

Assembly Bill No. 2

Passed the Assembly December 18, 2008

Chief Clerk of the Assembly

Passed the Senate December 18, 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 Sections 6051.9, 6201.9, 6357.6, 7374, 17044, 19136.8, and 60709 to, to add Part 21 (commencing with Section 42001) to, to repeal Chapter 2 (commencing with Section 7360) of Part 2 of, and to repeal Part 31 (commencing with Section 60001) of, Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2, Evans. Sales, use, income, fuel, and oil severance taxes.

The Motor Vehicle Fuel License Tax Law imposes a tax of \$0.18 per gallon of fuel and requires, if the federal fuel tax is reduced below the rate of \$0.09 per gallon and federal financial allocations to this state are reduced or eliminated, that the tax rate be increased so that the combined state and federal tax rate per gallon equals \$0.27. The Diesel Fuel Tax Law imposes a tax of \$0.18 upon each gallon of fuel, as provided.

This bill would eliminate those fuel taxes on April 1, 2009.

Existing law imposes state sales and use taxes on retailers and on the storage, use, or other consumption of tangible personal property in this state at the combined rate of 6 $\frac{1}{4}$ % of the gross receipts from the retail sale of tangible personal property in this state, and of the sales price of tangible personal property purchased from any retailer for storage, use, or other consumption in this state.

This bill would, from February 1, 2009, impose an additional sales and use tax rate of $\frac{1}{2}$ of 1%. This bill would also provide an exemption from sales and use taxes for the sale or use of motor vehicle fuel, as provided.

The Personal Income Tax Law imposes taxes based upon taxable income. This bill would, for taxable years beginning on or after January 1, 2009, impose an additional tax at a specified rate of tax liability, as specified.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose an oil severance tax, on and after July 1, 2009, upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at a specified rate of the gross value of each barrel of oil severed. The tax would be administered by the Department of Conservation and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the department to deposit all tax revenues, penalties, and interest collected pursuant to these provisions into the General Fund.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

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

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

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 1, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 1, 2008, pursuant to the California Constitution.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 6051.9 is added to the Revenue and Taxation Code, to read:

6051.9. In addition to the taxes imposed by Section 6051 and any other provision of this part, for the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of 0.50 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state, on and after February 1, 2009.

SEC. 2. Section 6201.9 is added to the Revenue and Taxation Code, to read:

6201.9. In addition to the taxes imposed by Section 6201 and any other provision of this part, an excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state, at the rate of 0.50 percent of the sales price of the property, on and after February 1, 2009.

SEC. 3. Section 6357.6 is added to the Revenue and Taxation Code, to read:

6357.6. (a) On and after April 1, 2009, there are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage of, use, or other consumption in this state of, motor vehicle fuel.

(b) For purposes of this section, “motor vehicle fuel” means gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel.

(c) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) The exemption established by this section shall not apply with respect to any tax levied pursuant to either Section 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant to Section 35 of Article XIII of the California Constitution.

SEC. 4. Section 7374 is added to the Revenue and Taxation Code, to read:

7374. This chapter shall become inoperative on April 1, 2009, and, as of January 1, 2010, is repealed.

SEC. 5. Section 17044 is added to the Revenue and Taxation Code, to read:

17044. (a) For each taxable year beginning on or after January 1, 2009, in addition to any other taxes imposed by this part, an additional tax shall be imposed at the rate of 2.5 percent on the total tax for the taxable year.

(b) (1) For purposes of this section, “total tax” means the tax imposed by this part, less any credit allowed under Chapter 2 (commencing with Section 17041), other than the Child and Dependent Care Credit allowed under Section 17052.6.

(2) For purposes of applying Part 10.2 (commencing with Section 18401) of Division 2, the tax imposed under this section shall be treated as if imposed under Section 17041.

(c) The tax imposed under this section shall not be further reduced by any credits otherwise allowable under Chapter 2 (commencing with Section 17041), other than the Child and Dependent Care Credit allowed under Section 17052.6.

(d) Notwithstanding subdivision (a), for each taxable year beginning on or after January 1, 2010, the 2.5 percent rate specified in subdivision (a) shall be adjusted, as follows:

(1) The following reports shall be made to the Director of the Department of Finance pursuant to a time schedule prescribed by the director:

(A) The Franchise Tax Board shall report the increase in revenues for the 2009 calendar year, and each calendar year thereafter, attributable to Section 17044, as added by the act adding this section.

