



*California State Board of Equalization,
Legislative Division*

LEGISLATIVE BULLETIN



**SPECIAL TAXES LEGISLATION
1998**

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Assembly Bill 117 (Escutia) Chapter 1020
Extension of tire recycling fee

Effective January 1, 1999. Amends Sections 42871 and 42885 of Public Resources Code.

Extends the sunset date of the tire recycling fee from June 30, 1999 to January 1, 2001. The fee will continue to be deposited in the California Tire Recycling Management Fund.

Sponsor: Assemblymember Escutia

Law Prior to Amendment:

Under existing law, Section 42885 of the Public Resources Code imposes a fee of \$0.25 on the purchase of each tire from a retail seller of new tires. Under a contract with the California Integrated Waste Management Board (CIWMB), the fee is reported and paid by retailers to the State Board of Equalization on a quarterly basis. The current law states that Section 42885 shall be inoperative on June 30, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes operative and is repealed.

Background:

The tire recycling fee was first imposed beginning July 1, 1990 at the rate of \$0.25 on each tire left for disposal with a tire seller (Enacted through Ch. 974, Statutes of 1989, but the code sections were later renumbered by Ch. 35, Statutes of 1990). The proceeds from the fee are used to pay for costs associated with operating the tire recycling program, cost of cleanup, abatement, or other remedial action related to the disposal of used whole tires, and research directed at promoting and developing alternatives to the landfill disposal of used whole tires. Beginning January 1, 1997, the imposition of the fee was shifted from each tire left for disposal to each tire purchased from a new tire retailer (Ch. 304, Statutes of 1996).

Comments:

1. **Purpose.** According to the author's office, this measure is intended to allow the tire recycling fee program to continue for another 18 months while a solution to the increasing stockpiles of waste tires can be found. The author believes a critical analysis is needed on strategies and resources necessary to (1) eliminate stockpiles of waste tires, (2) protect public health and the environment, and (3) increase sustainable economic markets for waste tires in California.

2. **This bill would not create any administrative difficulties for the Board.** Provided the CIWMB would renew the fee collection contract with the Board, the continuation of the fee would not present any administrative difficulties for the Board.

Assembly Bill 911 (Knox) Chapter 649
Security deposit requirements for energy and telephone tax programs

Effective January 1, 1999. Adds Sections 40036 and 41041 to the Revenue and Taxation Code.

Provides the Board with the authority to require a telephone service supplier to post a security deposit when the Board finds it necessary to ensure compliance. The bill adds provisions similar to those contained in Sections 6701 and 32102 of the Sales and Use Tax Law and Alcoholic Beverage Tax Law, respectively, which allow the Board to determine what security level is required, based on the estimated average liability of each entity. Current registrants who have either timely filed all returns and paid all 9-1-1 taxes due since the taxpayer registered with the Board or for the three consecutive years prior to the effective date of the bill, will not be subject to the security deposit requirements, provided they remain in compliance.

This bill also provides the Board with the authority to require an electrical service supplier to post a security deposit with the Board. This will be done when the Board finds it necessary to ensure compliance under this section, though not all taxpayers would be required to post security. These provisions do not apply to current registrants who have been in compliance with return filing and tax payment requirements.

Sponsor: Board of Equalization

Law Prior to Amendment:

Emergency Telephone Users Surcharge (9-1-1) Law

Under current law, a surcharge of 0.72 percent is imposed on telephone communication services within the state. The surcharge is collected from consumers and remitted to the Board by entities providing intrastate telephone communication. The telephone user surcharge is used to fund the state's 9-1-1 programs.

Under current law, there are no statutes allowing the Board to require entities providing intrastate telephone communication service to post security. Until recently, there has been little need for such a statute.

Background:

Until the 1984 federal deregulation of long distance telephone carriers, the taxpayer base for the 9-1-1 program consisted of large, publicly-traded long distance companies and well-established local exchange carriers. In 1984, there were fewer than 100 service suppliers registered to collect this surcharge. Since 1984 the Excise Taxes Division has registered over 900 new telephone service suppliers. Currently, there are 465 active service suppliers registered to collect the 9-1-1 surcharge. The Excise Taxes Division staff has closed out over 500 accounts since long-distance service was deregulated.

Since 1995, over \$900,000 in outstanding 9-1-1 tax liability write-offs have been approved. Many of the companies which fail are out of state corporations. Collection of such receivables is difficult, if not impossible. Currently, \$68,000 of accounts receivable are in pending write-off status. Additionally, the financial stability of many companies is unknown. Many service suppliers are corporations which eventually file for bankruptcy. Often the Board will submit a claim in the case, but will receive no funds from any liquidation. By the time the case has cleared the court, the corporation has been suspended, making any collection action impossible. There are currently \$88,000 in accounts receivable in bankruptcy status. This amount will invariably be written off.

Last year, the Federal Government passed the Telecommunications Act of 1996. The Act provided for the deregulation of local exchange carrier service. The Act will likely result in an increased number of entities providing local telephone service in California. It is expected the Board will experience similar collection problems with the new local exchange carriers.

Energy Resources Surcharge

Under current law, a surcharge of two-tenths of a mill (\$0.0002) per kilowatt hour of electrical energy use is imposed on consumers and remitted to the Board by electric utilities to fund ongoing energy programs and projects.

