

AMENDED IN SENATE APRIL 17, 2013

SENATE BILL

No. 768

Introduced by Senator De León

February 22, 2013

An act to amend Sections 30104, 30108, and 30181 of, and to add Article 2.5 (commencing with Section 30130.50) to Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to ~~taxation.~~ taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 768, as amended, De León. Cigarette and tobacco products ~~taxes.~~ taxes: *California Tobacco Tax Act of 2014.*

The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) and the California Families and Children Act of 1998 (Proposition 10). A provision of that law imposes a tax upon the distribution of tobacco products at a tax rate that is equivalent to the combined rate of all taxes imposed on cigarettes, which is deposited in specified accounts.

~~This bill would state the intent of the Legislature to review the structure of the Cigarette and Tobacco Products Tax Law.~~

This bill would, on or after the first day of the first calendar quarter commencing more than 90 days on or after the effective date of the bill, impose an additional tax on the distribution of cigarettes at the rate of \$0.10 for each cigarette distributed; would require a dealer and a wholesaler to file a return with the State Board of Equalization showing the number of cigarettes in its possession or under its control on that

date, and impose a related floor stock tax; and would require a licensed cigarette distributor to file a return with the board and pay a cigarette indicia adjustment tax for cigarette tax stamps in its possession or under its control on that date. Because the bill would impose an additional tax on cigarettes under the Cigarette and Tobacco Products Tax Law, it would increase the tax upon the distribution of tobacco products under that law.

The bill would require, not later than December 1 of the 2nd year following a specified date, and each 2nd December 1 thereafter, the State Board of Equalization to review the cigarette taxes imposed by other states, determine the 5 highest taxes imposed by other states, and calculate the median tax per cigarette. The bill would increase the tax on the distribution of cigarettes, as specified, if the median of the 5 highest taxes imposed by other states is greater than a specified amount.

The bill would provide that the revenues collected from the additional tax be deposited in the California Tobacco Tax Act of 2014 Fund created by this bill, which would be a continuously appropriated fund, and transferred into the Tobacco Prevention and Education Account, the Tobacco Disease Related Health Care Account, and the Tobacco Law Enforcement Account to be expended for specified purposes. Because the California Tobacco Tax Act of 2014 Fund is a continuously appropriated fund, the bill would make an appropriation.

The bill would require moneys in the California Tobacco Tax Act of 2014 Fund to be transferred from the fund to the California Children and Families First Trust Fund, which is a continuously appropriated fund, the Cigarette and Tobacco Products Surtax Fund, the Breast Cancer Fund, and the General Fund, as necessary to offset revenue decreases to those funds directly resulting from imposition of additional taxes by these provisions. Because this bill would require funds to be transferred to a continuously appropriated fund, it would make an appropriation.

Because this bill would impose new requirements under the Cigarette and Tobacco Products Tax Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article

XIIIA of the California Constitution, and thus would require for passage the approval of ²/₃ of the membership of each house of the Legislature.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

Vote: ~~majority~~²/₃. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) Tobacco use is the single most preventable cause of death
4 and disease in California, claiming the lives of more than 35,000
5 people every year. California still has approximately 3.4 million
6 adult smokers and 300,000 youth smokers.

7 (b) The inevitable health, environmental, and economic costs
8 of smoking come to over \$22 for every pack of cigarettes sold in
9 California.

10 (c) Tobacco use costs Californians more than \$9.6 billion in
11 medical expenses every year. The cost of lost productivity due to
12 tobacco use adds an additional estimated \$8.5 billion to the annual
13 economic consequences of smoking in California.

14 (d) The treatment of cancer, heart disease and stroke, lung
15 disease, diabetes, and other diseases related to tobacco use
16 continues to impose a significant burden upon California's
17 overstressed health care system, including publicly funded health
18 care programs.