(B) The State Board of Equalization shall report the decrease in revenues for the 2009 calendar year, and each calendar year thereafter, attributable to Section 6357.6, as added by the act adding this section, and attributable to the repeal of Chapter 2 (commencing with Section 7360) by Part 2 of, and Part 31 (commencing with Section 60001) of, Division 2 by the act adding this section, and the increase in revenues for the 2009 calendar year, and each calendar year thereafter, attributable to Sections 6051.9 and 6201.9, as added by the act adding this section.

(C) The Department of Conservation shall report the increase in revenues for the 2009 calendar year, and each calendar year thereafter, attributable to Part 21 (commencing with Section 42001) of Division 2, as added by the act adding this section.

(2) (A) Based on the information reported pursuant to paragraph (1), the Director of the Department of Finance shall, for the 2010 calendar year and each calendar year thereafter, adjust the 2.5 percent rate specified in subdivision (a) in such a manner so that the act adding this section results in no net gain or loss in state tax revenues for all calendar years. The department’s adjustment shall

take into account any actual net revenue gain or loss in the year preceding the year of adjustment, as well as its estimate of the projected revenue changes in the year following the year of adjustment that are attributable to the act adding this section. The intent of this subdivision is to ensure that the act adding this section does not produce a net revenue gain in the state revenues.

(B) In the event the adjustment pursuant to subparagraph (A) is insufficient to result in revenue neutrality for any calendar year beginning on or after January 1, 2010, the Department of Finance shall then also adjust for that calendar year the 9.9 percent rate specified in Section 42003 in order to provide revenue neutrality for each calendar year.

(e) The tax withholding tables prescribed pursuant to Section 18663 shall not be adjusted until the calendar year commencing on January 1, 2010, to take into account the additional tax imposed by this section.

SEC. 6. Section 19136.8 is added to the Revenue and Taxation Code, to read:

19136.8. (a) No additions to tax shall be made under Section 19136 or 19142 with respect to any underpayment of an installment for a taxable year, to the extent that the underpayment was created or increased by Section 17044, as added by the act adding this section.

(b) The Franchise Tax Board shall implement this section in a reasonable manner.

SEC. 7. Part 21 (commencing with Section 42001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. OIL SEVERANCE TAX LAW

42001. This part shall be known and may be cited as the Oil Severance Tax Law.

42002. For purposes of this part, the following definitions shall apply:

(a) "Barrel of oil" means 42 United States gallons of 231 cubic inches per gallon computed at a temperature of 60 degrees Fahrenheit.

(b) "Department" means the Department of Conservation.

(c) "Gross value" means the sale price at the mouth of the well in the case of oil, including any bonus, premium, or other thing of

value paid for the oil. If there is no sale at the time of severance, “gross value” means the sale price when the oil is sold, including any bonus, premium, or other thing of value paid for the oil. If oil is exchanged for something other than cash, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the department shall determine the value of the oil subject to the tax based on the cash price paid to producers for like quality oil in the vicinity of the well.

(d) “Oil” means petroleum, or other crude oil, condensate, casing head gasoline, or other mineral oil that is mined, produced, or withdrawn from below the surface of the soil or water in this state.

(e) “Producer” means any person or entity that takes oil from the earth or water in this state in any manner; any person that owns, controls, manages, or leases any oil well in the earth or water of this state; any person that produces or extracts in any manner any oil by taking it from the earth or water in this state; any person that acquires the severed oil from a person or agency exempt from property taxation under the United States Constitution or other laws of the United States or under the California Constitution or other laws of the State of California; and any person that owns an interest, including a royalty interest, in oil or its value, whether the oil is produced by the person owning the interest or by another on the person’s behalf by lease, contract, or other arrangement.

(f) “Production” means the total gross amount of oil produced, including the gross amount attributable to a royalty or other interest.

(g) “Severed” or “severing” means the extraction or withdrawing from below the surface of the earth or water of any oil, regardless of whether the extraction or withdrawal shall be by natural flow, mechanical flow, forced flow, pumping, or any other means employed to get the oil from below the surface of the earth or water, and shall include the extraction or withdrawal by any means whatsoever of oil upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface.

