



*California State Board of Equalization,  
Legislative and Research Division*

# LEGISLATIVE BULLETIN

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

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## SALES TAX LEGISLATION 2016

STATE BOARD OF EQUALIZATION

**SALES TAX LEGISLATION**  
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[Assembly Bill 366 \(Bonta\) Chapter 502](#)  
***Transactions and Use Tax: City of Alameda: 2% Cap Exemption***

*Effective January 1, 2017. Adds and repeals Chapter 3.75 (commencing with Section 7292.5) to Part 1.7 of Division 2 of the Revenue and Taxation Code.*

**Summary:** Authorizes the City of Alameda to impose a general-purpose transactions and use tax (district tax) that, in combination with all district taxes imposed, may exceed the existing 2% rate limitation by no more than 0.5%.

**Sponsor:** City of Alameda

**Purpose:** To provide additional funding for police, fire, and other city services.

**Fiscal Impact Summary:** Approximately \$4.1 million annually.

**Former Law:** The State Board of Equalization (BOE) administers locally-imposed sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law. By law, cities and counties contract with the BOE to administer the ordinances imposing the local and district taxes.

The **Bradley-Burns Uniform Local Sales and Use Tax Law**<sup>1</sup> authorizes counties to impose a local sales and use tax. This tax rate is fixed at 1.25% of the sales price of tangible personal property sold at retail in the county, or purchased for use within the county. Under current law, cities are authorized to impose a local sales and use tax rate of up to 1%. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1.25%.

Of the 1.25%, cities and counties use 1% to support general operations. The remaining 0.25% is designated by statute for county-wide transportation purposes and restricted to road maintenance or the operation of transit systems. The counties receive the 0.25% tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. All cities and counties currently impose Bradley-Burns local taxes at a total uniform rate of 1.25%.

The **Transactions and Use Tax Law**<sup>2</sup> and the part of the RTC that imposes **Additional Local Taxes**<sup>3</sup> authorize cities and counties (and special purpose entities) to impose district taxes under specified conditions. Counties may impose a district tax for general purposes or special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the county. Cities also may impose a district tax for general purposes or special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the city. The combined district tax rate imposed within any local jurisdiction cannot exceed 2%<sup>4</sup> (with the exception of the City of El Cerrito and the counties of Alameda, Contra Costa, Los Angeles, Monterey, and San Mateo<sup>5</sup>).

<sup>1</sup> Part 1.5 of Division 2 of the Revenue and Taxation Code (RTC), commencing with Section 7200.

<sup>2</sup> Part 1.6 of Division 2 of the RTC, commencing with Section 7251.

<sup>3</sup> Part 1.7 of Division 2 of the RTC, commencing with Section 7280.

<sup>4</sup> RTC Section 7251.1.

<sup>5</sup> Exceptions authorized through AB 1324 (Ch. 795, Stats. 2014), AB 210 (Ch. 194, Stats. 2013, Wieckowski) for Alameda County and Contra Costa County, SB 314 (Ch. 785, Stats. 2003, Murray) and SB 767 (Ch. 580, Stats. 2015, De León) for the Los Angeles Metropolitan Transportation Authority, and SB 705 (Ch. 579, Stats. 2015, Hill) for San Mateo County and the Transportation Agency for Monterey County.

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Section 7291 authorizes Alameda County and Contra Costa County to impose a district tax for countywide transportation programs at a capped rate of 0.5% which in combination with other district taxes, would exceed the 2% limitation established in existing law if it satisfies all of the following conditions:

- 1) Alameda County and Contra Costa County adopt an ordinance proposing the district tax by any applicable voting requirements;
- 2) the proposed ordinance is submitted to the electorate and is approved by two-thirds of the voters voting on the ordinance; and
- 3) the district tax conforms to the Transactions and Use Tax Law.

Currently, the City of El Cerrito is the only city in California authorized to impose a tax not subject to the 2% rate limitation. Section 7293 authorizes the City of El Cerrito to impose a general-purpose district tax at a rate of no more than 0.5%, that in combination with all district taxes imposed, would exceed the 2% limitation established in existing law (and that would, in fact, not count towards the 2% limit at all) if it satisfies all of the following conditions:

- 1) City of El Cerrito adopt an ordinance proposing the district tax by any applicable voting approval requirement;
- 2) the proposed ordinance is submitted to the electorate and is approved by the majority of the voters voting on the ordinance; and
- 3) the district tax conforms to the Transactions and Use Tax Law.

By law, cities and counties (and special purpose entities) contract with the BOE to administer the ordinances imposing the district taxes.

**Amended Law:** This bill authorizes the City of Alameda to impose a general-purpose district tax that, in combination with all district taxes imposed, would not exceed the 2% limitation established in Section 7251.1 by more than 0.5%, if all of the following requirements are met:

- The city adopts an ordinance proposing a district tax by any applicable voting approval requirement.
- The city ordinance proposing the district tax is submitted to the electorate of the adopting city, as applicable, and is approved by the voters voting on the ordinance in accordance with Article XIII C of the California Constitution. The election on the ordinance proposing the district tax may occur after January 1, 2017.
- The district tax conforms to the Transactions and Use Tax Law, Part 1.6, other than Section 7251.1. The bill also specifies that the tax rate authorized by this bill shall not be included in the calculation of the 2% rate limitation established in Section 7251.1.

This bill takes effect on January 1, 2017. If the proposed district tax ordinance is not approved by the electorate by January 1, 2025, the bill's provisions will be repealed as of that same date.

**District Taxes Currently Administered by the BOE:** As of April 1, 2016, there are 205 local jurisdictions (city, county, and special purpose authority)<sup>6</sup> impose a district tax for general or special purposes. Of the 205 district taxes, 48 are county-imposed and 157 are city-imposed taxes. Of the 48 county-wide taxes, four are general purpose taxes and 44 are special purpose taxes (30 for transportation purposes). Of the 157 city-imposed taxes, 127 are general purpose taxes and 30 are special purpose taxes.

Currently, the individual district tax rates vary from 0.1%<sup>7</sup> to 1%. Some cities and counties have more than

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<sup>6</sup> Currently, all district taxes are levied exclusively within the borders of either a county or an incorporated city (with the exception of the Bay Area Rapid Transit District, which is comprised of Alameda, Contra Costa, and San Francisco counties and the Sonoma-Marín Rail Transit District). For purposes of calculating the 205 jurisdictions, the Bay Area Rapid Transit District and the Sonoma-Marín Rail Transit District are counted as one jurisdiction, even though each jurisdiction is comprised of three counties and two counties, respectively.

<sup>7</sup> Through specific authority, SB 1187 (Ch. 285, Stats. 2001, Costa) authorized Fresno County to impose a 0.1% district tax for zoological purposes.

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one district tax in effect, while others have none. Accordingly, combined state, local, and district tax rates generally range from 7.5% to 9.5%, with the exception of the cities of Albany, Hayward, San Leandro, and Union City in Alameda County, the City of El Cerrito in Contra Costa County, and the cities of La Mirada, Pico Rivera, and South Gate in Los Angeles County which are subject to the specific exemptions discussed above and each have a tax rate of 10%. A listing of the district taxes, rates, and effective dates is available on the BOE's website: [www.boe.ca.gov/sutax/pdf/districtratelist.pdf](http://www.boe.ca.gov/sutax/pdf/districtratelist.pdf).

