

AMENDED IN ASSEMBLY JUNE 24, 2009

**SENATE BILL**

**No. 76**

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**Introduced by Committee on Budget and Fiscal Review**

January 20, 2009

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~~An act relating to the Budget Act of 2009.~~ *An act to amend Sections 17276, 17276.9, 17276.10, 23663, 24416, 24416.9, 24416.10, 30016, 30104, 30108, 30165.1, 30181, and 30436 of, to add Article 2.5 (commencing with Section 30130.3) to Chapter 2 of Part 13 of, and to add Part 21 (commencing with Section 42001) to, Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 76, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2009.~~ *Income taxation: NOLs: credits: cigarettes and other tobacco products tax: oil severance tax.*

*(1) Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law allows net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding 2 taxable years.*

*This bill would delete those net operating loss carryback provisions.*

*(2) The Corporation Tax Law provides for taxable years beginning on or after July 1, 2008, that any credit that is an eligible credit, as defined, may be assigned to any eligible assignee, as defined.*

*This bill would provide that the credits may be assigned only on an original return that is filed on or before the effective date of this bill.*

*(3) The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) and the California Families and Children Act of 1998 (Proposition 10). That law imposes a tax upon the distribution of tobacco products at a tax rate which is equivalent to the combined rate of all taxes imposed on cigarettes, which is deposited in specified accounts.*

*This bill would, commencing on October 1, 2009, impose an additional excise tax on the distribution of cigarettes at the rate of \$0.075 for each cigarette distributed, which would, under Proposition 99, impose an equivalent tax rate on the distribution of tobacco products. This bill would also impose a tax upon the distribution of tobacco products at the same equivalent tax rate. The bill would impose a floor stock tax and require a dealer or wholesaler to file a return with the State Board of Equalization showing the number of cigarettes in his or her possession or under his or her control on that date, as specified, and to remit the tax to the board. The revenues collected from the additional tax, except as specified, would be deposited in the General Fund.*

*Because this bill would impose new requirements under the Cigarette and Tobacco Products Law, the violation of which is a crime, it would impose a state-mandated local program.*

*(4) 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 October 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 the rate of 9.9% 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 scope of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.*

(5) *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.*

(6) *This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of <sup>2</sup>/<sub>3</sub> of the membership of each house of the Legislature.*

(7) *This bill would take effect immediately as a tax levy.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.~~

Vote: ~~majority~~<sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: ~~no~~yes. State-mandated local program: ~~no~~yes.

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

1 SECTION 1. Section 17276 of the Revenue and Taxation Code  
2 is amended to read:

3 17276. Except as provided in Sections 17276.1, 17276.2,  
4 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided  
5 by Section 172 of the Internal Revenue Code, relating to a net  
6 operating loss deduction, shall be modified as follows:

7 (a) (1) Net operating losses attributable to taxable years  
8 beginning before January 1, 1987, shall not be allowed.

9 (2) A net operating loss shall not be carried forward to any  
10 taxable year beginning before January 1, 1987.

11 (b) (1) Except as provided in paragraphs (2) and (3), the  
12 provisions of Section 172(b)(2) of the Internal Revenue Code,  
13 relating to the amount of carryovers, shall be modified so that the  
14 applicable percentage of the entire amount of the net operating  
15 loss for any taxable year shall be eligible for carryover to any  
16 subsequent taxable year. For purposes of this subdivision, the  
17 applicable percentage shall be:

18 (A) Fifty percent for any taxable year beginning before January  
19 1, 2000.

20 (B) Fifty-five percent for any taxable year beginning on or after  
21 January 1, 2000, and before January 1, 2002.

1 (C) Sixty percent for any taxable year beginning on or after  
2 January 1, 2002, and before January 1, 2004.

3 (D) One hundred percent for any taxable year beginning on or  
4 after January 1, 2004.

5 (2) In the case of a taxpayer who has a net operating loss in any  
6 taxable year beginning on or after January 1, 1994, and who  
7 operates a new business during that taxable year, each of the  
8 following shall apply to each loss incurred during the first three  
9 taxable years of operating the new business:

10 (A) If the net operating loss is equal to or less than the net loss  
11 from the new business, 100 percent of the net operating loss shall  
12 be carried forward as provided in subdivision (d).

13 (B) If the net operating loss is greater than the net loss from the  
14 new business, the net operating loss shall be carried over as  
15 follows:

16 (i) With respect to an amount equal to the net loss from the new  
17 business, 100 percent of that amount shall be carried forward as  
18 provided in subdivision (d).

19 (ii) With respect to the portion of the net operating loss that  
20 exceeds the net loss from the new business, the applicable  
21 percentage of that amount shall be carried forward as provided in  
22 subdivision (d).

23 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
24 Code, the amount described in clause (ii) of subparagraph (B) shall  
25 be absorbed before the amount described in clause (i) of  
26 subparagraph (B).

27 (3) In the case of a taxpayer who has a net operating loss in any  
28 taxable year beginning on or after January 1, 1994, and who  
29 operates an eligible small business during that taxable year, each  
30 of the following shall apply:

31 (A) If the net operating loss is equal to or less than the net loss  
32 from the eligible small business, 100 percent of the net operating  
33 loss shall be carried forward to the taxable years specified in  
34 subdivision (d).

35 (B) If the net operating loss is greater than the net loss from the  
36 eligible small business, the net operating loss shall be carried over  
37 as follows:

38 (i) With respect to an amount equal to the net loss from the  
39 eligible small business, 100 percent of that amount shall be carried  
40 forward as provided in subdivision (d).

1 (ii) With respect to that portion of the net operating loss that  
2 exceeds the net loss from the eligible small business, the applicable  
3 percentage of that amount shall be carried forward as provided in  
4 subdivision (d).

5 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
6 Code, the amount described in clause (ii) of subparagraph (B) shall  
7 be absorbed before the amount described in clause (i) of  
8 subparagraph (B).

9 (4) In the case of a taxpayer who has a net operating loss in a  
10 taxable year beginning on or after January 1, 1994, and who  
11 operates a business that qualifies as both a new business and an  
12 eligible small business under this section, that business shall be  
13 treated as a new business for the first three taxable years of the  
14 new business.

15 (5) In the case of a taxpayer who has a net operating loss in a  
16 taxable year beginning on or after January 1, 1994, and who  
17 operates more than one business, and more than one of those  
18 businesses qualifies as either a new business or an eligible small  
19 business under this section, paragraph (2) shall be applied first,  
20 except that if there is any remaining portion of the net operating  
21 loss after application of clause (i) of subparagraph (B) of that  
22 paragraph, paragraph (3) shall be applied to the remaining portion  
23 of the net operating loss as though that remaining portion of the  
24 net operating loss constituted the entire net operating loss.

25 (6) For purposes of this section, the term “net loss” means the  
26 amount of net loss after application of Sections 465 and 469 of the  
27 Internal Revenue Code.

28 ~~(e) Section 172(b)(1) of the Internal Revenue Code, relating to~~  
29 ~~net operating loss carrybacks and carryovers and the years to which~~  
30 ~~the loss may be carried, is modified as follows:~~

31 ~~(1)~~

32 ~~(c) Net operating loss carrybacks shall not be allowed for any~~  
33 ~~net operating losses attributable to taxable years beginning before~~  
34 ~~January 1, 2011.~~

35 ~~(2) A net operating loss attributable to taxable years beginning~~  
36 ~~on or after January 1, 2011, shall be a net operating loss carryback~~  
37 ~~to each of the two taxable years preceding the taxable year of the~~  
38 ~~loss in lieu of the number of years provided therein.~~

39 ~~(A) For a net operating loss attributable to a taxable year~~  
40 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~

1 the amount of carryback to any taxable year shall not exceed 50  
2 percent of the net operating loss.

3 ~~(B) For a net operating loss attributable to a taxable year~~  
4 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~  
5 ~~the amount of carryback to any taxable year shall not exceed 75~~  
6 ~~percent of the net operating loss.~~

7 ~~(C) For a net operating loss attributable to a taxable year~~  
8 ~~beginning on or after January 1, 2013, the amount of carryback to~~  
9 ~~any taxable year shall not exceed 100 percent of the net operating~~  
10 ~~loss.~~

11 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~  
12 ~~Internal Revenue Code, relating to special rules for REITs, and~~  
13 ~~Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,~~  
14 ~~relating to corporate equity reduction interest loss, shall apply as~~  
15 ~~provided.~~

16 ~~(4) A net operating loss carryback shall not be carried back to~~  
17 ~~any taxable year beginning before January 1, 2009.~~

18 (d) (1) (A) For a net operating loss for any taxable year  
19 beginning on or after January 1, 1987, and before January 1, 2000,  
20 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to  
21 years to which net operating losses may be carried, is modified to  
22 substitute “five taxable years” in lieu of “20 taxable years” except  
23 as otherwise provided in paragraphs (2) and (3).

24 (B) For a net operating loss for any taxable year beginning on  
25 or after January 1, 2000, and before January 1, 2008, Section  
26 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years  
27 to which net operating losses may be carried, is modified to  
28 substitute “10 taxable years” in lieu of “20 taxable years.”

29 (2) For any taxable year beginning before January 1, 2000, in  
30 the case of a “new business,” the “five taxable years” in paragraph  
31 (1) shall be modified to read as follows:

32 (A) “Eight taxable years” for a net operating loss attributable  
33 to the first taxable year of that new business.

34 (B) “Seven taxable years” for a net operating loss attributable  
35 to the second taxable year of that new business.

36 (C) “Six taxable years” for a net operating loss attributable to  
37 the third taxable year of that new business.

38 (3) For any carryover of a net operating loss for which a  
39 deduction is denied by Section 17276.3, the carryover period  
40 specified in this subdivision shall be extended as follows:

1 (A) By one year for a net operating loss attributable to taxable  
2 years beginning in 1991.

3 (B) By two years for a net operating loss attributable to taxable  
4 years beginning prior to January 1, 1991.

