California State Board of Equalization,
Legislative and Research Division

LEGISLATIVE BULLETIN

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

SPECIAL TAXES AND FEES LEGISLATION 2015

SPECIAL TAXES AND FEES LEGISLATION
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Assembly Bill 266 (Bonta) Chapter 689
Division of Medical Cannabis Regulation

Effective January 1, 2016. Among its provisions, adds Section 31020 to the Revenue and Taxation Code.

Summary: Among other things, this bill requires the Board of Equalization (BOE), in consultation with the California Department of Food and Agriculture (CDFA), to adopt a system for reporting the movement of commercial cannabis and cannabis products throughout the distribution chain.

Sponsor: Assemblymember Bonta

Purpose: To establish comprehensive, statewide licensure and regulations for commercial medical cannabis activity that protect patients, promote public safety, and preserve the environment, while maintaining respect for local control.

Fiscal Impact Summary: Unknown increase in sales and use tax revenues.

Existing Law: **Sales and Use Tax Law.** Except where the law specifies an exclusion or exemption, California's Sales and Use Tax Law[1] imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state. Therefore, under the law, sales tax applies to retail sales of marijuana, including medical marijuana, to the same extent as any other retail sale of tangible personal property.

For patient treatment, the law[2] exempts from sales and use tax retail sales of medicines, as defined, under certain conditions, including when the medicines sold or furnished are:

- prescribed by an authorized person and dispensed on a prescription filled by a pharmacist,
- furnished by a licensed physician to his or her own patient,
- furnished by a health facility for treatment pursuant to a licensed physician's order, or sold to a licensed physician.

Medical Marijuana Program. Under existing law, the California Uniform Controlled Substances Act[3] prohibits, except as authorized by law, the possession, cultivation, transportation, and sale of marijuana and derivatives of marijuana. Existing law authorizes, under The Compassionate Use Act of 1996 (Proposition 215 of 1996), a patient or the patient's primary caregiver to cultivate or possess marijuana for the patient's medical use when recommended by a physician, as specified.[4]

New Law: Among other things, this bill adds Part 3.5 (commencing with Section 19300) to Division 8 of the Business and Professions Code (BPC) to enact the **Medical Marijuana Regulation and Safety Act** (Act). The Act establishes a comprehensive licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana.

The Act requires the Department of Consumer Affairs (DCA), the Department of Public Health (CDPH) and CDFA to administer the Act's licensing and regulatory framework and to promulgate regulations to implement their respective responsibilities.

[1] Part 1, Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).
[2] Sales and Use Tax Law Section 6369.
[3] Division 10 (commencing with Section 11000) of the Health and Safety Code (HSC).
[4] HSC Section 11362.5.

The Act also establishes the Bureau of Medical Marijuana Regulation (Bureau) within the DCA under the Bureau Director's supervision and control.

Revenue and Taxation Code. This bill adds RTC Section 31020 to require the BOE, in consultation with the CDFA, to adopt a system to report commercial cannabis and cannabis product movement throughout the distribution chain (track and trace). The adopted system must not duplicate the CDFA's electronic database, as specified in BPC Section 19335. The BOE's adopted system must also employ secure packaging and provide information to the BOE. The bill requires the system to capture, at a minimum, all of the following:

- The amount of tax due by the designated entity.
- The name, address, and license number of the designated entity that remitted the tax.
- The name, address, and license number of the succeeding entity receiving the product.
- The transaction date.
- Any other information the BOE deems necessary for marijuana and marijuana taxation and regulation.

Background:

Medical Marijuana Sellers – Sales Tax. In 1996, California voters passed Proposition 215, also known as the Compassionate Use Act of 1996, which allows patients and their primary caregivers to cultivate or possess marijuana for personal medical treatment with the recommendation of a physician, as specified.

In 2003, Senate Bill 420 (Ch. 875, Stats. 2003, Vasconcellos) was enacted to establish statewide guidelines for Proposition 215 enforcement. In particular, SB 420 clarified that nonprofit distribution is allowed in certain cases for patient cultivation cooperatives, small-scale caregiver gardeners, and dispensing collectives. However, despite the fact that numerous medical marijuana dispensaries currently do business in California, the sale of medical cannabis is illegal under federal law.

The sale of medical marijuana[5] is taxable. The BOE issues seller's permits to those medical marijuana sellers that apply and will issue seller's permits to any other sellers making lawful and unlawful sales.

In 2007, the BOE mailed a special notice to California sellers of medical marijuana to clarify the application of tax to medical marijuana sales and the requirement that they must hold a seller's permit.

Commentary:

1. **Related Legislation.** Senate Bill 643 (Ch. 719, Stats. 2015, McGuire) adds BPC Section 19335 to the Act to require the CDFA, in consultation with the Bureau, to establish a track and trace system to report medical marijuana item movement through the distribution chain that utilizes a **unique identifier program**. Section 19335 also requires the CDFA to create an electronic database that contains electronic shipping manifests, as described.

   Assembly Bill 243 (Ch. 688, Stats. 2015, Wood) adds HSC Section 11362.777 to require the CDFA to implement a medical marijuana **unique identification program**, in consultation with, including but not limited to, the Bureau, SWRCB, and the Department of Fish and Wildlife. That bill requires the unique identifier to be issued and attached at the base of each medical marijuana plant.

2. **Track and trace.** This bill requires the BOE to adopt a specified track and trace system that also employs secure packaging. The track and trace system must be capable of capturing specified data that relates to a proposed cannabis tax.

   While AB 243 proposed a cannabis tax, the tax provisions were amended out of that bill on September 4, 2015. On September 11, 2015, Assembly Member Wood introduced AB 1548, which imposes upon

[5] All retail sales, including illegal sales, are subject to tax unless a specific exclusion or exemption applies.

all cultivators a per-ounce tax on all cannabis flowers, leaves, and immature plants to be collected by the distributor at the time of sale. AB 1548 identifies the distributor as the entity that remits the tax, while AB 266 identifies a "designated entity" as the taxpayer.

The author of any future cannabis bill may wish to consider amending RTC Section 31020 to conform the taxpayer references.

3. **Unique identifier.** SB 643 requires the CDFA, in consultation with the Bureau, to establish a track and trace system that utilizes a unique identifier. That unique identifier must also report medical marijuana item movement throughout the distribution chain. For the unique identifier to report movement through the distribution chain, it appears that the unique identifier information may have to be captured within the BOE's adopted system. However, the author may intend for the unique identifier to be tracked only through the CDFA's electronic database for shipping manifests. RTC Section 31020 states that the BOE's system must not duplicate the CDFA's electronic database.

   Staff also notes that BPC Section 19347, which this bill adds, requires that medical cannabis products be labeled, in part, with the unique identifier information prominently displayed and in a clear and legible font prior to delivery or sale at a dispensary.

   Since this bill requires the BOE to consult with the CDFA to adopt a track and trace system, the question of whether or not the BOE's system should capture the unique identifier information can be resolved during the system's development.

4. **Summary of amendments.** The **September 11, 2015, amendments**, as they relate to the BOE, require the BOE to adopt a system to report commercial cannabis and cannabis product movement throughout the distribution chain. The system must also employ secure packaging and capture specified information. The **September 4, 2015, amendments** added to the Medical Board of California's list of priority cases repeated acts of clearly excessive cannabis recommendations to patients. These amendments did not impact the BOE. The **September 1, 2015, amendments** gutted and amended the bill to simply state legislative intent to enact legislation to establish a comprehensive regulatory framework for medical marijuana in the state. The **August 17, 2015, amendments**, among other things, authorize the Governor's Office of Medical Cannabis Regulation to require regulations to be resubmitted by a License Authority, change the date by which no person shall engage in commercial cannabis activity without a license to instead occur upon implementation of regulations by the Licensing Authorities, revise the distribution chain, and separate the transportation and delivery provisions. **The July 13, 2015, amendments,** in part, required the BOE to hire the Division of Medical Cannabis Regulation director rather than requiring a Governor's appointment and prohibited any licensee from also holding an Alcoholic Beverage Control license. The **June 30, 2015, amendments** make non-substantive reference changes, require the BOE to enter into an MOU with the City of Los Angeles to establish specified protocols, and delete the provisions that specifically authorize a marijuana and marijuana products transactions and use tax. The **June 2, 2015, amendments**, in part, enacted the Medical Cannabis Regulation and Control Act to be overseen by the Governor's Office of Marijuana Regulation and created a multi-agency licensing framework that includes the BOE.

Assembly Bill 401 (Dodd) Chapter 662
Low-Income Water Rate Assistance Program: Study

Effective January 1, 2016. Adds Section 189.5 to the Water Code.

Summary: Among other things, requires the BOE, in collaboration with the State Water Resources Control Board (SWRCB) and relevant stakeholders, to develop a Low-Income Water Rate Assistance Program (Program) funding and implementation plan.

Sponsor: Assemblymember Dodd

Purpose: To develop a plan to fund and implement a program that provides assistance to low-income water ratepayers.

Fiscal Impact Summary: No state revenue impact.

Existing Law: The BOE annually collects the water rights fee, which applies to owners of water rights. Among other things, current law[6] requires each person or entity that holds a permit or license to appropriate water and each lessor of water to pay the annual fee according to a fee schedule established by the State Water Resources Control Board (SWRCB).[7]

Water Code Section 1537 requires the BOE to collect all annual fees and other fees referred to the BOE by the SWRCB for collection. The BOE collects the fees pursuant to the Fee Collection Procedures Law.[8]

The fees collected are deposited into the Water Rights Fund in the State Treasury.

