

Assembly Bill No. 1748

CHAPTER 342

An act to amend Sections 6405, 6478, 7204.3, 7211, 7252, 7273, 7659.7, 9304, 18533, 30182, 30187, 41030, 41031, 41032, and 60653 of, to add Sections 7269, 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 to, to repeal Sections 7204.02, 7204.5, 7208, 7251.2, 7252.5, 7252.6, 7252.7, 7252.8, 7252.9, 7252.10, 7252.11, 7252.12, 7252.13, 7252.15, 7252.16, 7252.21, 7252.22, 7252.30, and 7271.05 of, and to repeal Chapter 2.67 (commencing with Section 7286.28) of, Chapter 2.8 (commencing with Section 7286.40) of, Chapter 2.90 (commencing with Section 7286.47) of, Chapter 2.95 (commencing with Section 7286.56) of, and Chapter 2.96 (commencing with Section 7286.65) of, Part 1.7 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 8, 2007. Filed with
Secretary of State October 8, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1748, Committee on Revenue and Taxation. Taxation.

(1) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law exempts from the use tax the first \$400 of tangible personal property that is both purchased in a foreign country and personally hand-carried into this state.

This bill would modify that use tax exemption by exempting the first \$800 of tangible personal property that is purchased outside this state and personally hand-carried into this state.

(2) Under the Sales and Use Tax Law and the Motor Vehicle Fuel Tax Law, certain taxpayers whose monthly tax liabilities meet or exceed specified amounts are required to make monthly prepayments of their tax liability. Under those laws, if a taxpayer fails to make timely prepayment of the tax liability, a 6% penalty will apply to the amount not timely remitted. Existing law also requires that the penalty be increased to 10%, as provided, if a person's failure to make a prepayment is due to negligence or intentional disregard of that law. Existing law does provide a mechanism for a taxpayer to dispute the imposition of the negligence penalty.

This bill would provide that the 10% negligence penalty law would be assessed as a deficiency determination in order to allow taxpayers an opportunity to dispute the application of the negligence penalty by filing a petition for redetermination.

(3) The Bradley-Burns Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law authorize local governmental agencies to

impose sales and use taxes in modified conformity to state sales and use taxes and authorize the State Board of Equalization to impose specified charges in administering those local taxes, as provided.

This bill would make clarifying changes to those provisions.

(4) The Bradley-Burns Uniform Local Sales and Use Tax Law provides that all sales and use taxes collected by the State Board of Equalization pursuant to contract with any city, city and county, redevelopment agency, or county, shall be transmitted by the board to those local entities, as specified.

This bill would repeal obsolete provisions related thereto.

(5) Existing law authorizes various local governmental entities, subject to certain limitations and approval requirements, to levy transactions and use taxes in accordance with the procedures and requirements set forth in the Transactions and Use Tax Law, and requires the local governmental entities, including districts, as defined, to contract with the State Board of Equalization to administer all transactions and use taxes, as authorized. Existing law provides that all such taxes collected by the board must be transmitted to the local governmental entities based on the location in which the sales were made. Existing law, however, does not provide a mechanism for the board to redistribute the transactions and use tax revenues that have been misallocated to a district.

This bill would allow the board to redistribute the revenues, collected by the board pursuant to a contract with the districts, that were originally misallocated by the board, but would limit the amounts eligible for the redistribution only to those amounts that were originally distributed not earlier than 2 quarterly periods prior to the quarterly period in which the board obtains knowledge of the improper distribution.

This bill would also make clarifying changes to and would repeal obsolete provisions under the Transactions and Use Tax Law.

(6) The Use Fuel Tax Law and the Diesel Fuel Tax Law both impose a tax upon each gallon of fuel subject to tax under those laws, and provide, as specified, for the transfer of revenues derived from those taxes, after authorized refunds and other allocations for specified purposes, to the Highway Users Tax Account in the Transportation Tax Fund. The Motor Vehicle Fuel Tax Law also imposes a tax of \$0.18 per gallon of fuel and requires that a portion of the amounts collected under that law be continuously appropriated for expenditure for specified purposes.

Existing law requires the Controller to transfer revenues derived from the taxes imposed under the Use Fuel Tax Law and the Diesel Fuel Tax Law to the Highway Users Tax Account at the same time as the transfers of moneys received under the Motor Vehicle Fuel License Tax Law are made.

This bill would revise the provisions of the Use Fuel Tax Law and the Diesel Fuel Tax Law to correct obsolete references to the “Motor Vehicle Fuel License Tax Law,” which, effective January 1, 2002, was renamed as the “Motor Vehicle Fuel Tax Law.”

