

Assembly Bill No. 3079

Passed the Assembly August 12, 2008

Chief Clerk of the Assembly

Passed the Senate July 14, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 64.5 to the Labor Code, and to amend Sections 7342, 7470, and 60135 of, to amend the heading of Article 3 (commencing with Section 7470) of Chapter 4 of Part 2 of Division 2 of, to add Sections 6487.06, 7652.8, and 60204.6 to, and to repeal Section 7076.5 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 3079, Committee on Revenue and Taxation. Taxation: State Board of Equalization: administration.

(1) The State Board of Equalization is authorized to enter into agreements for the reciprocal exchange of information or for release of information, including personal or confidential information, with state agencies, including providing information to the Department of Industrial Relations regarding the sales and use tax and use fuel tax programs.

This bill would authorize the Department of Industrial Relations to transmit to the State Board of Equalization, specified information in its records to assist the State Board of Equalization in determining compliance with the Sales and Use Tax Law, as provided.

(2) 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 provides for an 8-year statute of limitations for the collection of use taxes that are not reported under that law. Existing law provides for a 3-year statute of limitations in the case of an unregistered out-of-state retailer that voluntarily registers with the State Board of Equalization, if a determination is made that the failure to report and pay the tax was due to reasonable cause.

Prior to December 31, 2007, the statute of limitations for the collection of unreported use taxes on specified purchases by a qualified purchaser was 3 years if a determination was made that the failure to report and pay the tax was due to reasonable cause. That law also allowed the qualified purchaser to file a statement under penalty of perjury, requesting relief from penalties.

This bill would reinstate the 3-year statute of limitations for reasonable cause, including allowing a taxpayer to file a statement, under penalty of perjury, requesting relief from penalties imposed.

(3) The Sales and Use Tax Law, until January 1, 2009, provides for a managed audit program and allows a taxpayer to participate in the program if that taxpayer meets certain criteria.

This bill would repeal the termination date of the managed audit program, thereby extending the managed audit program indefinitely.

(4) The Diesel Fuel Tax Law and the Motor Vehicle Fuel Tax Law generally impose a tax at specified rates, when fuel is removed from a refinery or terminal or imported into this state. Pipeline and vessel operators are required to obtain a license from the State Board of Equalization and to file reports with the board regarding motor vehicle fuel and diesel fuel carried by their vessels and pipelines. Train operators are required to obtain a license or permit from the State Board of Equalization for the purpose of reporting the fuel purchased under an exemption certificate for use in their trains.

This bill would require train operators that carry motor vehicle fuel, alcohol, aircraft jet fuel, and diesel fuel to obtain a license from the State Board of Equalization and to file reports with the board regarding those fuels carried by their trains.

(5) This bill, by allowing a taxpayer to file a request for relief under penalty of perjury, would create a new crime and thereby would impose a state-mandated local program.

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

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

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

SECTION 1. Section 64.5 is added to the Labor Code, to read:

64.5. When requested by the State Board of Equalization, the department may permit any duly authorized representative of that agency to transmit to the State Board of Equalization information available in the department's records that indicates a retail

establishment is operating without a seller's permit required by the State Board of Equalization, to assist the State Board of Equalization in determining compliance with the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code).

SEC. 2. Section 6487.06 is added to the Revenue and Taxation Code, to read:

6487.06. (a) Notwithstanding Section 6487, the period during which a deficiency determination may be mailed to a qualifying purchaser is limited to three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(b) For purposes of this section, a "qualifying purchaser" is a person that voluntarily files an individual use tax return for tangible personal property that is purchased from a retailer outside of this state for storage, use, or other consumption in this state, and that meets all of the following conditions:

(1) The purchaser resides or is located within this state and has not previously done any of the following:

(A) Registered with the State Board of Equalization.

(B) Filed an individual use tax return with the State Board of Equalization.

(C) Reported an amount on his or her individual California income tax return.

(2) The purchaser is not engaged in business in this state as a retailer, as defined in Section 6015.

(3) The purchaser has not been contacted by the State Board of Equalization regarding failure to report the use tax imposed by Section 6202.

(4) The State Board of Equalization has made a determination that the purchaser's failure to file an individual use tax return or to otherwise report or pay the use tax imposed by Section 6202 was due to reasonable cause and was not caused by reason of negligence, intentional disregard of the law, or by an intent to evade the taxes imposed by this part.

(c) If the State Board of Equalization makes a determination that the purchaser's failure to timely report or remit the taxes imposed by this part is due to reasonable cause or due to circumstances beyond the purchaser's control, the purchaser may be relieved of any penalties imposed by this part. Any purchaser

seeking relief from penalties imposed by this part shall file a statement, signed under penalty of perjury, setting forth the facts that form the basis for the claim for relief.

(d) This section shall not apply to purchases of vehicles, vessels, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5.

SEC. 3. Section 7076.5 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 7342 of the Revenue and Taxation Code is amended to read:

7342. "Train operator" includes any person that owns, operates, or controls a train and is licensed as a railroad by a state or federal agency.

SEC. 5. The heading of Article 3 (commencing with Section 7470) of Chapter 4 of Part 2 of Division 2 of the Revenue and Taxation Code is amended to read:

Article 3. License for Pipeline Operator, Train Operator, and Vessel Operator

SEC. 6. Section 7470 of the Revenue and Taxation Code is amended to read:

7470. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. In addition, every train operator that transports motor vehicle fuel, alcohol, or aircraft jet fuel into, out of, or within this state shall obtain a license from the board on forms prescribed by the board. A pipeline operator license, a train operator license, or a vessel operator license shall be issued only to a person who is a pipeline operator, a train operator, or a vessel operator as defined in Sections 7331, 7342, and 7344. It is unlawful for a person to act as a pipeline operator or a vessel operator without first securing a license. It is unlawful for a train operator to transport motor vehicle fuel, alcohol, or aircraft jet fuel into, out of, or within this state on or after January 1, 2009, without first securing a license under this section or Section 7403.1.

SEC. 7. Section 7652.8 is added to the Revenue and Taxation Code, to read:

7652.8. Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include,

but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(a) The amount of motor vehicle fuel, alcohol, and aircraft jet fuel delivered into, out of, or within this state.

(b) The location where the motor vehicle fuel, alcohol, or aircraft jet fuel was delivered.

(c) The date of delivery.

(d) Any other information required by the board for the proper administration of this part. The train operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 8. Section 60135 of the Revenue and Taxation Code is amended to read:

60135. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. In addition, every train operator that transports diesel fuel into, out of, or within this state shall obtain a license from the board on forms prescribed by the board. A train operator license, pipeline operator license, or a vessel operator license shall be issued only to a person who is a train operator, pipeline operator, or a vessel operator as defined in Sections 60041, 60047.1, and 60049.1. It is unlawful for a person to act as a pipeline operator or a vessel operator without first securing a license. It is unlawful for a train operator to transport diesel fuel into, out of, or within this state on or after January 1, 2009, without first securing a license under this section or a permit under Section 60106.1.

SEC. 9. Section 60204.6 is added to the Revenue and Taxation Code, to read:

60204.6. Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(a) The amount of diesel fuel delivered into, out of, or within this state.

(b) The location where the diesel fuel was delivered.

(c) The date of delivery.

(d) Any other information required by the board for the proper administration of this part. The train operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

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

Approved _____, 2008

Governor