The BOE also administers and collects a surcharge on all natural gas consumed in this state.[9] A public utility gas corporation is required to collect and remit the natural gas surcharge quarterly to the BOE. That corporation must collect from any person who consumes natural gas in this state and to whom it provides gas service. In addition, all persons consuming in this state natural gas that has been transported by an interstate pipeline must pay the surcharge directly to the BOE on a quarterly basis. The BOE transmits the payments to the Treasurer for deposit in the Gas Consumption Surcharge Fund, which is used to fund low-income assistance programs, cost-efficient energy efficiency and conservation activities, and public interest research and development.

New Law: This bill adds Section 189.5 to the Water Code to establish the Low-Income Water Rate Assistance Act (Act). Among other things, the Act requires the SWRCB, in collaboration with the BOE and relevant stakeholders, to develop a funding and implementation plan for a program no later than January 1, 2018. The Act requires the program to include a description of:

- a collection method to support and implement the program, including a discussion of constitutional restrictions on public water agency rate-setting;
- the program's funding assistance mechanism through direct enrollee credits or water service provider reimbursement, including an income verification method for low-income ratepayer eligibility; and

[6] Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code.
[7] Water Code Section 1525.
[8] Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.
[9] Article 10 (commencing with Section 890) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

- the methodology to determine the amounts to collect from water ratepayers in order to fund the program.

The Act specifically states that it does not authorize the imposition of a state charge to fund the program.

The Act defines the following terms:

- "Board" means the State Water Resources Control Board.
- "Low-income" means a household with income that is equal to or no greater than 200% of the federal poverty guideline level. For one-person households, program eligibility shall be based on two-person household guideline levels.
- "Program" means the Low-Income Water Rate Assistance Program.

In General: Created in 1879 by a constitutional amendment, the BOE was initially responsible for ensuring that county property tax assessment practices were equal and uniform throughout California.

The BOE began to levy four new taxes in 1911, including insurance and corporate franchise taxes to produce revenue for services throughout the state. As a result of the Great Depression, the BOE assumed the collection of the newly created sales tax in 1933 and the use tax in 1935. In addition to property tax administration, the BOE currently administers the state's sales and use, fuel, alcohol, tobacco, and numerous other taxes and fees that fund specific state programs.

Commentary:

1. **The BOE's scope and mission.** The BOE's mission is to serve the public through fair, effective, and efficient *tax administration*.

   This measure requires the BOE to collaborate with the SWRCB to develop a plan for the program's funding and implementation. The Act prescribes the program elements to include collection and implementation methods, a funding assistance mechanism, and a method to determine the funds necessary to support the program.

   The BOE commits to providing quality customer service. As part of that commitment, the BOE provides information and advice to the Legislature, industry groups, taxpayers, other state agencies, and other interested parties regarding tax and fee programs that the BOE currently administers. However, the proposed BOE collaboration extends beyond the BOE's scope and mission. Except for tax collection and administration expertise, the BOE has no expertise or stated position related to low-income funding assistance or funds necessary to support the program. Should the bill specify another agency or agencies, instead of or in addition to the BOE, to collaborate with the SWRCB to develop the program?

2. **Amendment summary.** The **September 2, 2015** amendments revised the recommendation due date to January 1, 2018. The **September 1, 2015** amendments changed the lead agency from the Department of Community Service and Development (Department) to the SWRCB. The **July 9, 2015** amendments changed the report due date from February 1 to January, 1, 2017. The **April 8, 2015 amendments** revised the program funding and implementation elements required to be developed by the Department, in collaboration with the BOE.

Assembly Bill 815 (Ridley-Thomas) Chapter 108
Oil Spill Prevention Fee: Technical Clean-up

Effective January 1, 2016. Amends Section 8670.40 of the Government Code, and amends Section 46101 of, adds Section 46008 to, and repeals Section 46018 of, the Revenue and Taxation Code.

Summary: Clarifies who owes and pays the oil spill prevention fee, excludes petroleum products derived from fee-paid crude oil, and deletes unnecessary oil pipeline operator registration requirements. The bill also defines certain terms in the Revenue and Taxation Code.

Sponsor: Board of Equalization

Purpose: To reduce confusion and clarify the intent of last year's budget trailer bill, Senate Bill 861.[10]

Fiscal Impact Summary: Does not impact oil spill prevention fee revenues.

Former Law: Existing law[11] imposes an oil spill prevention fee on each barrel of crude oil received from within or outside the state. The fee is also imposed on petroleum products received from outside the state at a marine terminal by any mode of delivery, provided it passed over, across, under, or through waters of the state. Marine terminal operators collect the fee from the owner of the crude oil or petroleum products, based on each barrel of crude oil received from within or outside the state, or petroleum products received from outside the state at a marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state.

Additionally, the prevention fee is collected by the refinery owner from the crude oil or petroleum products owner at the time it is received at a refinery within the state by any mode of delivery that has passed over, across, under, or through waters of the state, whether from within or outside the state.

There is a rebuttable presumption that crude oil or petroleum products received at a marine terminal or refinery has passed over, across, under, or through waters of the state. The presumption may be overcome by the marine terminal or refinery operator, or the owner of the crude oil or petroleum products, by providing evidence to rebut the presumption.

Although the BOE generally hears petitions for redetermination and claims for refund, the BOE will not hear challenges to the rebuttable presumption. Instead, the BOE will forward such petitions or claims to the Administrator for a decision.

As a Governor's appointee in the Department of Fish and Wildlife, the Administrator annually sets the fee rate. The current fee rate cap is $0.065 per gallon.[12] The Administrator is required to prepare a plan that projects revenues and expenses over three fiscal years. The fee amount is set so that the projected revenue will meet current and proposed state budget needs. The Administrator may also allow for a surplus if revenues will not be adequate to meet contingencies and shortfalls.

The refinery, marine terminal, and pipeline operators must each register with the BOE.[13] The owner of the

[10] SB 861, Ch. 35, Stats. 2014.
[11] Government Code (GC) Section 8670.40, as enacted by SB 861. See BOE analysis of SB 861 for statutory changes enacted by that bill.
[12] The cap was scheduled to reduce to $0.05 on January 1, 2015, before the enactment of SB 861. Effective September 18, 2014, the fee cap remained at $0.065.
[13] The Oil Spill Prevention and Administration Fee is administered and collected by the BOE consistent with Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code (RTC). Article 2, Section 46101 of the RTC, requires these same feepayers to register with the BOE.

crude oil or petroleum products, the marine terminal operator, or the refinery operator pays the fee monthly to the BOE. If the fee has been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery, the fee will not be imposed or collected again. The marine terminal or refinery operator or the owner of the crude oil or petroleum products has the obligation to demonstrate that the fee has been previously paid on the same crude oil or petroleum product.

Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies. However, a separate fee funds oil spill response activities.

New Law: This bill amends GC Section 8670.40(b)(4) to delete the provision that allows the owner of the crude oil or petroleum product to pay the fee to the BOE. The bill also amends GC Section 8670.40(b)(5) so that a marine terminal and refinery operator may presume that the prevention fee has been imposed on petroleum products derived from fee-paid crude oil refined at a California refinery.

This bill deletes GC Section 8670.40(h) and amends RTC Section 46101 to clarify that pipeline operators are not required to register for and pay the *prevention* fee, but are required to register for the oil spill *response* fee program.

New RTC Section 46008 defines "barrel" to clarify the unit of measurement of crude oil and petroleum products upon which the fee is imposed. The bill deletes RTC Section 46018 which defines "oil," as it is unnecessary for BOE administration and is already defined in the Government Code.

Background: Currently, the prevention fee is imposed on crude oil received at a marine terminal or refinery. The prevention fee is also imposed on petroleum products received at a refinery, whether from within or outside the state, and on petroleum products received from outside the state at a marine terminal. While SB 861 expanded the prevention fee to crude oil and petroleum products received at the refinery, the bill also added provisions that prevent the fee from being imposed or paid twice on the same crude oil or petroleum products. However, current law is not clear that petroleum products derived from fee-paid crude oil, once refined, are not subject to the fee. BOE staff believes the petroleum products derived from fee-paid crude oil are a new and distinct product and therefore subject to the prevention fee. In contrast, both the Administrator[14] and the oil industry[15] interpret Section 8670.40(b)(5) to mean that the prevention fee is not collected by a marine terminal or refinery operator on petroleum products derived from fee-paid crude oil, as the petroleum products derived from fee-paid crude oil are the same molecules and therefore, are fee-paid.

As stated in its AB 2678 analysis, BOE staff believes that legislative intent language alone may be ineffective to relieve industry from the requirement to document that the prevention fee previously was paid on petroleum products derived from fee-paid crude oil. Therefore, statutory guidance is necessary to clarify the issue.

Commentary:

1. **Effect of the bill.** This bill makes several administrative changes that reduce confusion and clarify the intent of last year's budget trailer bill, SB 861. Since its passage, the BOE has worked with the Department of Fish and Wildlife and the affected industries to implement the expansion of the oil spill

[14] Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR) is responsible for implementation of SB 861. OSPR submitted an emergency regulation, operative October 23, 2014, that clarifies that the prevention fee is not intended to be imposed on petroleum products derived from fee-paid crude oil. https://govt.westlaw.com/calregs/Document/I1976B700622511E494DF8E988D408861?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)

[15] Clean up language in AB 2678 (Ridley-Thomas, 2014) contained legislative intent stating the prevention fee is imposed on crude oil or petroleum products upon first entry into the state and not upon subsequent movement of that same oil or products derived after that first delivery.

prevention fees from only marine waters to all waters of the state, and to include crude oil and petroleum products received at a refinery in this state.

