

**Introduced by Committee on Revenue and Taxation
(Senators Thompson (Chairman), Alquist, Boatwright,
Campbell, Kopp, Maddy, Marks, and Petris)**

February 22, 1995

An act to amend Section 42882 of the Public Resources Code, to amend Sections 8151, 8701, 9354.5, 30480, 32251.5, 40187, 41096, and 41143.4 of, and to add Section 30103.5 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 717, as introduced, Committee on Revenue and Taxation. Taxation.

(1) The California Tire Recycling Act authorizes the Integrated Waste Management Board to contract with the State Board of Equalization to collect the tire recycling fee. The Fee Collection Procedures Law governs the determination, collection, and refund of any fees administered by the State Board of Equalization.

This bill would authorize the State Board of Equalization to collect the tire recycling fee pursuant to the Fee Collection Procedures Law in the event the Integrated Waste Management Board contracts with the State Board of Equalization for collection.

(2) The Motor Vehicle Fuel License Tax Law provides that, in any judgment, interest shall be allowed on the amount of the license tax found to have been illegally collected, as specified.

This bill would, instead, provide that interest shall be allowed on the amount found to have been illegally collected, as specified.

(3) The Use Fuel Tax Law requires a user of fuel within this state to secure a use fuel tax permit and provides a \$500 penalty for violation of that requirement.

This bill would eliminate that penalty.

(4) The Cigarette and Tobacco Products Tax Law imposes a tax on the sale or transfer of untaxed cigarettes.

This bill would exempt from that tax the sale or transfer of untaxed cigarettes to a law enforcement agency for use in a criminal investigation, when authorized by the State Board of Equalization. The bill would also exempt the agency from obtaining a license as a distributor and from collecting or remitting the tax or surcharge with respect to authorized distributions.

(5) Under the Alcoholic Beverage Tax Law, the State Board of Equalization is authorized to change the reporting period for an alcoholic beverage taxpayer from monthly to quarterly or annually, depending on the taxpayer’s business, if the average monthly tax liability is less than \$100.

This bill would eliminate the tax liability limitation.

(6) The Emergency Telephone Users Surcharge Law imposes a penalty of 10% or \$10, whichever is greater, on a taxpayer who does not pay a determination when it becomes final.

This bill would allow the State Board of Equalization to relieve a taxpayer from that penalty for reasonable cause.

(7) The bill would make additional technical, clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 42882 of the Public Resources
2 Code is amended to read:
3 42882. In carrying out this chapter, the board may
4 solicit and use any and all expertise available in other state
5 agencies, including, but not limited to, the State Board of



1 Equalization, and, where an existing state agency
2 performs functions of a similar nature to the board's
3 functions, the board may contract with, or cooperate with
4 that agency in carrying out this chapter. *If the board*
5 *contracts with the State Board of Equalization to collect*
6 *the fee imposed in Section 42885, the State Board of*
7 *Equalization may collect that fee pursuant to the Fee*
8 *Collection Procedures Law (Part 30 (commencing with*
9 *Section 55001) of Division 2 of the Revenue and Taxation*
10 *Code).*

11 SEC. 2. Section 8151 of the Revenue and Taxation
12 Code is amended to read:

13 8151. In any judgment, interest shall be allowed at the
14 modified adjusted rate per annum established pursuant
15 to Section 6591.5 upon the amount ~~of the license tax~~ found
16 to have been illegally collected from the date of payment
17 thereof to the date of allowance of credit on account of
18 the judgment or to a date preceding the date of the
19 refund warrant by not more than 30 days, the date to be
20 determined by the board.

21 SEC. 3. Section 8701 of the Revenue and Taxation
22 Code is amended to read:

23 8701. ~~(a)~~ Every person desiring to become a user of
24 fuel within this state shall secure a use fuel tax permit.

25 ~~(b) The board shall assess a penalty of five hundred~~
26 ~~dollars (\$500) against any person who violates subdivision~~
27 ~~(a) by using fuel without a currently valid use fuel tax~~
28 ~~permit. The penalty shall be a lien against the vehicle~~
29 ~~using fuel in violation of this section, and the board or its~~
30 ~~authorized representatives may impound the vehicle~~
31 ~~until the penalty and all costs incurred in connection with~~
32 ~~the impounding or storage have been paid.~~

33 ~~(c) Commencing January 1, 1984, the penalty~~
34 ~~provided for in subdivision (b) shall not apply to any~~
35 ~~person applying for a use fuel tax permit not later than~~
36 ~~either of the following dates, whichever occurs later:~~

37 ~~(1) For users operating vehicles registered in~~
38 ~~California, the first expiration date of the California~~
39 ~~registration year of any motor vehicle of the user using~~



1 ~~fuel of the kind subject to the tax under this part which~~
2 ~~occurs after January 1, 1984.~~

3 ~~(2) Thirty days after the effective date of this~~
4 ~~subdivision.~~

5 ~~Any penalty which was assessed by the board for that~~
6 ~~period and which was paid shall be refunded. In the event~~
7 ~~that any penalty assessed for the period was not paid, the~~
8 ~~lien created by subdivision (b) shall be extinguished and~~
9 ~~the costs incident to the impounding and storage of the~~
10 ~~vehicle shall be canceled.~~

11 ~~This subdivision shall remain operative only until~~
12 ~~December 31, 1984.~~

13 ~~(d) The board, in conjunction with the Department of~~
14 ~~Motor Vehicles, shall provide for the written notification~~
15 ~~of all persons subject to this article who are operating~~
16 ~~vehicles registered in California of the provisions of~~
17 ~~subdivisions (a) and (b). At the time of registration, the~~
18 ~~Department of Motor Vehicles shall notify, in writing, all~~
19 ~~purchasers of new vehicles or transferees of used vehicles~~
20 ~~of a kind which use fuel taxable under this part of the~~
21 ~~provisions of this section.~~