5 (4) The net operating loss attributable to taxable years beginning  
6 on or after January 1, 1987, and before January 1, 1994, shall be  
7 a net operating loss carryover to each of the 10 taxable years  
8 following the year of the loss if it is incurred by a taxpayer that is  
9 under the jurisdiction of the court in a Title 11 or similar case at  
10 any time during the income year. The loss carryover provided in  
11 the preceding sentence shall not apply to any loss incurred after  
12 the date the taxpayer is no longer under the jurisdiction of the court  
13 in a Title 11 or similar case.

14 (e) For purposes of this section:

15 (1) “Eligible small business” means any trade or business that  
16 has gross receipts, less returns and allowances, of less than one  
17 million dollars (\$1,000,000) during the taxable year.

18 (2) Except as provided in subdivision (f), “new business” means  
19 any trade or business activity that is first commenced in this state  
20 on or after January 1, 1994.

21 (3) “Title 11 or similar case” shall have the same meaning as  
22 in Section 368(a)(3) of the Internal Revenue Code.

23 (4) In the case of any trade or business activity conducted by a  
24 partnership or “S” corporation paragraphs (1) and (2) shall be  
25 applied to the partnership or “S” corporation.

26 (f) For purposes of this section, in determining whether a trade  
27 or business activity qualifies as a new business under paragraph  
28 (2) of subdivision (e), the following rules shall apply:

29 (1) In any case where a taxpayer purchases or otherwise acquires  
30 all or any portion of the assets of an existing trade or business  
31 (irrespective of the form of entity) that is doing business in this  
32 state (within the meaning of Section 23101), the trade or business  
33 thereafter conducted by the taxpayer (or any related person) shall  
34 not be treated as a new business if the aggregate fair market value  
35 of the acquired assets (including real, personal, tangible, and  
36 intangible property) used by the taxpayer (or any related person)  
37 in the conduct of its trade or business exceeds 20 percent of the  
38 aggregate fair market value of the total assets of the trade or  
39 business being conducted by the taxpayer (or any related person).  
40 For purposes of this paragraph only, the following rules shall apply:

1 (A) The determination of the relative fair market values of the  
2 acquired assets and the total assets shall be made as of the last day  
3 of the first taxable year in which the taxpayer (or any related  
4 person) first uses any of the acquired trade or business assets in  
5 its business activity.

6 (B) Any acquired assets that constituted property described in  
7 Section 1221(1) of the Internal Revenue Code in the hands of the  
8 transferor shall not be treated as assets acquired from an existing  
9 trade or business, unless those assets also constitute property  
10 described in Section 1221(1) of the Internal Revenue Code in the  
11 hands of the acquiring taxpayer (or related person).

12 (2) In any case where a taxpayer (or any related person) is  
13 engaged in one or more trade or business activities in this state, or  
14 has been engaged in one or more trade or business activities in this  
15 state within the preceding 36 months (“prior trade or business  
16 activity”), and thereafter commences an additional trade or business  
17 activity in this state, the additional trade or business activity shall  
18 only be treated as a new business if the additional trade or business  
19 activity is classified under a different division of the Standard  
20 Industrial Classification (SIC) Manual published by the United  
21 States Office of Management and Budget, 1987 edition, than are  
22 any of the taxpayer’s (or any related person’s) current or prior  
23 trade or business activities.

24 (3) In any case where a taxpayer, including all related persons,  
25 is engaged in trade or business activities wholly outside of this  
26 state and the taxpayer first commences doing business in this state  
27 (within the meaning of Section 23101) after December 31, 1993  
28 (other than by purchase or other acquisition described in paragraph  
29 (1)), the trade or business activity shall be treated as a new business  
30 under paragraph (2) of subdivision (e).

31 (4) In any case where the legal form under which a trade or  
32 business activity is being conducted is changed, the change in form  
33 shall be disregarded and the determination of whether the trade or  
34 business activity is a new business shall be made by treating the  
35 taxpayer as having purchased or otherwise acquired all or any  
36 portion of the assets of an existing trade or business under the rules  
37 of paragraph (1) of this subdivision.

38 (5) “Related person” shall mean any person that is related to  
39 the taxpayer under either Section 267 or 318 of the Internal  
40 Revenue Code.



1 (6) “Acquire” shall include any gift, inheritance, transfer incident  
2 to divorce, or any other transfer, whether or not for consideration.

3 (7) (A) For taxable years beginning on or after January 1, 1997,  
4 the term “new business” shall include any taxpayer that is engaged  
5 in biopharmaceutical activities or other biotechnology activities  
6 that are described in Codes 2833 to 2836, inclusive, of the Standard  
7 Industrial Classification (SIC) Manual published by the United  
8 States Office of Management and Budget, 1987 edition, and as  
9 further amended, and that has not received regulatory approval for  
10 any product from the United States Food and Drug Administration.

11 (B) For purposes of this paragraph:

12 (i) “Biopharmaceutical activities” means those activities that  
13 use organisms or materials derived from organisms, and their  
14 cellular, subcellular, or molecular components, in order to provide  
15 pharmaceutical products for human or animal therapeutics and  
16 diagnostics. Biopharmaceutical activities make use of living  
17 organisms to make commercial products, as opposed to  
18 pharmaceutical activities that make use of chemical compounds  
19 to produce commercial products.

20 (ii) “Other biotechnology activities” means activities consisting  
21 of the application of recombinant DNA technology to produce  
22 commercial products, as well as activities regarding pharmaceutical  
23 delivery systems designed to provide a measure of control over  
24 the rate, duration, and site of pharmaceutical delivery.

25 (g) In computing the modifications under Section 172(d)(2) of  
26 the Internal Revenue Code, relating to capital gains and losses of  
27 taxpayers other than corporations, the exclusion provided by  
28 Section 18152.5 shall not be allowed.

29 (h) Notwithstanding any provisions of this section to the  
30 contrary, a deduction shall be allowed to a “qualified taxpayer” as  
31 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,  
32 and 17276.7.

33 (i) The Franchise Tax Board may prescribe appropriate  
34 regulations to carry out the purposes of this section, including any  
35 regulations necessary to prevent the avoidance of the purposes of  
36 this section through splitups, shell corporations, partnerships, tiered  
37 ownership structures, or otherwise.

38 (j) The Franchise Tax Board may reclassify any net operating  
39 loss carryover determined under either paragraph (2) or (3) of  
40 subdivision (b) as a net operating loss carryover under paragraph

1 (1) of subdivision (b) upon a showing that the reclassification is  
2 necessary to prevent evasion of the purposes of this section.

3 (k) Except as otherwise provided, the amendments made by  
4 Chapter 107 of the Statutes of 2000 shall apply to net operating  
5 losses for taxable years beginning on or after January 1, 2000.

6 *SEC. 2. Section 17276.9 of the Revenue and Taxation Code is*  
7 *amended to read:*

8 17276.9. (a) Notwithstanding Sections 17276, 17276.1,  
9 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and  
10 Section 172 of the Internal Revenue Code, no net operating loss  
11 deduction shall be allowed for any taxable year beginning on or  
12 after January 1, 2008, and before January 1, 2010.

13 (b) For any net operating loss or carryover of a net operating  
14 loss for which a deduction is denied by subdivision (a), the  
15 carryover period under Section 172 of the Internal Revenue Code  
16 shall be extended as follows:

17 (1) By one year, for losses incurred in taxable years beginning  
18 on or after January 1, 2008, and before January 1, 2009.

19 (2) By two years, for losses incurred in taxable years beginning  
20 before January 1, 2008.

21 ~~(e) Notwithstanding subdivision (a), a net operating loss~~  
22 ~~deduction shall be allowed for carryback of a net operating loss~~  
23 ~~attributable to a taxable year beginning on or after January 1, 2011.~~

24 ~~(d)~~

25 (c) The provisions of this section shall not apply to a taxpayer  
26 with net business income of less than five hundred thousand dollars  
27 (\$500,000) for the taxable year. For purposes of this subdivision,  
28 business income means:

29 (1) Income from a trade or business, whether conducted by the  
30 taxpayer or by a passthrough entity owned directly or indirectly  
31 by the taxpayer. For purposes of this paragraph, the term  
32 “passthrough entity” means a partnership or an “S” corporation.

33 (2) Income from rental activity.

34 (3) Income attributable to a farming business.

35 *SEC. 3. Section 17276.10 of the Revenue and Taxation Code*  
36 *is amended to read:*

37 17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4,  
38 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss  
39 attributable to a taxable year beginning on or after January 1, 2008,  
40 shall be a net operating carryover to each of the 20 taxable years

1 following the year of the loss, and a net operating loss attributable  
2 to a taxable year beginning on or after January 1, 2011, shall also  
3 be a net operating loss carryback to each of the two taxable years  
4 preceding the taxable year of loss.

5 *SEC. 4. Section 23663 of the Revenue and Taxation Code is*  
6 *amended to read:*

7 23663. (a) (1) Notwithstanding any other law to the contrary,  
8 for each taxable year beginning on or after July 1, 2008, any credit  
9 allowed to a taxpayer under this chapter that is an “eligible credit  
10 (within the meaning of paragraph (2) of subdivision (b)) may be  
11 assigned by that taxpayer to any “eligible assignee” (within the  
12 meaning of paragraph (3) of subdivision (b)).

13 (2) A credit assigned under paragraph (1) may only be applied  
14 by the eligible assignee against the “tax” of the eligible assignee  
15 in a taxable year beginning on or after January 1, 2010.

16 (3) Except as specifically provided in this section, following an  
17 assignment of any eligible credit under this section, the eligible  
18 assignee shall be treated as if it *was originally-earned allowed* the  
19 assigned credit.

20 (b) For purposes of this section, the following definitions shall  
21 apply:

22 (1) “Affiliated corporation” means a corporation that is a  
23 member of a commonly controlled group as defined in Section  
24 25105.

25 (2) “Eligible credit” ~~shall mean~~ *means either of the following:*

26 (A) Any credit ~~earned allowed~~ *to* by the taxpayer in a taxable  
27 year beginning on or after July 1, 2008, ~~or.~~

28 (B) Any credit ~~earned allowed~~ in any taxable year beginning  
29 before July 1, 2008, that is eligible to be carried forward to the  
30 taxpayer’s first taxable year beginning on or after July 1, 2008,  
31 under the provisions of this part.