2. **The marine terminal and refinery operator currently collect the fee.** The marine terminal and refinery operator collect the fee from the owner of the crude oil or petroleum products. To avoid confusion or overpayment, this bill deletes the provision that allows the owner of the crude oil or petroleum products to pay the fee to the BOE.
3. **Clarifies intent of SB 861.** This bill specifies that a marine terminal and refinery operator may presume that the fee has been imposed on petroleum products derived from fee-paid crude oil refined in California. The change provides clear guidance consistent with Department of Fish and Wildlife regulations and supported by the affected industry.
4. **Clarifies registration requirements for pipeline owners.** The oil spill prevention fee is no longer imposed on pipeline operators; therefore, this bill does not require them to register with the BOE for that program.

Assembly Bill 1032 (Salas) Chapter 481
Tax-Paid Biodiesel Blend: Refund

Effective January 1, 2016. Amends Sections 60501 and 60505.5 of the Revenue and Taxation Code.

Summary: Allows a diesel fuel tax refund to a supplier for that portion of tax-paid biodiesel fuel removed from the terminal rack as a dyed biodiesel blend.

Sponsor: California Independent Oil Marketers Association
California Biodiesel Alliance

Purpose: To address a diesel fuel tax issue wherein a supplier is unable to be reimbursed for excise taxes paid on biodiesel fuel subsequently sold as a dyed biodiesel blend, which is not subject to tax when removed at the terminal rack.

Fiscal Impact Summary: Estimated diesel fuel tax overpayments in fiscal years (FY's) 2012-13 and 2013-14 of $779,000 and $2.829 million, respectively.

Former Law: Under the Diesel Fuel Tax Law (DFTL),[16] an $0.11 per gallon excise tax[17] is imposed on the removal of diesel fuel at the refinery or terminal rack,[18] upon entry into the state, and upon sale to an unlicensed person. This tax is adjusted annually to balance the revenues from the additional sales taxes on diesel fuel against the diesel fuel excise tax rate reduction that occurred as a result of the Fuel Tax Swap.[19]

Existing law defines a terminal[20] as a distribution facility supplied by pipeline or vessel (i.e., by bulk transfer), from which the diesel fuel may be removed at a rack. It also includes a diesel fuel production facility with storage that is not supplied by pipeline or vessel, from which the fuel produced may be removed at a rack. These diesel fuel production facilities have the same licensing and reporting requirements as distribution facilities currently supplied by pipeline or vessel.

Generally, the diesel fuel supplier owes excise tax at the time the diesel fuel is removed from the terminal rack.[21] If the diesel fuel enters California outside the bulk transfer/terminal system ("below the rack"), for instance by train or truck, the excise tax is due once it enters California.[22]

A supplier includes, among others, a person who owns the fuel in a terminal (position holder), a refiner, an enterer (importer), a blender, and a terminal operator. The BOE requires a supplier to be licensed and file monthly returns or information reports that detail the amount of fuel entered, received, removed, and stored.

[16] Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code (RTC).
[17] The Board set the excise tax rate on diesel fuel at $0.11 per gallon for the period of July 1, 2014, to June 30, 2015. The diesel fuel excise tax rate was set at $0.13 per gallon for the period July 1, 2015, to June 30, 2016.
[18] RTC Section 60006 refers to a series of pipes, a "rack," as a mechanism for delivering fuel from a refinery or terminal into a truck, trailer, or other means of nonbulk transfer.
[19] Additional sales and use tax rate on sales of diesel fuel imposed by AB 105 (Ch. 6, Stats. 2011):
[20] RTC Section 60003.
[21] RTC Section 60051.
[22] RTC Section 60052.

Exemptions and Refunds. Certain sales by diesel fuel suppliers are exempt from the excise tax, such as export for use outside the state, fuel used off-highway, or dyed diesel fuel.[23]

Certain persons may claim a credit or refund for the tax paid on fuel that is subsequently used in a nontaxable manner. Current law[24] authorizes reimbursement of the tax paid on diesel fuel that meets any of the following conditions:

- Used for purposes other than operating motor vehicle on public highways of the state.
- Exported for use outside of this state.
- Used in construction equipment that is exempt from vehicle registration and operated on a construction project.
- Used in a vehicle on any highway under the jurisdiction of the United States (U.S.) Department of Agriculture. To qualify for a refund, the user must have paid for or contributed to the construction or maintenance of the highway.
- Used in a motor vehicle owned and operated by a public agency or political subdivision of the state on highways constructed and maintained by the U.S. within a military reservation in California.
- Sold by a supplier to a consulate officer or employee under circumstances where the supplier would have been entitled to an exemption if the fuel had been sold directly to the consulate.
- Lost in the ordinary course of handling, transportation, or storage.
- Sold to the U.S. and its agents and instrumentalities under conditions that would have otherwise allowed a supplier to qualify for an exemption had that fuel been sold directly to the U.S.
- Sold to a train operator for use in a diesel-powered train or for other off-highway use under conditions that would have otherwise allowed a supplier to qualify for an exemption had that fuel been sold directly to the train operator.
- Removed from the terminal rack, but only to the extent that the supplier can show that tax on that same diesel fuel has been paid more than once by that supplier.

Biodiesel. California tax laws consider biodiesel to be a diesel fuel[25] subject to the diesel fuel excise tax rate. The fuel industry generally describes biodiesel by its percentage of biodiesel blended with petro diesel. For instance, a 100% biodiesel is described as B100 and a 5% biodiesel is B5, in which petro diesel represents 95% of the blend.

New Law: This bill allows a diesel fuel tax refund to a supplier for that portion of tax-paid biodiesel fuel removed from the terminal rack as a dyed biodiesel blend.

Background: Most U.S. produced biodiesel comes from the Midwest region. Since this biodiesel distribution occurs outside the normal bulk transfer/terminal system it is subject to the diesel fuel tax upon entry into the state. As the biodiesel products enter the market from outside California, the enterer[26] is responsible for the diesel fuel tax when it enters the state. Biodiesel that is produced in California, is generally taxed upon removal from the fuel production facilities rack, or, when the biodiesel "enters" the California market if removed from below the rack.[27]

In either of those cases, when another supplier makes a subsequent purchase of this tax-paid biodiesel to create a blended diesel fuel, the tax-paid biodiesel fuel is blended with ex-tax diesel fuel. When this blended diesel fuel is subsequently removed at the terminal rack, it may result in tax assessed twice on

[23] RTC Section 60100.
[24] RTC Section 60501.
[25] RTC Section 60022.
[26] Importer of record or owner of the fuel; RTC Section 60013.
[27] "Below the rack" from outside the normal bulk transfer/terminal system means from outside the normal bulk transfer/terminal system.

the biodiesel portion. In the case of a taxable removal, the state allows the supplier to claim a credit on their return as tax paid twice by the same supplier.

However, some suppliers have been unable to receive a credit or refund for tax paid on biodiesel that enters or is produced in the state and delivered into their terminals as tax-paid, but removed at the terminal racks for a nontaxable purpose. While the current statute allows reimbursement for the second tax paid on diesel fuel by the same supplier, the statute does not account for tax-paid diesel fuel that is taxed upon entry into the terminal but removed for nontaxable purposes (e.g. dyed biodiesel blends). The supplier is unable to recover the tax from the customer and is also unable to seek reimbursement for the tax from the BOE. Since the tax-paid biodiesel is blended with ex-tax dyed diesel fuel, it is not subject to tax when it is removed from the terminal rack. Because there is no subsequent taxable event, the current statute does not provide for reimbursement of the tax-paid portion of the biodiesel.

Last year AB 2756 (Committee on Revenue and Taxation) contained the same provisions. However, the bill contained a property tax change that prompted the governor's veto.

Commentary:

1. **Effect of the bill.** This bill allows a diesel fuel tax refund to a supplier for that portion of tax-paid biodiesel fuel removed from the terminal rack as a dyed biodiesel blend.
2. **The BOE would not have any administrative issues with the refund provisions.** The BOE administers all provisions of the DFTL, including the exemption and refund provisions. BOE staff works closely with the fuel industry to remain aware of industry trends and practices, and provides information and assistance in the form of special notices, publications and reports, answers to frequently asked questions, and newsletters. The BOE has previously provided guidance to suppliers that refunds are not allowed for tax-paid biodiesel fuel converted to dyed biodiesel fuel.[28]

[28] http://www.boe.ca.gov/pdf/pub201_Dec_2012.pdf. See especially pp. 3 & 4, "Diesel Fuel Tax."

Assembly Bill 1277 (Brough) Chapter 789
Taxpayers' Rights Advocate: Levy Adjustment

Effective January 1, 2016. Among its provisions, amends Sections 9272, 30459.2, 32472, 40212, 41172, 43523, 45868, 46623, 50156.12, 55333, and 60632 of the Revenue and Taxation Code.

Summary: Increases from $1,500 to $2,300 the amount of levied funds the BOE's Taxpayers' Rights Advocate (TRA) is permitted to return to a taxpayer when the taxpayer can demonstrate that the levy threatens the health or welfare of the taxpayer or the taxpayer's family.[29] Also provides a mechanism for future inflation adjustments, extends this authorization irrespective of a jeopardy determination, and adds levy return authority to the remaining BOE-administered tax and fee programs that currently lack it.

Sponsor: Board of Equalization

Purpose: To adjust for inflation the dollar amount the TRA is authorized to return on a levy to prevent the levy from threatening the health and welfare of a taxpayer or the taxpayer's family.

Fiscal Impact Summary: Annual revenue loss of $4,600.

Former Law: Existing Revenue and Taxation Code (RTC)[30] authorizes the BOE's TRA to **release** a levy or notice to withhold, or order the **return** of up to $1,500 to the taxpayer[31] within 90 days of receiving levied funds, if the levy threatens the health or welfare of the taxpayer or the taxpayer's family.