(7) The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. The Cigarette and Tobacco Products Tax Law also requires a tax imposed by that law with respect to distributions of cigarettes to be paid by distributors through the use of stamps or meter register settings, and requires that these stamps or meter register settings be affixed to each package of cigarettes sold. Existing law requires distributors that elect to defer payments for stamps and meter register settings to file a report with the board regarding the distribution of cigarettes and purchases of stamps and meter register settings on or before the 5th day of the month following the month during which the cigarettes or tobacco products were distributed.

This bill would instead require those distributors who elect to defer payments to file the report with the State Board of Equalization regarding the distribution of cigarettes and purchases of stamps and meter register settings on the 25th day of the month following the month during which the cigarettes or tobacco products were distributed.

(8) The Cigarette and Tobacco Products Tax Law, under the Cigarette Tax Law, imposes a tax on every distributor of cigarettes and tobacco products at specified rates. Consumers and users subject to the tax resulting from the use or consumption of cigarettes or tobacco products, as defined, from whom the tax has not been collected are required to file a report of the amount of cigarettes received during the preceding month with the State Board of Equalization on or before the 25th day of the month following the month during which the cigarettes were received.

This bill would instead require a consumer or user subject to the tax, from whom the tax has not been collected, to file a report of the amount of cigarettes or tobacco products received during the preceding month with the State Board of Equalization on or before the last day of the month following the end of the quarter during which the cigarettes or tobacco products were received.

(9) Existing law requires the State Board of Equalization to administer various tax and fee programs, including the Motor Vehicle Fuel Tax Law, the Use Fuel Tax Law, the Private Railroad Car Tax Law, the Cigarette and Tobacco Products Tax Law, the Alcoholic Beverage Tax Law, the Timber Yield Tax Law, the Energy Resources Surcharge Law, the Emergency Telephone Users Surcharge Act, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Underground Storage Tank Maintenance Fee Law, the Fee Collection Procedures Law, and the Diesel Fuel Tax Law. Those laws provide for the imposition of interest and penalties for specified violations thereof.

This bill would provide that, under regulations prescribed by the board, a tax or fee liability under those laws that is unreported, understated, or unpaid due to certain omissions of one spouse, and the other spouse did not know of, and had no reason to know of, the understatement or nonpayment, and certain other criteria are met, then the other spouse shall be relieved of liability for the tax or fee, interest, and penalties attributable to that

understatement or nonpayment, as provided. This bill would provide that this relief shall apply retroactively. The bill would, under the Emergency Telephone Users Surcharge Act change the effective date of the surcharge rate period, as provided.

This bill would make a legislative finding and declaration relating to the public purpose served by specified provisions of the bill.

(10) Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are automatically incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

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

SECTION 1. Section 6405 of the Revenue and Taxation Code is amended to read:

6405. Notwithstanding Section 6246, the storage, use, or other consumption in this state of the first eight hundred dollars (\$800) of tangible personal property purchased in a foreign country by an individual from a retailer and personally hand-carried into this state from the foreign country within any 30-day period is exempt from the use tax. This section shall not apply to property sent or shipped to this state.

SEC. 2. Section 6478 of the Revenue and Taxation Code is amended to read:

6478. (a) If a failure to make a prepayment as described in Section 6477 is due to negligence or intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 6484, 6485, 6511, 6514, and 6591.

(d) The 10 percent negligence penalty shall become due and payable and shall be ascertained and determined in the same manner as the deficiency determination under Article 2 (commencing with Section 6481) of this chapter. The provisions of Article 5 (commencing with Section 6561) of this chapter shall be applicable with respect to the finality of the determination and the right to petition for redetermination.

SEC. 3. Section 7204.02 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 7204.3 of the Revenue and Taxation Code is amended to read:

7204.3. The board shall charge a city, city and county, redevelopment agency, or county an amount for the board's services in administering the sales and use tax ordinance of the local entity, as determined by the board with the concurrence of the Department of Finance, as follows:

(a) Beginning with the 2006–07 fiscal year, the amount charged each local entity shall be based on the methodology described in Alternative 4C of the November 2004 report by the State Board of Equalization entitled "Response to the Supplemental Report of the 2004 Budget Act."

(1) The amount charged may be adjusted in the current fiscal year to reflect the difference between the board's budgeted costs and any significant revised estimate of costs. Any adjustment shall be subject to budgetary controls included in the Budget Act. Prior to any adjustment, the Department of Finance shall notify the Chairperson of the Joint Legislative Budget Committee not later than 30 days prior to the effective date of the adjustment.

(2) The amount charged each local entity shall be adjusted to reflect the difference between the board's recovered costs and the actual costs incurred by the board during the fiscal year two years prior.

(b) The amounts determined by subdivision (a) shall be deducted in equal amounts from the quarterly allocation of taxes collected by the board for the city, city and county, redevelopment agency, or county.

