, 2005, and by another one mill ($0.001) on January 1, 2006.

SB 1161 (Stats. 2008, Ch. 616), among other things, extended the sunset date of the fee to January 1, 2016.

COMMENT

1. **Purpose.** To provide a source of funds for reimbursement of expenses related to the cleanup of leaking underground storage tanks.

2. **Key Amendments.** The **October 14, 2009 amendments** revised the end date of the temporary rate increase from December 31, 2012, to January 1, 2012. The temporary rate increase would then be in effect for the calendar years 2010 and 2011.

3. **A temporary rate increase of the underground storage tank fee would not create administrative problems for the Board.** While the bill takes effect immediately, the temporary rate increase does not go into effect until January 1, 2010.

   Section 25299.51 of the Health and Safety Code allows the State Water Resources Control Board to expend revenues to pay the administrative costs of the Board.

Assembly Bill 1422 (Bass) Chapter 157
Insurance Tax – Medi-Cal Managed Care Plans

Urgency measure, effective September 22, 2009. Among its provisions, amends, repeals, and adds Sections 12201, 12204, 12251, 12253, 12254, 12257, 12258, 12260, 12301, 12302, 12303, 12304, 12305, 12307, 12412, 12413, 12421, 12422, 12423, 12427, 12428, 12429, 12431, 12433, 12434, 12491, 12493, 12494, 12601, 12602, 12631, 12632, 12636, 12636.5, 12679, 12681, 12801, 12951, 12977, 12983, 12984, and 13108 of, and adds and repeals Sections 12009 and 12207 of, and adds and repeals Article 4 (commencing with Section 12240) of Chapter 3 of Part 7 of Division 2 of, the Revenue and Taxation Code.

BILL SUMMARY

This bill subjects Medi-Cal managed care plans to the insurance gross premiums tax at a rate of 2.35 percent of their total operating revenues, until December 31, 2010.

Sponsor: Assembly Member Bass

LAW PRIOR TO AMENDMENT

Section 12201 of the Revenue and Taxation Code (Section) imposes an annual tax on all insurers doing business in this state. For insurers other than title insurers and ocean marine insurers, Section 12221 specifies that the basis of the annual tax is gross premiums, less return premiums, received by the insurer on business done in this state. For insurers transacting title insurance, Section 12231 specifies that the basis of the annual tax is all income from business done in this state except interest and dividends, rents from real property, profits from the sale of investments, and income from investments. For insurers transacting ocean marine insurance, Section 12101 provides that the annual tax is measured by that proportion of the underwriting profit of the insurer from the ocean marine insurance written in the United States, which the gross premiums from ocean marine insurance written in this state bear to the gross premiums from ocean marine insurance written within the United States, at the rate of 5 percent.

Section 12202 sets the current rate of the annual tax at 2.35 percent, except for specified premiums that are taxed at 0.50 percent. Under Section 12204, the tax imposed on insurers is in lieu of all other state, county, and municipal taxes and licenses, including income taxes, with specified exceptions.

The definition of insurer does not expressly include health care service plan providers, who are covered under the Knox-Keene Health Care Service Plan Act. The Department of Managed Heath Care (DMHC) is responsible for administration of the Knox-Keene Act under which health care plan providers (including all HMOs and some PPOs) are subject to California's general tax on corporations. Unless otherwise provided by law, corporations doing business or incorporated in California must pay a franchise tax equal to the greater of the minimum of $800 or an amount measured by net income multiplied by the current tax rate, which is 8.84%.

AMENDMENT

This bill amends Section 12201 to impose the insurance gross premiums tax upon a Medi-Cal managed care plan doing business in this state at a rate of 2.35 percent, until December 31, 2010. The revenues derived from the imposition of the tax on Medi-Cal managed care plans would be continuously appropriated as follows:

- To the State Department of Health Care Services (DHCS) for purposes of the Medi-Cal program in an amount equal to 38.41 percent of the total revenues derived from the imposition of the tax on Medi-Cal managed care plans.
- To the Managed Risk Medical Insurance Board for purposes of the Healthy Families Program in an amount equal to 61.59 percent of the total revenues derived from the imposition of the tax on Medi-Cal managed care plans.

Article 4 (commencing with Section 12240), which this bill adds to Chapter 3 of Part 7 of Division 2 of the Revenue and Taxation Code, provides that the basis of the tax in the case of a Medi-Cal managed care plan is "total operating revenues," which is defined to mean all amounts received by a Medi-Cal managed care plan in premium or capitation payments for the coverage or provision of all health care services, including, but not limited to, Medi-Cal services. Total operating revenues does not include amounts received by a Medi-Cal managed care plan pursuant to a subcontract with a Medi-Cal managed care plan to provide health care services to Medi-Cal beneficiaries.

This bill adds Section 12009 to the Revenue and Taxation Code to define "Medi-Cal managed care plan" to mean any individual, organization, or entity, other than an insurer or a dental managed care plan, that enters into a contract with the DHCS, as described.