32 (3) “Eligible assignee” ~~shall mean~~ *means* any affiliated  
33 corporation that is properly treated as a member of the same  
34 combined reporting group pursuant to Section 25101 or 25110 as  
35 the taxpayer assigning the eligible credit as of:

36 (A) In the case of credits ~~earned allowed~~ in taxable years  
37 beginning before July 1, 2008:

38 (i) June 30, 2008, and

39 (ii) The last day of the taxable year of the assigning taxpayer  
40 in which the eligible credit is assigned.

1 (B) In the case of credits ~~earned~~ *allowed* in taxable years  
2 beginning on or after July 1, 2008:

3 (i) The last day of the first taxable year in which the credit was  
4 allowed to the taxpayer, and

5 (ii) The last day of the taxable year of the assigning taxpayer  
6 in which the eligible credit is assigned.

7 (c) (1) (A) The election to assign any credit under subdivision  
8 (a) shall be irrevocable once made, and shall be made by the  
9 taxpayer allowed that credit on its original return for the taxable  
10 year in which the assignment is made.

11 (B) *A credit may be assigned under subdivision (a) only on an*  
12 *original return for a taxable year beginning on or after July 1,*  
13 *2008, that was filed on or before the effective date of the act adding*  
14 *this subparagraph.*

15 (2) The taxpayer assigning any credit under this section shall  
16 reduce the amount of its unused credit by the face amount of any  
17 credit assigned under this section, and the amount of the assigned  
18 credit shall not be available for application against the assigning  
19 taxpayer's "tax" in any taxable year, nor shall it thereafter be  
20 included in the amount of any credit carryover of the assigning  
21 taxpayer.

22 (3) The eligible assignee of any credit under this section may  
23 apply all or any portion of the assigned credits against the "tax"  
24 (as defined in Section 23036) of the eligible assignee for the taxable  
25 year in which the assignment occurs, or any subsequent taxable  
26 year, subject to any carryover period limitations that apply to the  
27 assigned credit and also subject to the limitation in paragraph (2)  
28 of subdivision (a).

29 (4) In no case may the eligible assignee sell, otherwise transfer,  
30 or thereafter assign the assigned credit to any other taxpayer.

31 (d) (1) No consideration shall be required to be paid by the  
32 eligible assignee to the assigning taxpayer for assignment of any  
33 credit under this section.

34 (2) In the event that any consideration is paid by the eligible  
35 assignee to the assigning taxpayer for the transfer of an eligible  
36 credit under this section, then:

37 (A) No deduction shall be allowed to the eligible assignee under  
38 this part with respect to any amounts so paid, and

39 (B) No amounts so received by the assigning taxpayer shall be  
40 includable in gross income under this part.

1 (e) (1) The Franchise Tax Board shall specify the form and  
2 manner in which the election required under this section shall be  
3 made, as well as any necessary information that shall be required  
4 to be provided by the taxpayer assigning the credit to the eligible  
5 assignee.

6 (2) Any taxpayer who assigns any credit under this section shall  
7 report any information, in the form and manner specified by the  
8 Franchise Tax Board, necessary to substantiate any credit assigned  
9 under this section and verify the assignment and subsequent  
10 application of any assigned credit.

11 (3) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
12 Division 3 of Title 2 of the Government Code shall not apply to  
13 any standard, criterion, procedure, determination, rule, notice, or  
14 guideline established or issued by the Franchise Tax Board  
15 pursuant to paragraphs (1) and (2).

16 (4) The Franchise Tax Board may issue any regulations  
17 necessary to implement the purposes of this section, including any  
18 regulations necessary to specify the treatment of any assignment  
19 that does not comply with the requirements of this section  
20 (including, for example, where the taxpayer and eligible assignee  
21 are not properly treated as members of the same combined  
22 reporting group on any of the dates specified in paragraph (3) of  
23 subdivision (b).

24 (f) (1) The taxpayer and the eligible assignee shall be jointly  
25 and severally liable for any tax, addition to tax, or penalty that  
26 results from the disallowance, in whole or in part, of any eligible  
27 credit assigned under this section.

28 (2) Nothing in this section shall limit the authority of the  
29 Franchise Tax Board to audit either the assigning taxpayer or the  
30 eligible assignee with respect to any eligible credit assigned under  
31 this section.

32 (g) On or before June 30, 2013, the Franchise Tax Board shall  
33 report to the Joint Legislative Budget Committee, the Legislative  
34 Analyst, and the relevant policy committees of both houses on the  
35 effects of this section. The report shall include, but need not be  
36 limited to, the following:

37 (1) An estimate of use of credits in the 2010 and 2011 taxable  
38 years by eligible taxpayers.

39 (2) An analysis of effect of this section on expanding business  
40 activity in the state related to these credits.

1 (3) An estimate of the resulting tax revenue loss to the state.

2 (4) The report shall cover all credits covered in this section, but  
3 focus on the credits related to research and development, economic  
4 incentive areas, and low income housing.

5 *SEC. 5. Section 24416 of the Revenue and Taxation Code is*  
6 *amended to read:*

7 24416. Except as provided in Sections 24416.1, 24416.2,  
8 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss  
9 deduction shall be allowed in computing net income under Section  
10 24341 and shall be determined in accordance with Section 172 of  
11 the Internal Revenue Code, except as otherwise provided.

12 (a) (1) Net operating losses attributable to taxable years  
13 beginning before January 1, 1987, shall not be allowed.

14 (2) A net operating loss shall not be carried forward to any  
15 taxable year beginning before January 1, 1987.

16 (b) (1) Except as provided in paragraphs (2) and (3), the  
17 provisions of Section 172(b)(2) of the Internal Revenue Code,  
18 relating to the amount of carryovers, shall be modified so that the  
19 applicable percentage of the entire amount of the net operating  
20 loss for any taxable year shall be eligible for carryover to any  
21 subsequent taxable year. For purposes of this subdivision, the  
22 applicable percentage shall be:

23 (A) Fifty percent for any taxable year beginning before January  
24 1, 2000.

25 (B) Fifty-five percent for any taxable year beginning on or after  
26 January 1, 2000, and before January 1, 2002.

27 (C) Sixty percent for any taxable year beginning on or after  
28 January 1, 2002, and before January 1, 2004.

29 (D) One hundred percent for any taxable year beginning on or  
30 after January 1, 2004.

31 (2) In the case of a taxpayer who has a net operating loss in any  
32 taxable year beginning on or after January 1, 1994, and who  
33 operates a new business during that taxable year, each of the  
34 following shall apply to each loss incurred during the first three  
35 taxable years of operating the new business:

36 (A) If the net operating loss is equal to or less than the net loss  
37 from the new business, 100 percent of the net operating loss shall  
38 be carried forward as provided in subdivision (e).

1 (B) If the net operating loss is greater than the net loss from the  
2 new business, the net operating loss shall be carried over as  
3 follows:

4 (i) With respect to an amount equal to the net loss from the new  
5 business, 100 percent of that amount shall be carried forward as  
6 provided in subdivision (e).

7 (ii) With respect to the portion of the net operating loss that  
8 exceeds the net loss from the new business, the applicable  
9 percentage of that amount shall be carried forward as provided in  
10 subdivision (d).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
12 Code, the amount described in clause (ii) of subparagraph (B) shall  
13 be absorbed before the amount described in clause (i) of  
14 subparagraph (B).

15 (3) In the case of a taxpayer who has a net operating loss in any  
16 taxable year beginning on or after January 1, 1994, and who  
17 operates an eligible small business during that taxable year, each  
18 of the following shall apply:

19 (A) If the net operating loss is equal to or less than the net loss  
20 from the eligible small business, 100 percent of the net operating  
21 loss shall be carried forward to the taxable years specified in  
22 paragraph (1) of subdivision (e).

23 (B) If the net operating loss is greater than the net loss from the  
24 eligible small business, the net operating loss shall be carried over  
25 as follows:

26 (i) With respect to an amount equal to the net loss from the  
27 eligible small business, 100 percent of that amount shall be carried  
28 forward as provided in subdivision (e).

29 (ii) With respect to that portion of the net operating loss that  
30 exceeds the net loss from the eligible small business, the applicable  
31 percentage of that amount shall be carried forward as provided in  
32 subdivision (e).

33 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
34 Code, the amount described in clause (ii) of subparagraph (B) shall  
35 be absorbed before the amount described in clause (i) of  
36 subparagraph (B).

37 (4) In the case of a taxpayer who has a net operating loss in a  
38 taxable year beginning on or after January 1, 1994, and who  
39 operates a business that qualifies as both a new business and an  
40 eligible small business under this section, that business shall be

1 treated as a new business for the first three taxable years of the  
2 new business.

3 (5) In the case of a taxpayer who has a net operating loss in a  
4 taxable year beginning on or after January 1, 1994, and who  
5 operates more than one business, and more than one of those  
6 businesses qualifies as either a new business or an eligible small  
7 business under this section, paragraph (2) shall be applied first,  
8 except that if there is any remaining portion of the net operating  
9 loss after application of clause (i) of subparagraph (B) of paragraph  
10 (2), paragraph (3) shall be applied to the remaining portion of the  
11 net operating loss as though that remaining portion of the net  
12 operating loss constituted the entire net operating loss.

13 (6) For purposes of this section, “net loss” means the amount  
14 of net loss after application of Sections 465 and 469 of the Internal  
15 Revenue Code.

16 (c) For any taxable year in which the taxpayer has in effect a  
17 water’s-edge election under Section 25110, the deduction of a net  
18 operating loss carryover shall be denied to the extent that the net  
19 operating loss carryover was determined by taking into account  
20 the income and factors of an affiliated corporation in a combined  
21 report whose income and apportionment factors would not have  
22 been taken into account if a water’s-edge election under Section  
23 25110 had been in effect for the taxable year in which the loss was  
24 incurred.