SEC. 5. Section 7204.5 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 7208 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 7211 of the Revenue and Taxation Code is amended to read:

7211. Notwithstanding Section 7203.5, the State Board of Equalization shall continue to administer the sales and use tax ordinance of any city, county, or city and county that adopts a transactions and use tax ordinance administered by the board in accordance with Part 1.6 (commencing with Section 7251).

SEC. 8. Section 7251.2 of the Revenue and Taxation Code is repealed.

SEC. 9. Section 7252 of the Revenue and Taxation Code is amended to read:

7252. "District," as used in this part, means any city, county, city and county, or other governmental entity authorized, to impose transaction and use taxes pursuant to this part.

SEC. 10. Section 7252.5 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 7252.6 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 7252.7 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 7252.8 of the Revenue and Taxation Code is repealed.

SEC. 14. Section 7252.9 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 7252.10 of the Revenue and Taxation Code, as added by Section 6 of Chapter 301 of the Statutes of 1986, is repealed.

SEC. 16. Section 7252.10 of the Revenue and Taxation Code, as added by Section 21 of Chapter 474 of the Statutes of 2001, is repealed.

SEC. 17. Section 7252.11 of the Revenue and Taxation Code is repealed.

SEC. 18. Section 7252.12 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 7252.13 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 7252.15 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 7252.16 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 7252.21 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 7252.22 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 7252.30 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 7269 is added to the Revenue and Taxation Code, to read:

7269. The board may redistribute tax, penalty, or interest distributed to a district other than the district entitled thereto, but such redistribution shall not be made as to amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the board obtains knowledge of the improper distribution.

SEC. 26. Section 7271.05 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 7273 of the Revenue and Taxation Code is amended to read:

7273. In addition to the amounts otherwise provided for preparatory costs, the board shall charge each district an amount for the board's services in administering the transactions and use tax determined by the board, with the concurrence of the Department of Finance, as follows:

(a) Beginning with the 2006–07 fiscal year, the amount charged all districts shall be based on the methodology described in Alternative 4C of the November 2004 report by the State Board of Equalization entitled "Response to the Supplemental Report of the 2004 Budget Act." The amount charged each district shall be based upon the district's proportional share of the revenue after weighting the revenue to equalize the differences in district tax rates.

(1) The amount charged each district may be adjusted in the current fiscal year to reflect the difference between the board's budgeted costs and any significant revised estimate of costs. Any adjustment shall be subject to budgetary controls included in the Budget Act. Prior to any adjustment, the Department of Finance shall notify the Chairperson of the Joint Legislative Budget Committee not later than 30 days prior to the effective date of the adjustment.

(2) The amount charged each district shall be adjusted to reflect the difference between the board's recovered costs and the actual costs incurred by the board during the fiscal year two years prior.

(b) The board shall, by June 1 of each year, notify districts of the amount that it anticipates will be assessed for the next fiscal year. The districts shall be notified of the actual amounts that will be assessed within 30 days after enactment of the Budget Act for that fiscal year.

(c) The amount charged a district that becomes operative during the fiscal year shall be estimated for that fiscal year based on weighted revenue.

(d) The amounts determined by subdivision (a) shall be deducted in equal amounts from the quarterly allocation of taxes collected by the board for a given district.

SEC. 28. Chapter 2.67 (commencing with Section 7286.28) of Part 1.7 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 29. Chapter 2.8 (commencing with Section 7286.40) of Part 1.7 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 30. Chapter 2.90 (commencing with Section 7286.47) of Part 1.7 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 31. Chapter 2.95 (commencing with Section 7286.56) of Part 1.7 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 32. Chapter 2.96 (commencing with Section 7286.65) of Part 1.7 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 33. Section 7657.5 is added to the Revenue and Taxation Code, to read:

7657.5. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months subject to the provisions of this part, but shall not apply to any calendar month that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a supplier entering, removing, or selling taxable motor vehicle fuel or an aircraft jet fuel dealer selling or using taxable aircraft jet fuel to which the understatement is attributable. If neither spouse rendered substantial services as a supplier or aircraft jet fuel dealer, then the attribution of applicable items of understatement shall be treated as community property. An

erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 34. Section 7659.7 of the Revenue and Taxation Code is amended to read:

7659.7. (a) If the failure to make a prepayment as described in Section 7659.6 is due to negligence or intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent, instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 7655, 7660, 7662, 7672, 7673, and 7726.

(d) The 10-percent negligence penalty shall become due and payable and shall be ascertained and determined in the same manner as the deficiency determination under Article 4 (commencing with Section 7670) of this chapter. The provisions of Article 6 (commencing with Section 7710) of this chapter shall be applicable with respect to the finality of the determination and the right of the supplier to petition for redetermination.