**Legislative History:** Over the years, six bills have been approved by the Legislature granting specific authority to local governments to impose a district tax that exceeds the general 2% rate limitation:

- SB 314 (Ch. 685, Stats. 2003, Murray) authorized the MTA to impose a 0.5% district tax for the funding of specified transportation-related capital projects and programs. However, MTA never placed an ordinance before the voters to levy this authorized tax within the 6.5 year time frame.<sup>8</sup>
- AB 1086 (Ch. 327, Stats. 2011, Wieckowski) authorized the County of Alameda to impose a district tax for the support of countywide transportation programs at a rate of up to 0.5%. The bill required that the ordinance proposing the tax be submitted to the electorate on the November 6, 2012 General Election ballot and be approved by the voters. Alameda County voters declined to approve the proposed district tax (Measure B1) on the November 6, 2012 ballot, falling 0.14% short of the 66.6% super-majority needed to pass.
- AB 210 (Ch. 194, Stats. 2013, Wieckowski) extends the authority of Alameda County and authorizes Contra Costa County to impose a countywide transportation program district tax at a rate of up to 0.5%.
- AB 1324 (Chapter 795, Stats. 2014, Skinner) authorizes the City of El Cerrito to impose a general-purpose district tax at a rate of up to 0.5%.
- SB 767 (Chapter 580, Stats. 2015, De León) authorizes the Los Angeles County Metropolitan Transportation Authority (MTA) to impose an additional 0.5% district tax for funding transportation-related projects and programs. The tax would be imposed for an unspecified period to be determined by the MTA, and may exceed the existing 2% rate limitation.
- SB 705 (Chapter 579, Stats. 2015, Hill) authorizes both San Mateo County and the Transportation Agency for Monterey County to impose a countywide transportation program district tax until January 1, 2026. The tax may exceed the existing 2% rate limitation.

### Commentary:

1. **Current district taxes levied within Alameda County.** Alameda County has eight district taxes imposed within its borders—four county-wide taxes (three transportation taxes) and four city-wide taxes. The Alameda County Transportation Improvement Authority had specific authority to impose a 0.5% tax, operative April 1, 2015 through March 31, 2045, even though it caused the combined rate in the four cities that already imposed a tax to exceed 2%:

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<sup>8</sup> AB 2321 (Chapter 302, Statutes 2008, Feuer) amended PUC Section 130350.5 to authorize, among other things, the 0.5% tax for a period not to exceed 30 years.

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Alameda County – District Name and Tax Area	Rate	Effective Date	Expiration Date
Alameda County Essential Health Care Services Transactions and Use Tax (county-wide)	0.50%	07-01-04	06-30-34
Alameda County Transportation Commission 2002 (county-wide)	0.50%	04-01-02	03-31-22 <sup>9</sup>
<b>Alameda County Transportation Improvement Authority (county-wide)</b>	<b>0.50%</b>	<b>04-01-15</b>	<b>03-31-45</b>
Bay Area Rapid Transit District (county-wide)	0.50%	04-01-70	None
City of Albany Transactions and Use Tax (city-wide)	0.50%	04-01-13	03-31-21
City of Hayward Temporary Transactions and Use Tax (city-wide)	0.50%	10-01-14	12-31-34
City of San Leandro 2015 Transactions and Use Tax (city-wide)	0.50%	04-01-15	03-31-45
City of Union City Transactions and Use Tax (city-wide)	0.50%	04-01-11	03-31-25

Cities and counties may impose district taxes as long as the combined rate does not exceed 2% within the county. Because Alameda County imposes four 0.5% district taxes, the county is at the 2% limit. Consequently, any city in Alameda County, including the City of Alameda, cannot enact a new district tax without specific authority because the combined rate of district taxes imposed in every city in Alameda County is already at the 2% limit.

2. **The City of El Cerrito in Contra Costa County successfully sought an exception to the 2% limitation.** The City of El Cerrito is authorized to impose a general-purpose tax at a rate not to exceed 0.5%.
3. **The counties of Alameda, Contra Costa, Los Angeles, Monterey, and San Mateo successfully sought an exception to the 2% limitation.** The authorization for each of these counties is for county-wide transportation purposes.
4. **Related legislation.** [AB 1665](#) (Chapter 45, Stats. 2016, Bonilla) shifts Contra Costa County’s existing authority to impose a county-wide transportation district tax to the Contra Costa Transportation Authority.

<sup>9</sup> Effective April 1, 2022, the Alameda County Transportation Commission 2002 tax will end and the Alameda County Transportation Improvement Authority 0.5% tax will increase from 0.5% to 1% until 03/31/45.

**[Assembly Bill 821 \(Gipson\) Chapter 811](#)**  
***Medical Cannabis Dispensaries: Electronic Fund Transfer Exclusion***

*Effective January 1, 2017. Amends Section 6479.3 of the Revenue and Taxation Code.*

**Summary:** Until January 1, 2022, allows medical cannabis dispensaries to remit sales and use taxes by means other than an electronic funds transfer (EFT).

**Sponsor:** BOE Member Jerome Horton

**Purpose:** To encourage compliance in the medical cannabis industry by enabling dispensaries to pay their tax liability using cash without incurring a mandatory penalty.

**Fiscal Impact Summary:** No material impact to state or local revenues.

**Former Law:** Under existing law,<sup>10</sup> California's sales tax is paid by retailers engaged in business in the state and applies to all retail transactions involving sales of tangible personal property, except those the law specifically exempts or excludes. Retail sales of marijuana are subject to the tax to the same extent as any other retail sale of tangible personal property in this state.

Under the law,<sup>11</sup> certain reporting requirements are imposed on retailers that have substantial sales and use tax liabilities. Specifically, taxpayers with monthly tax liabilities that average \$10,000 or more must remit their tax payments via an EFT under BOE-prescribed procedures. Failure to remit the funds under those procedures subjects taxpayers to specified penalties: 10% for their quarterly remittance; and 6% for prepayments (required twice during the quarter). The law<sup>12</sup> provides penalty relief when the person's failure is due to reasonable cause and circumstances beyond his or her control. However, taxpayers must file a request for relief after the mandatory penalty is billed and the request must be signed under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

**Amended Law:** Until January 1, 2022, this bill allows a person issued a seller's permit for a place of business that is a dispensary, as defined, to remit amounts due by other than an EFT.

The bill defines a "dispensary" by reference to Business and Professions Code Section 19300.5 (n).<sup>13</sup>

**In General:** Since early 2014, all BOE field offices stopped accepting cash from taxpayers attempting to pay their sales or use tax liabilities. This "No Cash Policy" allows BOE to reduce costs and ensure employee safety. A large cash deposit by one taxpayer alone can take staff hours to count, and the potential danger with large sums requires added security. Although the BOE allows an exception when a taxpayer can document the inability to obtain a bank account for the smaller accounts, for taxpayers whose estimated monthly tax liabilities meet the EFT threshold of \$10,000 or more, the law requires remittances by an appropriate EFT, whether or not the taxpayer has the ability to so remit the tax.