This bill also amends Section 12204 to provide that the in lieu provisions currently afforded to insurers for all other taxes and licenses would not apply to a Medi-Cal managed care plan. Accordingly, Medi-Cal managed care plans will continue to be subject to other state, county, and municipal taxes and licenses, as applicable.

This measure will have no force or effect if any of the following applies:

- There is a final judicial determination or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services, that federal financial participation is not available with respect to any payment made under the methodology implemented pursuant to this bill.
- The revenues derived from the imposition of the gross premiums tax on Medi-Cal managed care plans are diverted in whole, or in part, from the Medi-Cal program or the Healthy Families Program.
- There is a final judicial determination that the tax imposed pursuant to this bill on Medi-Cal managed care plans is required to be in lieu of all other taxes as described in Section 12204 of the Revenue and Taxation Code.

Furthermore, the bill states that, if there is a delay for any reason in the implementation of Section 14301.11, which this bill adds to the Welfare and Institutions Code to require the DOI to use the revenues generated pursuant to the imposition of the gross premiums tax on a Medi-Cal health care plan as specified, in the 2009-10 rate year or in any other rate year, both of the following shall apply:

- A Medi-Cal managed care plan subject to the tax imposed by this bill shall be assessed the amount the plan will be required to pay, but shall not be required to pay the tax until the DHCS meets all of its required obligations.
- DHCS may retroactively increase rates and make payments to plans.

This bill is effective September 22, 2009, as an urgency statute.

BACKGROUND

Medi-Cal is California's Medicaid program. The DHCS's website describes Medi-Cal as a public health insurance program which provides needed health care services for low-income individuals including families with children, seniors, persons with disabilities, foster care, pregnant women, and low income people with specific diseases such as tuberculosis, breast cancer, or HIV/AIDS. Medi-Cal is financed equally by the State and federal government.

Medi-Cal provides health care through either fee-for-service (FFS) or managed care. Approximately half of all Medi-Cal beneficiaries are enrolled in managed care plans, which have networks of providers, including doctors, pharmacies, clinics, labs, and hospitals. Health care plans that operate under the regulation of the DMHC, which are generally prepaid health plans that are health maintenance organizations and some preferred provider organizations, are legally not considered to be in the business of insurance and not subject to regulation under the Insurance Code, pursuant to court rulings dating back to the 1940s and the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene).

IN GENERAL

According to the Assembly Floor Analysis, "The Healthy Families Program (HFP) is California's version of the federal Children's Health Insurance Program and provides health, dental and vision coverage to children in families with incomes between 100-250% of the federal poverty level who are not eligible for Medi-Cal and do not have private insurance. California receives a 2:1 federal match for every dollar spent on HFP. As of August 1, 2009, there were approximately 920,000 children enrolled in HFP.

"HFP currently has a $194 million General Fund shortfall resulting from budget-related cutbacks and has been closed to all new enrollments since July of this year. As of August 25, 2009, there were 70,788 children on the HFP waiting list. Without additional funding, MRMIB [Managed Risk Medical Insurance Board] had scheduled to begin disenrolling nearly 700,000 children in October 2009."

COMMENT

1. **Purpose.** To establish a funding mechanism that will avoid the disenrollment of 670,000 low-income children from Healthy Families Program and will address and eliminate the current Healthy Families Program waiting list through 2010.
2. **The Board staff does not foresee any administrative problems with this bill.** The insurance tax is administered by three state agencies, the Board, the Department of Insurance (DOI), and the Controller. The Controller acts as a collector of the tax. The DOI is primarily responsible for licensing and regulating insurers under the Insurance Code. This includes assessing the amount of tax

each insurer is required to pay. The Board is responsible for issuing the assessments provided by DOI and for deciding the validity of any petition for redetermination.

Requiring Medi-Cal managed care plans to pay the gross premiums tax would not change the roles or responsibilities of the Board.

Assembly Bill 1547 (Committee on Revenue and Taxation) Chapter 545

Fuel Terminals
Final Returns
Diesel Fuel Refunds

Effective January 1, 2010. Among its provisions, amends Sections 7339, 60003, 60501, and 60508 of, and adds Sections 7339.1, 55041.1 and 60003.1 to, and to repeal Sections 60508.1, 60508.2, 60508.4, and 60509 of, the Revenue and Taxation Code.

BILL SUMMARY

This bill contains **Board of Equalization (Board) sponsored provisions** for the special taxes and fees programs, which does the following under the Revenue and Taxation Code:

- Redefines a terminal to include a **fuel production facility**, as defined, with storage so that facilities outside the bulk transfer system have the same reporting requirements as terminals supplied by pipeline or vessel. *(§§7339, 7339.1, 60003, and 60003.1)*
- Requires annual feepayers under programs administered pursuant to the **Fee Collection Procedures Law** to file a closing return when they close or sell their business. *(§55041.1)*
- Allows a supplier of diesel fuel to file a claim for refund or claim a credit on their supplier return on behalf of retailers for qualified sales to **consulate officers or consulate employees**, or to the United States and its agencies and instrumentalities. *(§§60501, 60508, 60508.1, 60508.2, 60508.4, and 60509)*

Sponsor: Board of Equalization

Fuel Terminals

Revenue and Taxation Code Sections 7339, 7339.1, 60003, and 60003.1

LAW PRIOR TO AMENDMENT

Under existing Section 7339 of the Motor Vehicle Fuel Tax Law (Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code) (gasoline) and Section 60003 of the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code) (diesel), a terminal is defined as a distribution facility that is supplied by pipeline or vessel, and from which the gasoline or diesel fuel may be removed at a rack.