19 (e) In 2013–14, it is estimated that the General Fund cost of
20 publicly funded health care programs to the state will be more
21 than \$15 billion. In 2013–14, it is estimated that publicly funded
22 health care programs will provide health care coverage to more
23 than 1.4 million families and more than 700,000 children. At the
24 same time, hundreds of thousands of families and children go
25 without any medical coverage due to financial constraints upon
26 the state and local government budgets and recent cutbacks in
27 publicly funded health care programs.

28 (f) A recent cost-benefit analysis concluded that if states
29 followed the United States Centers for Disease Control and
30 Prevention's Best Practices for Comprehensive Tobacco Control

1 *Programs-2007 funding guidelines, up to 14 to 20 times the cost*
2 *of program implementation could be saved through reduced*
3 *medical and productivity costs as well as reduced Medicaid costs.*

4 *(g) The California Tobacco Tax Act of 2014 will help fund the*
5 *comprehensive California Tobacco Control Program designed to*
6 *change social norms about tobacco and discourage individuals*
7 *from taking up smoking and the use of other tobacco products*
8 *through educational programs, thereby saving the state and local*
9 *governments significant money now and in the future.*

10 *(h) Tobacco tax increases are an appropriate way to mitigate*
11 *the impacts of tobacco-related diseases and improve existing*
12 *programs providing for quality and access to health care services*
13 *for families and children.*

14 *(i) An increase in the tobacco tax will have an immediate effect*
15 *on smoking and is the most appropriate mechanism to fund services*
16 *to prevent tobacco use, help people quit smoking, and discourage*
17 *many people from taking up smoking.*

18 *(j) California taxes cigarettes at only \$0.87 per pack, and ranks*
19 *33rd in tobacco tax rates, reflecting one of the lowest tobacco*
20 *taxes in the United States. Thirty states have cigarette tax rates of*
21 *\$1 per pack or higher, and California is well below other west*
22 *coast states (Washington: \$3.025, Oregon: \$1.18, and Arizona:*
23 *\$2). California last raised its tobacco tax in 1998.*

24 *(k) The burden of smoking is not equally shared across*
25 *California populations and communities. Tobacco use rates are*
26 *much higher than the general population in African Americans,*
27 *white men, Korean men, enlisted military personnel, lesbian, gay,*
28 *bisexual and transgender, young adult, rural, and low-income*
29 *populations.*

30 *(l) A reinvigorated tobacco control program will allow targeted*
31 *public health and research efforts to combat the tobacco industry's*
32 *predatory marketing to ethnic groups, driving down smoking rates*
33 *and ultimately reducing heart disease, stroke, lung disease, and*
34 *cancer in these California communities, which together represent*
35 *more than half of our state's residents.*

36 *SEC. 2. Section 30104 of the Revenue and Taxation Code is*
37 *amended to read:*

38 *30104. The taxes imposed by this part shall not apply to the*
39 *sale of cigarettes or tobacco products by a distributor to a common*
40 *carrier engaged in interstate or foreign passenger service or to a*

1 person authorized to sell cigarettes or tobacco products on the
2 facilities of the carrier. Whenever cigarettes or tobacco products
3 are sold by distributors to common carriers engaged in interstate
4 or foreign passenger service for use or sale on facilities of the
5 carriers, or to persons authorized to sell cigarettes or tobacco
6 products on those facilities, the tax imposed by Sections 30101,
7 30123, and 30131.2 *under this part* shall not be levied with respect
8 to the sales of the cigarettes or tobacco products by the distributors,
9 but a tax is hereby levied upon the carriers or upon the persons
10 authorized to sell cigarettes or tobacco products on the facilities
11 of the carriers, as the case may be, for the privilege of making sales
12 in California at the same rate as set forth in Sections 30101, 30123,
13 and 30131.2 *under this part*. Those common carriers and authorized
14 persons shall pay the tax imposed by this section and file reports
15 with the board, as provided in Section 30186.