In 1996, California voters approved 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 a physician's recommendation, as specified.

<sup>10</sup> Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code (RTC).

<sup>11</sup> RTC Section 6479.3.

<sup>12</sup> RTC Section 6592.

<sup>13</sup> As added by [AB 266](#) (Ch. 689, Stats. 2015).

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In 2003, legislation was enacted to establish statewide guidelines for Proposition 215 enforcement.<sup>14</sup> In particular, the legislation 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 cannabis dispensaries currently do business in California, medical cannabis sales are illegal under federal law.

Because of this conflict between state and federal law, most banks do not allow cannabis businesses to hold accounts.

### Commentary:

- 1. Effect of the bill.** This bill allows the larger medical cannabis dispensaries to pay their sales and use tax liabilities with cash, check, credit card or any other means.
- 2. Amendments also allow payment by check or credit card.** The bill's purpose is to enable cannabis retailers to pay their liabilities with cash, when they are unable to obtain a bank account. As amended, this bill enables cannabis dispensaries to pay by any means, whether or not they have a bank account, and whether or not the non-EFT payment would facilitate collection. We suggest additional language be added back in the bill that allows the BOE to determine whether a non-EFT payment would facilitate tax collection prior to allowing the alternative payment.
- 3. If the bill were limited to cash payments, this bill would not affect revenues.** Under existing law, the BOE has been granting penalty relief to a dispensary when a dispensary requests relief, and when the dispensary's only way to make a sales or use tax payment is by using cash. Therefore, no penalty revenue loss would occur as a result of this bill.

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<sup>14</sup> [Senate Bill 420](#) (Ch. 875, Stats. 2003, Vasconcellos).

[Assembly Bill 1559 \(Dodd\) Chapter 257](#)  
***Tax Filing Deadline Extension: Disasters***

*Urgency; effective September 9, 2016. Among its provisions, amends Section 6459 of the Revenue and Taxation Code.*

**Summary:** Authorizes the BOE to extend for up to three months the time for a taxpayer to file a tax return or report, or to pay the tax, in the case of a disaster.

**Sponsor:** Board of Equalization

**Purpose:** To provide business owners in disaster areas more time to file returns and pay tax obligations to the BOE.

**Fiscal Impact Summary:** Minor, penalty-related revenue loss.

**Former Law:** Under existing Sales and Use Tax Law,<sup>15</sup> taxpayers must file sales and use tax returns on or before the last day of the month following the end of the reporting period. Persons who are late paying a tax, fee, or surcharge must pay a 10% penalty, plus interest on the unpaid tax from the tax due date to the date of payment.<sup>16</sup> One month's interest is due for each month or fraction of a month that the payment is late. Similar statutes cover the Motor Vehicle Fuel Tax, Use Fuel Tax, Cigarette and Tobacco Products Tax, Alcoholic Beverage Tax, Timber Yield Tax, Energy Resources Surcharge, Emergency Telephone Users Surcharge, Hazardous Substance Tax, Integrated Waste Management Fee, Oil Spill Response, Prevention, and Administration Fees, Underground Storage Tank Fee, Fee Collections Procedures, and Diesel Fuel Tax Laws.<sup>17</sup>

Existing RTC Section 6459 allows the BOE for good cause to extend up to one month the time for making any return or paying the tax due. The extension may be granted at any time provided the request is filed with the BOE within or prior to the period for granting the extension. An extension provides the taxpayer additional time to make a return and pay the tax, and relieves the person for any late payment penalty. However, the law continues to impose interest from the due date until the payment date, except in the case of a disaster.<sup>18</sup>

If the BOE finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, a taxpayer will be relieved of interest. [Regulation 1703, Interest and Penalties](#), defines "disaster" to mean fire, flood, storm, tidal wave, earthquake, or a similar public calamity, whether or not it results from natural causes. Taxpayers seeking interest relief must file a statement with the BOE under penalty of perjury stating the facts supporting their claim for relief.

Likewise, a taxpayer, including a disaster-affected taxpayer, may seek penalty relief.<sup>19</sup> Specified penalties are relieved if the BOE finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. A taxpayer seeking relief under this provision

<sup>15</sup> Revenue and Taxation Code (RTC) Section 6451.

<sup>16</sup> RTC Section 6591.

<sup>17</sup> RTC Sections 7656, 8754, 30185, 32253, 38405, 40065, 41054, 43154, 45152, 46153, 50111, 55041, and 60208, respectively.

<sup>18</sup> RTC Section 6593.

<sup>19</sup> RTC Section 6592.

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must also file a statement under penalty of perjury supporting the claim for relief.

**Amended Law:** This bill allows the BOE, in the case of a disaster, to extend the time for making any return or paying BOE-administered taxes for a period not to exceed three months. The extension may be granted at any time provided a request for relief is filed with the BOE within or before the period at issue.

“Disaster” is defined to mean fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.

This bill is operative immediately upon enactment.

**In General:** Disasters and emergencies vary from year to year and can differ dramatically with regard to type, geographic size, infrastructure, impact costs, and duration. As discussed above, the BOE considers a disaster for interest relief purposes to include fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes. A disaster includes, but does not require, a Governor declared state of emergency.

Government Code (GC) Section 8625 authorizes the Governor to proclaim a state of emergency under specified circumstances. GC Section 8558 establishes three conditions under which the Governor may proclaim a state of emergency:

- "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.
- "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state.
- "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city.

Generally, major disasters such as earthquake, firestorms, storm damage, or flooding satisfy the second condition described as a "state of emergency."

Since March 2013, Governor Brown has declared [24 states of emergency](#) for fire, rainstorm, oil spill, earthquake, drought, and terrorist attack-related disasters. In 2015 alone, Governor Brown declared 7 states of emergency impacting 25 different counties.

### Commentary:

1. **Summary of amendments.** The **August 08, 2016 amendments** (1) revised the filing and payment deadline extension provisions from “natural disaster” to “disaster,” (2) added a definition of “disaster,” (3) added an urgency clause, and (4) added coauthors. The **June 21, 2016 amendments** limited the return filing deadline to natural disasters and deleted the urgency clause. **The April 13, 2016 amendments** extended the return filing deadline due to a disaster provisions to both natural and economic disasters.
2. **Peace of mind.** Currently, sales and use taxpayers affected by a disaster have two avenues to avoid penalty: one-month extension (RTC Section 6459) and excusable delay relief (RTC Section 6592). This bill revises the one-month extension to three months in the case of a disaster, thereby providing disaster-affected taxpayers an additional two months to file their return and pay the tax.

Although a taxpayer currently may request penalty relief for periods exceeding one month, *they must file their return and pay the tax due* before making that request. If a taxpayer does not file their return or pay the tax by the due date (varies by tax program), the BOE may commence delinquency-related action. This may include sending late notices, beginning collection action, or revoking permits during

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that period, adding more stress to an already stressful situation. This bill provides a disaster-affected taxpayer peace of mind and the ability to avoid any BOE delinquency-related action by allowing the taxpayer to file the extension within or prior to the period for which the extension may be granted.