25 ~~(d) Section 172(b)(1) of the Internal Revenue Code, relating to~~  
26 ~~net operating loss carrybacks and carryovers and the years to which~~  
27 ~~the loss may be carried, is modified as follows:~~

28 ~~(1)~~

29 ~~(d) Net operating loss carrybacks shall not be allowed for any~~  
30 ~~net operating losses attributable to taxable years beginning before~~  
31 ~~January 1, 2011.~~

32 ~~(2) A net operating loss attributable to taxable years beginning~~  
33 ~~on or after January 1, 2011, shall be a net operating loss carryback~~  
34 ~~to each of the two taxable years preceding the taxable year of the~~  
35 ~~loss in lieu of the number of years provided therein.~~

36 ~~(A) For a net operating loss attributable to a taxable year~~  
37 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~  
38 ~~the amount of carryback to any taxable year shall not exceed 50~~  
39 ~~percent of the net operating loss.~~



1 ~~(B) For a net operating loss attributable to a taxable year~~  
2 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~  
3 ~~the amount of carryback to any taxable year shall not exceed 75~~  
4 ~~percent of the net operating loss.~~

5 ~~(C) For a net operating loss attributable to a taxable year~~  
6 ~~beginning on or after January 1, 2013, the amount of carryback to~~  
7 ~~any taxable year shall not exceed 100 percent of the net operating~~  
8 ~~loss.~~

9 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~  
10 ~~Internal Revenue Code, relating to special rules for REITs, and~~  
11 ~~Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,~~  
12 ~~relating to corporate equity reduction interest loss, shall apply as~~  
13 ~~provided.~~

14 ~~(4) A net operating loss carryback shall not be carried back to~~  
15 ~~any taxable year beginning before January 1, 2009.~~

16 (e) (1) (A) For a net operating loss for any taxable year  
17 beginning on or after January 1, 1987, and before January 1, 2000,  
18 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to  
19 years to which net operating losses may be carried, is modified to  
20 substitute “five taxable years” in lieu of “20 years” except as  
21 otherwise provided in paragraphs (2), (3), and (4).

22 (B) For a net operating loss for any income year beginning on  
23 or after January 1, 2000, and before January 1, 2008, Section  
24 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years  
25 to which net operating losses may be carried, is modified to  
26 substitute “10 taxable years” in lieu of “20 taxable years.”

27 (2) For any income year beginning before January 1, 2000, in  
28 the case of a “new business,” the “five taxable years” referred to  
29 in paragraph (1) shall be modified to read as follows:

30 (A) “Eight taxable years” for a net operating loss attributable  
31 to the first taxable year of that new business.

32 (B) “Seven taxable years” for a net operating loss attributable  
33 to the second taxable year of that new business.

34 (C) “Six taxable years” for a net operating loss attributable to  
35 the third taxable year of that new business.

36 (3) For any carryover of a net operating loss for which a  
37 deduction is denied by Section 24416.3, the carryover period  
38 specified in this subdivision shall be extended as follows:

39 (A) By one year for a net operating loss attributable to taxable  
40 years beginning in 1991.

1 (B) By two years for a net operating loss attributable to taxable  
2 years beginning prior to January 1, 1991.

3 (4) The net operating loss attributable to taxable years beginning  
4 on or after January 1, 1987, and before January 1, 1994, shall be  
5 a net operating loss carryover to each of the 10 taxable years  
6 following the year of the loss if it is incurred by a corporation that  
7 was either of the following:

8 (A) Under the jurisdiction of the court in a Title 11 or similar  
9 case at any time prior to January 1, 1994. The loss carryover  
10 provided in the preceding sentence shall not apply to any loss  
11 incurred in an income year after the taxable year during which the  
12 corporation is no longer under the jurisdiction of the court in a  
13 Title 11 or similar case.

14 (B) In receipt of assets acquired in a transaction that qualifies  
15 as a tax-free reorganization under Section 368(a)(1)(G) of the  
16 Internal Revenue Code.

17 (f) For purposes of this section:

18 (1) “Eligible small business” means any trade or business that  
19 has gross receipts, less returns and allowances, of less than one  
20 million dollars (\$1,000,000) during the income year.

21 (2) Except as provided in subdivision (g), “new business” means  
22 any trade or business activity that is first commenced in this state  
23 on or after January 1, 1994.

24 (3) “Title 11 or similar case” shall have the same meaning as  
25 in Section 368(a)(3) of the Internal Revenue Code.

26 (4) In the case of any trade or business activity conducted by a  
27 partnership or an “S corporation,” paragraphs (1) and (2) shall be  
28 applied to the partnership or “S corporation.”

29 (g) For purposes of this section, in determining whether a trade  
30 or business activity qualifies as a new business under paragraph  
31 (2) of subdivision (e), the following rules shall apply:

32 (1) In any case where a taxpayer purchases or otherwise acquires  
33 all or any portion of the assets of an existing trade or business  
34 (irrespective of the form of entity) that is doing business in this  
35 state (within the meaning of Section 23101), the trade or business  
36 thereafter conducted by the taxpayer (or any related person) shall  
37 not be treated as a new business if the aggregate fair market value  
38 of the acquired assets (including real, personal, tangible, and  
39 intangible property) used by the taxpayer (or any related person)  
40 in the conduct of its trade or business exceeds 20 percent of the

1 aggregate fair market value of the total assets of the trade or  
2 business being conducted by the taxpayer (or any related person).  
3 For purposes of this paragraph only, the following rules shall apply:

4 (A) The determination of the relative fair market values of the  
5 acquired assets and the total assets shall be made as of the last day  
6 of the first taxable year in which the taxpayer (or any related  
7 person) first uses any of the acquired trade or business assets in  
8 its business activity.

9 (B) Any acquired assets that constituted property described in  
10 Section 1221(1) of the Internal Revenue Code in the hands of the  
11 transferor shall not be treated as assets acquired from an existing  
12 trade or business, unless those assets also constitute property  
13 described in Section 1221(1) of the Internal Revenue Code in the  
14 hands of the acquiring taxpayer (or related person).

15 (2) In any case where a taxpayer (or any related person) is  
16 engaged in one or more trade or business activities in this state, or  
17 has been engaged in one or more trade or business activities in this  
18 state within the preceding 36 months (“prior trade or business  
19 activity”), and thereafter commences an additional trade or business  
20 activity in this state, the additional trade or business activity shall  
21 only be treated as a new business if the additional trade or business  
22 activity is classified under a different division of the Standard  
23 Industrial Classification (SIC) Manual published by the United  
24 States Office of Management and Budget, 1987 edition, than are  
25 any of the taxpayer’s (or any related person’s) current or prior  
26 trade or business activities.

27 (3) In any case where a taxpayer, including all related persons,  
28 is engaged in trade or business activities wholly outside of this  
29 state and the taxpayer first commences doing business in this state  
30 (within the meaning of Section 23101) after December 31, 1993  
31 (other than by purchase or other acquisition described in paragraph  
32 (1)), the trade or business activity shall be treated as a new business  
33 under paragraph (2) of subdivision (e).

34 (4) In any case where the legal form under which a trade or  
35 business activity is being conducted is changed, the change in form  
36 shall be disregarded and the determination of whether the trade or  
37 business activity is a new business shall be made by treating the  
38 taxpayer as having purchased or otherwise acquired all or any  
39 portion of the assets of an existing trade or business under the rules  
40 of paragraph (1) of this subdivision.

1 (5) “Related person” shall mean any person ~~that~~ *who* is related  
2 to the taxpayer under either Section 267 or 318 of the Internal  
3 Revenue Code.

4 (6) “Acquire” shall include any transfer, whether or not for  
5 consideration.

6 (7) (A) For taxable years beginning on or after January 1, 1997,  
7 the term “new business” shall include any taxpayer that is engaged  
8 in biopharmaceutical activities or other biotechnology activities  
9 that are described in Codes 2833 to 2836, inclusive, of the Standard  
10 Industrial Classification (SIC) Manual published by the United  
11 States Office of Management and Budget, 1987 edition, and as  
12 further amended, and that has not received regulatory approval for  
13 any product from the United States Food and Drug Administration.

14 (B) For purposes of this paragraph:

15 (i) “Biopharmaceutical activities” means those activities that  
16 use organisms or materials derived from organisms, and their  
17 cellular, subcellular, or molecular components, in order to provide  
18 pharmaceutical products for human or animal therapeutics and  
19 diagnostics. Biopharmaceutical activities make use of living  
20 organisms to make commercial products, as opposed to  
21 pharmaceutical activities that make use of chemical compounds  
22 to produce commercial products.

23 (ii) “Other biotechnology activities” means activities consisting  
24 of the application of recombinant DNA technology to produce  
25 commercial products, as well as activities regarding pharmaceutical  
26 delivery systems designed to provide a measure of control over  
27 the rate, duration, and site of pharmaceutical delivery.

28 (h) For purposes of corporations whose net income is determined  
29 under Chapter 17 (commencing with Section 25101), Section  
30 25108 shall apply to each of the following:

31 (1) The amount of net operating loss incurred in any taxable  
32 year that may be carried forward to another taxable year.

33 (2) The amount of any loss carry forward that may be deducted  
34 in any taxable year.

35 (i) The provisions of Section 172(b)(1)(D) of the Internal  
36 Revenue Code, relating to bad debt losses of commercial banks,  
37 shall not be applicable.

38 (j) The Franchise Tax Board may prescribe appropriate  
39 regulations to carry out the purposes of this section, including any  
40 regulations necessary to prevent the avoidance of the purposes of

1 this section through splitups, shell corporations, partnerships, tiered  
2 ownership structures, or otherwise.

3 (k) The Franchise Tax Board may reclassify any net operating  
4 loss carryover determined under either paragraph (2) or (3) of  
5 subdivision (b) as a net operating loss carryover under paragraph  
6 (1) of subdivision (b) upon a showing that the reclassification is  
7 necessary to prevent evasion of the purposes of this section.

8 (l) Except as otherwise provided, the amendments made by  
9 Chapter 107 of the Statutes of 2000 shall apply to net operating  
10 losses for taxable years beginning on or after January 1, 2000.

