

AMENDED IN ASSEMBLY JANUARY 7, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1458**

**Introduced by Assembly Member Kelley**

February 23, 2001

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~~An act to amend Sections 41003, 41007, 41008, 41009, 41012, 41020, 41021, 41022, 41023, 41024, 41027, 41030, 41031, 41032, 41045, 41046, 41050, 41051, 41052, 41052.1, 41053, 41076, 41077, 41080, 41083, 41088, 41090, 41095, 41101, and 41150 of, to repeal Sections 41014, 41015, 41016, 41017, 41018, 41019, and 41026 of, and to repeal and add Sections 41010, 41011, and 41025 of, the Revenue and Taxation Code, relating to taxation. An act to add Sections 7093.6, 9278, 50156.18, and 55046.5 to the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1458, as amended, Kelley. ~~Telephone service suppliers; surcharge~~ *State Board of Equalization: business and special taxes.*

*Existing law provides for the administration of various taxes by the State Board of Equalization.*

*This bill would authorize the board to accept offers in compromise on a final tax liability, as defined, under the Sales and Use Tax Law and the Use Fuel Tax Law, and on a final fee liability, as defined, under the Underground Storage Tank Maintenance Fee Law, as applicable.*

*The Fee Collection Procedures Law provides for the administration of various fee programs by the board.*

*This bill would authorize the board to allow for the relief of interest for failure to make a timely return or payment due to a disaster, as provided.*

*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 provide that no reimbursement is required by this act for a specified reason.*

~~The Emergency Telephone Users Surcharge Law requires a telephone service supplier to collect a surcharge from each telephone service user. Existing law requires the telephone service supplier to make quarterly payments of the collected surcharges to the State Board of Equalization, accompanied by a return. Existing law further specifies that surcharge revenues are, upon appropriation by the Legislature, to be expended for the support of the “911” emergency telephone system.~~

~~This bill would revise and recast that law to instead impose a surcharge upon service users for each access line, at an unspecified dollar rate per access line per month. This bill would define access line to mean, as provided, a switched access or radio access line for voice communication.~~

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

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

- 1 ~~SECTION 1. — Section 41003 of the Revenue and Taxation~~
- 2 *SECTION 1. Section 7093.6 is added to the Revenue and*
- 3 *Taxation Code, to read:*
- 4 *7093.6. (a) (1) Beginning January 1, 2003, the executive*
- 5 *director and chief counsel of the board, or their delegates, may*
- 6 *compromise any final tax liability in which the reduction of tax is*
- 7 *seven thousand five hundred dollars (\$7,500) or less.*
- 8 *(2) Except as provided in paragraph (3), the board, upon*
- 9 *recommendation by its executive director and chief counsel,*
- 10 *jointly, may compromise a final tax liability involving a reduction*
- 11 *in tax in excess of seven thousand five hundred dollars (\$7,500).*
- 12 *Any recommendation for approval of an offer in compromise that*
- 13 *is not either approved or disapproved within 45 days of the*
- 14 *submission of the recommendation shall be deemed approved.*



1 (3) *The board, itself, may by resolution delegate to the*  
2 *executive director and the chief counsel, jointly, the authority to*  
3 *compromise a final tax liability in which the reduction of tax is in*  
4 *excess of seven thousand five hundred dollars (\$7,500), but less*  
5 *than twenty-five thousand dollars (\$25,000).*

6 (b) *For purposes of this section, “a final tax liability” means*  
7 *any final tax liability arising under Part 1 (commencing with*  
8 *Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6*  
9 *(commencing with Section 7251), and Part 1.7 (commencing with*  
10 *Section 7280) or related interest, additions to tax, penalties, or*  
11 *other amounts assessed under this part.*

12 (c) *Offers in compromise shall be considered only for liabilities*  
13 *that were generated from a business that has been discontinued or*  
14 *transferred, where the taxpayer making the offer no longer has a*  
15 *controlling interest or association with the transferred business or*  
16 *has a controlling interest or association with a similar type of*  
17 *business as the transferred or discontinued business.*

18 (d) *For amounts to be compromised under this section, the*  
19 *following conditions shall exist:*

20 (1) *The taxpayer shall establish that:*

21 (A) *The amount offered in payment is the most that can be*  
22 *expected to be paid or collected from the taxpayer’s present assets*  
23 *or income.*