- 3. Business tax disaster relief.** BOE Regulation 1703 considers a disaster to include fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes. The definition applies to interest relief purposes in the case of a disaster. This bill makes consistent the “disaster” definition for both interest relief and tax return and payment extension purposes. A uniform definition makes disaster relief equitable for both interest and extensions, and eliminates taxpayer frustration and confusion.
- 4. Disaster victims generally require more time.** This bill grants additional time to those who have less presence of mind, resources, and necessary documentation under the circumstances to timely file their return and pay the tax.
- 5. Tax and interest still due.** This bill does not automatically relieve a taxpayer of accrued interest, only a potential 10% late filing penalty. However, existing law already provides a taxpayer relief of interest if the BOE finds that a person’s failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. A person seeking interest relief must file a claim with the BOE.

**Assembly Bill 1665 (Bonilla) Chapter 45**  
***Transactions and Use Tax: Contra Costa County***

*Urgency; effective July 1, 2016. Amends Section 7291 of the Revenue and Taxation Code.*

**Summary:** Shifts Contra Costa County's existing authority to impose a countywide transportation program transactions and use tax to the Contra Costa Transportation Authority. Also deletes an unnecessary reference to Alameda County's authority to impose a similar tax that has already been adopted.

**Sponsor:** Contra Costa Transportation Authority

**Purpose:** To provide additional funding for transportation programs.

**Fiscal Impact Summary:** No state revenue impact.

**Former Law:** The **Transactions and Use Tax Law**<sup>20</sup> and the part of the RTC that imposes **Additional Local Taxes**<sup>21</sup> authorize cities and counties (and special purpose entities) to impose district taxes under specified conditions. Counties may impose a district tax for general purposes or special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the county. Cities also may impose a district tax for general purposes or special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the city. The combined district tax rate imposed within any local jurisdiction cannot exceed 2%<sup>22</sup> (with the exception of the counties of Alameda, Contra Costa, Los Angeles, Monterey, and San Mateo<sup>23</sup>).

In addition, Section 7291 authorizes Alameda County and Contra Costa County to impose a district tax for countywide transportation programs at a capped rate of 0.5%, which in combination with other district taxes, would exceed the 2% limitation established in existing law if it satisfies all of the following conditions:

- 1) Alameda County and Contra Costa County adopt an ordinance proposing the district tax by any applicable voting requirements;
- 2) the proposed ordinance is submitted to the electorate and is approved by two-thirds of the voters voting on the ordinance; and
- 3) the district tax conforms to the Transactions and Use Tax Law.

By law, cities and counties (and special purpose entities) contract with the BOE to administer the ordinances imposing the district taxes.

**Amended Law:** This bill shifts Contra Costa County's existing authority to impose a countywide transportation program district tax until December 31, 2020, to the Contra Costa Transportation Authority. The bill also removes the existing authority granted to Alameda County to impose a countywide transportation program district tax as that county's voters already adopted such a tax. The tax is exempt

<sup>20</sup> Part 1.6 of Division 2 of the RTC, commencing with Section 7251.

<sup>21</sup> Part 1.7 of Division 2 of the RTC, commencing with Section 7280.

<sup>22</sup> RTC Section 7251.1.

<sup>23</sup> Exceptions authorized through AB 210 (Ch. 194, Stats. 2013, Wieckowski) for Alameda County and Contra Costa County, SB 314 (Ch. 785, Stats. 2003, Murray) and SB 767 (Ch. 580, Stats. 2015, De León) for the Los Angeles Metropolitan Transportation Authority, and SB 705 (Ch. 579, Stats. 2015, Hill) for San Mateo County and the Transportation Agency for Monterey County.

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from the existing 2% rate limitation.

The bill also provides that any ordinance previously adopted under the authority in existing law for Alameda County to impose an additional 0.5% transportation district tax, and in effect on January 1, 2016, may continue in effect.

The bill contains an urgency provision and states it is necessary that this measure take effect immediately in order to ensure the residents of Contra Costa County have adequate transportation services.

As an urgency statute, this bill takes effect immediately, but any tax is operative upon applicable approval by the county voters.

**Background:** Currently, 16 district taxes are levied within Contra Costa County —two county-wide tax (transportation purposes) and 14 city-wide taxes. Because two cities each impose a tax at a rate of 1%, Contra Costa County is at the 2% limit.

Contra Costa County - District Name and Tax Area	Rate	Effective Date	Expiration Date
Contra Costa Transportation Authority (county-wide)	0.50%	04-01-89	03-31-34
Bay Area Rapid Transit District (BART) (county-wide)	0.50%	04-01-70	None
City of Antioch Transactions and Use Tax (city-wide)	0.50%	04-01-14	03-31-21
City of Concord Transactions and Use Tax (city-wide)	0.50%	04-01-11	03-31-25
City of El Cerrito Street Improvements Transactions and Use Tax (city-wide)	0.50%	07-01-08	None
City of El Cerrito 2015 Transactions and Use Tax (city-wide)	1.00%	04-01-15	03-31-27
City of Hercules Temporary Transactions and Use Tax (city-wide)	0.50%	10-01-12	None
Town of Moraga Transactions and Use Tax (city-wide)	1.00%	04-01-13	03-31-33
City of Orinda Transactions and Use Tax (city-wide)	0.50%	04-01-13	03-31-23
City of Pinole Transactions and Use Tax (city-wide)	0.50%	04-01-07	None
City of Pinole 2014 Transactions and Use Tax (city-wide)	0.50%	04-01-15	None
City of Pittsburg Preservation of Citywide Service Temporary Transactions and Use Tax (city-wide)	0.50%	10-01-12	09-30-17
City of Richmond Transactions and Use Tax (city-wide)	0.50%	04-01-05	None
City of Richmond 2014 Transactions and Use Tax (city-wide)	0.50%	04-01-15	None
City of San Pablo Transactions and Use Tax (city-wide)	0.50%	10-01-12	09-30-17
City of San Pablo Emergency Medical Services Temporary Transactions and Use Tax	0.25%	10-01-14	None

**Legislative History:** Over the years, six bills have been approved by the Legislature granting specific authority to local governments to impose a district tax that exceeds the general 2% rate limitation:

- SB 314 (Ch. 685, Stats. 2003, Murray) authorized the MTA to impose a 0.5% district tax for the funding of specified transportation-related capital projects and programs. However, MTA never placed an

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ordinance before the voters to levy this authorized tax within the 6.5 year time frame.<sup>24</sup>

- AB 1086 (Ch. 327, Stats. 2011, Wieckowski) authorized the County of Alameda to impose a district tax for the support of countywide transportation programs at a rate of up to 0.5%. The bill required that the ordinance proposing the tax be submitted to the electorate on the November 6, 2012 General Election ballot and be approved by the voters. Alameda County voters declined to approve the proposed district tax (Measure B1) on the November 6, 2012 ballot, falling 0.14% short of the 66.6% super-majority needed to pass.
- AB 210 (Ch. 194, Stats. 2013, Wieckowski) extends the authority of Alameda County and authorizes Contra Costa County to impose a countywide transportation program district tax at a rate of up to 0.5%.
- AB 1324 (Chapter 795, Stats. 2014, Skinner) authorizes the City of El Cerrito to impose a general-purpose district tax at a rate of up to 0.5%.
- SB 767 (Chapter 580, Stats. 2015, De León) authorizes the Los Angeles County Metropolitan Transportation Authority (MTA) to impose an additional 0.5% district tax for funding transportation-related projects and programs. The tax would be imposed for an unspecified period to be determined by the MTA, and may exceed the existing 2% rate limitation.
- SB 705 (Chapter 579, Stats. 2015, Hill) authorizes both San Mateo County and the Transportation Agency for Monterey County to impose a countywide transportation program district tax until January 1, 2026. The tax may exceed the existing 2% rate limitation.

