



SOURCE: Legislative, Research, & Statistics Division

SUMMARY

Review and consideration of a proposal that would amend Revenue and Taxation Code sections 12951 and 12977 to align the insurance tax program with other tax and fee programs administered by CDTFA on behalf of BOE with respect to the 10-day public disclosure requirement for credits, cancellations, and refunds more than \$50,000.

EXISTING LAW

RTC section 12951 sets forth procedures regarding cancellations and refunds for the Insurance Taxation statutes.

It states:

12951.

(a) If any amount has been illegally assessed, the board shall set forth that fact in its records, certify the amount determined to be assessed in excess of the amount legally assessed and the insurer or surplus line broker against which the assessment was made, and authorize the cancellation of the amount upon the records of the Controller and the board. The board shall mail a notice to the insurer or surplus line broker of any cancellation authorized. 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 the effective date of that determination.

(b) This section shall become operative on July 1, 2013.

RTC section 12977 sets forth requirements for refunds or credits for collected taxes.

It states:

12977.

(a) If the board determines that any tax, interest, or penalty 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 of the board, certify the amount of the taxes, interest, or penalties collected in excess of what was legally due, and from whom they were collected or by whom paid, and certify the excess to the Controller for credit or refund.

(b) The Controller upon receipt of a certification for credit or refund shall credit the excess on any amounts then due and payable from the insurer or surplus line broker under this part and refund the balance.

(c) 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 the effective date of that determination.

(d) This section shall become operative on July 1, 2013.

CODE SECTIONS TO AMEND

RTC sections 12951 and 12977.

IDENTIFICATION OF PROBLEM

The insurance tax program statutes need technical updates. Current references to “proposed determinations” in the RTC are technically incorrect following recent procedural changes and statutory updates in surrounding RTC sections.

PROPOSED SOLUTION

This proposal would update the insurance tax program sections in the RTC to be consistent with the corresponding changes made to the alcoholic beverage tax (ABT) program statutes last year. The proposed change would simply clarify that “proposed determinations” are now referred to as “determinations” by the board; and that any amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days “after” the effective date of that determination (rather than what used to be 10 days prior to a proposed determination’).

JUSTIFICATION

Without legislative action, there would be incorrect statutory and procedural references for cancellations, refunds and credits in these two RTC sections governing the insurance tax program.

ARGUMENTS PRO AND CON

Pros

- Efficient and accurate program references and administration.
- Provides taxpayers their refunds in a timely manner.
- Provides consistency with other BOE and CDTFA tax programs.

Cons

- none

PROBABLE SUPPORT AND OPPOSITION

Unknown

OTHER EXTERNAL PARTIES THAT MAY BE AFFECTED

California Department of Tax and Fee Administration (CDTFA)

FISCAL IMPACT (If known)

none

DRAFT LANGUAGE

Sections 12951 and 12977 of the Revenue and Taxation Code are amended to read:

12951.

(a) If any amount has been illegally assessed, the board shall set forth that fact in its records, certify the amount determined to be assessed in excess of the amount legally assessed and the insurer or surplus line broker against which the assessment was made, and authorize the cancellation of the amount upon the records of the Controller and the board. The board shall mail a notice to the insurer or surplus line broker of any cancellation authorized. 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.

(b) This section shall become operative on July 1, 2013.

12977.

- (a) If the board determines that any tax, interest, or penalty 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 of the board, certify the amount of the taxes, interest, or penalties collected in excess of what was legally due, and from whom they were collected or by whom paid, and certify the excess to the Controller for credit or refund.
- (b) The Controller upon receipt of a certification for credit or refund shall credit the excess on any amounts then due and payable from the insurer or surplus line broker under this part and refund the balance.
- (c) 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.
- (d) This section shall become operative on July 1, 2013.