Section 7333 and Section 60006 define a rack as a mechanism for delivering fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of non-bulk transfer. Bulk transfer means any transfer of fuel by pipeline or vessel.

Both the gasoline and diesel fuel tax laws define a terminal operator as a supplier of the respective fuel (Sections 7338 and 60033). As a supplier, the terminal operator is required to be licensed with the Board (Sections 7451 and 60131) and is required to file a monthly information report detailing, among other things, the amount of fuel

received, removed, and stored at each terminal it operates (Sections 7652.5 and 60204).

In general, both the gasoline and diesel fuel tax is imposed upon the removal of the fuel in this state from a terminal, if the fuel is removed at the rack. A supplier is generally responsible for the tax.

Under existing law, for a facility to be licensed as a terminal, it must be able to receive fuel by pipeline or vessel and be able to remove fuel over a rack.

However, over the past few years, Board staff has noted an emerging trend in the fuel industry where fuel products are produced and enter the market from outside the traditional bulk transfer system. This trend coincides with the push towards alternative and renewable fuel products, such as biodiesel. These production sites typically have storage facilities that store the fuels produced and have loading racks to ship the fuel products to customers. However, because they are not supplied by a pipeline or vessel, these production facilities are not currently licensed as terminals and, therefore, do not file terminal reports on their fuel storage and removal activities.

Because existing laws did not envision that there would be large scale production of fuel products outside the bulk transfer system, there is a deficiency in the Board's ability to account for this fuel as it enters the marketplace. Without terminal reporting of this fuel, Board staff cannot match all the fuel transactions reported by licensed suppliers and, therefore, cannot verify that all taxable fuel entering the market in California and the tax on that fuel is properly reported and remitted.

BACKGROUND

In 1995 and in 2002, the imposition of the diesel fuel and gasoline taxes, respectively, was moved to the rack. At that time, virtually all fuel sold in the state was produced from petroleum stocks at refineries and moved into the marketplace through the pipeline and terminal network throughout the state. The fuel taxes laws and the tax/transaction reporting system was developed around the traditional bulk transfer (refinery-pipeline-terminal) model of fuel movements. California's fuel tax/transaction reporting system includes monthly tax returns filed by licensed fuel suppliers, and monthly reports submitted by terminal operators and bulk (pipeline, vessel) carriers. Non-bulk carriers, specifically train operators, are required to file monthly information reports beginning in 2009 (AB 3079, Stats. 2008, Ch. 306). All parties report load-by-load transaction details. The Board then compares the terminal and carrier report data to the data provided on supplier tax returns to verify that all taxable fuel products removed from the terminals in this state are properly reported and the appropriate tax remitted.

AMENDMENT

This measure amends the gasoline and diesel fuel tax laws to include in the definition of a terminal, a gasoline or diesel fuel production facility with storage that is not supplied by pipeline or vessel and from which the fuel produced may be removed at a rack. These changes also add a definition of "fuel production facility" to the gasoline and diesel fuel tax laws, and they place the same licensing and reporting requirements on fuel production facilities supplied outside the bulk transfer system as are imposed on those facilities currently supplied by pipeline or vessel.

Besides biodiesel production facilities, these changes would also cover other stand-alone fuel production facilities, such as transmix refractionation plants. Transmix is a fuel mixture of dissimilar fuels (usually gasoline and diesel fuels) that results when one fuel type is run through a pipeline after another type of fuel is run through the same pipeline. Transmix is captured at terminals and either returned to refineries to be re-refined or sent to transmix plants where the mixture is broken down (refractionated) into its component gasoline and diesel fuel parts. Based on analysis of supplier reporting and discussions with the California Air Resources Board, it is estimated that in-state production of biodiesel during 2007 totaled 6 million gallons. Transmix movements from terminals during the same period totaled 194 million gallons.

COMMENT

Purpose. These amendments are intended to enable Board staff to match the fuel transactions reported by licensed suppliers to verify that all taxable fuel entering the market in California is properly reported and taxed.

Final Returns
Revenue and Taxation Code Sections 55041.1

LAW PRIOR TO AMENDMENT

There is no provision under current law that requires feepayers who file annual returns under the California Tire Fee program (Chapter 17 (commencing with Section 42860) of Part 3 or Divisions 30 of the Public Resources Code) to file closing returns and pay the fees that are due to the Board at the time that they cease to engage in business in this state by reason of discontinuance, sale, or transfer their businesses.

Such feepayers, especially those that close out their business operations in the second or third quarter of the calendar year, may not timely file their returns and pay the fees due by the annual statutory due date because they are no longer engaged in business. For example, if a feepayer closed its business operations on May 16, 2008, it would not be required to file an annual return and pay the fees due to the Board until the annual statutory due date of January 15, 2009.