11 *SEC. 6. Section 24416.9 of the Revenue and Taxation Code is*  
12 *amended to read:*

13 24416.9. (a) Notwithstanding Sections 24416, 24416.1,  
14 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and  
15 Section 172 of the Internal Revenue Code, no net operating loss  
16 deduction shall be allowed for any taxable year beginning on or  
17 after January 1, 2008, and before January 1, 2010.

18 (b) For any net operating loss or carryover of a net operating  
19 loss for which a deduction is denied by subdivision (a), the  
20 carryover period under Section 172 of the Internal Revenue Code  
21 shall be extended as follows:

22 (1) By one year, for losses incurred in taxable years beginning  
23 on or after January 1, 2008, and before January 1, 2009.

24 (2) By two years, for losses incurred in taxable years beginning  
25 before January 1, 2008.

26 ~~(e) Notwithstanding subdivision (a), a net operating loss~~  
27 ~~deduction shall be allowed for carryback of a net operating loss~~  
28 ~~attributable to a taxable year beginning on or after January 1, 2011.~~

29 ~~(d)~~

30 (c) The provisions of this section shall not apply to a taxpayer  
31 with income subject to tax under this part of less than five hundred  
32 thousand dollars (\$500,000) for the taxable year.

33 *SEC. 7. Section 24416.10 of the Revenue and Taxation Code*  
34 *is amended to read:*

35 24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4,  
36 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss  
37 attributable to a taxable year beginning on or after January 1, 2008,  
38 shall be a net operating carryover to each of the 20 taxable years  
39 following the year of the loss, ~~and a net operating loss attributable~~  
40 ~~to a taxable year beginning on or after January 1, 2011, shall also~~

1 be a net operating loss carryback to each of the two taxable years  
2 preceding the taxable year of loss.

3 *SEC. 8. Section 30016 of the Revenue and Taxation Code is*  
4 *amended to read:*

5 30016. “Wholesaler” includes:

6 (a) Any person, other than a licensed distributor, who engages  
7 in this state in making sales for resale of cigarettes that are  
8 contained in packages to which are affixed stamps or meter  
9 impressions.

10 (b) Any person, other than a licensed distributor, who engages  
11 in this state in making sales for resale of tobacco products on which  
12 the tax imposed in ~~Sections 30123 and 30131.2~~ *under this part*  
13 has been paid.

14 *SEC. 9. Section 30104 of the Revenue and Taxation Code is*  
15 *amended to read:*

16 30104. The taxes imposed by this part shall not apply to the  
17 sale of cigarettes or tobacco products by a distributor to a common  
18 carrier engaged in interstate or foreign passenger service or to a  
19 person authorized to sell cigarettes or tobacco products on the  
20 facilities of the carrier. Whenever cigarettes or tobacco products  
21 are sold by distributors to common carriers engaged in interstate  
22 or foreign passenger service for use or sale on facilities of the  
23 carriers, or to persons authorized to sell cigarettes or tobacco  
24 products on those facilities, the tax imposed by ~~Sections 30101,~~  
25 ~~30123, and 30131.2~~ *under this part* shall not be levied with respect  
26 to the sales of the cigarettes or tobacco products by the distributors,  
27 but a tax is hereby levied upon the carriers or upon the persons  
28 authorized to sell cigarettes or tobacco products on the facilities  
29 of the carriers, as the case may be, for the privilege of making sales  
30 in California at the same rate as set forth in ~~Sections 30101, 30123,~~  
31 ~~and 30131.2~~ *under this part*. Those common carriers and authorized  
32 persons shall pay the tax imposed by this section and file reports  
33 with the board, as provided in Section 30186.

34 *SEC. 10. Section 30108 of the Revenue and Taxation Code is*  
35 *amended to read:*

36 30108. (a) Every distributor engaged in business in this state  
37 and selling or accepting orders for cigarettes or tobacco products  
38 with respect to the sale of which the tax imposed by ~~Sections~~  
39 ~~30101, 30123, and 30131.2~~ *under this part* is inapplicable shall,  
40 at the time of making the sale or accepting the order or, if the

1 purchaser is not then obligated to pay the tax with respect to his  
2 or her distribution of the cigarettes or tobacco products, at the time  
3 the purchaser becomes so obligated, collect the tax from the  
4 purchaser, if the purchaser is other than a licensed distributor, and  
5 shall give to the purchaser a receipt therefor in the manner and  
6 form prescribed by the board.

7 (b) Every person engaged in business in this state and making  
8 gifts of untaxed cigarettes or tobacco products as samples with  
9 respect to which the tax imposed by ~~Sections 30101, 30123, and~~  
10 ~~30131.2~~ *under this part* is inapplicable shall, at the time of making  
11 the gift or, if the donee is not then obligated to pay the tax with  
12 respect to his or her distribution of the cigarettes or tobacco  
13 products, at the time the donee becomes so obligated, collect the  
14 tax from the donee, if the donee is other than a licensed distributor,  
15 and shall give the donee a receipt therefor in the manner and form  
16 prescribed by the board. This section shall not apply to those  
17 distributions of cigarettes or tobacco products which are exempt  
18 from tax under Section 30105.5.

19 (c) “Engaged in business in the state” means and includes any  
20 of the following:

21 (1) Maintaining, occupying, or using, permanently or  
22 temporarily, directly or indirectly, or through a subsidiary, or agent,  
23 by whatever name called, an office, place of distribution, sales or  
24 sample room or place, warehouse or storage place, or other place  
25 of business.

26 (2) Having any representative, agent, salesperson, canvasser or  
27 solicitor operating in this state under the authority of the distributor  
28 or its subsidiary for the purpose of selling, delivering, or the taking  
29 of orders for cigarettes or tobacco products.

30 (d) The taxes required to be collected by this section constitute  
31 debts owed by the distributor, or other person required to collect  
32 the taxes, to the state.

33 *SEC. 11. Article 2.5 (commencing with Section 30130.3) is*  
34 *added to Chapter 2 of Part 13 of Division 2 of the Revenue and*  
35 *Taxation Code, to read:*

36  
37 *Article 2.5. Cigarette and Tobacco Products Excise Tax*

38  
39 *30130.3. The following definitions apply for purposes of this*  
40 *article:*

1 (a) “Cigarette” has the same meaning as in Section 30003, as  
2 it read on January 1, 2009.

3 (b) “Tobacco products” includes, but is not limited to, all forms  
4 of cigars, smoking tobacco, chewing tobacco, snuff, and any other  
5 articles or products made of, or containing at least 50 percent,  
6 tobacco, but does not include cigarettes.

7 30130.5. In addition to any other tax imposed under this part,  
8 an excise tax is hereby imposed upon every distributor of cigarettes  
9 at the rate of seventy-five mills (\$0.075) for each cigarette  
10 distributed on and after October 1, 2009.

11 30130.52. (a) (1) Every dealer and wholesaler, for the  
12 privilege of holding or storing cigarettes for sale, use, or  
13 consumption, shall pay a floor stock tax for each cigarette in his  
14 or her possession or under his or her control in this state at 12:01  
15 a.m. on October 1, 2009, at the rate of seventy-five mills (\$0.075)  
16 for each cigarette.

17 (2) Every dealer and wholesaler shall file a return with the State  
18 Board of Equalization on or before November 16, 2009, on a form  
19 prescribed by the board, showing the number of cigarettes in his  
20 or her possession or under his or her control at 12:01 a.m. on  
21 October 1, 2009. The amount of tax shall be computed and shown  
22 on the return.

23 (b) (1) Every licensed cigarette distributor, for the privilege of  
24 distributing cigarettes and for holding or storing cigarettes for  
25 sale, use, or consumption, shall pay a cigarette indicia adjustment  
26 tax for each California cigarette tax stamp that is affixed to any  
27 package of cigarettes and for each unaffixed California cigarette  
28 tax stamp in his or her possession or under his or her control at  
29 12:01 a.m. on October 1, 2009, at the following rates:

30 (A) One dollar and eight hundred seventy-five mills (\$1.875)  
31 for each stamp bearing the designation “25.”

32 (B) One dollar and fifty cents (\$1.50) for each stamp bearing  
33 the designation “20.”

34 (C) Seventy-five cents (\$0.75) for each stamp bearing the  
35 designation “10.”

36 (2) Every licensed cigarette distributor shall file a return with  
37 the board on or before November 16, 2009, on a form prescribed  
38 by the board, showing the number of stamps described in  
39 subparagraphs (A), (B), and (C), of paragraph (1). The amount  
40 of tax shall be computed and shown on the return.



1 (c) *The taxes required to be paid by this section are due and*  
2 *payable on November 16, 2009. Payments shall be made by*  
3 *remittances payable to the State Board of Equalization and the*  
4 *payments shall accompany the forms required to be filed by this*  
5 *section.*

6 (d) *Any amount required to be paid by this section that is not*  
7 *timely paid shall bear interest at the rate and by the method*  
8 *established pursuant to Section 30202 from November 16, 2009,*  
9 *until paid, and shall be subject to determination, and*  
10 *redetermination, and any penalties provided with respect to*  
11 *determinations and redeterminations.*

12 30130.54. (a) *In addition to the taxes imposed upon the*  
13 *distribution of tobacco products by this chapter, there shall be*  
14 *imposed, on and after July 1, 2010, an additional tax upon every*  
15 *distributor of tobacco products, based on the wholesale cost of*  
16 *these products, at a tax rate, as determined annually by the State*  
17 *Board of Equalization, that is equivalent to the rate of tax imposed*  
18 *on cigarettes by Section 30130.5.*

19 (b) *The wholesale cost used to calculate the amount of tax due*  
20 *under this section does not include the wholesale cost of tobacco*  
21 *products that were returned by a customer during the same*  
22 *reporting period in which the tobacco products were distributed,*  
23 *when the distributor refunds the entire amount the customer paid*  
24 *for the tobacco products either in cash or credit. For purposes of*  
25 *this subdivision, refund or credit of the entire amount shall be*  
26 *deemed to be given when the purchase price less rehandling and*  
27 *restocking costs is refunded or credited to the customer. The*  
28 *amount withheld for rehandling and restocking costs may be a*  
29 *percentage of the sales price determined by the average cost of*  
30 *rehandling and restocking returned merchandise during the*  
31 *previous accounting cycle.*

32 30130.56. *The taxes imposed under this article shall be*  
33 *administered and collected in accordance with this part.*

34 30130.58. (a) *Except for payments of refunds made pursuant*  
35 *to Article 1 (commencing with Section 30361) of Chapter 6, and*  
36 *reimbursement to the State Board of Equalization for expenses*  
37 *incurred in the administration and collection of the tax imposed*  
38 *by this article, all moneys derived from a tax imposed pursuant to*  
39 *this article shall be transferred to the General Fund.*

1 (b) *This section shall not apply to any moneys raised pursuant*  
2 *to the taxes imposed by subdivision (b) of Section 30123.*

3 *30130.59. The annual determination required of the State*  
4 *Board of Equalization pursuant to Section 30130.54 shall be made*  
5 *based on the wholesale cost of tobacco products as of March 1,*  
6 *and shall be effective during the state's next fiscal year.*

7 *SEC. 12. Section 30165.1 of the Revenue and Taxation Code*  
8 *is amended to read:*

9 30165.1. (a) The following definitions shall apply for purposes  
10 of this section:

11 (1) "Board" means the State Board of Equalization.