Conversely, the Cigarette and Tobacco Products Tax Law (RTC Section 30459.2) and the Fee Collection Procedures Law (RTC Section 55333) require the BOE to **release** a levy upon the TRA's order but do not permit the return of levied funds, when the levy threatens the taxpayer's or the taxpayer's family's health or welfare. These provisions also require the BOE to **release** a levy when the expense of selling an asset exceeds the tax liability.

The TRA authority to release or return funds does not apply when a jeopardy determination has been issued. A jeopardy determination is issued when collection of the amount due is jeopardized by delay. These determinations are due and payable immediately and are subject to all collection actions as of the date they are served. Because a jeopardy determination is indicative of collection being in jeopardy if delayed, collection offices must give priority to these cases and take all appropriate collection actions, including the seizure of personal property.[32] Internal Revenue Code provisions exempt certain property from levy, but allow the levy on principal residences and certain business assets in certain circumstances. If the Internal Revenue Service (IRS) Secretary finds that collection of the tax is in jeopardy, then the IRS may levy on certain business assets.[33]

The BOE must return a taxpayer's levied property or sale proceeds if: (1) the levy is not issued in accordance with law; (2) a taxpayer complies with an installment payment agreement; or (3) the property's return facilitates collection or is in the best interests of the state and the taxpayer. These

[29] The reference to the taxpayer and family includes the taxpayer's spouse/partner and dependents.
[30] Sales and Use Tax Law (§ 7094), Use Fuel Tax Law (§ 9272), Alcoholic Beverage Tax Law (§ 32472), Energy Resources Surcharge Law (§ 40212), Emergency Telephone Users Surcharge Law (§ 41172), Hazardous Substances Tax Law (§ 43523), Integrated Waste Management Fee Law (§ 45868), Oil Spill Response, Prevention, and Administration Fees Law (§ 46623), Underground Storage Tank Maintenance Fee Law (§ 50156.12), and Diesel Fuel Tax Law (§ 60632).
[31] The term "taxpayer" includes feepayers.
[32] Jeopardy Determinations, Section 764.020, Chapter 7 Collections, BOE Compliance Policy and Procedures Manual.
[33] Section 6334 of Part II, of Subchapter D, of Chapter 64, of Subtitle F, of Title 26, of the United States Code.

provisions do not apply if the BOE finds tax collection is in jeopardy.

New Law: This bill increases from $1,500 to $2,300 the amount of levied funds the TRA is permitted to return when the levy threatens the health or welfare of the taxpayer or the taxpayer's family, and allows the TRA to return levied funds associated with a jeopardy determination if the ultimate collection of the amount due is no longer in jeopardy. Consistent with other tax and fee laws, this bill also provides the TRA the authority to return up to $2,300 in levied funds under the Cigarette and Tobacco Products Tax Law and the Fee Collection Procedures Law, which governs the collection of the California Tire, Covered Electronic Waste Recycling, Fire Prevention, Marine Invasive Species, Water Rights Fees, and Lumber Products Assessment, as well as the Natural Gas Surcharge.

Background: The Katz-Harris California Taxpayers' Bill of Rights[34] provides certain guarantees under the California Sales and Use Tax Law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the tax assessment and collection process. The Taxpayers' Bill of Rights provides similar guarantees under the California Personal Income Tax Law and the Bank and Corporation Tax Law. In 1992, legislation[35] extended the taxpayer rights provisions to most BOE-administered special tax and fee programs.

The Katz-Harris legislation added RTC Section 7094, which allowed the TRA to release a levy upon determination that the levy threatened the health or welfare of the taxpayer or the taxpayer's family. The language mirrored Franchise Tax Board (FTB) statutes and placed no time or dollar limitation on the request for release.

In 1995, Section 7094 was amended[36] to read as it does today. Among other things, the Legislature granted the TRA additional authority to return (within 90 days from the levy) up to $1,500, when the TRA determines the levy threatens the taxpayer's or the taxpayer's family's health or welfare.

RTC Section	Tax or Fee Program	Added	Amended	Bill No.	Amendment
7094	Sales & Use	1988	1995	SB 718	Return of Funds
9272	Use Fuel	1992	1995	SB 718	Return of Funds
30459.2	Cigarette & Tobacco	1992	N/A	SB 1661	Release of Levy
32472	Alcoholic Beverage	1992	1995	SB 718	Return of Funds
40212	Energy Resources	1992	1995	SB 718	Return of Funds
41172	Emergency Telephone	1992	1995	SB 718	Return of Funds
43523	Hazardous Substances	1992	1995	SB 718	Return of Funds
45868	Integrated Waste	1992	1995	SB 718	Return of Funds
46623	Oil Spill Response and Administration	1995	N/A	SB 722	Release of Levy & Return of Funds
50156.12	Underground Storage Tank	1992	1995	SB 718	Return of Funds
55333	Fee Collection Procedures	1992	N/A	SB 1920	Release of Levy
60632	Diesel Fuel	1994	1996	SB 1827	Release of Levy & Return of Funds

In General: Both the IRS and the FTB are authorized by statute to provide for the release of a levy if the levy creates an economic hardship or otherwise threatens the health and welfare of the taxpayer, his or her spouse and dependents or family.

With respect to the FTB, a levy may be released in the event of any circumstances deemed appropriate by the FTB, including, but not limited to the following:

[34] Assembly Bill 2833, Ch. 1574, Stats. 1988; effective January 1, 1989.
[35] Senate Bill 1661, Ch. 438, Stats. 1992; effective January 1, 1993.
[36] Senate Bill 718, Ch. 555, Stats. 1995; effective January 1, 1996 .

- Expense to the state related to the sales process exceeds the liability.
- TRA orders the release upon a finding that the levy threatens the health or welfare.
- Proceeds from the sale would not result in a reasonable reduction of the debt.
- Administrative procedures were not followed when the levy was issued.
- Installment payment agreement was entered into to pay the tax liability for which the levy was issued, unless the agreement allows for a levy.
- Release of the levy will facilitate collection of the tax liability or will be in the best interest of the taxpayer and state.

In general, the IRS is also authorized to release a levy under similar conditions as the FTB. These include the following:

- Release of the levy will facilitate collection of the liability.
- Installment payment agreement has been entered into, unless the agreement allows for a levy.
- Secretary determines that the levy creates a financial hardship.
- Liability is satisfied or becomes unenforceable due to lapse of time.
- Fair market value exceeds the liability and release will not hinder collection.

The IRS is specifically authorized to return property that has been wrongfully levied upon. The amount and time are both specified and exceed the time limit and amount that the BOE is authorized to return. The IRS may return property at any time. An amount equal to the amount of on the levy may be returned prior to nine (9) months from the date of levy.

Legislative History. Similar changes have been attempted in the prior two years. BOE-sponsored Assembly Bill 1222 (Bloom, 2013) was amended into a different measure when the author did not accept Senate Governance and Finance Committee suggested amendments limiting the bill to provide an out-year inflation adjustment of the return amount. Last year's Assembly Bill 2249 (Bloom) was not heard in a committee.

Commentary:

1. **Effect of the bill.** This bill adjusts for inflation the amount of temporary assistance taxpayers may receive when a levy threatens their or their family's health or welfare. In addition, the bill provides the TRA consistent levy return authority for all BOE administered tax and fee programs.

2. **The April 29, 2015 amendments** substituted the term "determination" for "assessment" in regards to jeopardy cases, and clarified that the TRA may return funds on jeopardy determinations if collection of the amount due is no longer in jeopardy.

3. **The return of levied funds does not reduce the tax liability.** The BOE is authorized to levy bank accounts to collect delinquent amounts. Occasionally a taxpayer is unable to contact the TRA to stop the funds from being levied until after the BOE has seized the funds. In these rare cases, levied funds are needed to cover the taxpayer's basic living expenses. Only the TRA, and not the Board, is allowed to order funds returned when the levy threatens the health or welfare of the taxpayer or the taxpayer's family.

   The BOE's TRA bases the decision to return levied funds upon a taxpayer's reasonable documentation and financial condition disclosure. Typically the taxpayer completes a BOE financial statement with accompanying documents to substantiate income and expenses. Since California is a community property state, the BOE requests information about total household income and expenses.

4. **Basis for the suggested increase.** The increase from $1,500 to $2,300 is based on the accumulated California inflation factor from the date Section 7094 was first effective, on January 1, 1996, to the present. This measure also provides a mechanism for future inflation adjustments.

   The amount returned may not cover a taxpayer's monthly living expenses, but a reasonable increase in the funds returned will help a taxpayer provide for his or her family when the need arises. The incremental inflationary adjustment ensures that the amount returned will keep pace with the cost of living.

Senate Bill 84 (Hill) Chapter 25

Regional Railroad Accident Preparedness and Immediate Response Fee
Prepaid Mobile Telephony Service Surcharge: Technical Clean-up

Effective June 24, 2015, but operative dates are specified where appropriate. Among its provisions, adds Article 3.9 (commencing with Section 8574.30) to the Government Code, and amends Sections 41030, 41032, 42010, and 42023 of, and adds Sections 42010.7, 42023.5, 42101.7, and 42104 to, the Revenue and Taxation Code.

Regional Railroad Accident Preparedness and Immediate Response Fee

Government Code Article 3.9 (commencing with Section 8574.30)

Purpose: To provide funding for regional and onsite response capabilities in the event of a large-scale hazardous materials release from a train accident.