16 *SEC. 3. Section 30108 of the Revenue and Taxation Code is*
17 *amended to read:*

18 30108. (a) Every distributor engaged in business in this state
19 and selling or accepting orders for cigarettes or tobacco products
20 with respect to the sale of which the tax imposed by Sections
21 30101, 30123, and 30131.2 *under this part* is inapplicable shall,
22 at the time of making the sale or accepting the order or, if the
23 purchaser is not then obligated to pay the tax with respect to his
24 or her distribution of the cigarettes or tobacco products, at the time
25 the purchaser becomes so obligated, collect the tax from the
26 purchaser, if the purchaser is other than a licensed distributor, and
27 shall give to the purchaser a receipt therefor in the manner and
28 form prescribed by the board.

29 (b) Every person engaged in business in this state and making
30 gifts of untaxed cigarettes or tobacco products as samples with
31 respect to which the tax imposed by Sections 30101, 30123, and
32 30131.2 *under this part* is inapplicable shall, at the time of making
33 the gift or, if the donee is not then obligated to pay the tax with
34 respect to his or her distribution of the cigarettes or tobacco
35 products, at the time the donee becomes so obligated, collect the
36 tax from the donee, if the donee is other than a licensed distributor,
37 and shall give the donee a receipt therefor in the manner and form
38 prescribed by the board. This section shall not apply to those
39 distributions of cigarettes or tobacco products which are exempt
40 from tax under Section 30105.5.

1 (c) “Engaged in business in the state” means and includes any
2 of the following:

3 (1) Maintaining, occupying, or using, permanently or
4 temporarily, directly or indirectly, or through a subsidiary, or agent,
5 by whatever name called, an office, place of distribution, sales or
6 sample room or place, warehouse or storage place, or other place
7 of business.

8 (2) Having any representative, agent, salesperson, canvasser or
9 solicitor operating in this state under the authority of the distributor
10 or its subsidiary for the purpose of selling, delivering, or the taking
11 of orders for cigarettes or tobacco products.

12 (d) The taxes required to be collected by this section constitute
13 debts owed by the distributor, or other person required to collect
14 the taxes, to the state.

15 *SEC. 4. Article 2.5 (commencing with Section 30130.50) is*
16 *added to Chapter 2 of Part 13 of Division 2 of the Revenue and*
17 *Taxation Code, to read:*

18

19 *Article 2.5. The California Tobacco Tax Act of 2014*

20

21 *30130.50. For the purposes of this article:*

22 (a) “Cigarette” has the same meaning as in Section 30003 as
23 it read on January 1, 2013.

24 (b) “Tobacco products” includes, but is not limited to, all forms
25 of cigars, smoking tobacco, chewing tobacco, snuff, and any other
26 articles or products made of, or containing at least 50 percent,
27 tobacco, but does not include cigarettes.

28 *30130.51. (a) In addition to any other taxes imposed upon the*
29 *distribution of cigarettes, there shall be imposed an additional tax*
30 *upon every distributor of cigarettes at the rate of one hundred*
31 *mills (\$.10) for each cigarette distributed on or after the first day*
32 *of the first calendar quarter commencing more than 90 days after*
33 *the effective date of this act.*

34 (b) (1) *To offset the effects of inflation and further reduce*
35 *smoking prevalence, on or before March 1 of each year, the State*
36 *Board of Equalization shall calculate the percentage increase in*
37 *the California Consumer Price Index for all items of December of*
38 *the prior calendar year over the December of the preceding*
39 *calendar year immediately preceding the prior calendar year.*
40 *Each fiscal year, the tax imposed by subdivision (a) on the*

1 *distribution of cigarettes and tobacco products shall be adjusted*
2 *by the State Board of Equalization to reflect the California*
3 *Consumer Price Index for all items percentage increase, if any.*
4 *The adjusted tax shall be effective during the state's next fiscal*
5 *year.*

6 *(2) In no event shall the tax be less than the tax imposed under*
7 *this part as of the effective date of this act.*

8 *30130.52. (a) (1) Every dealer and wholesaler, for the*
9 *privilege of holding or storing cigarettes for sale, use, or*
10 *consumption, shall pay a floor stock tax for each cigarette in its*
11 *possession or under its control in this state at 12:01 a.m. on the*
12 *first day of the first calendar quarter commencing more than 90*
13 *days after the effective date of this act at the rate of one hundred*
14 *mills (\$.10) for each cigarette.*