### Commentary:

1. **The May 9, 2016 amendments** (1) removed Alameda County's existing authority to impose a countywide transportation district tax as that county's voters already approved such a tax, (2) added an urgency provision, and (3) added coauthors. On November 4, 2014, Alameda County voters approved an additional 0.5% district tax (known as Measure BB) to fund countywide transportation programs. This is the first tax in that county levied in excess of the 2% cap.
2. **District taxes currently administered by the BOE.** As of April 1, 2016, 206 local jurisdictions (city, county, and special purpose authority)<sup>25</sup> impose a district tax for general or special purposes. Of the 206 district taxes, 48 are county-imposed and 158 have city-imposed taxes. Four of the 48 county-imposed taxes are general purpose taxes and 44 are special purpose taxes (30 for transportation purposes). Of the 158 city-imposed taxes, 128 are general purpose taxes and 30 are special purpose taxes.

Currently, the individual district tax rates vary from 0.1%<sup>26</sup> to 1%. Some cities and counties have more than one district tax in effect, while others have none. Accordingly, combined state, local, and district tax rates generally range from 7.5% to 9.5%, with the exception of the cities of Albany, Hayward, San Leandro, and Union City in Alameda County, the City of El Cerrito in Contra Costa County, and the cities of La Mirada, Pico Rivera, and South Gate in Los Angeles County which subject to the specific exemptions discussed above, each have a tax rate of 10%. A listing of the district taxes, rates, and effective dates is available on the BOE's website: [www.boe.ca.gov/sutax/pdf/districtatelist.pdf](http://www.boe.ca.gov/sutax/pdf/districtatelist.pdf).

<sup>24</sup> AB 2321 (Chapter 302, Statutes 2008, Feuer) amended PUC Section 130350.5 to authorize, among other things, the 0.5% tax for a period not to exceed 30 years.

<sup>25</sup> Currently, all district taxes are levied exclusively within the borders of either a county or an incorporated city (with the exception of the Bay Area Rapid Transit District, which is comprised of Alameda, Contra Costa, and San Francisco counties and the Sonoma-Marín Rail Transit District). For purposes of calculating the 205 jurisdictions, the Bay Area Rapid Transit District and the Sonoma-Marín Rail Transit District are counted as one jurisdiction, even though each jurisdiction is comprised of three counties and two counties, respectively.

<sup>26</sup> Through specific authority, SB 1187 (Ch. 285, Stats. 2001, Costa) authorized Fresno County to impose a 0.1% district tax for zoological purposes.

**[Assembly Bill 1856 \(Dababneh\) Chapter 98](#)**  
***Single Refund Claim: Installment Payments***

*Effective January 1, 2017. Among its provisions, adds Section 6902.6 to the Revenue and Taxation Code.*

**Summary:** Allows a taxpayer making installment payments on an outstanding tax liability to file a single claim for refund to cover the period.

**Sponsor:** Board of Equalization

**Purpose:** To provide some equitable relief for taxpayers who are barred from receiving a refund for one or more installment payments because they did not file a timely claim for refund for each individual payment.

**Fiscal Impact Summary:** Unknown revenue loss due to refunds currently barred by statute.

**Former Law:** Under existing law,<sup>27</sup> when an overpayment of tax, interest, or penalty is made to the BOE, a claim for refund must be filed within a specified period to recover any amounts overpaid. The law requires a claim for refund to be in writing and state the specific grounds for the claim.

Under existing Sales and Use Tax Law, a claim for refund must be filed within the latest of the following periods:

- Three years from the due date of the return for the period for which the claimed overpayment was made;
- Six months from the date of the (claimed) overpayment;
- Six months from the date a determination (billing) became final; or
- Three years from the date the BOE collected an involuntary payment by the use of enforcement procedures, such as levies or liens.

Similar statutes cover the Use Fuel Tax, Cigarette and Tobacco Products Tax, Alcoholic Beverage Tax, Energy Resources Surcharge, Emergency Telephone Users Surcharge, Hazardous Substance Tax, Integrated Waste Management Fee, Oil Spill Response, Prevention, and Administration Fees, Underground Storage Tank Fee, Fee Collections Procedures, and Diesel Fuel Tax Laws.<sup>28</sup>

Unless the taxpayer filed a timely petition for redetermination, no refund may be allowed for an overpayment if the taxpayer does not file a claim for refund with the BOE within the latest of these periods, even if there is a cancellation or reduction of the originally determined amount.

The only recourse for taxpayers who miss a 30-day deadline to file a formal protest of an audit determination is to pay the tax and file a claim for refund. Nonetheless, the BOE may, at its discretion, accept a late petition as an administrative protest. The administrative protest, however, generally does not result in a stay of collection actions. The taxpayer generally is required to make installment payments while the appeals process is pending.

<sup>27</sup> Sections 6901, 6902 and 6904 of the Revenue and Taxation Code (RTC).

<sup>28</sup> RTC Sections 9152, 30263, 32402, 40112, 41101, 43452, 45652, 46502, 50140, 55222, and 60522, respectively.

**Amended Law:** This bill allows a taxpayer making installment tax payments to file a single claim for refund to cover the period before the outstanding determination is paid in full. This single claim for refund tolls the statute of limitations as of the timely filing of a refund claim on the first installment for all prior payments made within the limitation period (i.e. the previous six months) and covers all subsequent payments applied to that determination.

**Background:** In 2001, the Franchise Tax Board (FTB) sponsored Assembly Bill 1115 (Chapter 920, Committee on Revenue and Taxation, effective January 1, 2002) to allow a taxpayer to file a claim for refund before a liability was fully paid. The claim is accepted as an “informal claim for refund.” The informal claim delays the expiration of the statute of limitations (the later of four years from the original due date of the return or one year from the date of payment) and protects the taxpayer’s right to appeal to the BOE or file suit against the FTB in court. The informal claim is “perfected” and considered filed when the full amount due has been paid. The FTB can take formal action to either allow the claim or deny the claim in whole or in part.

Taxpayers paying their taxes in installments typically pay in full within three years, but may extend payments for as long as seven years. Prior to enactment of Assembly Bill 1115, those taxpayers who waited to file a refund claim until the tax was paid in full under a seven-year payment plan were barred by the statute of limitations and could not recover all of their payments even if they prevailed on appeal.