Existing Law: **Health and Safety Code.** Under existing law, the Health and Safety Code[37] imposes various hazardous waste fees on the generation, storage, treatment, and disposal of hazardous wastes. These fees are collected by either the BOE or the Department of Toxic Substances Control (DTSC). Hazardous waste fees revenues fund DTSC's administration of the hazardous waste regulatory program and the state Superfund program.

Government Code. California law[38] imposes an oil spill prevention and administration fee upon crude oil or petroleum products received at a refinery or marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state.

The Administrator, a Governor's appointee in the Department of Fish and Wildlife, annually sets the fee rate. The Administrator is required to prepare a plan that projects revenues and expenses over three fiscal years. The fee amount is set so that the projected revenue will meet current and proposed state budget needs. The Administrator may also allow for a surplus if revenues will not be adequate to meet contingencies and shortfalls.

Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies.

Public Utilities Code. Existing law[39] requires the California Public Utilities Commission (CPUC) to annually determine a fee to be paid by every common carrier and related business subject to the jurisdiction of CPUC, including, but not limited to, every railroad corporation.

The annual fee is established to produce an amount equivalent to the authorized CPUC budget for the same year. The amount includes adjustments appropriated by the Legislature and an appropriate reserve to regulate common carriers and related businesses, less the amount to be paid from special accounts or funds, reimbursements, federal funds, other revenues, and unencumbered funds from the preceding year.

For fiscal year 2014-15, the railroad corporation fees are fixed as follows:

Class I: Burlington Northern Santa Fe $2,072,844.00
Union Pacific $5,077,395.00

[37] Division 20, Chapters 6.5, 6.8, and 6.11 of the Health and Safety Code; Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code (RTC).
[38] Government Code (GC) Section 8670.40.
[39] Public Utilities Code Section 421.

Class II and III (shortline) 0.27% of gross revenue, minimum of $500 each

The annual fee is collected by CPUC and transmitted at least quarterly to the Treasurer for deposit into the Public Utilities Commission Transportation Reimbursement Account in the General Fund.

The fees paid by railroad corporations are required to be used for the CPUC's state-funded railroad investigation and enforcement activities, other than the rail safety activities funded by the Transportation Planning and Development Account.

In addition, current law[40] requires all rail operators to provide a risk assessment to the CPUC that describes all of the following:

- Rail facility location and functions.
- Movement and storage of cargo, including hazardous material cargo, at the rail facility, including the frequency of that movement or storage.
- Information regarding rail operator safety practices, training programs, and emergency response procedures at the rail facility.
- Rail operator communication procedures with state and local personnel that would be involved in responding to an act of terrorism, sabotage, or other crimes at the rail facility.

Current law[41] also covers hazardous materials transported by rail, and requires each railroad corporation that transports hazardous materials in the state to provide:

- A system map of the state to the Office of Emergency Services (OES) and to CPUC, showing practical groupings of mileposts on the system and mileposts of stations, terminals, junction points, road crossings, and the locations of natural gas and liquid pipelines in railroad rights-of-way.
- Annually to the OES a copy of a publication which identifies emergency handling guidelines for the surface transportation of hazardous materials, unless otherwise provided.
- Specified information if there is a train incident resulting in a release or an overturned railcar or an impact which threatens a release of a hazardous material.

New Law: This bill imposes an unspecified fee on the owner of hazardous materials at the time the hazardous materials are transported by rail in this state. The Director of the OES shall establish a fee schedule based on the 25 most hazardous material commodities transported by rail car in California. Prior to the adoption of regulations identifying those 25 commodities, the fee applies to the top 25 hazardous material commodities identified by the Association of American Railroads Bureau of Explosives' Annual Report of Non-Accident Releases of Hazardous Materials Transported by Rail, published in August 2013. Those fee schedules determine the amounts paid by each hazardous materials owner. Hazardous materials owners will pay the fee to the railroads and the railroad will remit the collected fees to the BOE.[42]

The fee will be imposed within six months of the Director establishing the fee schedules. Liability will be based on each loaded rail car as follows:

- If the loaded rail car enters the state from outside this state, the fee is imposed on the owner of the hazardous material at the time the loaded rail car enters this state.
- If the rail car or truck is loaded within this state, the fee is imposed at the time of loading of the

[40] The Local Community Rail Security Act of 2006, Article 7.3 (commencing with Section 7665), of Chapter 1 of Division 4 of the Public Utilities Code.
[41] Hazardous Materials Transportation by Rail, Article 7.5 (commencing with Section 7671), of Chapter 1 of Division 4 of the Public Utilities Code.
[42] The return and fee amounts are remitted to the BOE by the person required to be registered with the BOE.

hazardous material into or onto the rail car for transport in or through this state.

Any hazardous material owner or railroad that has paid the fees shall not be assessed additional fees for transporting the same hazardous materials in the same rail cars on a different railroad within the state.

Revenues collected, less refunds and expense reimbursement to the BOE, would be deposited into the Regional Railroad Accident Preparedness and Immediate Response Fund (Fund), which this bill creates. The Fund will repay any moneys loaned to pay OES implementation costs. Upon appropriation by the Legislature, moneys in the Fund will be used to plan, develop, create, acquire, support, and maintain emergency response capabilities to prepare for, and respond to, rail car accidents involving large-scale hazardous materials releases.

Definitions. This bill defines the following terms:

- "Board" means the State Board of Equalization.
- "Director" means the Director of Emergency Services.
- "Fund" means the Regional Railroad Accident Preparedness and Immediate Response Fund established pursuant to Section 8574.44.
- "Hazardous material" means a material that the United States Department of Transportation (USDOT) has designated as a hazardous material for purposes of transportation in Part 172 of Title 49 of the Code of Federal Regulations (CFR).
- "Office" means the Office of Emergency Services.
- "Owner" means the person who has the ultimate control over, and the right to use or sell, the hazardous material being shipped. There is a rebuttable presumption that the shipper, consignor, or consignee of the hazardous material is the owner of the hazardous material. This presumption may be overcome by showing that the ownership of the hazardous material rests with someone other than the shipper, consignor, or consignee. Evidence to rebut the presumption may include, but is not limited to, a bill of lading, shipping document, bill of sale, or other medium, that shows the ownership of the hazardous material rests in a person other than the shipper, consignor, or consignee.
- "Railroad" has the same meaning as defined in PUC Section 229.
- "Rail car" means a loaded or unloaded railroad car or rolling stock designated to transport hazardous material commodities, and includes, but is not limited to, those railroad cars subject to the requirements of Part 179 (commencing with Section 179.1) of Title 49 of the CFR, or a successor set of regulations adopted by the US DOT.

Railroads. Railroad operators that transport hazardous material by rail car shall register with the BOE and collect the fee from the owner of the hazardous material. Fees are paid to the BOE with the quarterly return. Any fees collected by the railroad from the hazardous material owner that have not been remitted to the BOE are considered a debt owed to the state by the railroad.

Hazardous material owner. The hazardous material owner is liable for the fee until it has been paid to the BOE, except that payment to a railroad registered with the BOE for collection of the fee is sufficient to relieve the owner from further fee liability.

BOE administration. The BOE will assess and collect the fee in accordance with the Fee Collection Procedures Law (FCPL).[43] The references in the FCPL to "fee" include the fee imposed by this bill, and the reference to "feepayer" includes the person required to pay the fee imposed by this bill.

[43] Part 30 (commencing with Section 55001) of Division 2 of the RTC.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

Emergency regulation authority is also provided to the BOE.

Petition for redetermination and claim for refund. The BOE would handle and decide petitions for redetermination and claims for refund, except for those filed on the grounds that the contents of the rail car is or is not a hazardous material. The BOE would forward such petitions or refund claims to the Director for a decision.

Returns. The railroads required to register with the BOE shall file quarterly returns, on or before the last day of the calendar month following the end of the calendar quarter. The railroad shall pay the fees to the BOE with the return, based on the number of loaded hazardous material rail cars transported within the state.

Contribution in kind. OES may authorize partial fee payment through contributions in kind of equipment, materials, or services.

Fee collector reimbursement. The railroad is entitled to collect an amount not to exceed 5% of the fee collected to offset their administrative collection costs.

Fee exemption. OES may exempt from the fee certain shipments of hazardous materials as follows:

- Those shipments of hazardous materials that do not merit inclusion in the state regional railroad accident preparedness and immediate response plan, as specified, and;
- Those shipments of hazardous materials that do not merit additional governmental preparation to respond to their release in the event of a railroad accident.

The fee shall not be imposed on a hazardous materials owner or a railroad that has paid the fee as required by this bill for further transporting the same hazardous materials in the same rail cars on a different railroad within the state.

Fund balance and fee amounts. The Director has the authority to collect an amount not to exceed Fund balances as follows:

- 2016 and 2017 calendar year Fund balances are capped at $20 million.
- Commencing January 1, 2018, the Fund balance is capped at $10 million.
- Calendar years subsequent to 2018, the Director shall adjust the amount of the fee if appropriate, at least every three years, taking into consideration the existing and expected operational and continued resource requirements.

The BOE is responsible for informing the Director if collected fee amounts reach the specified Fund balances.

As a budget trailer bill that makes an appropriation, this bill is effective June 25. 2015, but the surface transportation hazardous material fee is operative within six months after establishment of the schedules of fees.

Background: In 1991, Senate Bill 48 (Thompson) required the BOE to implement the collection of the Hazardous Spill Prevention Fee to be paid by each surface transporter of hazardous materials on California highways and railroad lines, which was administered in cooperation with DTSC.

The fees were deposited into the Rail Accident Prevention and Response Fund, which that bill created, to provide funding for cleanup costs related to hazardous spills and to finance the Railroad Accident

Prevention and Immediate Deployment Force operated by DTSC. The Hazardous Spill Prevention Fee expired on December 31, 1995.