Under current law, there are no statutes allowing the Board to collect a security deposit from electric utilities making sales of electrical energy to consumers. Until recently, there has been little need for such a statute. However, scheduled deregulation of the energy industry has created the need for statutory authority which would authorize the Board to impose security deposit requirements on some surcharge payers.

Background:

Currently, there are 56 entities in California which sell electrical energy to consumers. The largest entities are stable, publicly-traded utilities, while the majority of registrants are municipalities. Additionally, there are 29 entities which are registered as electrical consumers. These entities purchase electrical energy directly from the federal government and report the surcharge on what they consume. Generally, these entities are state prisons and water reclamation districts.

The electrical energy industry is in the process of becoming deregulated. Deregulation will allow consumers to have a choice in deciding who will supply their electrical energy needs. It is anticipated the state will see an influx of small, privately held entities supplying electrical energy to consumers. It is expected that the effect of the deregulation of electrical energy upon the Board's tax administration will be similar to that of the deregulation of the telephone industry. Many companies will enter the electrical energy industry, but some will not continue over time. The scenario could develop in which failing energy companies could accrue large energy surcharge liabilities that could become collection problems for the Board.

Comments:

1. **Purpose.** The Board of Equalization is sponsoring this proposal to ensure collection of tax revenue in the high-risk, ever-changing telephone industry. The telephone communication industry often involves high-dollar volume and extreme competition. It is in the state's best interest to require security from certain service suppliers who put at risk the vital funding of California's 9-1-1 emergency response system.

In regard to the electrical service industry, this proposal would provide a proactive approach to ensure collection of surcharge revenue from what is anticipated to become a competitive, high-risk industry. The deregulation of the electrical energy market is expected to impact the Board's administration of the energy surcharge program in a manner similar to the deregulation of the telephone industry.

2. **Revenues lost to date have been taxes collected from telephone customers.** The \$900,000 in uncollectable 9-1-1 taxes written off by the Board since 1995 are taxes which have been collected from telephone customers but not remitted to the state. This bill would provide a safeguard against those taxpayers who collect taxes from customers and then fail to pay these amounts to the state.

3. **Service providers may currently require their customers to post security.** New residential and business customers of both electrical service suppliers and telephone service suppliers can be required to post a security deposit with the service provider. Similar to the Board's proposal, security deposits are returned to customers who are consistent and timely with their payments. The Board is simply seeking statutory authority to require a similar security deposit.
4. **The Board would not impose security deposit requirement on all taxpayers.** Security would only be imposed on a case-by-case basis. For example, only accounts deemed "risky" (i.e., previous or current collection problems) or new accounts would be required to post security. Also, the bill specifically provides that the security would be released after a three-year period in which the taxpayer has filed all returns and paid all taxes due under either the energy surcharge or the 9-1-1 tax program. This proposed new statute would conform to current statutory authority under both the Sales and Use Tax Law and Alcoholic Beverage Tax Law. Additionally, security procedures utilized under the Cigarette and Tobacco Products and Alcoholic Beverage Tax programs could easily be applied under both these programs.

Assembly Bill 2075 (Granlund) Chapter 815
Credit for unsalable tobacco products

Tax levy; effective September 25, 1998. Amends Section 30177 of the Revenue and Taxation Code.

Requires the Board to refund or credit the excise taxes previously paid by a distributor on tobacco products which become unfit for use or unsalable.

Sponsor: California Distributors Association

Law Prior to Amendment:

Under existing law, the Cigarette and Tobacco Products Tax Law imposes excise taxes on cigarettes of 18 1/2 mills per cigarette (37 cents per package of 20). A distributor of cigarettes affixes a cigarette stamp to each package as evidence that the excise tax has been paid to the state.

Current Section 30177 requires the Board to refund or credit to a distributor the denominated values, less the discount given on their purchase, of stamps or meter impressions affixed to packages of cigarettes which have become unfit for use or unsalable. A distributor must provide the Board with proof that the cigarettes have not been used for smoking in this state.

Section 30123 imposes a surcharge on tobacco products at a rate to be annually determined by the Board. The tobacco products tax rate is equivalent to the combined rate of tax on cigarettes and based on the March 1 wholesale cost of tobacco products. The surcharge rate through June 30, 1999 is 26.17%.

Background:

Proposition 99, passed on the November 1988 ballot, effective January 1, 1989, imposed a surtax of 25 cents per package of 20 cigarettes, and also created an equivalent tax on tobacco products. Proceeds from the taxes fund health education, disease research, hospital care, fire prevention, and environmental conservation. The measure enacted by the voters was intended to provide equitable tax treatment of cigarettes and tobacco products.

Comments:

1. **Purpose.** To correct the current disparity in the treatment of tobacco products relative to refunds on unsalable cigarettes.
2. **This bill would add consistency and fairness to the law.** One of the purposes of Proposition 99 was to tax and regulate tobacco products in a manner as similar to cigarettes as possible. Since cigarette distributors are entitled to a refund of tax on damaged and unsalable cigarettes, the statutes should be amended to allow a similar refund on tobacco products.

This bill would correct an oversight in the drafting of Proposition 99 and all subsequent legislation which was intended to make the law consistent for cigarettes and tobacco products, in order to authorize the Board to refund taxes to distributors on worthless tobacco products. This bill is consistent with, and furthers the purposes of, Proposition 99 and would prevent the state from being unjustly enriched from excise taxes on damaged or unsalable tobacco products.