22 SEC. 4. Section 9354.5 of the Revenue and Taxation
23 Code is amended to read:

24 9354.5. Notwithstanding any other provision of this
25 part, ~~any violation of~~ *person who violates* this part ~~by any~~
26 ~~person~~ with intent to defeat or evade the determination
27 of an amount due required by law to be made is guilty of
28 a felony when the amount of tax liability aggregates
29 twenty-five thousand dollars (\$25,000) or more in any
30 12-consecutive-month period. The determination shall be
31 approved by the ~~Deputy Executive Director, Business~~
32 ~~Taxes,~~ or ~~that person's~~ *his or her* designee. Each offense
33 shall be punished by a fine of not less than five thousand
34 dollars (\$5,000) and not more than twenty thousand
35 dollars (\$20,000), or imprisonment for 16 months, two
36 years, or three years, or both the fine and imprisonment
37 in the discretion of the court.

38 SEC. 5. Section 30103.5 is added to the Revenue and
39 Taxation Code, to read:



1 30103.5. (a) The tax and surcharge imposed by this
2 part shall not apply to the sale or transfer of untaxed
3 cigarettes to a law enforcement agency for use in a
4 criminal investigation when that sale or transfer is
5 authorized by the board.

6 (b) A law enforcement agency authorized by the
7 board to receive or purchase cigarettes as provided in
8 subdivision (a) shall not be required to apply for, or
9 obtain, a license as a distributor pursuant to Section 30140.

10 (c) A law enforcement agency making distributions of
11 cigarettes received or purchased under subdivision (a) is
12 not required to collect or remit the tax or surcharge
13 imposed by this part with respect to those authorized
14 distributions.

15 SEC. 6. Section 30480 of the Revenue and Taxation
16 Code is amended to read:

17 30480. Notwithstanding any other provision of this
18 part, any ~~violation of person who violates~~ this part ~~by any~~
19 ~~person~~ with intent to defeat or evade the determination
20 of an amount due required by law to be made is guilty of
21 a felony when the amount of tax liability aggregates
22 twenty-five thousand dollars (\$25,000) or more in any
23 12-consecutive-month period. The determination shall be
24 approved by the ~~Deputy Executive Director, Business~~
25 ~~Taxes,~~ or ~~that person's~~ *his or her* designee. Each offense
26 shall be punished by a fine of not less than five thousand
27 dollars (\$5,000) and not more than twenty thousand
28 dollars (\$20,000), or imprisonment for 16 months, two
29 years, or three years, or both the fine and imprisonment
30 in the discretion of the court.

31 SEC. 7. Section 32251.5 of the Revenue and Taxation
32 Code is amended to read:

33 32251.5. ~~Whenever the returns filed by a taxpayer~~
34 ~~report tax liabilities that average less than one hundred~~
35 ~~dollars (\$100) per month, the~~ *The* board, if it deems it
36 necessary in order to facilitate the collection of the
37 amount of taxes, may require returns and payment of the
38 amount of taxes for quarterly or annual periods
39 depending on the principal place of business of the
40 taxpayer, the amount of business done by the taxpayer, or



1 the amount of taxes normally paid or payable by the
2 taxpayer.

3 SEC. 8. Section 40187 of the Revenue and Taxation
4 Code is amended to read:

5 40187. Notwithstanding any other provision of this
6 part, any ~~violation of person who violates~~ this part ~~by any~~
7 ~~person~~ with intent to defeat or evade the determination
8 of an amount due required by law to be made is guilty of
9 a felony when the amount of tax liability aggregates
10 twenty-five thousand dollars (\$25,000) or more in any
11 12-consecutive-month period. The determination shall be
12 approved by the ~~Deputy Executive Director, Business~~
13 ~~Taxes,~~ or ~~that person's~~ *his or her* designee. Each offense
14 shall be punished by a fine of not less than five thousand
15 dollars (\$5,000) and not more than twenty thousand
16 dollars (\$20,000), or imprisonment for 16 months, two
17 years, or three years, or both the fine and imprisonment
18 in the discretion of the court.

19 SEC. 9. Section 41096 of the Revenue and Taxation
20 Code is amended to read:

21 41096. If the board finds that a person's failure to
22 make a timely return or payment is due to reasonable
23 cause and circumstances beyond the person's control, and
24 occurred notwithstanding the exercise of ordinary care
25 and the absence of willful neglect, the person may be
26 relieved of the penalty provided by Sections 41080, *41090*,
27 and 41095.

28 Any person seeking to be relieved of the penalty shall
29 file with the board a statement under penalty of perjury
30 setting forth the facts upon which he *or she* bases his *or*
31 *her* claim for relief.

32 SEC. 10. Section 41143.4 of the Revenue and Taxation
33 Code is amended to read:

34 41143.4. Notwithstanding any other provision of this
35 part, any ~~violation of person who violates~~ this part ~~by any~~
36 ~~person~~ with intent to defeat or evade the determination
37 of an amount due required by law to be made is guilty of
38 a felony when the amount of tax liability aggregates
39 twenty-five thousand dollars (\$25,000) or more in any
40 12-consecutive-month period. The determination shall be



1 approved by the ~~Deputy~~ *Executive* Director, ~~Business~~
2 ~~Taxes~~, or ~~that person's~~ *his or her* designee. Each offense
3 shall be punished by a fine of not less than five thousand
4 dollars (\$5,000) and not more than twenty thousand
5 dollars (\$20,000), or imprisonment for 16 months, two
6 years, or three years, or both the fine and imprisonment
7 in the discretion of the court.

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