In 2002, Assembly Bill 2479 (Jackson) would have required the BOE to implement the collection of a fee to be paid by each surface transporter of a substance of concern in accordance with regulations adopted by the DTSC. That bill failed to pass out of the Assembly Appropriations Committee.

In 2006, Assembly Bill 2822 (Mullin) would have required the BOE to implement the collection of a fee imposed upon each railroad corporation that transports a hazardous material in the state. That bill failed in the Assembly Transportation Committee.

In 2014, SB 1319 (Hill, et. al, as amended 08/22/14) would have imposed a Regional Railroad Accident Preparedness and Immediate Response Fee. The unspecified fee would have been imposed on hazardous material owners at the time the hazardous material is transported by loaded rail tank car. A similar bill, SB 506 (Hill and Pavley, as amended 06/15/14), would have imposed an unspecified fee on the hazardous material owners at the time the hazardous material is transported by loaded railroad tank car. SB 1319 was gutted an amended to an unrelated bill, while SB 506 failed in the Assembly.

Last year the Legislature enacted SB 861,[44] which generally expanded the oil spill prevention and administration fee (prevention fee) and the oil spill response fee to be used to respond to spills in inland waters of the state. SB 861 effectively expanded the prevention fee to apply to crude oil rail shipments that were entering California from other states and countries. The prevention fee was expanded to include crude oil and petroleum products received at a refinery in this state by any mode of delivery that passed over, across, under, or through waters of the state. Crude oil or petroleum products are rebuttably presumed to meet this criteria. Effective June 20, 2014, the bill provided a 90-day delayed operative date for the prevention fee, which was operative on September 18, 2014.

In General: Federal laws regarding railroads cover safety, hazardous material transportation, hazardous material emergencies, inspections, and security. Federal laws generally preempt most state regulations.[45] The Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the USDOT are responsible for federal rules and enforcement. The PHMSA is specifically responsible for the protection of people and the environment from the risks of hazardous material transportation. With respect to the transportation of hazardous material, federal laws generally preempt state laws and regulations. However, federal statutes provides that a State may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.[46]

In California, the state OES assists local governments in emergency preparedness, response, recovery, and hazard mitigation efforts. The CPUC shares authority with the federal government to enforce federal safety requirements and state safety rules. The CPUC is responsible for regulating railroad safety where federal regulations do not preempt state authority. The Federal Railroad Safety Act of 1970 (FRSA) and the Rail Safety Improvement Act (RSIA) of 2008, generally preempt state laws and regulations that have the purpose or effect of regulating rail transportation and safety that are covered by federal laws and regulations.

Both federal and state governments, as well as national industry associations have investigated, reported, analyzed, and debated the recent increase in oil transportation by rail. Although information is available

[44] A budget trailer bill, SB 861 (Ch. 35, Stats. 2014).
[45] Section 20106 of Subchapter I of Chapter 201 of Part A of Subtitle V, of Title 49 of the US Code, relates to preemption of federal laws and regulations related to railroad safety and security.
[46] Subdivision (f) of Section 5125 of Chapter 51 of Subtitle III of Title 49 of the US Code, specifies the hazardous materials transportation fee and reporting requirements by the State. Section 5125 is related to preemption of federal laws and regulations related to hazardous materials transportation.

regarding reported and estimated amounts of oil shipments by rail, it is not comprehensive information collected on all types of hazardous material shipped by rail. According to some reports, the difficulty with regulating hazardous material is that although the DOT requires shippers and carriers to identify hazardous material and keep records, this information is considered proprietary and not accessible to the public. Consequently, it is currently difficult to obtain or estimate the amount or frequency of hazardous material transported by rail.[47]

Commentary:

1. **While the fee is imposed on the hazardous material owner, the railroad will be responsible for collection.** The fee schedule will be set by OES regulations, which will be based on the top 25 most hazardous material commodities. Prior to the adoption of the OES regulation, the fee will be imposed on the owners of the top 25 hazardous material commodities identified in a railroad industry report.[48] Within six months of that rate setting, the BOE will begin fee collection.[49] In order to gain efficiencies and streamline administration, the railroads will collect the fee from the owner of the hazardous material. As the return and fees are due quarterly, it is expected that the railroads would use their shipping information to bill the hazardous materials owners for transporting hazardous materials.

2. **BOE will handle appeals and refunds, except those related to qualifying "hazardous material."** This bill defines "hazardous material" and places responsibility with OES for deciding any appeal or claim for refund based on the grounds that the rail car content is not a hazardous material.

3. **"Owner" of hazardous material.** By definition, "owner" means the person who has the ultimate control over, and the right to sell, the hazardous material being shipped. To assist the BOE and railroads, the shipper, consignor, or consignee of the hazardous material is rebuttably presumed to be the owner of the hazardous material.

   The presumption may be overcome by showing that the ownership of the hazardous material rests with someone other than the shipper, consignor, or consignee. Evidence to rebut the presumption may include, but is not limited to, a bill of lading, shipping document, bill of sale, or other medium that shows the ownership of the hazardous material rests in a person other than the shipper, consignor, or consignee. The BOE will decide any issues regarding the rebuttable presumption of hazardous material ownership.

4. **Fee payment through a "contribution in kind" would be unique.** The BOE administers numerous programs with tax credits, exemptions, exclusions, refunds, and appropriations. The contribution in kind option provided in this bill is new to the BOE. BOE staff is unaware of any other California statute or regulation, other state statute, or federal or local government program that provides a similar payment structure. Concerns regarding contribution in kind payments generally deal with specifying roles and responsibilities, which include, but are not limited to:

   - OES responsibilities with respect to valuation of assets, reporting of credit to the BOE, feepayer, or railroad, and drafting regulations to address policy or legal issues with respect to payment of fees through a contribution in kind.
   - Will the Department of Finance provide accounting guidance to BOE through the State Administrative Manual?

[47] US Rail Transportation of Crude Oil, Background and Issues for Congress, California Emergency Response to Rail Accidents, Regulatory Framework, Moving Crude Oil by Rail, Association of American Railroads, Oil by Rail Safety in California, State of California, Interagency Rail Safety Working Group.
[48] Association of American Railroads Bureau of Explosives' Annual Report of Non-Accident Releases of Hazardous Materials Transported by Rail, published in August 2013.
[49] BOE staff would prefer the fee to be due "on the first day of the first calendar quarter commencing AFTER six months of establishing the fee."

- OES can authorize payment of a portion of fees owed through a contribution in kind. OES needs to provide a structure for the feepayers to be able to claim a "credit" up to the authorized payment amount. BOE staff will work with OES to understand how this provision will be administered.
- Could the contribution in kind be a violation of California Constitution, Article 16, Section 6, which prohibits giving or lending state credit?

5. **Fee collector reimbursement provision.** Railroads are entitled to collect "an amount not to exceed 5 percent of the fee collected . . . to offset the administrative cost to collect the fee." This language suggests the railroad could collect a surcharge, not to exceed 5% of the fee collected, from the hazardous material owner, which may lead to varying reimbursement amounts.

   Other fee programs administered by the BOE allow a retailer to retain a specified amount or percentage of the collected fees as reimbursement for their administrative costs. As this bill provides the railroads the authority to collect their own fee to offset fee collection costs, the BOE will not be capturing this information on a return, nor will this amount be an audit issue.

6. **The bill provides an exemption for a railroad shortline.** The hazardous material owner will not be assessed a second fee for transporting the same hazardous material in the same rail cars on a different railroad within the state. The exemption would apply when a Class III railroad, or shortline, handled the same loaded rail cars from a Class I railroad.

7. **Administrative start-up cost funding is essential.** This bill is effective upon enactment and requires the Director to establish new fee schedules. Within six months of the established fee schedules, the BOE must begin to collect the fee. Fee implementation would likely begin in the middle of fiscal year 2015-16, with fee collection following soon after. Upfront BOE implementation cost reimbursement is essential. The bill should provide either a direct appropriation to the BOE for fiscal year 2015-16 administrative costs or a loan from the General Fund (GF) to the Fund. The loan would be repaid from collected fees.

   Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to administer the proposed fee program. Without an appropriation, it may be necessary for the BOE to divert GF dollars to implement the new program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.

8. **Technical amendments.** The term "loaded hazardous material rail car or truck" should be defined. Because the amount of the fee is based on the number of rail cars "loaded" with hazardous materials, any ambiguity about whether a rail car is "loaded" could create audit disputes. Presently, it is unclear if there is a de minimis amount allowed, or if the fee is imposed on any amount of hazardous material loaded onto a rail car or truck.

   GC Section 8574.32(c) provides an exemption for "those shipments of hazardous materials" under specified conditions. This provision is permissive and allows OES to exempt certain shipments, as opposed to hazardous materials. The exemption, if by shipments, should be detailed in statute or regulation in order to provide sufficient administrative guidance to the transporters, hazardous materials owners, and the BOE.

911 Surcharge Act: Rate Change Notification Deadline and Method
Revenue and Taxation Code Sections 41030 and 41032

Sponsor: Board of Equalization

Former Law: The 911 Surcharge Act imposes a surcharge on amounts paid by every person in the state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service that provides access to the "911" emergency system by utilizing the digits 9-1-1 by any service user in this state.

RTC Section 41030 requires the OES[50] to annually determine, on or before October 1, a surcharge rate that the OES estimates will produce sufficient revenue to fund the current fiscal year's 911 program costs.