Senate Bill 2014 (Sher) Chapter 737
CUPA offset credit and offsite recycling credit

Effective January 1, 1999. Amends Section 25205.5 of, and adds 25205.9 to, the Health and Safety Code.

Amends Section 25205.5 of the Health and Safety Code to provide two new refunds for generators of hazardous wastes. Subdivision (h) makes a generator of hazardous waste eligible for a refund of all, or part of, the state generator fee paid if all of the following apply:

- **The generator paid an inspection fee to a CUPA, which imposed the fee as part of a single fee system and fee accountability program in compliance with Section 25404.5.**
- **The generator received a credit for the generator fee or generator surcharge, as provided in Section 43152.7 or 43152.11, respectively, for fees paid to a local hazardous waste management program pursuant to a Memorandum of Understanding filed with the Department of Toxic Substances Control (DTSC) for waste generated in 1996.**
- **DTSC certifies that funds are available to pay all or part of the refund.**

The other refund, as contained in subdivision (i) of Section 25205.5, authorizes a refund of all, or part of, the generator fee to a generator who transfers hazardous materials to an offsite facility for recycling if all the following conditions apply:

- **The offsite facility to which the hazardous materials are manifested pays a facility fee pursuant to Section 25205.2.**
- **The amount of hazardous materials recycled deducted from the total tonnage generated results in the generator dropping to a lower generator fee tier.**
- **The hazardous materials are not burned in a boiler, industrial furnace, or an incinerator, used in a manner constituting disposal, or used to produce products that are applied to land.**
- **DTSC certifies, pursuant to Section 25205.9, which this bill would create, that funds are available to pay all or part of the refunds.**

This bill requires a generator to submit an application for refund to the Board by March 31 of the fiscal year during which the generator paid the generator fee. An application received after March 31 would be void, not processed by the Board, and returned to the applicant.

This bill also adds Section 25205.9 to require DTSC on or before June 30 of each year to determine if there are surplus funds in the Hazardous Waste Control Account and allocate the surplus, upon appropriation by the Legislature, to pay the refunds in the following priority:

1. To pay refunds, as provided in subdivision (h) of Section 25205.5, at an amount not to exceed the local hazardous waste generator inspection fee paid to a CUPA in the previous year or the generator fee paid to the state, whichever is less.
2. To pay refunds for hazardous materials recycled, pursuant to subdivision (i) of Section 25205.5, provided that there are sufficient funds available. However, if the generator receives a refund for the CUPA fee, pursuant to subdivision (h) of Section 25205.5, a refund of the state generator fee for offsite recycling could not exceed the difference between the amount of the generator fee paid and the refund received for having paid a fee to a CUPA.

“Surplus”, for the purposes of Section 25205.9, is defined to mean the amount in the Hazardous Waste Control Account on June 30 of each year that is in excess of the \$1 million reserve required by Section 25174.

In the case of a limited surplus for refunds, this bill requires CUPA refunds to have priority over the recycling incentive refunds, with a proration of refunds among all eligible feepayers, if necessary.

Sponsor: Environmental Technology Council

Law Prior to Amendments:

Under existing law, Section 25205.5 of the Hazardous Substances Tax Law imposes a fee on a generator for each generator site for each calendar year unless the generator has paid a facility fee or received a credit per Section 25205.2(i) for each specific site for the calendar year for which the fee is due. The fee is divided into different tiers based on the tonnage of waste generated (5 - 24.9 tons, 25 - 49.9 tons, etc.) with a significant incremental increase in the fee as a generator produces more waste and moves from one tier to the next. An exemption from the fee is provided for hazardous materials which are recycled, and used onsite, and not transferred offsite.

In General:

Current Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code requires the state and local governments to implement a unified program. The unified program is a state and local effort designed to consolidate, coordinate, and make consistent six existing programs regulating hazardous waste and hazardous materials management, including the oversight of generators of hazardous waste. Among its responsibilities under the unified program, a CUPA is required to develop and implement a single fee system to cover their reasonable and necessary costs to implement their unified program.

The amount of the CUPA fees charged by each jurisdiction vary dramatically throughout the state. According to information gathered by the DTSC and published on their website, some CUPAs charge nothing, because the amounts are included in their Business Plan fees, while other CUPAs charge as much as \$58,080 per year, which is even in excess of the highest current state generator fee category. Similar to the state generator fees, there are tiers to the fees charged. While the basis of the fee varies, the vast majority of the CUPAs base their fee on either the number of employees or the volume of waste generated. Under the provisions of this bill, qualifying CUPA fees would be used to determine the amount of the refund.

Comments:

1. **Purpose.** According to the author's office, this bill is intended to restore an offsetting credit against the state generator fee for any local generator fees paid, which were allowed prior to the creation of CUPAs, and also to provide a powerful incentive for companies to recycle their wastes rather than send them to a landfill or incinerator. This recycling incentive is intended to provide a generator with the same exemption as currently allowed to generators who recycle their waste on-site.
2. **The CUPA refund would not apply to newer generators.** In order to qualify for a refund of the state generator fee for having paid a CUPA fee, the generator would have had to have received a credit for either the generator fee or generator fee surcharge pursuant to a Memorandum of Understanding for waste generated in 1996. Accordingly, if you had not been in business during that time period, you would not now qualify for the refund.