24 (B) *The taxpayer does not have reasonable prospects of*  
25 *acquiring increased income or assets that would enable the*  
26 *taxpayer to satisfy a greater amount of the liability than the*  
27 *amount offered, within a reasonable period of time.*

28 (2) *The board shall have determined that acceptance of the*  
29 *compromise is in the best interest of the state.*

30 (e) *A determination by the board that it would not be in the best*  
31 *interest of the state to accept an offer in compromise in satisfaction*  
32 *of a final tax liability shall not be subject to administrative appeal*  
33 *or judicial review.*

34 (f) *When an offer in compromise is either accepted or rejected,*  
35 *or the terms and conditions of a compromise agreement are*  
36 *fulfilled, the board shall notify the taxpayer in writing. In the event*  
37 *an offer is rejected, the amount posted will either be applied to the*  
38 *liability or refunded, at the discretion of the taxpayer.*

39 (g) *When more than one taxpayer is liable for the debt, such as*  
40 *with spouses or partnerships or other business combinations, the*



1 acceptance of an offer in compromise from one liable taxpayer  
2 shall not relieve the other taxpayers from paying the entire liability.  
3 However, the amount of the liability shall be reduced by the amount  
4 of the accepted offer.

5 (h) Whenever a compromise of tax or penalties or total tax and  
6 penalties in excess of five hundred dollars (\$500) is approved,  
7 there shall be placed on file for a least one year in the office of the  
8 executive director of the board a public record with respect to that  
9 compromise. The public record shall include all of the following  
10 information:

11 (1) The name of the taxpayer.

12 (2) The amount of unpaid tax and related penalties, additions  
13 to tax, interest, or other amounts involved.

14 (3) The amount offered.

15 (4) A summary of the reason why the compromise is in the best  
16 interest of the state.

17 The public record shall not include any information that relates  
18 to any trade secrets, patent, process, style of work, apparatus,  
19 business secret, or organizational structure, that if disclosed,  
20 would adversely affect the taxpayer or violate the confidentiality  
21 provisions of Section 7056. No list shall be prepared and no  
22 releases distributed by the board in connection with these  
23 statements.

24 (i) Any compromise made under this section may be rescinded,  
25 all compromised liabilities may be reestablished (without regard  
26 to any statute of limitations that otherwise may be applicable), and  
27 no portion of the amount offered in compromise refunded, if either  
28 of the following occurs:

29 (1) The board determines that any person did any of the  
30 following acts regarding the making of the offer:

31 (A) Concealed from the board any property belonging to the  
32 estate of any taxpayer or other person liable for the tax.

33 (B) Received, withheld, destroyed, mutilated, or falsified any  
34 book, document, or record or made any false statement, relating  
35 to the estate or financial condition of the taxpayer or other person  
36 liable for the tax.

37 (2) The taxpayer fails to comply with any of the terms and  
38 conditions relative to the offer.

39 (j) Any person who, in connection with any offer or compromise  
40 under this section, or offer of that compromise to enter into that



1 agreement, willfully does either of the following shall be guilty of  
2 a felony and, upon conviction, shall be fined not more than fifty  
3 thousand dollars (\$50,000) or imprisoned not more than three  
4 years, or both, together with the costs of investigation and  
5 prosecution:

6 (1) Conceals from any officer or employee of this state any  
7 property belonging to the estate of a taxpayer or other person  
8 liable in respect of the tax.

9 (2) Receives, withholds, destroys, mutilates, or falsifies any  
10 book, document, or record, or makes any false statement, relating  
11 to the estate or financial condition of the taxpayer or other person  
12 liable in respect of the tax.

13 (k) For purposes of this section, "person" means the taxpayer,  
14 any member of the taxpayer's family, any corporation, agent,  
15 fiduciary, or representative of, or any other individual or entity  
16 acting on behalf of, the taxpayer, or any other corporation or entity  
17 owned or controlled by the taxpayer, directly or indirectly, or that  
18 owns or controls the taxpayer, directly or indirectly.

19 SEC. 2. Section 9278 is added to the Revenue and Taxation  
20 Code, to read:

21 9278. (a) (1) Beginning January 1, 2003, the executive  
22 director and chief counsel of the board, or their delegates, may  
23 compromise any final tax liability in which the reduction of tax is  
24 seven thousand five hundred dollars (\$7,500) or less.