Failure of these feepayers to timely file their annual returns often results in a delinquency and becomes a collection action that involves expenditure of additional Board resources to recover the unreported fees and additional interest and penalty.

AMENDMENT

The California Tire Fee is administered by the Board pursuant to the Fee Collection Procedures (FCP) Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). This change establishes a requirement in the FCP Law that every person who is required to file an annual return under the law file a closing return and pay any fees due to the Board upon the discontinuance, sale, or transfer of his or her business during the calendar year. This language is similar to existing language in other tax and fee programs administered by the Board.

Under this provision, a feepayer that reports and pays the tire fee on an annual basis is required to file a closing return and pay any fees that are due to the Board at the time it ceases to engage in business during the calendar year.

COMMENT

Purpose. This change requires a feepayer to close out its tire fee account at the same time it closes its sales and use tax permit with the Board, which would make it more convenient for the feepayer, more reliable for any successor, and more efficient for the Board. As a result, the Board would be able to collect and deposit fees due earlier during the calendar year, rather than after the year has ended, and reduce expenses for recovering and collecting delinquent fees from feepayers that fail to timely file their annual returns.

This provision will also allow the Board to work with feepayers in other programs administered under the FCP Law to change their reporting basis, as needed, to provide more efficient and improved customer service.

Diesel Fuel Refunds

Revenue and Taxation Code Sections 60501, 60508, 60508.1, 60508.2, 60508.4, and 60509

LAW PRIOR TO AMENDMENT

In general, under the existing Diesel Fuel Tax Law (Part 31, Division 2 of the Revenue and Taxation Code, commencing with Section 60001), the state provides an excise tax exemption for diesel fuel that is (1) dyed, (2) exported out of state, (3) sold to the United States government and its agencies or instrumentalities, (4) sold to certain consulate officers and consulate employees, (5) used off-highway and (6) used for agricultural purposes.

Section 60501 allows a diesel fuel supplier to claim a refund of the tax on diesel fuel when the tax-paid diesel fuel is exported, removed, sold, or used by a supplier under certain conditions. Some of the conditions include, but are not limited to, sale of diesel fuel under specified circumstances by a supplier to any consulate officer or consulate employee, and sales to the United States and its agencies and instrumentalities.

Section 60508.1 allows a diesel fuel supplier to take a credit in lieu of refund on the supplier's tax return for sales of tax-paid diesel fuel to a consulate officer or consulate employee.

The current Motor Vehicle Fuel Tax Law provides that motor vehicle fuel (gasoline) suppliers are able to claim a refund, or take a credit in lieu of refund, for qualified tax-paid sales to the armed forces of the United States or to a consulate officer or consulate employee. The gasoline tax statutes were drafted to allow suppliers who did not sell directly to the consulate officer or consulate employee the ability to file a claim for refund on behalf of the retailer.

Sales of tax-paid diesel fuel to consulate officer or consulate employee. Current Section 60501(a)(4)(F) provides that a claim for refund is allowed for diesel fuel sold by a supplier to any consulate officer or consulate employee under circumstances

which would have entitled the supplier to an exemption under paragraph (6) of subdivision (a) of Section 60100 if the supplier had sold the diesel fuel directly to the consulate officer or consulate employee. Generally, Section 60508.1 provides that the supplier may take a credit in lieu of a refund on the supplier's tax return. Under existing diesel fuel statutes, only a supplier who sells directly to a consulate officer or employee is entitled to claim the credit for the tax or file a claim for refund. No provision exists that allows a retailer to claim a refund for the sales it makes under these circumstances; therefore, the supplier is unable to claim a refund, or take a credit, when the sale is made by the retailer.

Sales of tax-paid diesel fuel to the United States and its agencies and instrumentalities. Under existing Section 60501(a)(4)(H), a claim for refund is allowed for diesel fuel sold by a person (not just a supplier) to the United States and its agencies and instrumentalities under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of the diesel fuel. Under existing diesel fuel statutes, only the person who sells to the United States and its instrumentalities is entitled to claim the credit for the tax or file a claim for refund. No provision exists that allows a supplier to claim a refund, or take the in lieu credit, when the retailer made the direct sale to the United States and its instrumentalities.

BACKGROUND

The current diesel fuel refund statutes worked well when major oil companies owned and operated most service stations and the oil companies, who were licensed suppliers, could take credit for the tax included in the retail sale on their supplier return. However, the industry has evolved, and now most "branded" stations are franchised or leased to independent retailers.

In practice, oil companies have continued to use the accounting methods that were put into place prior to the franchising of the company-operated stations and have claimed credit for these taxes on their returns. However, in an audit situation, if the supplier had erroneously claimed credits for its franchisee's sales to a consulate officer or the U.S. Government, the audit staff disallows the credits. This results in the supplier having to obtain reimbursement for the taxes from the franchisee. The franchisee then, at least with respect to sales to the U.S. Government, needs to file a claim for refund for those periods and amounts that are still within the statute of limitations.