15 *(2) Every dealer and wholesaler shall file a return with the State*
16 *Board of Equalization on or before the first day of the first calendar*
17 *quarter commencing more than 180 days after the effective date*
18 *of this act on a form prescribed by the State Board of Equalization,*
19 *showing the number of cigarettes in its possession or under its*
20 *control in this state at 12:01 a.m. on the first day of the first*
21 *calendar quarter commencing more than 90 days after the effective*
22 *date of this act. The amount of tax shall be computed and shown*
23 *on the return.*

24 *(b) (1) Every licensed cigarette distributor, for the privilege of*
25 *distributing cigarettes and for holding or storing cigarettes for*
26 *sale, use, or consumption, shall pay a cigarette indicia adjustment*
27 *tax for each California cigarette tax stamp that is affixed to any*
28 *package of cigarettes and for each unaffixed California cigarette*
29 *tax stamp in its possession or under its control at 12:01 a.m. on*
30 *the first day of the first calendar quarter commencing more than*
31 *90 days after the effective date of this act at the following rates:*

32 *(A) Two dollars and fifty cents (\$2.50) for each stamp bearing*
33 *the designation "25."*

34 *(B) Two dollars (\$2) for each stamp bearing the designation*
35 *"20."*

36 *(C) One dollar (\$1) for each stamp bearing the designation*
37 *"10."*

38 *(2) Every licensed cigarette distributor shall file a return with*
39 *the board on or before the first day of the first calendar quarter*
40 *commencing 180 days after the effective date of this act on a form*

1 *prescribed by the board, showing the number of stamps described*
2 *in subparagraphs (A), (B), and (C) of paragraph (1). The amount*
3 *of tax shall be computed and shown on the return.*

4 *(c) The taxes required to be paid by this section are due and*
5 *payable on or before the first day of the first calendar quarter*
6 *commencing 180 days after the effective date of this act. Payments*
7 *shall be made by remittances payable to the board and the*
8 *payments shall accompany the return and forms required to be*
9 *filed by this section.*

10 *(d) Any amount required to be paid by this section that is not*
11 *timely paid shall bear interest at the rate and by the method*
12 *established pursuant to Section 30202 from the first day of the*
13 *first calendar quarter commencing 180 days after the effective*
14 *date of this act, until paid, and shall be subject to determination,*
15 *and redetermination, and any penalties provided with respect to*
16 *determinations and redeterminations.*

17 *30130.53. (a) The State Board of Equalization shall determine*
18 *within one year of the effective date of this act, and annually*
19 *thereafter, the effect that the additional taxes imposed on cigarettes*
20 *by this article, and the resulting increase in the tax on tobacco*
21 *products required by subdivision (b) of Section 30123, have on*
22 *the consumption of cigarettes and tobacco products in this state.*
23 *To the extent that a decrease in consumption is determined by the*
24 *State Board of Equalization to be a direct result of the additional*
25 *tax imposed by this article, or the resulting increase in the tax on*
26 *tobacco products required by subdivision (b) of Section 30123,*
27 *the State Board of Equalization shall determine the fiscal effect*
28 *the decrease in consumption has on the Cigarette and Tobacco*
29 *Products Surtax Fund created by Section 30122 (Proposition 99*
30 *as approved by the voters at the November 8, 1988, statewide*
31 *general election), the Breast Cancer Fund created by Section*
32 *30461.6, the California Children and Families Trust Fund created*
33 *by Section 30131 (Proposition 10 as approved by the voters at the*
34 *November 3, 1998, statewide general election), and the General*
35 *Fund with respect to revenues derived from Section 30101.*

36 *(b) Funds shall be transferred from the California Tobacco Tax*
37 *Act of 2014 Fund to the Cigarette and Tobacco Products Surtax*
38 *Fund, the Breast Cancer Fund, the California Children and*
39 *Families Trust Fund, and the General Fund, to offset the revenue*

1 decrease directly resulting from imposition of additional taxes by
2 this article.