SEC. 35. Section 8880 is added to the Revenue and Taxation Code, to read:

8880. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the

extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a user using taxable fuel or a vendor selling taxable fuel to which the understatement is attributable. If neither spouse rendered substantial services as a user or a vendor, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 36. Section 9304 of the Revenue and Taxation Code is amended to read:

9304. The Controller shall make the transfers at the same time as the transfers to the Highway Users Tax Account in the Transportation Tax Fund of moneys received under the Motor Vehicle Fuel Tax Law are made.

SEC. 37. Section 11408.5 is added to the Revenue and Taxation Code, to read:

11408.5. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to pay a tax levied and required to be paid under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed, and the understatement of tax liability is attributable to one spouse;

or any amount of the tax was unpaid and the nonpayment of the tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar years subject to the provisions of this part, but shall not apply to any calendar year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to pay a levy or an omission of an item from the payment, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a person that owns a private railroad car operated upon the railroads in this state to which the understatement is attributable. If neither spouse rendered substantial services as such a person, then the attribution of applicable items of understatement shall be treated as community property.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 38. Section 18533 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 353 of the Statutes of 2004, is amended to read:

18533. (a) (1) Notwithstanding subdivision (a) and the first sentence of subdivision (b) of Section 19006:

(A) An individual who has made a joint return may elect to seek relief under the procedures prescribed under subdivision (b), and

(B) If the individual is eligible to elect the application of subdivision (c), the individual may, in addition to any election under subparagraph (A), elect to limit the individual's liability for any deficiency with respect to the joint return in the manner prescribed under subdivision (c).

(2) Any determination under this section shall be made without regard to community property laws.

(b) (1) Under procedures prescribed by the Franchise Tax Board, if—

(A) A joint return has been made under this chapter for a taxable year,

(B) On that return there is an understatement of tax attributable to erroneous items of one individual filing the joint return,

(C) The other individual filing the joint return establishes that in signing the return he or she did not know of, and had no reason to know of, that understatement,

(D) Taking into account all facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for that taxable year attributable to that understatement, and

(E) The other individual elects (in the form and manner as the Franchise Tax Board may prescribe) the benefits of this subdivision not later than the date that is two years after the date the Franchise Tax Board has begun collection activities with respect to the individual making the election, then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to that understatement.

(2) If an individual who, but for subparagraph (C) of paragraph (1), would be relieved of liability under paragraph (1), establishes that in signing the return the individual did not know, and had no reason to know, the extent of the understatement, then the individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to the portion of the understatement of which that individual did not know and had no reason to know.

(3) For purposes of this subdivision, the term “understatement” has the meaning given to that term by Section 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual's liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) that is not allocable to the individual under subdivision (d), that election may not apply to that deficiency (or portion). This subparagraph does not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual electing the application of this subdivision is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) For purposes of this paragraph—

(i) The term “disqualified asset” means any property or right to property transferred to an individual making the election under this subdivision with respect to a joint return by the other individual filing the joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

(ii) (I) For purposes of clause (i), except as provided in subclause (II), any transfer that is made after the date that is one year before the date on which the first notice of proposed assessment under Article 3 (commencing with Section 19031) of Chapter 4 is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(II) Subclause (I) does not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to that decree or to any transfer that an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

(d) For purposes of subdivision (c)—

(1) The portion of any deficiency on a joint return allocated to an individual shall be the amount that bears the same ratio to the deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency (or portion thereof) is attributable to—

(A) The disallowance of a credit, or

(B) Any tax (other than tax imposed by Section 17041 or 17062) required to be included with the joint return, and the item is allocated to one individual under paragraph (3), that deficiency (or portion) shall be allocated to that individual. Any item so allocated may not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section if that appeal is filed during the 30-day period prescribed in clause (ii) and the appeal shall be treated as an appeal to the board under Section 19045. Notwithstanding the preceding sentence, the individual making the election under subdivision

(b) or (c) may appeal to the board at any time after the date that is six months after the date the election is filed with the Franchise Tax Board and before the close of the 30-day period prescribed in clause (ii).

(B) Except as otherwise provided in Section 19081 or 19082, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or (c) for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

(2) The running of the period of limitations in Section 19371 on the collection of the assessment to which the petition under subparagraph (A) of paragraph (1) relates shall be suspended for the period during which the Franchise Tax Board is prohibited by subparagraph (B) of paragraph (1) from collecting by levy or a proceeding in court and for 60 days thereafter.

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Section 19306 and Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

(B) In the case of any election under subdivision (b) or (c), if a decision of the board in any prior proceeding for the same taxable year has become final, that decision shall be conclusive except with respect to the qualification of the individual for relief that was not an issue in that proceeding. The exception contained in the preceding sentence does not apply if the board determines that the individual participated meaningfully in the prior proceeding.

(C) No credit or refund shall be allowed as a result of an election under subdivision (c).

(f) Under procedures prescribed by the Franchise Tax Board, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), the Franchise Tax Board may relieve the individual of that liability.

