



**SOURCE:** Legislative, Research & Statistics Division

**SUMMARY:** This proposal amends Revenue and Taxation Code (RTC)<sup>1</sup> section 32401 to require any tax, penalty, or interest determinations made by the Board under the Alcoholic Beverage Tax (ABT) law that have been paid more than once, have been erroneously or illegally collected or computed, and are in excess of \$50,000 to be made available to the public for at least 10 days after the effective date of the determination rather than 10 days prior. This proposal additionally amends section 32440 to require any cancellations made by the Board that are in excess of \$50,000 to be made public for at least 10 days after the effective date of the cancellation rather than 10 days prior.

**EXISTING LAW:** Section 32401 requires if the Board determines that any amount of tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the Board shall credit the excess amount collected or paid on any amounts then due to the person, or their successors, administrators, or executors. Any such proposed determinations that are in excess of \$50,000 shall be available as a public record for at least 10 days prior to the effective date of the determination and the issuance of the refund.

Section 32440 requires any amount illegally determined, either by the person filing the result or by the Board, the Board shall certify the amount determined to be in excess of the amount legally due and shall authorize the cancellation of the amount upon the records of the Board. Any proposed cancellations that are in excess of \$50,000 shall be available as a public record for at least 10 days prior to the effective date of the determination and the issuance of the refund.

**CODE SECTIONS TO AMEND:** RTC sections 32401 and 32440.

**IDENTIFICATION OF PROBLEM:** Current law requires the State Board of Equalization (BOE) and California Department of Tax and Fee Administration (CDTFA) to maintain a public record listing of all proposed refunds or cancellations exceeding \$50,000 for at least 10 days prior to issuing those refunds. This record includes: a taxpayer or feepayer's name (unless redacted for confidentiality), the taxpayer's case identification number, and the amount of the refund. This requirement delays the issuance of refunds to taxpayers. Even if there was an objection to a refund's issuance, there is no process for the BOE to reverse the refund; although the State Controller may bring action in court to recover any refund erroneously made.<sup>2</sup> Additionally, these changes were made to other special tax and fee programs in 2022.<sup>3</sup> Without these changes, ABT will be administered differently from those programs.

**PROPOSED SOLUTION:** This proposal would instead require that any refunds or cancellations in excess of \$50,000 be publicly listed for at least 10 days after the effective date of the determination or cancellation resulting in taxpayers receiving their refunds earlier.

## JUSTIFICATION

A. Briefly describe the ramifications of not acting.

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<sup>1</sup> All references will be to the Revenue and Taxation Code unless otherwise specified.

<sup>2</sup> Section 32431.

<sup>3</sup> SB 1496 (Senate Governance and Finance Committee, Stats. 2022, Ch. 474).

Without adopting these proposed changes, the ABT program will not conform with other changes made by the CDTFA to other special tax and fee programs leading to government inefficiencies in administration of the program.

- B. State the reasons why the BOE should have the responsibility for this program and why it should not be placed at another level of government (if applicable).

Article XX, section 22 of the California Constitution authorizes the BOE to administer the ABT and makes the BOE constitutionally responsible for the program. Through an Interagency Agreement (IAA), the CDTFA collects the ABT and administers certain functions of the program in cooperation with the BOE. This proposal would align the ABT program with other special tax and fee programs.

- C. Note whether a similar proposal has been submitted in the past and the outcome.

Several proposals have been submitted in the past and have been enacted by previous governors. A more detailed history is discussed in the program background and legislative history section.

**PROGRAM BACKGROUND/LEGISLATIVE HISTORY:** Section 32401 was added into statute in 1955 which allows the Board to issue refunds to persons if the Board made a determination that the tax, penalty, or interest was paid more than once or had been erroneously or illegally collected or computed.<sup>4</sup> The Board is required to credit the excess amounts paid or collected to the person, their successors, administrators, or executors. Any proposed determinations that are in excess of \$50,000 are required to be available as part of the public record for at least 10 days prior to the effective date of the determination.<sup>5</sup>

Section 32401 was amended in 1995 to remove the requirement that the Board certify to the State Board of Control the amount collected in excess of what was legally due and the person from whom it was collected.<sup>6</sup>

Section 32440 was added into statute in 1955 which allows the Board to certify any amount that has been illegally determined to the State Board of Control and authorizes the State Board of Control to authorize the cancellation of the amount.<sup>7</sup>

Section 32440 was amended in 1995 to remove the requirement that the Board certify to the State Board of Control the amount of tax determined to be cancelled. Any cancellations that are in excess of \$50,000 are required to be available as part of the public record for at least 10 days prior to the effective date of the determination.<sup>8</sup>

In 2022, the CDTFA changed the refund process for these determinations and cancellations for all of the special tax and fee programs except ABT by changing the public notice requirement from 10 days prior to the effective date of the determination to 10 days after the determination date.<sup>9</sup>

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<sup>4</sup> SB 1462 (Thompson, Stats. 1955, Ch. 1842).

<sup>5</sup> AB 3069 (Frazee, Stats. 1994, Ch. 726).

<sup>6</sup> SB 718 (Senate Revenue and Taxation Committee, Stats. 1995, Ch. 555).

<sup>7</sup> SB 1462 (Thompson, Stats. 1955, Ch. 1842).

<sup>8</sup> AB 3069 (Frazee, Stats. 1994, Ch. 726).

<sup>9</sup> SB 1496 (Senate Governance and Finance Committee, Stats. 2022, Ch. 474).

The passage of AB 102 (2017) transferred all tax and fee programs statutorily administered by the BOE to the newly created CDTFA.<sup>10</sup> The BOE retained its constitutional programs of the property tax, Tax on Insurers and Alcoholic Beverage Tax.

## ARGUMENTS PRO AND CON

### Pros

- Taxpayers who overpaid tax or had amounts erroneously calculated would receive their refund earlier.
- Increases government efficiency and administration of the ABT program by conforming provisions to other special tax and fee programs.

### Cons

- None.

**PROBABLE SUPPORT AND OPPOSITION:** Unknown

**OTHER EXTERNAL PARTIES THAT MAY BE AFFECTED:** CDTFA

### **FISCAL IMPACT (If known)**

A. Identify any computer or desktop programs that would be affected by this proposal.

None.

B. Identify additional staffing and workload required to carry out the proposal.

Unknown if additional staffing would be needed to administer any changes for this proposal.

**PERFORMANCE INDICATORS:** Not applicable.

## DRAFT LANGUAGE

***Section 32401 of the Revenue and Taxation Code is amended to read:***

**32401.** If the board determines that any amount of tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or ~~his or her~~ the person's successors, administrators, or executors. Any ~~proposed~~ determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days ~~prior to~~ after the effective date of that determination.

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<sup>10</sup> AB 102 (Assembly Budget Committee, Ch. 16, Stats. 2017).

***Section 32440 of the Revenue and Taxation Code is amended to read:***

If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and shall authorize the cancellation of the amount upon the records of the board. Any ~~proposed~~ cancellation by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days ~~prior to~~ after the effective date of that determination.