12 (2) "Brand family" means all styles of cigarettes sold under the  
13 same trademark and differentiated from one another by means of  
14 additional modifiers, including, but not limited to, "menthol,"  
15 "lights," "kings," and "100s" and includes any brand name, alone  
16 or in conjunction with any other word, trademark, logo, symbol,  
17 motto, selling message, recognizable pattern of colors, or any other  
18 indicia of product identification identical or similar to, or  
19 identifiable with, a previously known brand of cigarettes.

20 (3) "Cigarette" has the same meaning as in subdivision (d) of  
21 Section 104556 of the Health and Safety Code and includes tobacco  
22 products defined as a cigarette under that subdivision.

23 (4) "Distributor" has the same meaning as in Section 30011.

24 (5) "MSA" means the Master Settlement Agreement, as defined  
25 in subdivision (e) of Section 104556 of the Health and Safety Code.

26 (6) "Nonparticipating manufacturer" means any tobacco product  
27 manufacturer that is not a participating manufacturer.

28 (7) "Participating manufacturer" has the same meaning as in  
29 subsection II(jj) of the MSA.

30 (8) "Qualified escrow fund" has the same meaning as in  
31 subdivision (f) of Section 104556 of the Health and Safety Code.

32 (9) "Tobacco product manufacturer" has the same meaning as  
33 in subdivision (i) of Section 104556 of the Health and Safety Code.

34 (10) "Units sold" has the same meaning as in subdivision (j) of  
35 Section 104556 of the Health and Safety Code.

36 (b) Every tobacco product manufacturer whose cigarettes are  
37 sold in this state, whether directly or through a distributor, retailer,  
38 or similar intermediary or intermediaries, shall execute and deliver  
39 on a form and in the manner prescribed by the Attorney General  
40 a certification to the Attorney General no later than the 30th day

1 of April each year that, as of the date of the certification, the  
2 tobacco product manufacturer is either a participating manufacturer,  
3 or is in full compliance with Article 3 (commencing with Section  
4 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
5 Safety Code, including all installment payments required by that  
6 article and this section, and any regulations promulgated pursuant  
7 thereto. Any person who makes a certification pursuant to this  
8 subdivision that asserts the truth of any material matter that he or  
9 she knows to be false is guilty of a misdemeanor punishable by  
10 imprisonment of up to one year in the county jail, or a fine of not  
11 more than one thousand dollars (\$1,000), or both the imprisonment  
12 and the fine.

13 (1) A participating manufacturer shall include in its certification  
14 a complete list of its brand families. The participating manufacturer  
15 shall update the list 30 days prior to any addition to or modification  
16 of its brand families by executing and delivering a supplemental  
17 certification to the Attorney General.

18 (2) A nonparticipating manufacturer shall include in its  
19 certification a complete list of all of its brand families, in  
20 accordance with the following requirements:

21 (A) Separately listing brand families of cigarettes and the  
22 number of units sold for each brand family that were sold in the  
23 state during the preceding calendar year.

24 (B) Separately listing all of its brand families that have been  
25 sold in the state at any time during the current calendar year.

26 (C) Indicating by an asterisk any brand family sold in the state  
27 during the preceding calendar year that is no longer being sold in  
28 the state as of the date of the certification.

29 (D) Identifying by name and address any other manufacturer,  
30 including all fabricators or makers of the brand families in the  
31 preceding or current calendar year in a form, manner, and detail  
32 as required by the Attorney General. The nonparticipating  
33 manufacturer shall update the list 30 days prior to any change in  
34 a fabricator for any brand family or any addition to or modification  
35 of its brand families by executing and delivering a supplemental  
36 certification to the Attorney General.

37 (3) In the case of a nonparticipating manufacturer, the  
38 certification shall further certify all of the following:

39 (A) That the nonparticipating manufacturer is registered to do  
40 business in the state, or has appointed a resident agent for service

1 of process and provided notice thereof as required by subdivision  
2 (f).

3 (B) That the nonparticipating manufacturer has done all of the  
4 following:

5 (i) Established and continues to maintain a qualified escrow  
6 fund as that term is defined in subdivision (f) of Section 104556  
7 of the Health and Safety Code and implementing regulations.

8 (ii) Executed a qualified escrow agreement that has been  
9 reviewed and approved by the Attorney General and that governs  
10 the qualified escrow fund.

11 (iii) If the nonparticipating manufacturer is not the fabricator  
12 or maker of the cigarettes, that the escrow agreement, certification,  
13 reports, and any other forms required by Article 3 (commencing  
14 with Section 104555) of Chapter 1 of Part 3 of Division 103 of  
15 the Health and Safety Code and implementing regulations are  
16 signed by the company that fabricates or makes the cigarettes and  
17 in the manner required by the Attorney General.

18 (C) That the nonparticipating manufacturer is in full compliance  
19 with Article 3 (commencing with Section 104555) of Chapter 1  
20 of Part 3 of Division 103 of the Health and Safety Code, including  
21 paragraph (2) of subdivision (a) of Section 104557 of the Health  
22 and Safety Code, this section, and any regulations promulgated  
23 pursuant thereto.

24 (D) That the manufacturer has provided all of the following:

25 (i) The name, address, and telephone number of the financial  
26 institution where the nonparticipating manufacturer has established  
27 the qualified escrow fund required pursuant to Article 3  
28 (commencing with Section 104555) of Chapter 1 of Part 3 of  
29 Division 103 of the Health and Safety Code and all regulations  
30 promulgated thereto.

31 (ii) The account number of the qualified escrow fund and  
32 subaccount number for the State of California.

33 (iii) The amount the nonparticipating manufacturer placed in  
34 the fund for cigarettes sold in the state during the preceding  
35 calendar year, the date and amount of each deposit, and any  
36 confirming evidence or verification as may be deemed necessary  
37 by the Attorney General.

38 (iv) The amounts and dates of any withdrawal or transfer of  
39 funds the nonparticipating manufacturer made at any time from  
40 the fund or from any other qualified escrow fund into which it ever

1 made escrow payments pursuant to Article 3 (commencing with  
2 Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
3 Health and Safety Code and all regulations promulgated thereto.

4 (4) (A) A tobacco product manufacturer may not include a  
5 brand family in its certification unless either of the following is  
6 true:

7 (i) In the case of a participating manufacturer, the participating  
8 manufacturer affirms that the brand family is to be deemed to be  
9 its cigarettes for purposes of calculating its payments under the  
10 MSA for the relevant year, in the volume and shares determined  
11 pursuant to the MSA.

12 (ii) In the case of a nonparticipating manufacturer, the  
13 nonparticipating manufacturer affirms that the brand family is to  
14 be deemed to be its cigarettes for purposes of Article 3  
15 (commencing with Section 104555) of Chapter 1 of Part 3 of  
16 Division 103 of the Health and Safety Code, including paragraph  
17 (2) of subdivision (a) of Section 104557 of the Health and Safety  
18 Code, and any regulations promulgated pursuant thereto and this  
19 section.

20 (B) Nothing in this section shall be construed as limiting or  
21 otherwise affecting the state's right to maintain that a brand family  
22 constitutes cigarettes of a different tobacco product manufacturer  
23 for purposes of calculating payments under the MSA or for  
24 purposes of Article 3 (commencing with Section 104555) of  
25 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code  
26 and any regulations promulgated pursuant thereto.

27 (5) A tobacco product manufacturer shall maintain all invoices  
28 and documentation of sales and other information relied upon for  
29 the certification for a period of five years, unless otherwise required  
30 by law to maintain them for a longer period of time.

31 (c) Not later than June 30, 2004, the Attorney General shall  
32 develop and publish on its Internet Web site a directory listing of  
33 all tobacco product manufacturers that have provided current,  
34 timely, and accurate certifications conforming to the requirements  
35 of subdivision (b) and all brand families that are listed in the  
36 certifications, except as specified below.

37 (1) The Attorney General may not include or retain in the  
38 directory the name or brand families of any nonparticipating  
39 manufacturer that fails to provide the required certification or  
40 whose certification the Attorney General determines is not in

1 compliance with subdivision (b), unless the Attorney General has  
2 determined that the violation has been cured to the satisfaction of  
3 the Attorney General.

4 (2) Neither a tobacco product manufacturer nor brand family  
5 shall be included or retained in the directory if the Attorney General  
6 concludes that either of the following is true:

7 (A) In the case of a nonparticipating manufacturer, any escrow  
8 deposit required pursuant to Section 104557 of the Health and  
9 Safety Code for any period for any brand family, whether or not  
10 listed by the nonparticipating manufacturer, has not been fully  
11 deposited into a qualified escrow fund governed by a qualified  
12 escrow agreement that has been approved by the Attorney General.