25 (2) Except as provided in paragraph (3), the board, upon  
26 recommendation by its executive director and chief counsel,  
27 jointly, may compromise a final tax liability involving a reduction  
28 in tax in excess of seven thousand five hundred dollars (\$7,500).  
29 Any recommendation for approval of an offer in compromise that  
30 is not either approved or disapproved within 45 days of the  
31 submission of the recommendation shall be deemed approved.

32 (3) The board, itself, may by resolution delegate to the  
33 executive director and the chief counsel, jointly, the authority to  
34 compromise a final tax liability in which the reduction of tax is in  
35 excess of seven thousand five hundred dollars (\$7,500), but less  
36 than twenty-five thousand dollars (\$25,000).

37 (b) For purposes of this section, "a final tax liability" means  
38 any final tax liability arising under Part 3 (commencing with  
39 Section 8601), or related interest, additions to tax, penalties, or  
40 other amounts assessed under this part.



1 (c) Offers in compromise shall be considered only for liabilities  
2 that were generated from a business that has been discontinued or  
3 transferred, where the taxpayer making the offer no longer has a  
4 controlling interest or association with the transferred business or  
5 has a controlling interest or association with a similar type of  
6 business as the transferred or discontinued business.

7 (d) For amounts to be compromised under this section, the  
8 following conditions shall exist:

9 (1) The taxpayer shall establish that:

10 (A) The amount offered in payment is the most that can be  
11 expected to be paid or collected from the taxpayer's present assets  
12 or income.

13 (B) The taxpayer does not have reasonable prospects of  
14 acquiring increased income or assets that would enable the  
15 taxpayer to satisfy a greater amount of the liability than the  
16 amount offered, within a reasonable period of time.

17 (2) The board shall have determined that acceptance of the  
18 compromise is in the best interest of the state.

19 (e) A determination by the board that it would not be in the best  
20 interest of the state to accept an offer in compromise in satisfaction  
21 of a final tax liability shall not be subject to administrative appeal  
22 or judicial review.

23 (f) When an offer in compromise is either accepted or rejected,  
24 or the terms and conditions of a compromise agreement are  
25 fulfilled, the board shall notify the taxpayer in writing. In the event  
26 an offer is rejected, the amount posted will either be applied to the  
27 liability or refunded, at the discretion of the taxpayer.

28 (g) When more than one taxpayer is liable for the debt, such as  
29 with spouses or partnerships or other business combinations, the  
30 acceptance of an offer in compromise from one liable taxpayer  
31 shall not relieve the other taxpayers from paying the entire liability.  
32 However, the amount of the liability shall be reduced by the amount  
33 of the accepted offer.

34 (h) Whenever a compromise of tax or penalties or total tax and  
35 penalties in excess of five hundred dollars (\$500) is approved,  
36 there shall be placed on file for a least one year in the office of the  
37 executive director of the board a public record with respect to that  
38 compromise. The public record shall include all of the following  
39 information:

40 (1) The name of the taxpayer.



1 (2) *The amount of unpaid tax and related penalties, additions*  
2 *to tax, interest, or other amounts involved.*

3 (3) *The amount offered.*

4 (4) *A summary of the reason why the compromise is in the best*  
5 *interest of the state.*

6 *The public record shall not include any information that relates*  
7 *to any trade secrets, patent, process, style of work, apparatus,*  
8 *business secret, or organizational structure, that if disclosed,*  
9 *would adversely affect the taxpayer or violate the confidentiality*  
10 *provisions of Section 9255. No list shall be prepared and no*  
11 *releases distributed by the board in connection with these*  
12 *statements.*

13 (i) *Any compromise made under this section may be rescinded,*  
14 *all compromised liabilities may be reestablished (without regard*  
15 *to any statute of limitations that otherwise may be applicable), and*  
16 *no portion of the amount offered in compromise refunded, if either*  
17 *of the following occurs:*

18 (1) *The board determines that any person did any of the*  
19 *following acts regarding the making of the offer:*

20 (A) *Concealed from the board any property belonging to the*  
21 *estate of any taxpayer or other person liable for the tax.*

22 (B) *Received, withheld, destroyed, mutilated, or falsified any*  
23 *book, document, or record or made any false statement, relating*  
24 *to the estate or financial condition of the taxpayer or other person*  
25 *liable for the tax.*