However, that proposed refund section could be interpreted to leave the statute of limitations open for generators who have not yet received a credit for 1996, but could still receive a credit in the future. For example, the three year statutes of limitations period for amounts due for 1996 would not close until February 28, 2000. The language in this bill leaves open the possibility that a generator could qualify in the future for the CUPA credit if they eventually receive a credit for fees paid for 1996. If that is not the sponsor's intent, then the bill should be

clarified to require a generator to have already claimed their credit by a date specified in the bill.

A similar ambiguity exists in the requirement that a generator submit an application for a refund by March 31 of the fiscal year during which the generator paid the generator fee. The current language does not require that the generator have paid the fee in the time period for which it was also due. If a generator pays a year or more after the statutes require it to pay, this bill would only require that the application be submitted by March 31 of that fiscal year, regardless of the year for which the fee was due and payable. This would appear to be a qualifying claim for refund if received when funds are available. Conversely, the opposite might also occur. A generator could claim a refund in a subsequent year but by that time they file their claim the funds available for refund could be exhausted and no refund would be made.

3. **Would the recycling incentive be equitable for facility operators?** The recycling exemption in current law only applies to on-site recycling by operators who have paid the facility fee. Facilities are exempt from the generator fee because they have paid the facility fee. A facility operator pays a fee based on the size and type of the facility.

This measure would provide a generator of hazardous waste a refund of the generator fee without having paid any other hazardous waste fee to the state. It appears that a generator who sends hazardous waste off-site to be recycled would actually receive a greater benefit from this bill than the current benefit provided to a facility operator for on-site recycling who also has invested in the equipment necessary to perform the recycling process.

4. **The exemption could apply to materials shipped to out of state facilities.** As provided by the amendments in the final version of the bill, the proposed exemption for hazardous waste recycled offsite requires that the waste be manifested to an offsite facility which has paid a facility fee to the state. With this change, this exemption could apply to waste eventually shipped out of state for recycling since the waste must only be initially manifested to a permitted facility and not specifically recycled in California.

Senate Bill 2134 (Burton) Chapter 292
Ban on export-only cigarettes

Urgency; effective August 13, 1998. Amends Section 30163 of the Revenue and Taxation Code.

Prohibits the affixing of any stamp or meter impression to any package of cigarettes unless that package complies with all requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Section 1331 and following) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States. This bill requires the Board to revoke the license of any distributor who affixes a stamp or meter impression upon any cigarettes that do not comply with the labeling requirements.

This bill contains an urgency clause to make it effective immediately.

Sponsor: California Distributors Association

Law Prior to Amendments:

Under existing law, Section 30101 of the Cigarette and Tobacco Products Tax Law imposes an excise tax of 6 mills (or 12 cents per package of 20) on each cigarette distributed. In addition, Section 30123 imposes a surtax of 12 1/2 mills (25 cents per package of 20) for a current total tax on cigarettes of 18 1/2 mills per cigarette (37 cents per package of 20). This excise tax is imposed upon each cigarette distribution, which is basically defined as the first sale of untaxed cigarettes in this state.

Current Section 30163 requires that a cigarette stamp be affixed to each package of cigarettes. Failure to have a stamp attached indicates that the cigarette tax has not been paid to the state and the seller is in violation of the law.

Selling cigarettes without a stamp or meter impression is a misdemeanor under Section 30474. Each offense is subject to a fine of not more than \$1,000, imprisonment not exceeding one year in a county jail, or both fine and imprisonment, in the discretion of the court. In addition to the fine and sentence, each person shall pay \$100 for each carton of 200 cigarettes knowingly possessed, stored, or retained for purpose of sale, or sold or offered for sale without the proper stamp or meter impression.

Background:

Most American cigarette manufacturers market two different types of cigarettes: cigarettes for domestic sale and cigarettes for export to other countries. It is Board staff's understanding that the cigarettes are essentially identical products. Because "export only" cigarettes can be purchased at a reduced price, some California distributors have been importing these cigarettes back into this state, paying federal and state taxes and duties, and selling those cigarettes. The Board's legal staff has determined that the importing and stamping of these cigarettes is not in violation of any of California's cigarette tax laws because the distributors have been complying with the appropriate state reporting requirements.

However, recent Board staff investigations have revealed that not all "export only" cigarettes cleared through licensed distributors have been properly declared and stamped. The Excise Tax Division is beginning to see signs of increased smuggling of these types of cigarettes through licensed distributors and believes California may experience increased tax evasion due to the expansion of smuggling of "export only" cigarettes in much the same way that Florida has reportedly been experiencing the smuggling of those products in recent years.

Comments:

1. **Purpose.** A background sheet provided by the sponsor states that the intent of this proposal is to provide the Board with a tool to use against distributors of contraband cigarettes and cigarettes intended for foreign markets, which are not intended for sale in California. The sponsor asserts that "For Export Only" cigarettes are associated with export fraud, smuggling, and organized crime. This is their effort to deter the increasing volumes of contraband cigarettes sold in California.
2. **The smuggling of cigarettes is a problem.** Board staff concurs with the sponsors that cigarette smuggling into California results in a loss of between \$20 to \$30 million annually. Staff concurs that "export only" cigarettes comprise the vast majority of smuggled cigarettes because those cigarettes are not subject to the same reporting and tracking requirements of cigarettes shipped within the United States. Because illicit and unreported sales provide a built-in profit of \$0.61 (the combined \$0.24 federal and \$0.37 state excise taxes) on each package of 20 cigarettes, cigarette smuggling is a tempting market for organized crime.
3. **Importing of "export only" cigarettes does not automatically constitute smuggling.** Smuggling of cigarettes constitutes tax evasion. Distributors of "export only" cigarettes who properly stamp their cigarettes, and thereby pay their cigarette taxes, are not violating current state cigarette tax laws. This measure, however, would prevent distributors from selling "export only" cigarettes, which are not necessarily contraband.