3 (c) Transfers under this section shall be made by the board at
4 times as the board determines necessary to further the intent of
5 this section.

6 30130.54. (a) The California Tobacco Tax Act of 2014 Fund
7 is hereby established in the State Treasury for the purposes set
8 forth in this article. All revenues, less refunds, derived from the
9 taxes imposed by this article shall be deposited in the California
10 Tobacco Tax Act of 2014 Fund.

11 (b) Moneys in the California Tobacco Tax Act of 2014 Fund,
12 less moneys transferred pursuant to Section 30130.53, shall be
13 transferred as follows:

14 (1) ___ percent to the Tobacco Prevention and Education
15 Account, which is hereby created in the California Tobacco Tax
16 Act of 2014 Fund.

17 (2) ___ percent to the Tobacco Disease Related Health Care
18 Account, which is hereby created in the California Tobacco Tax
19 Act of 2014 Fund.

20 (3) ___ percent to the Tobacco Law Enforcement Account, which
21 is hereby created in the California Tobacco Tax Act of 2014 Fund.

22 (c) Funds deposited into the California Tobacco Tax Act of
23 2014 Fund may be placed into the Pooled Money Investment
24 Account for investment only, and interest earned shall be credited
25 to the fund and deposited, apportioned, and expended only in
26 accordance with the act that added this section and its purposes.

27 (d) Notwithstanding any other law, the California Tobacco Tax
28 Act of 2014 Fund is a trust fund established solely to carry out the
29 purposes of this act and all revenues deposited into the California
30 Tobacco Tax Act of 2014 Fund, together with interest earned by
31 the fund, are hereby continuously appropriated for the purposes
32 of the act that added this section without regard to fiscal year and
33 shall be expended only in accordance with this act and its purposes.

34 (e) Notwithstanding any other law, the taxes imposed by the act
35 that added this section and the revenue derived therefrom,
36 including investment interest, shall not be considered to be part
37 of the General Fund, as that term is used in Chapter 1
38 (commencing with Section 16300) of Part 2 of Division 4 of the
39 Government Code, shall not be considered General Fund revenue
40 for purposes of Section 8 of Article XVI of the California

1 Constitution, and its implementing statutes, and shall not be
2 considered “moneys to be applied by the state for the support of
3 school districts and community college districts” pursuant to
4 Section 8 of Article XVI of the California Constitution, and its
5 implementing statutes.

6 (f) Notwithstanding any other law, revenues deposited into the
7 California Tobacco Tax Act of 2014 Fund, and any interest earned
8 by the fund, shall only be used for the specific purposes set forth
9 in Section 30130.55. Revenues deposited into California Tobacco
10 Tax Act of 2014 Fund shall not be subject to appropriation,
11 reversion, or transfer by the Legislature, the Governor, the
12 Director of Finance, or the Controller for any other purpose, nor
13 shall the funds be loaned to the General Fund or any other fund
14 of the state or any local government fund.

15 (g) All revenues deposited into the California Tobacco Tax Act
16 of 2014 Fund shall be appropriated and expended only for the
17 purposes expressed in this article, and shall be used only to
18 supplement existing levels of service and not to fund existing levels
19 of service. Moneys in the fund shall not be used to supplant state
20 or local general fund moneys for any purpose.

21 30130.55. After transferring the moneys as required pursuant
22 to subdivision (b) of Section 30130.53 and pursuant to subdivision
23 (b) of Section 30130.54, the Controller shall appropriate the
24 moneys from the accounts in the California Tobacco Tax Act of
25 2014 Fund as follows:

26 (a) The Tobacco Prevention and Education Account shall be
27 allocated to supplement tobacco prevention and control programs
28 as follows:

29 (1) ___ percent to the State Department of Public Health.

30 (2) ___ percent to the State Department of Education.

31 (3) ___ percent to the University of California.