13 (B) Any outstanding final judgment, including interest thereon,  
14 for violations of Article 3 (commencing with Section 104555) of  
15 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,  
16 this section, and any regulations promulgated pursuant thereto,  
17 has not been fully satisfied for the brand family and the  
18 manufacturer.

19 (3) The Attorney General shall update the directory as necessary  
20 in order to correct mistakes and to add or remove a tobacco product  
21 manufacturer or brand family to keep the directory in conformity  
22 with the requirements of this section. The Attorney General shall  
23 promptly provide distributors with written notice of each tobacco  
24 product manufacturer and brand family that the Attorney General  
25 has added to, or excluded or removed from the list.

26 (4) Every distributor shall provide to the Attorney General and  
27 update, as necessary, an electronic mail address for the purpose  
28 of receiving any notifications as may be required by this section.

29 (5) The Attorney General shall provide each tobacco product  
30 manufacturer that has provided all certifications and other  
31 information required by this section with a written acknowledgment  
32 of receipt within seven business days after receiving the  
33 certifications and other materials. Each tobacco product  
34 manufacturer shall provide to each distributor to whom it sells or  
35 ships cigarettes, or any tobacco product defined as a cigarette under  
36 this section, a copy of each acknowledgment of receipt provided  
37 to the manufacturer by the Attorney General. Upon request, the  
38 Attorney General shall provide any distributor with a copy of the  
39 most recent written acknowledgment of receipt provided to the  
40 tobacco product manufacturer.

1 (d) (1) The Attorney General may exclude or remove from the  
2 list required by subdivision (c) a tobacco product manufacturer or  
3 any of its brand families, based on a determination that the  
4 manufacturer is not a participating manufacturer and has not made  
5 all escrow payments required by paragraph (2) of subdivision (a)  
6 of Section 104557 of the Health and Safety Code, in accordance  
7 with that subdivision, or has not complied with this section. Before  
8 the exclusion or removal may take effect, the Attorney General  
9 shall notify the manufacturer of this determination.

10 (2) Upon receiving notice from the Attorney General pursuant  
11 to paragraph (1), the manufacturer may challenge the Attorney  
12 General's determination as erroneous, and may seek relief from  
13 the determination, by filing a petition for writ of mandate pursuant  
14 to Section 1085 of the Code of Civil Procedure for that purpose  
15 in the Superior Court for the County of Sacramento, or as otherwise  
16 provided by law. The filing of the petition shall operate to stay the  
17 Attorney General's determination, if the manufacturer has paid  
18 into escrow the full amount of any deficiency in the escrow  
19 payments that the Attorney General has determined the tobacco  
20 product manufacturer was required to have made under paragraph  
21 (2) of subdivision (a) of Section 104557 of the Health and Safety  
22 Code, including any installment payments required under  
23 subdivision (h), pending final resolution of the action.

24 (e) (1) No person shall affix, or cause to be affixed, any tax  
25 stamp or meter impression to a package of cigarettes pursuant to  
26 subdivision (a) of Section 30163, or pay the tax levied pursuant  
27 to ~~Sections 30123 and 30131.2~~ *this part* on a tobacco product  
28 defined as a cigarette under this section, unless the brand family  
29 of the cigarettes or tobacco product, and the tobacco product  
30 manufacturer that makes or sells the cigarettes or tobacco product,  
31 are included on the list posted by the Attorney General pursuant  
32 to subdivision (c).

33 (2) No person shall sell, offer, or possess for sale in this state,  
34 or import for personal consumption in this state, cigarettes of a  
35 tobacco product manufacturer or brand family not included in the  
36 directory.

37 (3) No person shall do either of the following:

38 (A) Sell or distribute cigarettes that the person knows or should  
39 know are intended to be distributed in violation of paragraphs (1)  
40 and (2).

1 (B) Acquire, hold, own, possess, transport, import, or cause to  
2 be imported cigarettes that the person knows or should know are  
3 intended to be distributed in violation of paragraphs (1) and (2).

4 (f) (1) Any nonresident or foreign nonparticipating manufacturer  
5 that has not registered to do business in the state as a foreign  
6 corporation or business entity shall, as a condition precedent to  
7 having its brand families listed or retained in the directory, appoint  
8 and continually engage without interruption the services of an  
9 agent in this state to act as agent for the service of process on whom  
10 all process, and any action or proceeding against it concerning or  
11 arising out of the enforcement of this section, Article 3  
12 (commencing with Section 104555) of Chapter 1 of Part 3 of  
13 Division 103 of the Health and Safety Code, and any regulations  
14 promulgated pursuant thereto, may be served in any manner  
15 authorized by law. This service shall constitute legal and valid  
16 service of process on the nonparticipating manufacturer. The  
17 nonparticipating manufacturer shall provide the name, address,  
18 telephone number, and proof of the appointment and availability  
19 of the agent to the satisfaction of the Attorney General.

20 (2) The nonparticipating manufacturer shall provide notice to  
21 the Attorney General 30 calendar days prior to termination of the  
22 authority of an agent and shall further provide proof to the  
23 satisfaction of the Attorney General of the appointment of a new  
24 agent no less than five calendar days prior to the termination of  
25 an existing agent appointment. In the event an agent terminates an  
26 agency appointment, the nonparticipating manufacturer shall notify  
27 the Attorney General of said termination within five calendar days  
28 and shall include proof to the satisfaction of the Attorney General  
29 of the appointment of a new agent.

30 (3) Any nonparticipating manufacturer whose products are sold  
31 in this state without appointing or designating an agent as herein  
32 required shall be deemed to have appointed the Secretary of State  
33 as its agent, as provided in Section 2105 of the Corporations Code,  
34 and may be proceeded against in courts of this state by service of  
35 process upon the Secretary of State. However, the appointment of  
36 the Secretary of State pursuant to this provision as the agent for  
37 service of process does not satisfy the condition precedent specified  
38 in paragraph (1) to having its brand families listed or retained in  
39 the directory.



1 (g) (1) Not later than 25 days after the end of each calendar  
2 quarter, and more frequently if so directed by the board or the  
3 Attorney General, each distributor shall submit any information  
4 as the board or Attorney General requires to facilitate compliance  
5 with this section, including, but not limited to, a list by brand  
6 family of the total number of cigarettes or in the case of roll your  
7 own, the total ounces for which the distributor affixed stamps  
8 during the previous calendar month or otherwise paid the tax due  
9 for those cigarettes. The distributor shall maintain, and shall make  
10 available to the board and the Attorney General, all invoices and  
11 documentation of sales of all nonparticipating manufacturer  
12 cigarettes and any other information relied upon in reporting to  
13 the board and the Attorney General for a period of five years.

14 (2) Notwithstanding Section 30455, the board is authorized to  
15 disclose to the Attorney General any information received under  
16 this part for purposes of determining compliance with and  
17 enforcing the provisions of this section and Article 3 (commencing  
18 with Section 104555) of Chapter 1 of Part 3 of Division 103 of  
19 the Health and Safety Code, and any regulations promulgated  
20 pursuant thereto. The board and Attorney General shall share with  
21 each other the information received under this section, and may  
22 share that information with other federal, state, or local agencies,  
23 only for purposes of enforcement of this section, Article 3  
24 (commencing with Section 104555) of Chapter 1 of Part 3 of  
25 Division 103 of the Health and Safety Code, and any regulations  
26 promulgated pursuant thereto, or corresponding laws of other  
27 states.

28 (3) At any time, the Attorney General may require from the  
29 nonparticipating manufacturer proof from the financial institution  
30 in which the manufacturer has established a qualified escrow fund  
31 for the purpose of compliance with Article 3 (commencing with  
32 Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
33 Health and Safety Code, and any regulations promulgated pursuant  
34 thereto, of the amount of money in the fund being held on behalf  
35 of the state and the dates of deposits, and listing the amounts of  
36 all withdrawals from the fund and the dates thereof.

37 (4) In addition to the information required to be submitted  
38 pursuant to this section or Article 3 (commencing with Section  
39 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
40 Safety Code and any regulations promulgated pursuant thereto,

1 the board or the Attorney General may require a retailer,  
2 wholesaler, distributor, or tobacco product manufacturer to submit  
3 any additional information, including, but not limited to, samples  
4 of the packaging or labeling of each brand family, as is necessary  
5 to enable the Attorney General to determine whether a tobacco  
6 product manufacturer is in compliance with this section, or Article  
7 3 (commencing with Section 104555) of Chapter 1 of Part 3 of  
8 Division 103 of the Health and Safety Code, and any regulations  
9 promulgated pursuant thereto.

10 (h) To promote compliance with this section, the Attorney  
11 General may promulgate regulations requiring a tobacco product  
12 manufacturer subject to the requirements of paragraph (2) of  
13 subdivision (a) of Section 104557 to make the escrow deposits  
14 required in quarterly or other specified installments during the year  
15 in which the sales covered by the deposits are made. The Attorney  
16 General may require production of information sufficient to enable  
17 the Attorney General to determine the adequacy of the amount of  
18 the installment deposit.

19 (i) (1) In addition to any other civil or criminal penalty provided  
20 by law, upon a finding that a distributor has violated subdivision  
21 (e), or paragraph (1) of subdivision (g), the board may take the  
22 following actions:

23 (A) In the case of the first offense, the board may revoke or  
24 suspend the license or licenses of the distributor pursuant to the  
25 procedures applicable to the revocation of a license set forth in  
26 Section 30148.

27 (B) In the case of a second or any subsequent offense, in addition  
28 to the action authorized under subparagraph (A), the board may  
29 impose a civil penalty in an amount not to exceed the greater of  
30 either of the following:

31 (i) Five times the retail value of the cigarettes or tobacco  
32 products defined as cigarettes under this section.

33 (ii) Five thousand dollars (\$5,000).

34 (2) A distributor in any action for a violation of subdivision (e)  
35 shall have a defense provided that either of the following is true:

36 (A) At the time of the violation, the cigarettes or tobacco  
37 products claimed to be the subject of the alleged violation belonged  
38 to a brand family that was included on the list required by  
39 subdivision (c).