As of September 30, 2014, Section 41030 requires the OES to notify the Board of Equalization (BOE) of the 911 surcharge rate by October 15 each year. Section 41030 formerly was silent as to the date by which the OES must notify the BOE of the new rate. The October 15 notification date remains in effect until January 1, 2020, and as of that date is repealed.[51]

RTC Section 41031 requires the BOE to "fix" the 911 surcharge rate each year after notification from the OES of the rate for the following calendar year. RTC Section 41032 requires that, immediately upon notification by OES and fixing of the surcharge rate, the BOE shall publish the new rate in its minutes, no later than November 15, and notify by mail every BOE-registered service supplier of the new rate.

New Law: This bill amends RTC Section 41030 to revise the date by which the OES must notify the BOE of the new 911 surcharge rate from October 15 to October 1.

The bill also amends RTC Section 41032 to require the BOE to notify service suppliers of the new rate by available means including, but not limited to, mail, electronic mail, and web site postings.

Background: In 2014, Assembly Bill (AB) 1717 (Ch. 885) enacted the Prepaid Mobile Telephony Services Surcharge Act and Local Prepaid Mobile Telephony Services Collection Act (Collection Acts)[52] to impose state and local prepaid MTS surcharges. The bill also amended the 911 Surcharge Act (RTC Section 41030) to specify October 15 as the date by which the OES must annually notify the BOE of the new 911 surcharge rate and prepaid MTS surcharge rate. Senate Bill (SB) 1211 (Ch. 926, Stats. 2014) also amended Section 41030 to require the OES to include Next Generation 911 technology and services costs when determining the 911 surcharge rate. Both SB 1211 and AB 1717 incorporated double-jointing language.

In General: The ministerial function to fix and publish the new 911 surcharge rate in the minutes by November 15 each year places a degree of urgency upon both the OES and the BOE. Although the OES generally provides the new 911 surcharge rate to the BOE on or before October 1 each year, 2014 legislation amended the 911 Surcharge Act to impose an October 15 deadline for providing this information. The new deadline could delay BOE's receipt of the new rate until October 15, and thereby impede its ability to meet its own November 15 deadline for publishing the rate in the BOE's minutes.

[50] In 1980, AB 3022 (Ch. 1035) amended the 911 Surcharge Act to transfer the responsibility for determining the surcharge rate from the BOE to the Department of General Services (DGS). In 2009, the duties, functions, employees, property, and related funding were transferred from the DGS to the Office of the State Chief Information Officer, which was subsequently renamed the CTA. In 2013, the surcharge rate determination was transferred to the OES.
[51] As amended by SB 1211 (Ch. 926, Stats. 2014), Section 2.5 is operative from January 1, 2015, until January 1, 2020. On January 1, 2020, Section 2.7 becomes operative.
[52] Part 21 (commencing with Section 42001) and Part 21.5 (commencing with Section 42100) of Division 2 of the RTC.

Fiscal Year	OES Notification to BOE	Date Published in BOE Minutes
2010-11	August 30, 2010	September 15, 2010
2011-12	October 2, 2011	October 25, 2011
2012-13	October 1, 2012	October 23, 2012
2013-14	September 6, 2013	October 29, 2013
2014-15	September 5, 2014	October 14, 2014

The Members of the BOE are required to meet monthly, however, the dates on which they meet change each year. In addition, the BOE is subject to the Bagley-Keene Open Meeting Act (commencing with GC Section 11120) which requires the BOE to issue a Public Agenda Notice at least 10 days prior to each meeting. The 10-day advance notification period, coupled with the November 15 rate publication deadline likely will make meeting this deadline difficult.

If the OES notifies the BOE of the new 911 surcharge rate on October 15 each year, it is very unlikely the new rate can appear as an information item on an October Board agenda. Consequently, the 911 rate publication would be deferred to the November agenda. However, if the November Board meeting is held after November 15, the Members of the BOE would have to hold a special Board Meeting solely for the purpose of publishing the new 911 rate in its minutes.

Commentary:

1. **More efficient communication.** In addition to publishing the new rate in its minutes, the BOE notifies service suppliers of the new rate by mail, which is currently required by law. This bill allows direct mail notification to continue, but will also allow for transition to electronic mail (e-mail) or other means of notification at some point in the future. Lastly, the BOE will continue to post the new rate on its website. The 2015 surcharge rate can be found at http://www.boe.ca.gov/pdf/boe863.pdf.
2. **Adequate time.** This bill provides the BOE necessary time to publish the new rate in its minutes and allows the BOE to more timely and efficiently notify services suppliers of the annual rate change notification.

Prepaid MTS Collection Act: Direct Sellers: Electronic Return Filing
Revenue and Taxation Code Section 42010

Former Law: **911 Surcharge Act.** The 911 Surcharge Act imposes a surcharge on amounts paid by every person in the state for both of the following:

- Intrastate telephone communication service, and
- VoIP service that provides access to California users of the "911" emergency system by utilizing the digits 9-1-1.

The 911 Surcharge Act requires a service supplier to collect the surcharge from each service user at the time of billing.

RTC Section 41051 provides that the 911 surcharge is due monthly to the BOE. The surcharge amount that a service supplier collects in one calendar month must be remitted (paid) to the BOE on or before the last day of the second month following the month in which the surcharges were collected.

RTC Section 41052 requires a service supplier to file a monthly return with the BOE on or before the last day of the second month following each month in which the surcharges were collected.

Prepaid MTS Collection Acts (Collection Acts). Beginning January 1, 2016, the Collection Acts impose a prepaid MTS surcharge and local charge on each prepaid consumer as a percentage of the sales price of each retail transaction. The Collection Acts require the seller to collect the prepaid MTS surcharge and local charge at the time of the retail transaction. The prepaid MTS surcharge calculation includes:

- The 911 surcharge rate, and
- The CPUC reimbursement fee and telecommunications universal service surcharges.

The local charge is the combined total of the local charge rates, as calculated pursuant to RTC Sections 42102 and 42102.5, which the local jurisdiction has adopted. The local charge is collected at the same time and in the same manner as the prepaid MTS surcharge.

RTC Section 42004 defines a "seller" to mean "a person that sells prepaid mobile telephony service to a person in a retail transaction." The term seller *includes a direct seller*. Section 42004 defines a "direct seller" to mean:

> A prepaid MTS provider or service supplier, as defined in Section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited, to any of the following:
>
> (A) A telephone corporation, as defined by Section 234 of the Public Utilities Code.
>
> (B) An interconnected VoIP service, as defined in Section 285 of the Public Utilities Code.
>
> (C) A retailer, as defined by Section 6203, that is a member of the same commonly controlled group, as defined in Section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, as an entity described in subparagraph (A) or (B).

RTC Section 42010 requires a direct seller to pay to the BOE that portion of the prepaid MTS surcharge that consists of the 911 surcharge under the 911 Surcharge Act. Direct sellers must pay the CPUC surcharge and local charge portion of the prepaid MTS surcharge directly to the CPUC and local agencies, respectively.

RTC Section 42021(b) requires a seller to file a quarterly return using electronic media. Section 42021(d) states that the "section applies only to those remittances of the prepaid MTS surcharge or local charges that are required to be remitted to the board pursuant to this part and as this section is made applicable to Part 21.1 (commencing with Section 42100) pursuant to subdivision (a) of Section 42103."

New Law: This bill amends RTC Section 42010(f) to clarify that a direct seller is required to file electronic returns when paying to the BOE that portion of the prepaid MTS surcharge that is for the 911 surcharge, consistent with the enacting legislation's intent. Requiring direct sellers to electronically file returns when remitting the required payments pursuant to the 911 Surcharge Act makes the prepaid MTS surcharge much easier to administer, and allows BOE to obtain timely and accurate information from direct sellers.

Background: In 2014, AB 1717 (Ch. 885) enacted the Collection Acts to create standardization with respect to the method used to collect communications taxes, fees, surcharges, utility user taxes, and other telecommunication charges from end-use consumers of prepaid MTS.

As the Collection Acts made their way through the Legislature, stakeholders provided suggested technical amendments to the bill. One such amendment included the addition of a missing word ("that") in Section 42010(j) to clarify the seller's liability for failing to collect the prepaid MTS surcharge. While the August 22, 2014, version of AB 1717 incorporated the missing word into Section 42010(j), the remainder of the

section that pertains to the local charge was inadvertently overlooked and is inconsistent with other BOE-administered end-user taxes.

Commentary: Shortly prior to enactment of the Collection Acts, the bill was amended to add a new subdivision (d) to Section 42021. Section 42021(d) states that the section applies only to prepaid MTS surcharge and local charge payments required to be paid to the BOE pursuant to the Collection Acts.

Section 42021(d) was not intended to exclude a direct seller from the requirement to file returns electronically. However, Section 42021(d) could be construed to exclude direct sellers from the Collection Act's new mandatory electronic return filing requirement.

The technical change to subdivision (f) is necessary for the efficient and effective administration of the new prepaid MTS surcharge and local charge.

Prepaid MTS Surcharge: Deposit and Allocation
Revenue and Taxation Code Sections 42010 and 42023

Former Law. **911 Surcharge Act.** Article 2 (commencing with Section 41135) of Chapter 7 provides that all amounts paid monthly to the BOE under to the 911 Surcharge Act are deposited into the State Emergency Telephone Number Account (SETNA) in the General Fund. Article 2 further specifies how moneys in the SETNA must be spent, upon appropriation by the Legislature.