(g) (1) The Franchise Tax Board may prescribe regulations providing methods for allocation of items other than the methods under paragraph (3) of subdivision (d).

(2) It is the intent of the Legislature that, in construing this section and any other sections that are specifically cross-referenced in this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

(h) (1) Except as provided in paragraph (2), the amendments made by Section 5 of Chapter 931 of the Statutes of 1999, shall apply to any liability for tax arising after October 10, 1999, and any liability for tax arising on or before that date but remaining unpaid as of that date.

(2) The period specified under subparagraph (E) of paragraph (1) of subdivision (b) or subparagraph (B) of paragraph (3) of subdivision (c) does not expire before the date that is four years after the date of the first collection activity after October 10, 1999.

(i) (1) An individual who has made a joint return and has been granted relief under Section 6015 of the Internal Revenue Code, relating to joint and several liability with respect to a federal joint income tax return, shall be eligible for relief under this section if all of the following conditions are satisfied:

(A) The individual requests relief under this section.

(B) The facts and circumstances that apply to the understatement and liabilities for which the relief is requested are the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under Section 6015 of the Internal Revenue Code.

(C) The individual requesting relief under this subdivision furnishes the Franchise Tax Board with a copy of the federal determination granting that individual relief under Section 6015 of the Internal Revenue Code. If the federal determination does not clearly identify the issues and liabilities for which the individual was granted relief under Section 6015 of the Internal Revenue Code, the Franchise Tax Board may request, from the individual requesting relief, any supporting documentation reasonably necessary to substantiate that the issues and liabilities for which relief is requested under this section are the same as the issues and liabilities for which the individual received relief under Section 6015 of the Internal Revenue Code.

(2) This subdivision does not apply if, prior to the expiration of the 30-day period described in clause (i) of subparagraph (A) of paragraph (1) of subdivision (e), the other individual that filed the joint return for which the relief is requested under this subdivision submits information to the Franchise Tax Board that indicates that relief should not be granted. For purposes of this paragraph, “information that indicates that relief should not be granted” is limited to the following:

(A) Information that indicates that the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are not the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under Section 6015 of the Internal Revenue Code.

(B) Information that indicates that there has not been a federal determination granting relief under Section 6015 of the Internal Revenue Code or that the federal determination granting relief under Section 6015 of the Internal Revenue Code has been modified, altered, withdrawn, canceled, or rescinded.

(C) Information indicating that the other individual, as described in the first sentence of this paragraph, did not have the opportunity to participate, within the meaning of Section 6015 of the Internal Revenue Code and the regulations thereunder, in the federal administrative or judicial proceeding that resulted in relief under Section 6015 of the Internal Revenue Code.

(j) If, prior to the date the Franchise Tax Board issues its determination with respect to a request for relief under this section, the individual requesting relief demonstrates to the Franchise Tax Board that a request for relief has been filed with the Internal Revenue Service pursuant to Section 6015 of the Internal Revenue Code and demonstrates that the request for relief involves the same facts and circumstances as the request for relief that is pending before the Franchise Tax Board, the Franchise Tax Board may not deny relief with respect to that request, in whole or in part, until federal action on the request for relief under Section 6015 of the Internal Revenue Code is final.

(k) The provisions of subdivisions (i) and (j) shall apply to both of the following:

(1) Any tax liability that becomes final on or after the effective date of the act adding subdivisions (i) and (j) to this section.

(2) Any unpaid tax liability that became final prior to the effective date of the act adding subdivisions (i) and (j) to this section.

(l) An individual may not be granted relief under this section if a court has revised the tax liability in a proceeding for dissolution of the marriage in accordance with subdivision (b) of Section 19006.

(m) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any procedure or rule prescribed by the Franchise Tax Board pursuant to this section.

(n) This section shall cease to be operative on January 1, 2009, and as of that date is repealed.

SEC. 39. Section 18533 of the Revenue and Taxation Code, as amended by Section 3 of Chapter 353 of the Statutes of 2004, is amended to read:

18533. (a) (1) Notwithstanding subdivision (a) and the first sentence of subdivision (b) of Section 19006:

(A) An individual who has made a joint return may elect to seek relief under the procedures prescribed under subdivision (b), and

(B) If the individual is eligible to elect the application of subdivision (c), the individual may, in addition to any election under subparagraph (A), elect to limit the individual's liability for any deficiency with respect to the joint return in the manner prescribed under subdivision (c).

(2) Any determination under this section shall be made without regard to community property laws.

(b) (1) Under procedures prescribed by the Franchise Tax Board, if—

(A) A joint return has been made under this chapter for a taxable year,

(B) On that return there is an understatement of tax attributable to erroneous items of one individual filing the joint return,

(C) The other individual filing the joint return establishes that in signing the return he or she did not know of, and had no reason to know of, that understatement,

(D) Taking into account all facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for that taxable year attributable to that understatement, and

(E) The other individual elects (in the form and manner as the Franchise Tax Board may prescribe) the benefits of this subdivision not later than the date that is two years after the date the Franchise Tax Board has begun collection activities with respect to the individual making the election, then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to that understatement.