32 (b) The Tobacco Disease Related Health Care Account shall
33 be allocated to the State Department of Health Care Services to
34 improve existing programs to provide quality and access to health
35 care programs for families and children pursuant to Chapter 7
36 (commencing with Section 14000) to Chapter 8.9 (commencing
37 with Section 14700), inclusive, of Part 3 of Division 9 of the
38 Welfare and Institutions Code.

39 (c) The Tobacco Law Enforcement Account shall be allocated
40 to the State Board of Equalization, Department of Justice, and the

1 *State Department of Public Health for the purpose of*
2 *supplementing funding for the enforcement of laws that regulate*
3 *the distribution and sale of cigarettes and other tobacco products,*
4 *including, but not limited to, laws that prohibit cigarette smuggling,*
5 *counterfeiting, selling untaxed tobacco, selling tobacco without a*
6 *proper license and selling tobacco to minors, and enforcing*
7 *tobacco-related laws, court judgments, and settlements.*

8 *(d) Not more than 2 percent of the funds received from the*
9 *California Tobacco Tax Act of 2014 Fund shall be used by any*
10 *department for administrative costs.*

11 *(e) The Department of Justice, the State Department of Public*
12 *Health, the State Department of Education, the State Department*
13 *of Health Care Services, and the University of California shall,*
14 *on an annual basis, publish on their respective Internet Web sites*
15 *an accounting of moneys received from the California Tobacco*
16 *Tax Act of 2014 Fund and how the moneys were spent.*

17 *SEC. 5. Section 30181 of the Revenue and Taxation Code is*
18 *amended to read:*

19 30181. (a) When any tax imposed upon cigarettes under ~~Article~~
20 ~~1 (commencing with Section 30101), Article 2 (commencing with~~
21 ~~Section 30121), and Article 3 (commencing with Section 30131)~~
22 ~~of Chapter 2 this part~~ is not paid through the use of stamps or
23 meter impressions, the tax shall be due and payable monthly on
24 or before the 25th day of the month following the calendar month
25 in which a distribution of cigarettes occurs, or in the case of a sale
26 of cigarettes on the facilities of a common carrier for which the
27 tax is imposed pursuant to Section 30104, the tax shall be due and
28 payable monthly on or before the 25th day of the month following
29 the calendar month in which a sale of cigarettes on the facilities
30 of the carrier occurs.

31 (b) Each distributor of tobacco products shall file a return in the
32 form, as prescribed by the board, which may include, but not be
33 limited to, electronic media respecting the distributions of tobacco
34 products and their wholesale cost during the preceding month, and
35 any other information as the board may require to carry out this
36 part. The return shall be filed with the board on or before the 25th
37 day of the calendar month following the close of the monthly
38 period for which it relates, together with a remittance payable to
39 the board, of the amount of tax, if any, due under Article 2

1 (commencing with Section 30121) or Article 3 (commencing with
2 Section 30131) of Chapter 2 for that period.

3 (c) To facilitate the administration of this part, the board may
4 require the filing of the returns for longer than monthly periods.

5 (d) Returns shall be authenticated in a form or pursuant to
6 methods as may be prescribed by the board.

7 ~~(e) This section shall become operative on January 1, 2007.~~

8 *SEC. 6. No reimbursement is required by this act pursuant to*
9 *Section 6 of Article XIII B of the California Constitution because*
10 *the only costs that may be incurred by a local agency or school*
11 *district will be incurred because this act creates a new crime or*
12 *infraction, eliminates a crime or infraction, or changes the penalty*
13 *for a crime or infraction, within the meaning of Section 17556 of*
14 *the Government Code, or changes the definition of a crime within*
15 *the meaning of Section 6 of Article XIII B of the California*
16 *Constitution.*

17 *SEC. 7. This act provides for a tax levy within the meaning of*
18 *Article IV of the Constitution and shall go into immediate effect.*

19 ~~SECTION 1. It is the intent of the Legislature to conduct a~~
20 ~~review of the structure of the Cigarette and Tobacco Products Tax~~
21 ~~Law.~~