This proposal would not impose any additional penalties on unreported distributions or tax evasion. Though it associates “export only” cigarette distributors who pay the proper taxes with tax evaders, and punishes distributors who are not evading the cigarette tax, this proposal may help prevent an increase in smuggling. As smugglers become more aware of the potential profits and easier method of bringing untaxed cigarettes into California without the greater risk associated with the reporting requirements of domestically produced and shipped cigarettes, “export only” cigarettes are expected to become a greater problem. Using the Board’s authority to enforce the ban on distribution of “export only” cigarettes, this proposal would bar under any circumstances the distribution in California of “export only” cigarettes that do not meet federal labeling requirements.

It should be pointed out that the Board cannot revoke a distributor’s license without first giving a distributor at least 10 days’ notice and scheduling a hearing for the distributor to be able to show cause why the license should not be revoked. A new license can be issued provided the distributor is able to satisfactorily show the Board that they will comply with the cigarette tax law.

4. **Foreign manufactured cigarettes would continue to be available.** This bill would only restrict the sale of domestically manufactured cigarettes which are packaged for export outside the United States. Cigarettes manufactured in Great Britain, as one example, would continue to be legally imported, stamped, and made available for sale. Distributors of foreign produced cigarettes would continue to be allowed to stamp and sell their products in California.

Senate Bill 2174 (Rainey) Chapter 1049
Public Records Act

Effective January 1, 1999. Adds Section 6257.5 to, and Chapter 3 (commencing with Section 15650) to Part 9 of Division 3 of Title 2 of, the Government Code.

Specifies that, for all agencies subject to the California Public Records Act (Government Code Section 6250 et seq.), no limitations on access to a public record may be made based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure. This bill also requires the Board of Equalization to adopt regulations to establish procedures and guidelines to access public records, and to study and report to the Legislature by January 1, 2000, concerning the feasibility and cost of indexing its public records.

Sponsor: Associated Sales Tax Consultants

Law Prior to Amendment:

Under existing law, the Public Records Act (commencing with Section 6250 of the Government Code) provides for public access to any record maintained by a state and local agency, including the Board of Equalization (Board), unless there is a statutory exemption that allows or requires the agency to withhold the record.

In *State Board of Equalization v. Superior Court*, 10 Cal.App.4th 1177, the court decided that the Board could not withhold disclosure of its “working law” merely because such documents contained confidential taxpayer information, since the confidential information could be excised without destroying the utility of the documents. Specifically, the court directed the Board to disclose to Associated Sales Tax Consultants (ASTC) certain records, with confidential information excised, which showed the Board’s practice in interpreting and applying two Sales and Use Tax regulations.

The Public Records Act requires that within 10 days after receipt of a request for copies of records, the agency must determine whether it will comply with or deny the request and must immediately notify the person making the request of such determination and the reasons for the determination (Government Code Section 6256). Government Code section 6257 provides that the agency "upon request for a copy of records ... shall make the records promptly available." Current case law provides for a flexible time limit for providing copies of records to the public, based on a reasonableness standard (*Rogers v. Superior Court* 19 Cal. App. 4th 469, 483 (1993)). Reasonableness is determined by the circumstances of the request.

The Board is in full compliance with the Public Records Act and *State Board of Equalization v. Superior Court*. The Board provides copies of public records, with confidential taxpayer information redacted, upon request. Consistent with the size and nature of the request, the Board provides copies of public records within a reasonable amount of time.

Comments:

1. **Purpose.** This bill is intended to provide easier access to public records.
2. **This bill would establish additional public records requirements applicable only to the Board.** The Board would be required to adopt regulations that specifically identifies and describes the various types of Board public records that pertain to its tax and fee programs.
3. **This bill would require the Board to study and report to the Legislature the feasibility and cost to create and maintain a subject matter index of all public records pertaining to Board-administered tax and fee programs.** The Board has been exploring the feasibility of establishing a Board-wide centralized index and filing system for all documents used by the staff for tax administration; however, this project has not yet been completed.

Senate Bill 2230 (Committee on Revenue and Taxation) Chapter 420*Board-sponsored housekeeping measure*

Effective January 1, 1999. Amends Sections 6479.3, 8131, 9156, 30009, 30016, 30367, 32406, 40117, 41106, 43456, 45656, 46507, 55226, and 60525 of, and adds Section 50142.2 to, the Revenue and Taxation Code.

Among the Board-sponsored proposals that affect the Special Taxes programs, this bill:

- 1. Conforms for purposes of equity the Special Taxes Department program provisions to the Sales and Use Tax Law by allowing the Board to require a taxpayer or feepayer to waive credit interest during the time in which they request the Board to defer action on their claim for refund.**
- 2. Includes inventory seized while in the possession of an unlicensed distributor in the definition of "use or consumption" in order to impose the tax on the seized, unstamped cigarette inventory of tax evaders.**
- 3. Makes a purely technical amendment to include a reseller of tobacco products in the definition of a "wholesaler."**

Senate Bill 2231 (Committee on Revenue and Taxation) Chapter 350
Board-sponsored housekeeping measure

Effective January 1, 1999. Amends Section 25174.6 of the Health and Safety Code, amends Sections 41052.1, 43452, 43522, 50157, 60501, and 60503 of the Revenue and Taxation Code.