AMENDMENT

These changes amend Sections 60501 and 60508, and repeal Sections 60508.1, 60508.2, 60508.4, and 60509 of the Diesel Fuel Tax Law to allow suppliers to file claims for refund, or take a credit in lieu of a refund, on their supplier returns on behalf of retailers for diesel fuel taxes on qualified retail sales to consulate officers or consulate employees or to the United States and its agencies and instrumentalities and to more closely conform the provisions of the Diesel Fuel Tax Law with the provisions of the gasoline tax law.

These changes will allow the oil company, i.e., the supplier, to claim the credit on its supplier return and avoid the necessity of obtaining reimbursement for the tax from the franchisee and the necessity for the franchisee to file a claim for refund with the Board. This approach is supported by the industry and will reduce the number of

claims for refund and potential controversies over claims that are submitted by the wrong person or that may be barred by the statute of limitations.

COMMENTS

Purpose. These amendments are intended to simply allow diesel fuel suppliers to file claims for refund, or take a credit in lieu of a refund, on their supplier returns on behalf of retailers for diesel fuel taxes on qualified retail sales to consulate officers or consulate employees or to the United States and its agencies and instrumentalities, consistent with the gasoline tax.

Senate Bill 16 (Ducheny) Chapter 23, Fourth Extraordinary Session

Accounts Receivable Discharge Threshold

Collection Fee

Urgency measure, effective July 28, 2009. Among its provisions, amends Section 13943.2 of, and adds Sections 16583.1 and 16583.2 to, the Government Code.

BILL SUMMARY

Among its provisions, this 2009-10 Budget revision trailer bill (1) increases the amount of debt which state agencies can discharge from collections activity from $250 to $500, and (2) authorizes state agencies to impose a reasonable fee for the actual cost of its collections of past due accounts.

Sponsor: Budget Committee

LAW PRIOR TO AMENDMENT

Existing Government Code (GC) Section 13943.2 provides the State Victim's Compensation and Government Claims Board (SVCGC) with authority to approve state agency requests to discharge accounts receivable up to $250, if the state agency's efforts have not resulted in payment and it would not be cost beneficial to pursue additional collection efforts.

Under Section 13943.2, the Board has established a "small balance" write-off process in which the Board writes off balances of $250 or less, as specified, after a period of 180 days upon the liability becoming due and payable, with specified exceptions (e.g., security is available).

Existing Chapter 4.3 (commencing with Section 16580) of Part 2 of Division 4 of Title 2 of the GC, known as the Accounts Receivable Management Act, requires state agencies to allocate collection resources based on giving highest priority to those accounts receivables with the highest expected return. The Accounts Receivable Management Act also authorizes each state agency to sell part or all of its accounts receivable to private debt collectors under specified conditions. This Act, however, does not authorize state agencies to charge a fee for their costs related to collecting delinquent accounts receivable. Further, there is no other statutory authority allowing the Board to charge a fee for its costs of collecting these delinquencies.

The State's collection procedures to collect delinquent accounts are detailed in the State Administrative Manual Section 8776 (et seq).

Existing law authorizes the Board to use various collection actions to collect delinquent accounts receivables, including but not limited to: bank levies, liens, wage garnishments, till-tap or keeper warrants, permit revocations, alcoholic beverage license suspensions, seizures of assets, offsets, and court actions. Of these collection actions, there are only four actions for which the Board charges the taxpayer a fee for its actual costs of collection:

Reinstatement Fee. The Board may revoke a permit if a taxpayer does not file a tax return on time or pay a tax or fee liability on time. The Board is also authorized

to revoke a permit if a taxpayer is required to post security but does not. Current law authorizes the Board to charge a $50 reinstatement fee when a permit has been revoked and the taxpayer requests that its permit be reinstated. A $50 reinstatement fee applies to each business location.

Till-tap or Keeper Warrant. If a taxpayer has not paid its tax or fee liability that is due and payable, the Board is authorized to serve a civil warrant to the California Highway Patrol or the local sheriff to enter the taxpayer's place of business and collect the gross receipts or contents of the cash register(s). Current law authorizes the Board to collect warrant fees that are assessed by the California Highway Patrol or local law enforcement agency to place an officer in the place of business.

Sale of Alcoholic Beverage License. The Board may seize and sell a liquor license upon termination of a business and for which a taxpayer is delinquent in the payment of taxes or penalties. The Board may charge taxpayers for any costs it incurs because of the seizure and sale, including but not limited to, advertising, long distance calls, postage, and notices of publication.

Sale of Other Property. The Board may seize and sell other types of real and personal property, such as a boat, home, or vehicle to satisfy a delinquent tax liability. The Board may charge taxpayers for any costs it incurs associated with the seizure and sale of such property. For example, the Board may issue a warrant to a county sheriff to seize and sell a tax debtor's vehicle. Any costs related to the seizure and sale are paid from the sale proceeds, with the remaining proceeds applied to the outstanding liability.