26 (2) *The taxpayer fails to comply with any of the terms and*  
27 *conditions relative to the offer.*

28 (j) *Any person who, in connection with any offer or compromise*  
29 *under this section, or offer of that compromise to enter into that*  
30 *agreement, willfully does either of the following shall be guilty of*  
31 *a felony and, upon conviction, shall be fined not more than fifty*  
32 *thousand dollars (\$50,000) or imprisoned not more than three*  
33 *years, or both, together with the costs of investigation and*  
34 *prosecution:*

35 (1) *Conceals from any officer or employee of this state any*  
36 *property belonging to the estate of a taxpayer or other person*  
37 *liable in respect of the tax.*

38 (2) *Receives, withholds, destroys, mutilates, or falsifies any*  
39 *book, document, or record, or makes any false statement, relating*



1 *to the estate or financial condition of the taxpayer or other person*  
2 *liable in respect of the tax.*

3 *(k) For purposes of this section, “person” means the taxpayer,*  
4 *any member of the taxpayer’s family, any corporation, agent,*  
5 *fiduciary, or representative of, or any other individual or entity*  
6 *acting on behalf of, the taxpayer, or any other corporation or entity*  
7 *owned or controlled by the taxpayer, directly or indirectly, or that*  
8 *owns or controls the taxpayer, directly or indirectly.*

9 *SEC. 3. Section 50156.18 is added to the Revenue and*  
10 *Taxation Code, to read:*

11 *50156.18. (a) (1) Beginning January 1, 2003, the executive*  
12 *director and chief counsel of the board, or their delegates, may*  
13 *compromise any final fee liability in which the reduction of the fee*  
14 *is seven thousand five hundred dollars (\$7,500) or less.*

15 *(2) Except as provided in paragraph (3), the board, upon*  
16 *recommendation by its executive director and chief counsel,*  
17 *jointly, may compromise a final fee liability involving a reduction*  
18 *in the fee in excess of seven thousand five hundred dollars*  
19 *(\$7,500). Any recommendation for approval of an offer in*  
20 *compromise that is not either approved or disapproved within 45*  
21 *days of the submission of the recommendation shall be deemed*  
22 *approved.*

23 *(3) The board, itself, may by resolution delegate to the*  
24 *executive director and the chief counsel, jointly, the authority to*  
25 *compromise a final fee liability in which the reduction of the fee is*  
26 *in excess of seven thousand five hundred dollars (\$7,500), but less*  
27 *than twenty-five thousand dollars (\$25,000).*

28 *(b) For purposes of this section, “a final fee liability” means*  
29 *any final fee liability arising under Part 26 (commencing with*  
30 *Section 50101), or related interest, additions to the fee, penalties,*  
31 *or other amounts assessed under this part.*

32 *(c) Offers in compromise shall be considered only for liabilities*  
33 *that were generated from a business that has been discontinued or*  
34 *transferred, where the feepayer making the offer no longer has a*  
35 *controlling interest or association with the transferred business or*  
36 *has a controlling interest or association with a similar type of*  
37 *business as the transferred or discontinued business.*

38 *(d) For amounts to be compromised under this section, the*  
39 *following conditions shall exist:*

40 *(1) The feepayer shall establish that:*



1 (A) *The amount offered in payment is the most that can be*  
2 *expected to be paid or collected from the feepayer's present assets*  
3 *or income.*

4 (B) *The feepayer does not have reasonable prospects of*  
5 *acquiring increased income or assets that would enable the*  
6 *feepayer to satisfy a greater amount of the liability than the amount*  
7 *offered, within a reasonable period of time.*

8 (2) *The board shall have determined that acceptance of the*  
9 *compromise is in the best interest of the state.*

10 (e) *A determination by the board that it would not be in the best*  
11 *interest of the state to accept an offer in compromise in satisfaction*  
12 *of a final fee liability shall not be subject to administrative appeal*  
13 *or judicial review.*

14 (f) *When an offer in compromise is either accepted or rejected,*  
15 *or the terms and conditions of a compromise agreement are*  
16 *fulfilled, the board shall notify the feepayer in writing. In the event*  
17 *an offer is rejected, the amount posted will either be applied to the*  
18 *liability or refunded, at the discretion of the feepayer.*