Board of Equalization-sponsored technical and housekeeping measure that:

- 1. Changes the period upon which the annual disposal fee rate adjustment is made to a fiscal year basis in order to be consistent with other hazardous waste fees which are adjusted annually.**
- 2. Allows for reporting periods other than monthly under the 9-1-1 tax law in order to ease reporting requirements for certain taxpayers.**
- 3. Provides that an overpayment of the disposal fee will be credited or refunded to the person submitting the hazardous waste for disposal, unless the disposal facility has not collected the amount from the person submitting the waste for disposal or has refunded the amount to that person.**
- 4. Makes technical changes to correct references to the Health and Safety Code sections related to the occupational lead poisoning prevention fee and childhood lead poisoning prevention fee.**
- 5. Clarifies that the underground storage fees are transmitted to the Treasurer to be deposited in the Underground Storage Tank Cleanup Fund in the State Treasury.**
- 6. Makes technical changes to clarify that refunds are available for spilled diesel fuel and for specific sales of diesel fuel.**
- 7. Makes the diesel fuel tax exemption certificates for farming use or exempt bus operations a Board form and corrects the effective date of the certificates.**

Senate Bill 2232(Committee on Revenue and Taxation) Chapter 609
Board-sponsored housekeeping measure

Effective January 1, 1999. Amends Sections 7308, 7313, 7314, 7355, 7356, 7506.5, 7651, 7855, 8171, 8172, 8173, 8708, 8957, 9181, 9182, 9183, 9255.1, 30315, 30381, 30383, 32387, 32431, 40155, 41123.5, 43444.2, 43481, 45605, 45751, 46406, 46541, 50136, 50150, 55205, 55261, 60122, 60407, 60561, and 60608 of, adds Sections 7305.5, 7316, 7652.5, 7983, 30382, 32432, 32433, 43482, 43483, 45752, 45753, 46542, 46543, 50150.1, 50150.2, 55262, 55263, 60562, and 60563 to, adds Article 4 (commencing with Section 40135) to Chapter 5 of Part 19 of, adds Article 4 (commencing with Section 41114.1) to Chapter 5 of Part 20 of, Division 2 of, and repeals Section 7356.5 of, the Revenue and Taxation Code.

Board of Equalization-sponsored technical and housekeeping measure that:

- 1. Adds to the Motor Vehicle Fuel License Tax Law a definition of “redistribution” and “tax-paid fuel,” includes a cardlock, keylock and other unattended mechanism in the definition of a service station, redefines “bulk plant,” and excludes service stations from the tax on the gallonage of fuel redistributed in excess of the gallonage acquired tax-paid in order to conform the statutes with the *Al-Sal* decision.**
- 2. Provides under the various special taxes laws that a levy has the same effect as a levy pursuant to a writ of execution and exempts deposit accounts from continuous provisions of the levy in order to provide a clear and consistent tax and fee collection procedure among all of the programs administered by the Board.**
- 3. Conforms partnership agreement provisions for Motor Vehicle Fuel License Tax Law with all other Board administered tax and fee programs.**
- 4. Authorizes the Board to issue determinations for recovery of amounts erroneously refunded by the Board in order to conform the special taxes department program provisions to those under the Sales and Use Tax Law.**
- 5. Allows a California fuel trip permit to be issued without issuing a DMV trip permit, conforms the California fuel trip permit to International Fuel Tax Agreement, and clarifies that the fuel trip permit is for entry or reentry during four consecutive days.**
- 6. Allows the Board to provide information obtained pursuant to the Use Fuel Tax Law and the Diesel Fuel Tax Law to state and federal agencies enforcing motor vehicle laws or conducting motor vehicle investigations.**

Senate Bill 2240(Committee on Environmental Quality) Chapter 882
Department of Toxic Substances Control-sponsored housekeeping measure

Effective January 1, 1999. Amends Sections 25173.6, 25173.7, 25174, 25187.5, 25205.6, 25205.7, 25205.15, 25354, and 25354.5 of, amends and repeals Section 25174.8 of, and adds Section 25174.9 to, the Health and Safety Code, amends Section 43551 of, adds Sections 43055 and 43552 to, the Revenue and Taxation Code, and amends Section 53 of Chapter 870 of the Statutes of 1997.

Department of Toxic Substances Control (DTSC)-sponsored bill to correct, modify, and clarify some of the changes made by Senate Bill 660 (Ch. 870, 1997), also known as the Environmental Cleanup and Reform Act of 1997. Among its provisions, this bill:

Allows DTSC to use the North American Industry Classification System to identify corporations subject to the environmental fee.

Law Prior to Amendment:

Under existing law, Section 25205.6 requires DTSC to provide the Board with a schedule of two digit Standard Industrial Classification (SIC) codes, established by the United States Department of Commerce, that consist of the type of corporations that use, generate, store, or conduct activities in California related to hazardous materials. In general, the environmental fee is imposed on corporations with 50 or more employees which fall under specific SIC code categories.

Comments:

The SIC codes will soon be replaced by the NAICS. This proposal would allow DTSC to use NAICS when adopted.

Provides the Board continued authority to collect any outstanding generator fee surcharge liabilities, which is repealed effective July 1, 1998.