AMENDMENT

This bill amends GC Section 13943.2 to increase the amount of debt that state agencies can discharge from collection activity from $250 to $500. In addition, this bill adds GC Sections 16583.1 and 16583.2 to do the following:

- Authorize a participant under the Accounts Receivable Management Act to impose a reasonable fee, not to exceed the actual costs, for its cost of collection on a past due account. GC Section 16581 defines "participant" to mean all state agencies, departments, and offices.
- Require a state agency to submit an annual report to the State Controller of its accounts receivables and discharged accounts. The Controller is required to inform a state agency, not less than 60 days before the annual report is due, of both the format and submission date for the annual report.

As an urgency measure, this bill became effective July 28, 2009.

BACKGROUND

Assembly Bill 2591 (Chapter 506, Stats. 2006) required seven specified state agencies to submit an annual report to the Department of Finance (DOF) on the status of that agency's delinquent accounts receivables, and its efforts to collect these accounts during the previous fiscal year. The DOF must submit an annual report to the Legislature on the status of delinquent accounts receivable of state agencies. The reporting agencies are: The Board, Franchise Tax Board (FTB), State Lands Commission, Department of General Services, Department of Motor Vehicles, Department of Real Estate, and the Department of Corrections.

Since the enactment of AB 2591, there have been two reports submitted to the Legislature. As a result of the findings from the first report, 2006-07 Delinquent Accounts Report, the DOF established an Accounts Receivable (AR) Workgroup for purposes of improving administrative procedures and collections on delinquent accounts. The AR Workgroup, over the past year, evaluated existing AR processes and procedures, implemented new administrative procedures for locating debtors and for performing reviews of ARs, evaluated and submitted initial recommendations on the feasibility of selling the state's discharged debts or ARs, identified that statewide AR amounts may be misleading, and made updates to the State Administrative Manual.

On April 3, 2009, the DOF submitted the second report, 2007-08 Delinquent Accounts Report, to the Assembly Budget Committee, Senate Budget and Fiscal Review Committee, and Assembly and Senate Appropriations Committees. The report discusses actions taken, and recommendations made by the AR Workgroup. Two of these recommendations proposed to increase the threshold to discharge delinquent accounts and allow state agencies to charge a fee for their costs of collecting delinquent accounts receivables.

According to the DOF, over the course of next year, the AR Workgroup will continue to meet periodically to identify additional improvements to the overall management of AR practices and processes, which will include evaluating ways that the state can increase potential revenues.

COMMENTS

1. **Purpose.** To enact statutory changes necessary to implement improvements to state agencies collection of accounts receivable that have been adopted as part of the 2009-10 Conference Budget package.

2. **Implementation considerations.** Discharging accounts receivable under $500. Board staff does not see a problem administering the new threshold amount. It will continue to discharge balances of $500 or less in accordance with the procedures outlined in the State Administration Manual Section 8776.6, and the Board's existing criteria for write-offs of small balances.

   Imposing reasonable fees to cover collection costs. Numerous issues need to be addressed by Board staff in order to successfully administer the proposed collection fee. In part, these issues are as follows:

   - Would the same amount of fee be imposed on all types of ownership (sole owner, limited partnership, general partnership, corporation, limited liability company)? In general, collection of corporation accounts can involve an additional workload to verify corporate entity status, mail additional notices, search for corporate assets, and more. This added workload might warrant imposing a higher collection fee on corporation accounts, versus individual accounts.

   - When would the fee be assessed? At what point in the collection process would a fee be assessed? For Board liabilities, once a liability becomes due and payable, collection action may be initiated. There are two types of liabilities—self-assessed and Board-assessed. Self-assessed liabilities are when a taxpayer files a return, but 1) does not make a payment, 2) makes a partial payment, 3) makes a payment with a check that is dishonored by the

bank, and 4) files a late payment or return without penalty and interest charges included in the payment. When a self-assessed liability occurs, a receivable is established, and collection action begins.

- Board-assessed liabilities are liabilities for which a notice of determination (billing) has been issued by Board staff. They become due and payable 30 days from the date on which a determination is issued (unless a taxpayer has filed a timely petition for redetermination). Collection action may begin immediately after a determination is due and payable. At what point in the collection process would a delinquent receivable be subject to the proposed fee? As an alternative, a fee may be imposed on delinquent accounts that remain unpaid for 120, or 180 or more days after the liability was first due to the Board. These are just a few of the alternatives to be considered by Board staff.
- If a taxpayer enters into an installment payment agreement and fully complies with all terms of the agreement, would the taxpayer be subject to a collection fee? For example, an audit of a taxpayer's business discloses an underreporting of taxable sales. During an exit discussion, the taxpayer requests to pay the audit liability by making monthly payments. If the taxpayer is eligible for an installment payment agreement and complies with the terms of the agreement, would the Board assess a collection fee?
- Does the Board have sufficient authority under GC Section 16583.1 to impose collections fees? Section 16583.1 provides general statutory authority for state agencies to impose collection fees, however, it does not contain administrative provisions with regard to imposing the proposed fees and the amount of the fees.
- If a taxpayer disagrees with the assessment of the fee, will the taxpayer be able to contest the assessment by filing an appeal?
- GC Section 16583.1 allows, but does not require, a state agency to impose a reasonable fee, not to exceed the actual costs, to recover that agency's collection costs on a past due account. What do actual costs include? Would actual costs include those costs for the Board's collection program as specified in the annual Budget Act?
- Under current law, when a tax or fee becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus interest, penalties, and other costs. The lien attaches to real and personal property of a tax debtor by operation of law, and continues in effect for ten years from the date of its creation, unless it is sooner released or otherwise discharged. This is referred to as a "statutory lien." Would the proposed collection fees be covered under these statutory lien provisions?