Prepaid MTS Surcharge Collection Act. RTC Section 42023 requires the BOE to deposit all prepaid MTS surcharge revenues into the Prepaid Mobile Telephony Services Surcharge Fund (Prepaid MTS Surcharge Fund). Deposited amounts include all surcharges, interest, penalties, and other amounts collected and paid to the BOE, less payments of refunds and reimbursement to the BOE for administration and collection expenses. All moneys in the Prepaid MTS Surcharge Fund shall be deposited as follows:

- The 911 surcharge portion of the prepaid MTS surcharge will be deposited into the Prepaid MTS 911 Account. All moneys deposited into the Prepaid MTS 911 Account shall be transferred to the SETNA in the General Fund.
- The CPUC surcharges portion of the prepaid MTS surcharge shall be deposited into the Prepaid MTS PUC Account. All moneys deposited in the Prepaid MTS PUC Account shall be allocated and transferred to the respective universal service funds and to the PUC Reimbursement Account.

New Law. This bill amends RTC Section 42010 to clearly provide that amounts paid by direct sellers shall be deposited into the SETNA. The bill also amends Section 42023 to make clear how non-direct seller prepaid MTS surcharge collections deposited into the Prepaid MTS 911 Account and transferred to the SETNA, and deposited into the Prepaid MTS PUC Account, are allocated and appropriated.

Commentary. The Prepaid MTS Surcharge Collection Act requires a direct seller to pay the 911 surcharge portion of the MTS surcharge to the BOE pursuant to the 911 Surcharge Act. This requirement implies that the BOE deposit these amounts into the SETNA along with payments under the 911 Surcharge Act. However, the language is not clear.

Additionally, the Prepaid MTS Surcharge Collection Act requires non-direct seller prepaid MTS surcharge collections ultimately to be transferred from the Prepaid MTS 911 Account to the SETNA, and from the Prepaid MTS PUC Account to the respective universal service funds and PUC reimbursement Account. However, the language does not specify how those amounts transferred to the SETNA are spent, or how moneys transferred from the Prepaid MTS PUC Account are allocated to the respective universal service funds and the PUC Reimbursement Account.

Prepaid MTS Surcharge and Local Charge: De Minimis Sales Threshold
Revenue and Taxation Code Sections 42010.7 and 42101.7

Existing law. The Collection Acts require a seller to collect a prepaid MTS surcharge and local charge from each prepaid consumer at the time of each retail transaction in this state. The Collection Acts define "seller" to mean a person that sells prepaid mobile telephony service to "a person in a retail transaction." The term seller *includes a direct seller*. Section 42004 defines a "direct seller" to mean:

- A prepaid MTS provider or service supplier, as defined in Section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited, to any of the following:
- A telephone corporation, as defined by PUC Section 234 .
- An interconnected VoIP service, as defined in PUC Section 285.
- A retailer, as defined by RTC Section 6203, that is a member of the same commonly controlled group, as defined in RTC Section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, as an entity described in subparagraph (A) or (B).

New Law. This bill adds Sections 42010.7 and 42101.7 to the Collection Acts to authorize a seller, other than a direct seller, not to collect the prepaid MTS surcharge and local charge if they have de minimis prepaid MTS sales in the previous calendar year. The bill defines de minimis sales as less than fifteen thousand dollars ($15,000) in prepaid MTS sales during the previous calendar year.

The bill requires the Department of Finance (DOF) to annually review and adjust that de minimis sales threshold, as necessary to minimize program administration costs and maintain revenues to support program administration, enforcement, and CPUC public purpose programs and rulemaking activities. Adjustments to the de minimis sales threshold become operative on January 1 of the following calendar year.

The bill provides that the de minimis sales threshold shall be based on the aggregate of all sales of prepaid MTS services subject to the local charges at all retail locations operated by the seller and not the individual sales at each retail location operated by the seller.

The de minimis prepaid sales provisions become operative January 1, 2017.

Background. All sellers that make sales of prepaid MTS are required to register with the BOE and report the prepaid MTS surcharge and local charge on those sales, regardless of the amount of sales. Commencing January 1, 2017, sellers, other than direct sellers, with prepaid MTS sales less than $15,000 annually during the previous calendar year will be closed-out by the BOE. Sellers that make sales of $15,000 or more during the previous calendar year will be required to collect and remit the prepaid MTS surcharge and local charge.

Commentary. If the small seller threshold provision is enacted, sellers must still continue to track their sales of prepaid MTS to determine if they fall under the threshold.

Prepaid MTS Surcharge and Local Charge: Short-Term Loan for Administrative Costs
Revenue and Taxation Code Sections 42023.5 and 42104

Existing law. RTC Section 42023 established the Prepaid MTS Surcharge Fund in the State Treasury. The Prepaid MTS Surcharge Fund consists of all surcharges, interest, penalties, and other amounts collected and paid to the BOE, less refund payments and BOE expense reimbursement.

RTC Section 420103 creates the Local Charges for Prepaid MTS Fund in the State Treasury. The local charges consist of all taxes, charges, interest, penalties, and other amounts collected paid to the BOE, less refund payments and BOE expense reimbursement.

New Law. This bill adds Sections 42023.5 and 42104 to the Collection Acts to authorize the Director of Finance to approve a short-term loan for FY 2015-16 from the General Fund to the Prepaid MTS Surcharge Fund and to the Local Charges for Prepaid MTS Fund. The short-term loan intends to provide adequate cash flow for BOE expenses to administer and collect the prepaid MTS surcharge and Local Charge.

The bill provides the following conditions for the short-term loan:

- Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that the repayment may be delayed until a date not more than six months after the date of enactment of the annual Budget Act for the subsequent fiscal year.
- Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

Commentary. In 2014, AB 1717 (Ch. 885) enacted the Collection Acts to create standardization with respect to the method used to collect communications taxes, fees, surcharges, utility user taxes, and other telecommunication charges from end-use consumers of prepaid MTS.

This bill imposes the MTS surcharge and Local Charge on and after January 1, 2016. Typically, the BOE requires 6 to 8 months to implement a new tax or fee program. However, due to the complexity of the MTS surcharge and local charge programs, the BOE staff noted in the AB 1717 bill analysis that implementation requires at least 12 months to successfully implement the MTS surcharge and local charge programs. As such, the BOE required funding during FY 2014-15 to allow for the 12-month implementation time. However, AB 1717 did not contain an appropriation to the BOE for FY 2014-15 administrative costs. Without FY 2014-15 funding, the BOE is not able to begin implementation until July 1, 2015 (FY 2015-16) once the BOE receives adequate administrative cost funding through the Budget Act.

Typically, the BOE seeks administrative cost reimbursement from the account or fund into which tax proceeds are deposited. However, AB 1717 created the MTS Surcharge Fund, which lacks funding to reimburse the BOE prior to collection of the tax. Thus, BOE staff suggested that AB 1717 authorize a loan from the General Fund or other eligible fund to the MTS Surcharge Fund. The loan would be repaid from taxes collected.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Revenue & Taxation Code				
Use Fuel Tax Law				
§9272	Amend	AB 1277	Ch. 789	Release of levy
Cigarette and Tobacco Products Tax Law				
§30459.2	Amend	AB 1277	Ch. 789	Release of levy
Division of Medical Cannabis Regulation				
§31020	Add	AB 266	Ch. 689	Commercial cannabis tracking
Alcoholic Beverage Tax Law				
§32472	Amend	AB 1277	Ch. 789	Release of levy
Energy Resources Surcharge Law				
§40212	Amend	AB 1277	Ch. 789	Release of levy
Emergency Telephone Users Surcharge Law				
§41030	Amend	SB 84	Ch. 25	Determination of rate
§41032	Amend	SB 84	Ch. 25	Publication of rate
§41172	Amend	AB 1277	Ch. 789	Release of levy
Prepaid Mobile Telephony Services Surcharge Act				
§42010	Amend	SB 84	Ch. 25	Imposition and collection of surcharge
§42023	Amend	SB 84	Ch. 25	Fund; Deposit into account
§42010.7	Add	SB 84	Ch. 25	Non-direct sellers; de minimis amount
§42023.5	Add	SB 84	Ch. 25	General Fund short-term loan
Local Prepaid Mobile Telephony Services Collection Act				
§42101.7	Add	SB 84	Ch. 25	Non-direct sellers; de minimis amount
§42104	Add	SB 84	Ch. 25	General Fund short-term loan

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Revenue & Taxation Code continued				
Hazardous Substance Tax Law				
§43523	Amend	AB 1277	Ch. 789	Release of levy
Integrated Waste Management Fee Law				
§45868	Amend	AB 1277	Ch. 789	Release of levy
Oil Spill Response, Prevention, and Administration Fees Law				
§46008	Add	AB 815	Ch. 108	"Barrel" definition
§46018	Repeal	AB 815	Ch. 108	"Oil" definition
§46101	Amend	AB 815	Ch. 108	Persons required to register with the BOE
§46623	Amend	AB 1277	Ch. 789	Release of levy
Underground Storage Tank Maintenance Fee Law				
§50156.2	Amend	AB 1277	Ch. 789	Release of levy
Fee Collection Procedures Law				
§55333	Amend	AB 1277	Ch. 789	Release of levy
Diesel Fuel Tax Law				
§60501	Amend	AB 1032	Ch. 481	Overpayments; credits and refunds
§60505.5	Amend	AB 1032	Ch. 481	Refund; electronic media
§60632	Amend	AB 1277	Ch. 789	Release of levy
Government Code				
Regional Railroad Accident Preparedness and Immediate Response Fee				
Article 3.9 (commencing with §8574.30	Add	SB 84	Ch. 25	Regional Railroad Accident Preparedness and Immediate Response
Oil Spill Response, Prevention, and Administration Fees Law				
§8670.40	Amend	AB 815	Ch. 108	Oil spill prevention and administration fee
Water Code				
Low-Income Water Rate Assistance Program				
§189.5	Add	AB 401	Ch. 662	Low-income water rate assistance program.