(2) If an individual who, but for subparagraph (C) of paragraph (1), would be relieved of liability under paragraph (1), establishes that in signing the return the individual did not know, and had no reason to know, the extent of the understatement, then the individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to the portion of the understatement of which that individual did not know and had no reason to know.

(3) For purposes of this subdivision, the term “understatement” has the meaning given to that term by Section 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual’s liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or

portion thereof) that is not allocable to the individual under subdivision (d), that election does not apply to that deficiency (or portion). This subparagraph does not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual electing the application of this subdivision is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) For purposes of this paragraph—

(i) The term “disqualified asset” means any property or right to property transferred to an individual making the election under this subdivision with respect to a joint return by the other individual filing the joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

(ii) (I) For purposes of clause (i), except as provided in subclause (II), any transfer that is made after the date that is one year before the date on which the first notice of proposed assessment under Article 3 (commencing with Section 19031) of Chapter 4 is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(II) Subclause (I) does not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to that decree or to any transfer that an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

(d) For purposes of subdivision (c)—

(1) The portion of any deficiency on a joint return allocated to an individual shall be the amount that bears the same ratio to the deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency (or portion thereof) is attributable to—

(A) The disallowance of a credit, or

(B) Any tax (other than tax imposed by Section 17041 or 17062) required to be included with the joint return, and the item is allocated to one individual under paragraph (3), that deficiency (or portion) shall be allocated to that individual. Any item so allocated may not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board

establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section if that appeal is filed during the 30-day period prescribed in clause (ii) and the appeal shall be treated as an appeal to the board under Section 19045. Notwithstanding the preceding sentence, the individual making the election under subdivision (b) or (c) may appeal to the board at any time after the date that is six months after the date the election is filed with the Franchise Tax Board and before the close of the 30-day period prescribed in clause (ii).

(B) Except as otherwise provided in Section 19081 or 19082, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or (c) for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

(2) The running of the period of limitations in Section 19371 on the collection of the assessment to which the petition under subparagraph (A) of paragraph (1) relates shall be suspended for the period during which the Franchise Tax Board is prohibited by subparagraph (B) of paragraph (1) from collecting by levy or a proceeding in court and for 60 days thereafter.

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Section 19306 and Article 6

(commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

(B) In the case of any election under subdivision (b) or (c), if a decision of the board in any prior proceeding for the same taxable year has become final, that decision shall be conclusive except with respect to the qualification of the individual for relief that was not an issue in that proceeding. The exception contained in the preceding sentence does not apply if the board determines that the individual participated meaningfully in the prior proceeding.

(C) No credit or refund shall be allowed as a result of an election under subdivision (c).

(f) Under procedures prescribed by the Franchise Tax Board, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), the Franchise Tax Board may relieve the individual of that liability.

(g) (1) The Franchise Tax Board may prescribe regulations providing methods for allocation of items other than the methods under paragraph (3) of subdivision (d).

(2) It is the intent of the Legislature that, in construing this section and any other sections that are specifically cross-referenced in this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

(h) (1) Except as provided in paragraph (2), the amendments made by Section 5 of Chapter 931 of the Statutes of 1999 shall apply to any liability for tax arising after October 10, 1999, and any liability for tax arising on or before that date but remaining unpaid as of that date.

(2) The period specified under subparagraph (E) of paragraph (1) of subdivision (b) or subparagraph (B) of paragraph (3) of subdivision (c) does not expire before the date that is four years after the date of the first collection activity after October 10, 1999.

(i) An individual may not be granted relief under this section if a court has revised the tax liability in a proceeding for dissolution of the marriage in accordance with subdivision (b) of Section 19006.

(j) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any procedure or rule prescribed by the Franchise Tax Board pursuant to this section.

(k) This section shall become operative on January 1, 2009.

SEC. 40. Section 30182 of the Revenue and Taxation Code is amended to read:

30182. (a) Except as provided in subdivision (b), every distributor shall file, on or before the 25th day of each month, a report in the form as prescribed by the board, that may include, but not be limited to, electronic media with respect to distributions of cigarettes and purchases of stamps

and meter register units during the preceding month and any other information as the board may require to carry out this part.

(b) Reports shall be authenticated in a form, or pursuant to, methods as may be prescribed by the board.