Law Prior to Amendment:

Senate Bill 660 repeals Section 43055 effective July 1, 1998. This section currently authorizes the Board to administer and collect the hazardous waste generator fee surcharge. Senate Bill 660 also repealed the generator fee surcharge, as contained in Section 25205.9 of the Health and Safety Code, effective January 1, 1998.

Comments:

While the effective date of the repeal of Section 43055 will authorize the Board to mail and process the generator fee surcharge return for 1997, due February 28, 1998, there will remain outstanding liabilities for the surcharge which arose before January 1, 1998, but which the Board has not yet collected. In addition, Board audits of generator fee accounts may reveal additional outstanding surcharge liabilities.

In order to enforce compliance with the generator fee surcharge for those periods in which the fee applied, this proposal would add Section 43055 and provide the Board with the necessary authority to collect outstanding generator fee surcharge liabilities which arose before January 1, 1998.

Corrects references related to the deposit of the environmental fee collected by the Board.***Law Prior to Amendment:***

Current Section 43551 requires the environmental fee imposed pursuant to Section 25205.6 of the Health and Safety Code to be deposited into the Hazardous Waste Control Account. Section 25205.6, however, requires the fee to be deposited in the Toxic Substances Control Account.

Comment:

This change corrects a simple fund referencing error.

TABLE OF SECTIONS AFFECTED

SECTION	BILL AND CHAPTER NUMBER		SUBJECT
Revenue & Taxation Code			
§7305.5	Add	SB 2232 Ch. 609	"Redistribution"
§7308	Amend	SB 2232 Ch. 609	"Broker"
§7313	Amend	SB 2232 Ch. 609	"Service Station"
§7314	Amend	SB 2232 Ch. 609	"Bulk Plant"
§7316	Add	SB 2232 Ch. 609	"Tax-paid fuel"
§7355	Amend	SB 2232 Ch. 609	"Gallon"
§7356	Amend	SB 2232 Ch. 609	Distributor liable for tax on excess gallonge
§7356.5	Repeal	SB 2232 Ch. 609	Redistribution of temperature corrected gallonge
§7506.5	Amend	SB 2232 Ch. 609	Revocation because of nonuse
§7651	Amend	SB 2232 Ch. 609	Distributor's report required
§7652.5	Add	SB 2232 Ch. 609	Tax-paid fuel deduction on returns
§7855	Amend	SB 2232 Ch. 609	Credits-persons other than creditor
§7983	Add	SB 2232 Ch. 609	Furnishing of partnership agreement
§8131	Amend	SB 2230 Ch. 420	When interest not allowed
§8171	Amend	SB 2232 Ch. 609	Controller's recovery of erroneous refunds
§8172	Amend	SB 2232 Ch. 609	Place of trial
§8173	Amend	SB 2232 Ch. 609	Rules of procedure
§8708	Amend	SB 2232 Ch. 609	Issuance of California fuel trip permit

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL NUMBER		SUBJECT
Revenue & Taxation Code				
§8957	Amend	SB 2232	Ch. 609	Notice-credits held by persons other than taxpayer
§9156	Amend	SB 2230	Ch. 420	Intentional or careless overpayment
§9181	Amend	SB 2232	Ch. 609	Erroneous refunds; action
§9182	Amend	SB 2232	Ch. 609	Place of trial
§9183	Amend	SB 2232	Ch. 609	Rules of procedure, etc.
§9255.1	Amend	SB 2232	Ch. 609	Furnishing of information to state and federal agencies
§30009	Amend	SB 2230	Ch. 420	Use or consumption
§30016	Amend	SB 2230	Ch. 420	Wholesaler
§30163	Amend	SB 2134	Ch. 292	Affixed to packages
§30177	Amend	AB 2075	Ch. 815	Unsalable or destroyed cigarettes and tobacco products
§30315	Amend	SB 2232	Ch. 609	Notice to persons other than taxpayer
§30367	Amend	SB 2230	Ch. 420	Disallowance of interest
§30381	Amend	SB 2232	Ch. 609	Erroneous refund; action
§30382	Add	SB 2232	Ch. 609	Place of trial
§30383	Amend	SB 2232	Ch. 609	Rules of procedure
§32387	Amend	SB 2232	Ch. 609	Notice to persons other than taxpayer
§32406	Amend	SB 2230	Ch. 420	Disallowance of interest

TABLE OF SECTIONS AFFECTED

SECTIONS	BILL NUMBER		SUBJECT
Revenue & Taxation Code			
§32431 Amend	SB 2232	Ch. 609	Action by Controller
§32432 Add	SB 2232	Ch. 609	Place of trial
§32433 Add	SB 2232	Ch. 609	Rules of procedure
§40036 Add	AB 911	Ch. 649	Security
§40117 Amend	SB 2230	Ch. 420	Disallowance of interest
Article 4 (commencing with §40135) Add	SB 2232	Ch. 609	Recovery of erroneous refunds
§40155 Amend	SB 2232	Ch. 609	Notice to persons other than taxpayers
§41041 Add	AB 911	Ch. 649	Security
§41052.1 Amend	SB 2231	Ch. 350	Other than monthly returns
§41106 Amend	§SB 2230	Ch. 420	Disallowance of interest
Article 4 (commencing with §41114.1) Add	SB 2232	Ch. 609	Recovery of erroneous refunds
§41123.5 Amend	SB 2232	Ch. 609	Notice to persons other than taxpayer
§43055 Add	SB 2240	Ch. 882	Generator surcharge fee
§43444.2 Amend	SB 2232	Ch. 609	Notice to persons other than taxpayer
§43452 Amend	SB 2231	Ch. 350	Claim; limitation period
§43456 Amend	SB 2230	Ch. 420	Disallowance of interest
§43481 Amend	SB 2232	Ch. 609	Recovery of erroneous refunds
§43482 Add	SB 2232	Ch. 609	Place of trial