3. **Proposed collection fees will require approval by the Board Members.** Board staff's recommendations to impose a collection fee must be placed on a Board Agenda for discussion and approval by the Board Members.
4. **The Legislative Analysts Office (LAO) recommends that the Board assess fees for dishonored checks, installment payment agreements, and offers in compromise agreements.** In its 2009-10 Budget Analysis, the LAO recommended that the Legislature require the Board and FTB to make certain

changes for purposes of generating additional General Fund revenues and deterring taxpayers from making payments from accounts with insufficient funds. Those changes are as follows:

Penalties for bad checks and money orders. According to the LAO, "Bad checks and money orders disrupt the tax collection process and delay the deposit of funds into the state's General Fund. FTB assesses a $15 penalty on bad checks and money orders of less than $750, and if the dishonored check or money order exceeds $750, the penalty increases to 2 percent of the face value. The Board does not charge a penalty on bad checks or money orders. The federal government assesses greater penalties for bad checks and money orders than the state." According to the LAO, aligning the amount of California penalties with federal penalties would serve as a greater deterrent to taxpayers paying taxes with checks and money orders that have insufficient funds. In addition, increasing the penalties for bad checks and money orders would result in General Fund revenues of approximately $400,000 for 2009-10 and nearly $1 million beginning 2010-11, and thereafter.

Fees for installment payment agreements. The Board does not charge a fee for installment payment agreements. In contrast, the FTB and Internal Revenue Service (IRS) do charge fees for this service. FTB charges a flat fee of $20 per agreement, which according to FTB, does not cover the cost to provide the service or reflect the higher cost of processing non-electronic fund transfer (EFT) payments. The IRS charges $52 per agreement for EFT payment agreements and $105 per agreement for paper check agreements. According to the LAO, if the Board implements a fee and the FTB increases their existing fee this would result in combined annual General Fund savings of approximately $4 million annually.

Fees for offers in compromise agreements (OIC). According to the LAO, "since OICs are a service provided to taxpayers, it would be appropriate to assess a fee. The IRS charges a flat fee of $150 per OIC. If FTB and BOE charged an application fee of $75 for each OIC, it would result in General Fund savings of approximately $400,000 annually."

TABLE OF SECTIONS AFFECTED

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
Motor Vehicle Fuel Tax Law				
§7339	Amend	AB 1547	Ch. 545	"Terminal"
§7339.1	Add	AB 1547	Ch. 545	"Fuel Production Facility"
Tax on Insurers Law				
§12009	Add Repeal	AB 1422	Ch. 157	"Medi-Cal managed care plan" defined
§12201	Amend Add Repeal	AB 1422	Ch. 157	Annual tax
§12204	Amend Add Repeal	AB 1422	Ch. 157	In lieu of other taxes; exceptions
§12207	Add Repeal	AB 1422	Ch. 157	Disallowed credits
Article 4 (commencing with §12240)	Add	AB 1422	Ch. 157	Basis of Tax for Medi-Cal Managed Care Plans
§12240	Add Repeal	AB 1422	Ch. 157	Basis of tax
§12241	Add Repeal	AB 1422	Ch. 157	"Total operating revenue" defined
§12242	Add Repeal	AB 1422	Ch. 157	Repeal date
§12251	Amend Add Repeal	AB 1422	Ch. 157	Prepayments
§12253	Amend Add Repeal	AB 1422	Ch. 157	Remittance of prepayment

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
Tax on Insurers Law *continued*				
§12254	Amend Add Repeal	AB 1422	Ch. 157	Amount of prepayment
§12254	Amend Add Repeal	AB 1422	Ch. 157	Amount of prepayment
§12257	Amend Add Repeal	AB 1422	Ch. 157	Overpayment
§12258	Amend Add Repeal	AB 1422	Ch. 157	Penalty and interest
§12260	Amend Add Repeal	AB 1422	Ch. 157	Relief from prepayments
§12301	Amend Add Repeal	AB 1422	Ch. 157	Due date
§12302	Amend Add Repeal	AB 1422	Ch. 157	Insurance tax return in duplicate
§12303	Amend Add Repeal	AB 1422	Ch. 157	Return to be signed; oath or declaration
§12304	Amend Add Repeal	AB 1422	Ch. 157	Blank forms furnished
§12305	Amend Add Repeal	AB 1422	Ch. 157	Remittance of tax
§12307	Amend Add Repeal	AB 1422	Ch. 157	Interest on extension