### **Commentary:**

- 1. The April 6, 2016 amendments** replaced “tax” with “surcharge” or “fee,” as applicable, in the various statutes being amended.
- 2. Taxpayers do not understand why they must file a claim for each individual payment.** Assuming all other statutory limitation periods have elapsed or do not apply, the law requires a taxpayer to file a timely claim for refund within six months of *each individual installment payment* made on an outstanding tax liability. Despite the BOE’s letters and publications instructing taxpayers to file a protective refund claim for each individual payment, some taxpayers still fail to do so. Taxpayers who have entered into an installment payment plan often mistakenly believe they need only file one claim for refund at the conclusion of the payment plan, rather than filing protective claims for refund for each payment within six months. Similarly, taxpayers making multiple payments may believe that upon paying the amount due and receiving notice of their appeal rights, each payment will be refunded, regardless of whether they filed claims for each individual payment.
- 3. BOE has identified several cases in which taxpayers were not refunded all of their payments.** This bill is prompted by several cases in which a taxpayer was barred by the statute of limitations from recovering the installment payments made to the BOE even though the determination was either cancelled or reduced to an amount less than the total payments received. In each case, the taxpayer did not file a timely petition for redetermination, made multiple payments for one liability, but did not file refund claims for each installment payment.

[Assembly Bill 1858 \(Santiago\) Chapter 449](#)  
***Joint Agency Work Group: Unlicensed Automobile Dismantlers***

*Effective January 1, 2017. Adds and repeals Section 11545 of the Vehicle Code.*

**Summary:** Requires the Department of Motor Vehicles (DMV) to collaborate with the BOE and several other state agencies to coordinate enforcement and compliance activity related to unlicensed automobile dismantling.

**Sponsors:** State of California Auto Dismantler Association  
Board of Equalization

**Purpose:** To investigate environmental quality issues and tax evasion that occur as a result of unlicensed automobile dismantling activities.

**Fiscal Impact Summary:** No state or local revenue impact.

**Former Law:** Current Vehicle Code Section 11500 requires automobile dismantlers to be licensed with the DMV and have an established place of business. To obtain an automobile dismantler's license with the DMV, the applicant must provide proof of the following: (1) BOE seller's permit number, (2) California Environmental Protection Agency, (CalEPA) identification number, and (3) Franchise Tax Board identification number. The applicant must also provide a statement that he or she either has filed an application for a stormwater permit or that it is not required and a similar statement that he or she either has filed a hazardous materials plan or that it is not required.<sup>29</sup>

Since 2012, under the Sales and Use Tax Law,<sup>30</sup> there is a presumption that a licensed dismantler or any person selling a vehicle at auction is making a retail sale. The seller may rebut this presumption by accepting a resale certificate from a licensed dealer, dismantler, automotive repair dealer, or scrap metal processor. The intent of this provision is to reduce the tax gap related to the auto auction and dismantling industry. This gap results from unlicensed sellers, repair shops and dismantlers who avoid paying sales or use tax by issuing a resale certificate at the time of purchase at a salvage auto auction.

Part 12.2 (commencing with Section 15910) of Division 3 of Title 2 of the Government Code establishes the Revenue Recovery and Collaborate Enforcement (RRACE) Team as a pilot program. The Team includes the BOE, Franchise Tax Board, Employment Development Department, and Department of Justice who work cooperatively to pursue criminal tax evasion resulting from underground economic activities that evade state taxation. This law authorizes members of the RRACE Team and other participating agencies to exchange information to investigate underground operations that result in state tax evasion. The RRACE Team investigates organized criminal entities and/or serial offenders for violation of tax laws.

**Amended Law:** This bill adds Vehicle Code Section 11545 to require DMV to collaborate with BOE, CalEPA, Department of Toxic substances Control, State Water Resources Control Board, Department of Recycling and Recovery, and the Air Resources Board to review and coordinate enforcement and compliance activity related to unlicensed and unregulated automobile dismantling, including resulting tax evasion, environmental impacts, and public health impacts. Until January 1, 2020, the enforcement and information sharing work group tasks include:

<sup>29</sup> Vehicle Code Section 11504(a).

<sup>30</sup> Revenue and Taxation Code Section 6092.5, as added by AB 2618 (Ma, Ch. 756, Stats. 2012).

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- BOE and the other agencies may collaborate with, and solicit information from, district attorneys, certified unified program agencies, code enforcement agencies, and any other federal, state, or local agencies with jurisdictions over unlicensed, unregulated, and underground automobile dismantlers to achieve the purpose of this bill.
- DMV, in consultation with the other agencies, shall submit a report to the Legislature on or before January 1, 2019 that includes the following information:
  - Number of unlicensed dismantlers investigated and the number of investigations that resulted in an administrative enforcement action, civil enforcement action, or criminal prosecution.
  - Any identified statutory or regulatory gaps for investigating and prosecuting unlicensed automobile dismantlers.
  - Information on how vehicles are acquired by unlicensed dismantlers, places where unlicensed activity are suspected or known to occur, types of facilities where unlicensed activity tends to occur.
  - Summary of the barriers to adequate and efficient enforcement of environmental, tax, and licensing statutes and regulations against unlicensed dismantlers.
  - Proposed strategies for bringing unlicensed dismantlers into compliance through compliance assistance, education and training, or other identified methods.
  - Recommendations for modifying, eliminating, or continuing the coordinated enforcement and compliance activities
  - Recommendations for statutory or regulatory changes, or both, needed to better allow for enforcement against unlicensed automobile dismantlers

This bill also contains legislative findings and declarations.

**Background:** According to the author's office, out of the 28 million registered vehicles in California, about 1.2 million are disposed of annually. Of these, approximately 360,000, or 30%, of the end-of-life vehicles are being processed through unlicensed and unregulated automobile dismantlers. Unlicensed automobile dismantlers do not follow DMV licensing requirements or comply with tax or environmental laws and regulations.

**In General:** The BOE is currently involved with various joint agency enforcement programs established to combat the underground economy. These include the RRACE Team, also known as Tax Recovery and Criminal Enforcement (TRaCE) Task Force, Joint Enforcement Strike Force (JESF), and the Labor Enforcement Task Force (LETF). Additional agency efforts include the BOE's Statewide Compliance and Outreach Program and the Contractor State License Board's Statewide Investigative Fraud Team.

### Commentary:

1. **Effect of the bill.** This measure creates a joint agency enforcement and information sharing group, led by DMV, to investigate unregulated automobile dismantlers and reduce the unlicensed automobile dismantler economy.
2. **Summary of amendments.** The **August 15, 2016 amendments** removed the term "underground" in reference to unlicensed and unregulated automobile dismantlers, and deleted the requirement to provide enforcement and necessary resources to the DMV, and the requirement for DMV to establish a public outreach effort to solicit referrals from the public. Two coauthors were also added. **The August 1, 2016 amendments**, among other things, (1) converted a task force into an information sharing workgroup, (2) added additional state agencies to the group, (3) added collaboration with federal, state, and local agencies, (4) created an outreach program to solicit referrals from the public and (5) extended the due date for the report to the Legislature. **The May 27, 2016 amendments**

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truncated the legislative findings and declarations by removing specific statistics and narrowing the language to focus on unlicensed dismantlers instead of the underground economy.

- 3. Collaborative efforts could yield positive results.** Through combined efforts with DMV and CalEPA, and the other listed agencies, and those agencies' unique perspectives on unlicensed dismantlers, BOE could develop new methods to investigate and reduce tax evasion by this specific segment of the underground economy.
- 4. Current efforts focus on unrelated issues.** The RRACE Team focuses on the underground economy and criminal prosecution of tax evasion. JESF and LETF focus primarily on labor issues. The BOE is an active member of each partnership and has benefited from each.