(h) “Stripper well” means a well that has been certified by the department as an oil well incapable of producing an average of more than 10 barrels of oil per day during the entire taxable month. Once a well has been certified as a stripper well, that stripper well shall remain certified as a stripper well until the well produces an

average of more than 10 barrels of oil per day during an entire taxable month.

42003. (a) On and after July 1, 2009, for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, a tax is hereby imposed upon all producers at the rate of 9.9 percent of the gross value of each barrel of oil severed. The tax shall be applied equally to all portions of the gross value of each barrel of oil severed.

(b) Notwithstanding subdivision (a), for each calendar year beginning on and after January 1, 2010, the 9.9 percent rate specified in subdivision (a) shall be subject to adjustment in accordance with subdivision (d) of Section 17044.

42004. Except as otherwise provided in this part, the tax shall be upon the entire production in this state, regardless of the place of sale or to whom sold or by whom used, or the fact that the delivery may be made to points outside the state.

42005. The tax imposed by this part shall be in addition to any ad valorem taxes imposed by the state, or any of its political subdivisions, or any local business license taxes that may be incurred as a privilege of severing oil from the earth or water or doing business in that locality. There shall be no exemption from the payment of an ad valorem tax related to equipment, material, or property by reason of the payment of the gross severance tax pursuant to this part.

42006. Two or more producers that are corporations and are owned or controlled directly or indirectly, as defined in Section 25105, by the same interests shall be considered as a single producer for purposes of application of the tax prescribed in this part.

42007. (a) There shall be exempted from the imposition of the oil severance tax imposed pursuant to this part oil produced by a stripper well in which the average value of oil as of January 1 of the prior year is less than thirty dollars (\$30) per barrel.

(b) For oil produced in this state from a well that qualifies under Section 3251 of the Public Resources Code or which has been inactive for a period of at least the preceding five consecutive years, the imposition of the oil severance tax shall be reduced to zero for a period of 10 years.

42007.5. There shall be exempted from the imposition of the oil severance tax imposed pursuant to this part all oil owned or

produced by the state and any political subdivision's (including any local public entity (as defined by Section 900.4 of the Government Code)) proprietary share of oil produced under any unit, cooperative, or other pooling agreement.

42008. The tax imposed by this part is due and payable to the department quarterly on or before the last day of the month next succeeding each calendar quarter.

42009. (a) Any person that fails to pay any tax within the time required shall pay, in addition to the amount of tax owed, plus interest at the rate of 1 ½ percent per month, or fraction thereof, computed from the delinquent date of the assessment until and including the date of payment.

(b) Every payment on a delinquent tax owed pursuant to this part shall be applied as follows:

- (1) First, to any interest due on the tax.
- (2) Second, to any penalty imposed by this part.
- (3) Third to the balance, if any, of the tax due.

42010. On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the department in the form as the department may prescribe.

42011. The department shall deposit all tax revenues, penalties, and interest collected pursuant to this part in the General Fund.

42012. The department may prescribe those forms and reporting requirements as necessary to implement the tax, including, but not limited to, information regarding the location of the well by county, the gross amount of oil produced, the quantity sold and the selling price, the prevailing market price of oil, and the amount of tax due.

42013. The department shall administer and collect the tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2). For purposes of this part, the reference in the Fee Collection Procedures Law to "fee" shall include the tax imposed by this part, to "feepayer" shall include a person required to pay the oil severance tax, and to "board" shall mean the Department of Conservation.

42014. The department may prescribe, adopt, and enforce emergency regulations relating to the administration and enforcement of this part. Any emergency regulations prescribed,

adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law, and shall remain in effect until revised by the director.

42015. If any provision of this part or the application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the part which can be given effect without the invalid provision or application, and to this end, the provisions of this part are severable.

SEC. 8. Section 60709 is added to the Revenue and Taxation Code, to read:

60709. This part shall become inoperative on April 1, 2009, and, as of January 1, 2010, is repealed.

SEC. 9. Notwithstanding any other law, any action challenging, or otherwise contesting the validity of, any provision of this act may be brought in a court with appropriate jurisdiction only within 90 days from the date that this act takes effect.

SEC. 10. If Sections 1, 2, 5, or 7 of this act, or the application thereof, is held invalid in a court of competent jurisdiction, the remaining provisions of this act are not severable and shall not be given, or otherwise have, any force or effect.

SEC. 11. This act addresses the fiscal emergency declared by the Governor by proclamation on December 1, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 12. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

Approved _____, 2008

Governor