19 (g) *When more than one feepayer is liable for the debt, such as*  
20 *with spouses or partnerships or other business combinations, the*  
21 *acceptance of an offer in compromise from one liable feepayer*  
22 *shall not relieve the other feepayers from paying the entire liability.*  
23 *However, the amount of the liability shall be reduced by the amount*  
24 *of the accepted offer.*

25 (h) *Whenever a compromise of the fee or penalties or total fees*  
26 *and penalties in excess of five hundred dollars (\$500) is approved,*  
27 *there shall be placed on file for a least one year in the office of the*  
28 *executive director of the board a public record with respect to that*  
29 *compromise. The public record shall include all of the following*  
30 *information:*

31 (1) *The name of the feepayer.*

32 (2) *The amount of unpaid fees and related penalties, additions*  
33 *to fees, interest, or other amounts involved.*

34 (3) *The amount offered.*

35 (4) *A summary of the reason why the compromise is in the best*  
36 *interest of the state.*

37 *The public record shall not include any information that relates*  
38 *to any trade secrets, patent, process, style of work, apparatus,*  
39 *business secret, or organizational structure, that if disclosed,*  
40 *would adversely affect the feepayer or violate the confidentiality*



1 provisions of Chapter 8 of Article 2 (commencing with Section  
2 50156). No list shall be prepared and no releases distributed by the  
3 board in connection with these statements.

4 (i) Any compromise made under this section may be rescinded,  
5 all compromised liabilities may be reestablished (without regard  
6 to any statute of limitations that otherwise may be applicable), and  
7 no portion of the amount offered in compromise refunded, if either  
8 of the following occurs:

9 (1) The board determines that any person did any of the  
10 following acts regarding the making of the offer:

11 (A) Concealed from the board any property belonging to the  
12 estate of any feepayer or other person liable for the fee.

13 (B) Received, withheld, destroyed, mutilated, or falsified any  
14 book, document, or record or made any false statement, relating  
15 to the estate or financial condition of the feepayer or other person  
16 liable for the fee.

17 (2) The feepayer fails to comply with any of the terms and  
18 conditions relative to the offer.

19 (j) Any person who, in connection with any offer or compromise  
20 under this section, or offer of that compromise to enter into that  
21 agreement, willfully does either of the following shall be guilty of  
22 a felony and, upon conviction, shall be fined not more than fifty  
23 thousand dollars (\$50,000) or imprisoned not more than three  
24 years, or both, together with the costs of investigation and  
25 prosecution:

26 (1) Conceals from any officer or employee of this state any  
27 property belonging to the estate of a feepayer or other person  
28 liable in respect of the fee.

29 (2) Receives, withholds, destroys, mutilates, or falsifies any  
30 book, document, or record, or makes any false statement, relating  
31 to the estate or financial condition of the feepayer or other person  
32 liable in respect of the fee.

33 (k) For purposes of this section, "person" means the feepayer,  
34 any member of the feepayer's family, any corporation, agent,  
35 fiduciary, or representative of, or any other individual or entity  
36 acting on behalf of, the feepayer, or any other corporation or entity  
37 owned or controlled by the feepayer, directly or indirectly, or that  
38 owns or controls the feepayer, directly or indirectly.

39 SEC. 4. Section 55046.5 is added to the Revenue and Taxation  
40 Code, to read:



1 55046.5. *If the board finds that a person's failure to make a*  
2 *timely return or payment was due to a disaster, and occurred*  
3 *notwithstanding the exercise of ordinary care and the absence of*  
4 *willful neglect, the person may be relieved of interest provided by*  
5 *Sections 55041, 55042, 55050, and 55061.*

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

9 *SEC. 5. No reimbursement is required by this act pursuant to*  
10 *Section 6 of Article XIII B of the California Constitution because*  
11 *the only costs that may be incurred by a local agency or school*  
12 *district will be incurred because this act creates a new crime or*  
13 *infraction, eliminates a crime or infraction, or changes the penalty*  
14 *for a crime or infraction, within the meaning of Section 17556 of*  
15 *the Government Code, or changes the definition of a crime within*  
16 *the meaning of Section 6 of Article XIII B of the California*  
17 *Constitution.*

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**All matter omitted in this version of the  
bill appears in the bill as introduced As-  
sembly, February 23, 1901 (JR 11)**