[Assembly Bill 2201 \(Brough\) Chapter 264](#)  
***Electronic Payments: Interest: One Day Late***

*Effective January 1, 2017. Among its provisions, repeals and adds Section 6591.6 to the Revenue and Taxation Code.*

**Summary:** Reinstates expired provisions that, until January 1, 2016, allowed the BOE, under specified circumstances, to prorate the interest due on a tax or fee electronic payment made one day late where the BOE Members, meeting as a public body, found that it would be inequitable to impose interest for the entire month.

**Sponsor:** Board of Equalization

**Purpose:** To continue to provide BOE Members with some limited flexibility to provide equitable interest relief when a payment is only one day late.

**Fiscal Impact Summary:** Annual state and local revenue loss of \$78,000.

**Former Law:** Under certain circumstances, until January 1, 2016, existing law<sup>31</sup> allowed the BOE to prorate the interest on a late tax or fee *electronic* payment where the BOE Members, meeting as a public body, found that it would be inequitable to impose interest for the entire month, provided the payment was only one day late. These circumstances included:

- The tax, fee, or surcharge (“tax”) payment was made no more than one business day after the due date.
- The person was granted relief from all penalties that applied to the payment.
- The person filed a request for an oral hearing before the BOE Members.

Beginning January 1, 2016, existing law requires the BOE to impose a 6% monthly interest rate (plus penalty) for any electronic payments made after the statutory due date. Simple interest accrues on the late tax payment, from the tax due date to the last day of the month in which it is paid. For an electronic payment, if a taxpayer makes a payment even one day late, interest accrues to that month’s end.

Under existing law,<sup>32</sup> for returns and other documents mailed or physically delivered to the BOE by a bona fide commercial delivery service, the BOE is authorized to establish a uniform policy to accept payments and various documents (claims for credit or refund, returns, or other information) as timely when the payment or document’s envelope or delivery document’s stamped cancellation mark shows a date after the statutory due date. Existing law states that this uniform policy shall not be construed as a statutory extension for taxpayers to file or remit taxes and fees. The BOE has adopted a uniform policy that allows the BOE to accept as timely payments or documents mailed or delivered to the BOE when the envelope or delivery document’s postmark date shows a date one day after the due date. These provisions do not apply, however, to returns, payments, or documents *electronically* submitted to the BOE.

**Electronic Funds Transfer requirements.** Existing law requires taxpayers who have an average monthly sales or use tax liability of \$10,000 or more, and special taxes accounts that have average monthly tax payments of at least \$20,000, to remit amounts due by an electronic funds transfer (EFT). For these taxpayers, the law requires that their EFT payments be deposited in the state’s account on the next

<sup>31</sup> As added by SB 1028 (Stats. 2010, Ch. 316).

<sup>32</sup> Government Code Section 15620.5.

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banking day following the tax due date. The law requires the BOE to impose a late payment penalty and interest when a taxpayer fails to initiate an EFT payment in sufficient time for the funds to be deposited in the state's account as the law requires. For the most commonly used EFT payment method (ACH debit), taxpayers must initiate their payments by 3 pm on the tax due date in order for that payment to be timely deposited in the state's bank account. Beginning January 1, 2016, if a taxpayer misses the 3 pm deadline, the payment is considered late, and an entire month's interest charge is due (along with the applicable penalty).

**New Law:** This bill reinstates these expired provisions.

### **Commentary:**

- 1. Effect of the bill.** This BOE-sponsored measure allows BOE Members to prorate interest for an electronic tax payment when the tax payment is no more than one day late and the late payment is due to reasonable cause or circumstances beyond the taxpayer's control.
- 2. Other agencies compute interest on a daily basis.** Both the Franchise Tax Board and the Employment Development Department compute interest on a daily basis, and the BOE should continue to have that ability when the facts and circumstances warrant.
- 3. Bill could encourage taxpayers paying late to pay more promptly.** Interest is imposed on outstanding amounts of tax due to compensate the State for its inability to use the funds and to encourage timely tax remittances. This bill is consistent with that principle, as it will continue to impose interest on the late payment, but only for the one day that the payment is late. Moreover, it will encourage those otherwise law-abiding taxpayers who, due to unique situations, inadvertently missed the payment deadline to pay the tax the next day to avoid the interest charge for the entire remaining portion of the month. (Currently, if a taxpayer misses the payment due date, there's no real financial incentive to quickly remit the payment, since an entire month's interest is charged regardless of whether the payment arrives one day late or 28 days late.)

**Senate Bill 837 (Committee on Budget and Fiscal Review) Chapter 32**  
***Medical Cannabis Regulation and Safety Act: Technical Changes***

*Effective June 27, 2016. Amends Section 19335 of the Business and Professions Code, repeals Section 31020 of the Revenue and Taxation Code, and amends Section 1535 of the Water Code.*

**Summary:** Among its provisions, this budget trailer bill makes the following changes to the Medical Marijuana Regulation and Safety Act (MMRSA):

- Requires the California Department of Food and Agriculture (CDFA) to consult with the BOE when creating the electronic database of shipping manifests to facilitate the track and trace program.
- Provides the BOE read access to the CDFA's electronic database for medical cannabis and medical cannabis product taxation and regulation.

The bill also allows the State Water Resources Control Board (SWRCB) to refer for collection by the BOE a cancelled fee billing for a statement of water diversion and use (Water Code Section 1535) and repeals the requirement for the BOE to adopt a system for reporting the movement of commercial cannabis and cannabis products through the distribution chain (Revenue and Taxation Code Section 31020).

**Purpose:** To make various statutory changes necessary to implement the Budget Act of 2016.

**Fiscal Impact Summary:** No impact to state revenues.

**Former Law: Medical Marijuana Regulation and Safety Act (MMRSA).**<sup>33</sup> Under existing law, the MMRSA establishes the Bureau of Medical Marijuana Regulation (Bureau) within the Department of Consumer Affairs to oversee and enforce the state's medical marijuana regulations, in collaboration with the California Department of Public Health (CDPH) and the CDFA. Additionally, it establishes categories of licenses for various medical marijuana activities, such as cultivation, manufacturing, distribution, transportation, and sale.

**California's Medical Marijuana Program.** Under existing law, the California Uniform Controlled Substances Act<sup>34</sup> prohibits the possession, cultivation, transportation, and sale of marijuana and derivatives of marijuana, except as authorized by law. 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.<sup>35</sup>

Existing law also provides that collectives and cooperatives that cultivate cannabis are not, solely on that basis, subject to certain criminal penalties, including unauthorized possession, cultivation, and transportation of marijuana. This exception expires one year after the Bureau posts a notice on its Internet Web site that the Bureau has commenced issuing MMRSA licenses.

**BOE Track and Trace.** Current law<sup>36</sup> requires 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. The system must capture, at a minimum, all of the following:

- The amount of tax due by the designated entity.

<sup>33</sup> Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

<sup>34</sup> Division 10 (commencing with Section 11000) of the Health and Safety Code (HSC).

<sup>35</sup> HSC Section 11362.5.

<sup>36</sup> Revenue and Taxation Code (RTC) Section 31020

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- 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.