SEC. 41. Section 30187 of the Revenue and Taxation Code is amended to read:

30187. Every consumer or user subject to the tax resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 from whom the tax has not been collected under Section 30108 shall, on or before the last day of the month following the end of the quarter, file with the board a report of the amount of cigarettes or tobacco products received by him or her in the preceding calendar quarter in that detail as the board may prescribe and in the form as prescribed by the board, which may include, but not be limited to, electronic media, submitting with the report the amount of tax due. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 42. Section 30285 is added to the Revenue and Taxation Code, to read:

30285. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return or report, or both, required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return or report, or both, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return or report, or both, was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months subject to the provisions of this part, but shall not apply to any calendar month that is more than five years from the final date on the board-issued determination, five years from the return or report due date for nonpayment on a return or report, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or report, or both, or an omission of an item from the return or report, or both, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a distributor of cigarettes or tobacco products or who sells or accepts orders for cigarettes or tobacco products to be transported to a consumer in this state from somewhere out of this state to which the understatement is attributable. If neither spouse rendered substantial services as a distributor, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return or report, or both.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 43. Section 32258 is added to the Revenue and Taxation Code, to read:

32258. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months, quarters, or years subject to the provisions of this part, but shall not apply to any calendar month, quarter, or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a manufacturer, wine-grower, importer, or seller of beer or wine, or as manufacturer, distilled spirits manufacturer’s agent, brandy manufacturer, rectifier, wholesaler, or seller of distilled spirits to which the understatement is attributable. If neither spouse rendered substantial services as a manufacturer, wine-grower, importer, or seller of beer or wine, or as manufacturer, distilled spirits manufacturer’s agent, brandy manufacturer, rectifier, wholesaler, or seller of distilled spirits, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 44. Section 38454.5 is added to the Revenue and Taxation Code, to read:

38454.5. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a timber owner who harvests timber or causes it to be harvested, is first to acquire title to felled or downed timber from an exempt person or agency, or without authorization, harvests or causes to be harvested timber owned by another to which the understatement is attributable. If neither spouse rendered substantial services as a timber owner, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 45. Section 40105 is added to the Revenue and Taxation Code, to read:

40105. (a) Under regulations prescribed by the board, if:

(1) A surcharge liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of surcharge liability is attributable to one spouse; or any amount of the surcharge reported on a return was unpaid and the nonpayment of the reported surcharge liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in surcharge attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the surcharge (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the surcharge.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as an electric utility making sales of electrical energy or as a consumer of electrical energy to which the understatement is attributable. If neither spouse rendered substantial services as an electric utility or a consumer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid surcharge or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same

responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 46. Section 41030 of the Revenue and Taxation Code is amended to read:

41030. The Department of General Services shall determine annually, on or before October 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The surcharge rate shall be determined by dividing the costs (including incremental costs) the Department of General Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services to which the surcharge will apply for the period of January 1 to December 31 of the next succeeding calendar year, but in no event shall such surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

SEC. 47. Section 41031 of the Revenue and Taxation Code is amended to read:

41031. The Department of General Services shall make its determination of such surcharge rate each year no later than October 1 and shall notify the board of the new rate, which shall be fixed by the board to be effective with respect to charges made for intrastate telephone communication services on or after January 1 of the next succeeding calendar year.

SEC. 48. Section 41032 of the Revenue and Taxation Code is amended to read:

41032. Immediately upon notification by the Department of General Services and fixing the surcharge rate, the board shall each year no later than November 15 publish in its minutes the new rate, and it shall notify by mail every service supplier registered with it of the new rate.

SEC. 49. Section 41099 is added to the Revenue and Taxation Code, to read:

41099. (a) Under regulations prescribed by the board, if:

(1) A surcharge liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of surcharge liability is attributable to one spouse; or any amount of the surcharge reported on a return was unpaid and the nonpayment of the reported surcharge liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in surcharge attributable

to that understatement or nonpayment, then the other spouse shall be relieved of liability for the surcharge (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the surcharge.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months, quarters, or years subject to the provisions of this part, but shall not apply to any calendar month, quarter, or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a service supplier of intrastate telephone communications services to service users or as a user of intrastate telephone communication services to which the understatement is attributable. If neither spouse rendered substantial services as a service supplier or as a service user, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid surcharge or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 50. Section 43159.1 is added to the Revenue and Taxation Code, to read:

43159.1. (a) Under regulations prescribed by the board, except for a fee imposed pursuant to Section 105310 of the Health and Safety Code, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one

spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months or years subject to the provisions of this part, but shall not apply to any calendar month or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a taxpayer with respect to the taxes administered under this part to which the understatement is attributable. If neither spouse rendered substantial services as a taxpayer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 51. Section 43159.2 is added to the Revenue and Taxation Code, to read:

43159.2. (a) Under regulations prescribed by the board, with respect to a fee imposed pursuant to Section 105310 of the Health and Safety Code, if:

(1) A fee liability due on a notice of determination or other billing document for collection of the fee under this part was unpaid and the nonpayment of the fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the fee attributable to that nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar years subject to the provisions of this part, but shall not apply to any calendar year that is more than five years from the final date on the board-issued determination or other similar billing document for collection of the fee, five years from the due date for payment on the billing, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to pay a notice of determination or similar billing document for collection of the fee, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a feepayer with respect to a fee imposed under Section 105310 of the Health and Safety Code to which the nonpayment is attributable. If neither spouse rendered substantial services as a feepayer, then the attribution of the nonpayment shall be treated as community property.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 52. Section 45158 is added to the Revenue and Taxation Code, to read:

45158. (a) Under regulations prescribed by the board, if:

(1) A fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of fee liability is attributable to one spouse; or any amount of the fee reported on a return was unpaid and the nonpayment of the reported fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as an operator of a facility for disposal of solid waste to which the understatement is attributable. If neither spouse rendered substantial services as an operator, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 53. Section 46159 is added to the Revenue and Taxation Code, to read:

46159. (a) Under regulations prescribed by the board, if:

(1) A fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of the fee liability is attributable to one spouse; or any amount of the fee reported on a return was unpaid and the nonpayment of the reported fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months subject to the provisions of this part, but shall not apply to any calendar month that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as an operator of a marine terminal, a pipeline, or a refinery engaged in activities subject to fees under this part to which the understatement is attributable. If neither spouse rendered substantial services as an operator, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 54. Section 50112.6 is added to the Revenue and Taxation Code, to read:

50112.6. (a) Under regulations prescribed by the board, if:

(1) A fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of the fee liability is attributable to one spouse; or any amount of the fee reported on a return was unpaid and the nonpayment of the reported fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as an owner of an underground storage tank containing petroleum that is subject to fees

imposed by this part to which the understatement is attributable. If neither spouse rendered substantial services as an owner, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 55. Section 55045.1 is added to the Revenue and Taxation Code, to read:

55045.1. (a) Under regulations prescribed by the board, if:

(1) A tax or fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax or fee liability is attributable to one spouse; or any amount of the tax or fee reported on a return was unpaid and the nonpayment of the reported tax or fee liability is attributable to one spouse, or any amount of the fee due on a notice of determination or similar billing document used for collection of the fee was unpaid and the nonpayment of the fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the tax or fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the tax or fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax or fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months, quarters, or years subject to the provisions of this part, but shall not apply to any calendar month, quarter, or year that is more than five years from the final date on the board-issued determination or similar billing document for collection of the fee, five years from the return due date for nonpayment on a return,

or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a taxpayer or feepayer engaged in an activity or transaction that is subject to a tax or fee administered under this part to which the understatement or nonpayment is attributable. If neither spouse rendered substantial services as a taxpayer or feepayer, then the attribution of applicable items of understatement or nonpayment shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 56. Section 60210.5 is added to the Revenue and Taxation Code, to read:

60210.5. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months or quarters subject to the provisions of this part, but shall not apply to any calendar month or quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by *res judicata*, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a supplier entering, removing, or selling taxable diesel fuel, an interstate user, an exempt bus operator, or a highway vehicle operator using taxable diesel fuel to which the understatement is attributable. If neither spouse rendered substantial services as a supplier, interstate user, exempt bus operator, or highway vehicle operator, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 57. Section 60653 of the Revenue and Taxation Code is amended to read:

60653. The Controller shall make the transfers to the Highway Users Tax Account in the Transportation Tax Fund pursuant to Section 60652 at the same time as the transfers of moneys received under the Motor Vehicle Fuel Tax Law are made.

SEC. 58. (a) The amendments made to Section 18533 of the Revenue and Taxation Code by Section 38 of this act shall apply to requests for relief filed on or after January 1, 2008, and before January 1, 2009.

(b) The amendments made to Section 18533 of the Revenue and Taxation Code by Section 39 of this act shall apply to requests for relief filed on or after January 1, 2009.

SEC. 59. The amendments made to Section 41031 of the Revenue and Taxation Code by Section 47 of this act shall apply as follows: The surcharge rate determined by the Department of General Services and fixed by the State Board of Equalization that would otherwise be effective with respect to charges made for intrastate telephone communication services for the period beginning on November 1, 2007, through October 31, 2008, inclusive, shall instead apply to charges made for intrastate telephone communication services for the period beginning on November 1, 2007, through December 31, 2008, inclusive.

SEC. 60. The Legislature finds and declares that the enactment of this act and the retroactive application provided by Sections 33, 35, 37, 42 to 45, inclusive, and 49 to 56, inclusive, of this act are necessary for the public purpose of providing equitable relief to innocent spouses or registered domestic partners who are liable for a tax or fee, even though the spouse or registered domestic partner did not know of, and had no reason to know of, any understatement or nonpayment of the tax fee, and by ensuring that the collection of a tax or fee liability is fair and correct.

SEC. 61. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.