TABLE OF SECTIONS AFFECTED

SECTIONS	BILL NUMBER		SUBJECT
Revenue & Taxation Code			
§43483	Add	SB 2232 Ch. 609	Rules of procedure
§43522	Amend	SB 2231 Ch. 350	Settlement of disputed tax liabilities
§43551	Amend	SB 2240 Ch. 882	Hazardous Waste Control Account
§43552	Add	SB 2240 Ch. 882	Toxic Substances Control Account
§45605	Amend	SB 2232 Ch. 609	Notice to persons other than taxpayer
§45656	Amend	SB 2230 Ch. 420	Disallowance of interest
§45751	Amend	SB 2232 Ch. 609	Recovery of erroneous refunds
§45752	Add	SB 2232 Ch. 609	Place of trial
§45753	Add	SB 2232 Ch. 609	Rules of procedure
§46406	Amend	SB 2232 Ch. 609	Notice of levy
§46507	Amend	SB 2230 Ch. 420	Interest disallowed for intentional or careless overpayments
§46541	Amend	SB 2232 Ch. 609	Erroneous refunds
§46542	Add	SB 2232 Ch. 609	Place of trial
§46543	Add	SB 2232 Ch. 609	Rules of procedure
§50136	Amend	SB 2232 Ch. 609	Notice to persons other than feepayers
§50142.2	Add	SB 2230 Ch. 420	Interest disallowed for intentional or careless overpayments
§50150	Amend	SB 2232 Ch. 609	Recovery of erroneous refunds
§50150.1	Add	SB 2232 Ch. 609	Place of trial
§50150.2	Add	SB 2232 Ch. 609	Rules of procedure

TABLE OF SECTIONS AFFECTED

SECTIONS	BILL NUMBER		SUBJECT
Revenue & Taxation Code			
§50157	Amend	SB 2231 Ch. 350	Underground Storage Tank Cleanup Fund
§55205	Amend	SB 2232 Ch. 609	Notice to persons other than fee payers
§55226	Amend	SB 2230 Ch. 420	Interest disallowed on intentional or careless overpayments
§55261	Amend	SB 2232 Ch. 609	Erroneous refunds
§55262	Add	SB 2232 Ch. 609	Place of trial
§55263	Add	SB 2232 Ch. 609	Rules of procedure
§60122	Amend	SB 2232 Ch. 609	Diesel fuel trip permit
§60407	Amend	SB 2232 Ch. 609	Notice to persons other than fee payers
§60501	Amend	SB 2231 Ch. 350	Overpayment; credits and refunds
§60503	Amend	SB 2231 Ch. 350	Form of exemption certificate
§60525	Amend	SB 2230 Ch. 420	Disallowance of interest
§60561	Amend	SB 2232 Ch. 609	Erroneous refunds
§60562	Add	SB 2232 Ch. 609	Place of trial
§60563	Add	SB 2232 Ch. 609	Rules of procedure
§60608	Amend	SB 2232 Ch. 609	Information sharing

TABLE OF SECTIONS AFFECTED

SECTIONS	BILL NUMBER		SUBJECT
Government Code			
§6257.5 Add	SB 2174	Ch. 1049	Access to public records
Chapter 3 (commencing with Section 15650) to Part 9 of Division 3 of Title 2 Add	SB 2174	Ch. 1049	Access to public records
Health & Safety Code			
§25173.6 Amend	SB 2240	Ch. 882	Additional deposits to the Toxic Substances Control Account
§25173.7 Amend	SB 2240	Ch. 882	Appropriation of Toxic Substances Control Account funds
§25174 Amend	SB 2240	Ch. 882	Hazardous Waste Control Account
§25174.6 Amend	SB 2231	Ch. 350	Operators; fees; maximum amount
§25174.8 Repeal and Amend	SB 2240	Ch. 882	Federal Receipts Account
§25174.9 Add	SB 2240	Ch. 882	Successor fund of Federal Account
§25187.5 Amend	SB 2240	Ch. 882	Recovery of corrective action costs
§25205.5 Amend	SB 2014	Ch. 737	Generator fees; rates; exemption
§25205.6 Amend	SB 2240	Ch. 882	Corporation fees; categories; rates
§25205.7 Amend	SB 2240	Ch. 882	Application fees; facility permit
§25205.9 Add	SB 2014	Ch. 737	Determination of surplus funds for generator refunds
§25205.15 Amend	SB 2240	Ch. 882	Manifest fee
§25354 Amend	SB 2240	Ch. 882	Reserve account for emergencies

TABLE OF SECTIONS AFFECTED

SECTIONS	BILL NUMBER		SUBJECT
Health & Safety Code			
§25354.5 Amend	SB 2240	Ch. 882	Investigation of illegal substances
Public Resources Code			
§42871 Amend	AB 117	Ch. 1020	Initiation of tire recycling program
§42885 Amend	AB 117	Ch. 1020	Tire disposal fee