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
Tax on Insurers Law *continued*				
§12412	Amend Add Repeal	AB 1422	Ch. 157	Initial assessment of tax
§12413	Amend Add Repeal	AB 1422	Ch. 157	Notice of initial assessment
§12421	Amend Add Repeal	AB 1422	Ch. 157	Determination of correct amount of tax
§12422	Amend Add Repeal	AB 1422	Ch. 157	Proposed deficiency assessment
§12423	Amend Add Repeal	AB 1422	Ch. 157	Estimate where no return filed
§12427	Amend Add Repeal	AB 1422	Ch. 157	Notice of deficiency assessment
§12428	Amend Add Repeal	AB 1422	Ch. 157	Petition for redetermination
§12429	Amend Add Repeal	AB 1422	Ch. 157	Oral hearing
§12431	Amend Add Repeal	AB 1422	Ch. 157	Finality date

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
Tax on Insurers Law *continued*				
§12433	Amend Add Repeal	AB 1422	Ch. 157	Waiver of limitation
§12434	Amend Add Repeal	AB 1422	Ch. 157	Service of notice
§12491	Amend Add Repeal	AB 1422	Ch. 157	Lien of tax
§12493	Amend Add Repeal	AB 1422	Ch. 157	Lien has effect of execution
§12494	Amend Add Repeal	AB 1422	Ch. 157	Removal of lien
§12601	Amend Add Repeal	AB 1422	Ch. 157	Payment to Controller
§12602	Amend Add Repeal	AB 1422	Ch. 157	Electronic funds transfer
§12631	Amend Add Repeal	AB 1422	Ch. 157	Interest and penalty
§12632	Amend Add Repeal	AB 1422	Ch. 157	Deficiency assessment; interest and penalty
§12636	Amend Add Repeal	AB 1422	Ch. 157	Excusable delay

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
Tax on Insurers Law *continued*				
§12636.5	Amend Add Repeal	AB 1422	Ch. 157	Application of payment to delinquent tax liabilities
§12679	Amend Add Repeal	AB 1422	Ch. 157	Service of summons
§12681	Amend Add Repeal	AB 1422	Ch. 157	Controller's certificate prima facie evidence
§12801	Amend Add Repeal	AB 1422	Ch. 157	Controller's annual report of delinquent insurers
§12951	Amend Add Repeal	AB 1422	Ch. 157	Cancellation of assessment
§12977	Amend Add Repeal	AB 1422	Ch. 157	Credits and refunds
§12983	Amend Add Repeal	AB 1422	Ch. 157	Interest; insurers
§12984	Amend Add Repeal	AB 1422	Ch. 157	Disallowance of interest
§13108	Amend Add Repeal	AB 1422	Ch. 157	Judgment for assignee forbidden

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
Revenue and Taxation Code				
Integrated Waste Management Fee Law				
§45901	Amend	AB 274	Ch. 318	Disposition of proceeds
Fee Collection Procedures Law				
§55041.1	Add	AB 1547	Ch. 545	Final return
Diesel Fuel Tax Law				
§60003	Amend	AB 1547	Ch. 545	"Terminal"
§60003.1	Add	AB 1547	Ch. 545	"Fuel Production Facility"
§60501	Amend	AB 1547	Ch. 545	Credits and refunds
§60508	Amend	AB 1547	Ch. 545	Credits allowed on supplier's return
§60508.1	Repeal	AB 1547	Ch. 545	Credit provisions
§60508.2	Repeal	AB 1547	Ch. 545	Credit provisions
§60508.4	Repeal	AB 1547	Ch. 545	Credit provisions
§60509	Repeal	AB 1547	Ch. 545	Credit provisions

TABLE OF SECTIONS AFFECTED (CONTINUED)

SECTION		BILL AND CHAPTER NUMBER		SUBJECT
§13943.2	Amend	SBx4 16	Ch. 23	Accounts receivable discharge
§16583.1	Add	SBx4 16	Ch. 23	Collection fee
§16583.2	Add	SBx4 16	Ch. 23	Accounts receivable discharge report
Petroleum Underground Storage Tank Cleanup				
§25299.43	Amend	AB 1188	Ch. 649	Temporary fee increase
§25299.50.3	Amend	AB 1188	Ch. 649	"School district"
§25299.51.2	Add	AB 1188	Ch. 649	Audit of Fund
§25299.57	Amend	AB 1188	Ch. 649	Corrective actions; reimbursement of costs
§25299.62	Amend	AB 1188	Ch. 649	Payment by Controller
Solid Waste Postclosure Fee				
§48000	Amend	AB 274	Ch. 318	Solid Waste Postclosure Fee
§48001	Amend	AB 274	Ch. 318	Deposit of funds
§48001.5	Add	AB 274	Ch. 318	Distribution of funds
§48010	Add	AB 274	Ch. 318	Election to participate
§48011	Add	AB 274	Ch. 318	Conditions for expenditure
§48012	Add	AB 274	Ch. 318	Report on expenditures
§48013	Add	AB 274	Ch. 318	Operator of multiple landfills