**Water Right Fees.** Among other things, current law<sup>37</sup> requires each person or entity that holds a permit or license to appropriate water, and each lessor of water, to pay an annual fee according to a fee schedule established by the SWRCB. Each person or entity that files a Notice of Extraction and Diversion, as specified, must pay an annual fee<sup>38</sup> according to a fee schedule established by the SWRCB.

The law<sup>39</sup> allows the SWRCB to send certain unpaid fees to the BOE for collection and requires<sup>40</sup> the BOE to collect all annual fees and other fees referred by the SWRCB. The fees are collected pursuant to the Fee Collection Procedures Law<sup>41</sup> and deposited in the Water Rights Fund in the State Treasury.

**Amended Law:** This bill makes several changes to the MMRSA, including, but not limited to, changing the term marijuana to cannabis throughout.

With respect to the BOE, this bill requires the CDFA, in consultation with the BOE, to create an electronic database containing the electronic manifest to facilitate the track and trace program. The electronic manifests shall include, but not be limited to, the following information:

- The quantity, or weight, and variety of products shipped.
- The estimated times of departure and arrival.
- The quantity, or weight, and variety of products received.
- The actual time of departure and arrival.
- A categorization of the product.
- The license number and the unique identifier issued by the licensing authority for all licensees involved in the shipping process.

The bill provides the BOE read access to the electronic database for medical cannabis and medical cannabis product taxation and regulation purposes.

**Revenue and Taxation Code.** The bill repeals RTC Section 31020, which requires the BOE, in consultation with the CDFA, to adopt a system to report commercial cannabis and cannabis product movement throughout the distribution chain.

**Statement Fee Collection.** The bill amends WC Section 1535 to allow the SWRCB to refer an unpaid fee related to a statement of water diversion and use for cannabis cultivation to the BOE for collection.

**Effective Date.** As a budget trailer bill that makes an appropriation, this bill is effective immediately.

**Background:** 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) established statewide guidelines for Proposition 215 enforcement. In particular, SB 420 allows nonprofit distribution in certain cases for patient cultivation cooperatives, small-scale caregiver gardens, and dispensing collectives. However,

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<sup>37</sup> Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code (WC).

<sup>38</sup> WC Section 1529.

<sup>39</sup> WC Section 1535.

<sup>40</sup> WC Section 1537.

<sup>41</sup> Part 30 (commencing with Section 55001) of Division 2 of the RTC.

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despite the fact that numerous medical marijuana dispensaries currently do business in California, the sale of medical cannabis is illegal under federal law.

On August 29, 2013, the U.S. Department of Justice issued guidance to federal prosecutors regarding cannabis enforcement under the CSA (referred to as the [Cole Memo](#)).<sup>42</sup> The Cole Memo reiterated the Department's commitment to enforcing the CSA consistent with Congress' determination that cannabis is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. In furtherance of those objectives, the Cole Memo instructed the Department attorneys and law enforcement to focus on the following eight priorities in enforcing the CSA against cannabis-related conduct:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Under the Cole Memo, marijuana-related conduct that implicates one or more of these enforcement priorities should be the primary question when considering CSA prosecution. Although the guidance was issued in response to recent marijuana legalization initiatives in certain states, it applies to all Department marijuana enforcement nationwide.

Effective December 16, 2014, Public Law 113-235<sup>43</sup> prohibits the United States Department of Justice from using funds to prevent specified states, including California, from implementing laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

**Medical Marijuana Regulation and Safety Act.** In 2015, the Legislature enacted the MMRSA, a package of legislation that establishes a comprehensive licensing and regulatory framework for medical marijuana, including cultivation, manufacturing, transportation, distribution, sale, and product. The MMRSA consists of three bills: [SB 643](#) (Ch. 719, McGuire), [AB 243](#) (Ch. 688, Wood), and [AB 266](#) (Ch. 689, Bonta).

Among its provisions, the MMRSA establishes the Bureau within the DCA to oversee and enforce the state's medical marijuana regulations, in collaboration with the CDPH and the CDFA. Additionally, it establishes categories of licenses for various medical marijuana activities, such as cultivation, manufacturing, distribution, transportation, and sale.

AB 266 also added 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).

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<sup>42</sup> <http://medicalmarijuana.procon.org/sourcefiles/cole-DOJ-memo-aug-2013.pdf>

<sup>43</sup> [H.R. 83](#) / Public Law 113-235, Consolidated and Further Continuing Appropriations Act, 2015, (Dec. 16, 2014; 128 Stat. 2130; 701 pages).

**Commentary:**

1. **Should the BOE have a role in track and trace?** This bill repeals the provision that requires the BOE to establish a track and trace system for tax administration and enforcement. Although those provisions appear related to a proposed excise tax that was not passed by the Legislature, the information captured by the system would be helpful for sales and use tax enforcement under current law. This provision also provides helpful information through the electronic shipping manifests.

However, the electronic database containing electronic shipping manifest information may not be helpful if the BOE is tasked with the administration and collection of a future excise tax imposed above the retail level (e.g. cultivator, distributor). To collect such a tax, BOE staff suggests providing the BOE the authority to collect such a tax through the use of a tax stamp, product bags, or other method of collecting tax. Since an excise tax seems likely, BOE staff suggests the CDFA also consult with the BOE when establishing the track and trace system to include excise tax payment and other tax enforcement information.

2. **Collection provision not problematic.** This bill authorizes the SWRCB to refer unpaid fees related to a statement of water diversion and use for cannabis cultivation to the BOE for collection. Since the SWRCB currently has the authority to refer other unpaid water right-related fees to the BOE for collection, such as water-related application, registration, petition, and request fees and water quality certificates, as described, this provision will not be problematic to administer.

STATE BOARD OF EQUALIZATION

**TABLE OF SECTIONS AFFECTED**

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
<b>Revenue and Taxation Code</b>				
§6459	Amend	<a href="#">AB 1559</a>	Ch. 257	Extension of time
§6479.3	Amend	<a href="#">AB 821</a>	Ch. 811	Electronic funds transfer payments
§6591.6	Repeal Add	<a href="#">AB 2201</a>	Ch. 264	Electronic payments: one day late
§6902.6	Add	<a href="#">AB 1856</a>	Ch. 98	Single refund claim: multiple payments
§7291	Amend	<a href="#">AB 1665</a>	Ch. 45	Authorization to levy: Contra Costa Transportation Authority
Chapter 3.75 (commencing with §7292.5)	Add Repeal	<a href="#">AB 366</a>	Ch. 502	Local Government Finance in the City of Alameda
§31020	Repeal	<a href="#">SB 837</a>	Ch. 32	Commercial cannabis tracking
<b>Business and Professions Code</b>				
§19335	Amend	<a href="#">SB 837</a>	Ch. 32	Medical Cannabis Regulation and Safety Act: track and trace program
<b>Vehicle Code</b>				
§11545	Add Repeal	<a href="#">AB 1858</a>	Ch. 449	Automobile dismantling: joint agency work group
<b>Water Code</b>				
<b><i>Medical Cannabis Regulation and Safety Act</i></b>				
§1535	Amend	<a href="#">SB 837</a>	Ch. 32	Cannabis water fees; BOE collection