1 (B) At the time of the violation, the distributor possessed a copy  
2 of the Attorney General’s most recent written acknowledgment of  
3 receipt of the certifications and other information required as a  
4 condition of including the brand family on the list required by  
5 subdivision (c).

6 (3) The defense described in subparagraph (B) of paragraph (2)  
7 is not available to a distributor if, at the time of the violation, the  
8 Attorney General had provided the distributor with written notice  
9 that the brand family had been excluded or removed from the list  
10 required by subdivision (c), or the distributor failed to provide the  
11 Attorney General with a current address for the receipt of written  
12 notice through electronic mail as required by paragraph (4) of  
13 subdivision (c).

14 (4) A violation of paragraph (3) of subdivision (e) shall  
15 constitute a misdemeanor.

16 (j) If a distributor affixes a stamp or meter impression to a  
17 package of cigarettes under subdivision (a) of Section 30163, or  
18 pays the tax levied under ~~Sections 30123 and 30131.2~~ *this part* on  
19 a tobacco product defined as a cigarette under this section, during  
20 the period between the date on which the brand family of the  
21 cigarettes or tobacco product was excluded or removed from the  
22 list required by subdivision (c) and the date on which the distributor  
23 received notice of the exclusion or removal under paragraph (4)  
24 of subdivision (c), then both of the following shall apply:

25 (1) The distributor shall be entitled to a credit for the tax paid  
26 by the distributor with respect to the cigarette or tobacco product  
27 to which the stamp or meter impression was affixed, or the tax  
28 paid during that period. The distributor shall comply with  
29 regulations prescribed by the board regarding refunds and credits  
30 that are adopted pursuant to Section 30177.5. If the distributor has  
31 sold the cigarette or tobacco product to a wholesaler or retailer,  
32 and has received payment from the wholesaler or retailer, the  
33 distributor shall provide the credit to the wholesaler or retailer.

34 (2) The brand family may not be included on or restored to the  
35 list until the tobacco product manufacturer has reimbursed the  
36 distributor for the cost to the distributor of the cigarettes or tobacco  
37 product to which the stamp or meter impression was affixed, or  
38 the tax paid, during that period.

1 (k) Any tobacco product manufacturer that falsely represents  
2 any of the following to any person shall be guilty of a misdemeanor  
3 for each false representation:

4 (1) Any information required under subdivision (b).

5 (2) That the tobacco product manufacturer is a participating  
6 manufacturer.

7 (3) That the tobacco product manufacturer or any other person  
8 has made any or all escrow payments required by paragraph (2)  
9 of subdivision (a) of Section 104557 of the Health and Safety  
10 Code, if applicable to the manufacturer.

11 (4) That it has complied with subdivision (b), or with paragraph  
12 (1) of subdivision (g), if applicable to the manufacturer.

13 (l) A violation of subdivision (e) shall constitute unfair  
14 competition under Section 17200 of the Business and Professions  
15 Code.

16 (m) No person shall be issued a distributor's license, pursuant  
17 to Section 30140, unless that person has certified in writing that  
18 the person will comply fully with this section. Any person who  
19 makes a certification pursuant to this subdivision that asserts the  
20 truth of any material matter that he or she knows to be false is  
21 guilty of a misdemeanor punishable by imprisonment of up to one  
22 year in the county jail, or a fine of not more than one thousand  
23 dollars (\$1,000), or both the imprisonment and the fine.

24 (n) For the year 2003, if the effective date of the act that added  
25 this section is later than March 16, 2003, the first report of  
26 distributors required by paragraph (1) of subdivision (g) shall be  
27 due 30 days after that effective date, the certifications by a tobacco  
28 product manufacturer described in subdivision (b) shall be due 45  
29 days after that effective date, and the directory described in  
30 subdivision (c) shall be published or made available within 90  
31 days after that effective date.

32 (o) The Attorney General may adopt rules and regulations to  
33 implement this section. The rules and regulations may establish  
34 procedures for including in the list described in subdivision (c)  
35 tobacco product manufacturers that are not participating  
36 manufacturers and were not required to make escrow payments  
37 under paragraph (2) of subdivision (a) of Section 104557 of the  
38 Health and Safety Code, for sales made during any preceding  
39 calendar year, and brand families of those manufacturers. The rules  
40 and regulations may also establish procedures for seizure and

1 destruction of cigarettes forfeited to the state pursuant to Section  
2 30436 or Section 30449, including, but not limited to, the state  
3 facilities that may be used for the destruction of contraband  
4 cigarettes. Nothing in this section shall affect the authority of local  
5 law enforcement and local government officials to seize and destroy  
6 contraband under existing state or local law. The regulations  
7 adopted to effect the purposes of this section are emergency  
8 regulations in accordance with Chapter 3.5 (commencing with  
9 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
10 Code. For purposes of that chapter, including Section 11349.6 of  
11 the Government Code, the adoption of the regulations shall be  
12 considered by the Office of Administrative Law to be necessary  
13 for the immediate preservation of the public peace, health and  
14 safety, and general welfare. Notwithstanding subdivision (e) of  
15 Section 11346.1 of the Government Code, the regulations shall be  
16 repealed 180 days after their effective date, unless the adopting  
17 authority or agency complies with that chapter, as provided in  
18 subdivision (e) of Section 11346.1 of the Government Code.

19 (p) In any action brought by the state to enforce this section,  
20 the state shall be entitled to recover the costs of investigation,  
21 expert witness fees, costs of the action, and reasonable attorney's  
22 fees.

23 (q) Unless otherwise expressly provided, the remedies or  
24 penalties provided by this section are cumulative to each other and  
25 to the remedies or penalties available under all other laws of this  
26 state.

27 *SEC. 13. Section 30181 of the Revenue and Taxation Code is*  
28 *amended to read:*

29 30181. (a) When any tax imposed upon cigarettes under ~~Article~~  
30 ~~1 (commencing with Section 30101), Article 2 (commencing with~~  
31 ~~Section 30121), and Article 3 (commencing with Section 30131)~~  
32 ~~of Chapter 2 this part~~ is not paid through the use of stamps or  
33 meter impressions, the tax shall be due and payable monthly on  
34 or before the 25th day of the month following the calendar month  
35 in which a distribution of cigarettes occurs, or in the case of a sale  
36 of cigarettes on the facilities of a common carrier for which the  
37 tax is imposed pursuant to Section 30104, the tax shall be due and  
38 payable monthly on or before the 25th day of the month following  
39 the calendar month in which a sale of cigarettes on the facilities  
40 of the carrier occurs.

1 (b) Each distributor of tobacco products shall file a return in the  
2 form, as prescribed by the board, which may include, but not be  
3 limited to, electronic media respecting the distributions of tobacco  
4 products and their wholesale cost during the preceding month, and  
5 any other information as the board may require to carry out this  
6 part. The return shall be filed with the board on or before the 25th  
7 day of the calendar month following the close of the monthly  
8 period for which it relates, together with a remittance payable to  
9 the board, of the amount of tax, if any, due under ~~Article 2~~  
10 ~~(commencing with Section 30121) or Article 3 (commencing with~~  
11 ~~Section 30131) of Chapter 2~~ *this part* for that period.

12 (c) To facilitate the administration of this part, the board may  
13 require the filing of the returns for longer than monthly periods.

14 (d) Returns shall be authenticated in a form or pursuant to  
15 methods as may be prescribed by the board.

16 ~~(e) This section shall become operative on January 1, 2007.~~

17 *SEC. 14. Section 30436 of the Revenue and Taxation Code is*  
18 *amended to read:*

19 30436. The following property, upon seizure by the board, is  
20 hereby forfeited to the state:

21 (a) Cigarettes or tobacco products transported upon the  
22 highways, roads, or streets of this state in violation of Section  
23 30431 or Section 30432.

24 (b) Cigarettes not contained in packages to which are affixed  
25 California cigarette tax stamp or meter impressions or tobacco  
26 products upon which the tobacco products surtax has not been  
27 paid, which are offered for sale, possessed, kept, stored, or owned  
28 by any person with the intent of the person to sell the cigarettes or  
29 tobacco products without payment of the taxes imposed by this  
30 part.

31 (c) Any cigarette or tobacco product vending machine, together  
32 with the cigarettes, tobacco products, money or other contents  
33 thereof, that has been loaded, in whole or in part, with packages  
34 of cigarettes that do not have California cigarette tax stamps or  
35 meter impressions affixed or tobacco products upon which the  
36 tobacco products surtax has not been paid.

37 (d) Cigarettes contained in packages to which are affixed  
38 California cigarette tax stamps or meter impressions in violation  
39 of Section 30163.

1 (e) Cigarettes or tobacco products to which are affixed California  
2 cigarette tax stamps or meter impressions, or for which tax is paid  
3 pursuant to ~~Sections 30123 and 30131.2~~ *this part*, in violation of  
4 Section 30165.1, regardless of whether the violation is subject to  
5 the defense described in paragraph (2) of subdivision (i) of Section  
6 30165.1.

7 *SEC. 15. Part 21 (commencing with Section 42001) is added*  
8 *to Division 2 of the Revenue and Taxation Code, to read:*

9  
10 *PART 21. OIL SEVERANCE TAX LAW*

11  
12 *42001. This part shall be known and may be cited as the Oil*  
13 *Severance Tax Law.*

14 *42002. For purposes of this part, the following definitions shall*  
15 *apply:*

16 (a) *“Barrel of oil” means 42 United States gallons of 231 cubic*  
17 *inches per gallon computed at a temperature of 60 degrees*  
18 *Fahrenheit.*

19 (b) *“Department” means the Department of Conservation.*

20 (c) *“Gross value” means the sale price at the mouth of the well*  
21 *in the case of oil, including any bonus, premium, or other thing of*  
22 *value paid for the oil. If there is no sale at the time of severance,*  
23 *“gross value” means the sale price when the oil is sold, including*  
24 *any bonus, premium, or other thing of value paid for the oil. If oil*  
25 *is exchanged for something other than cash, or if the relation*  
26 *between the buyer and the seller is such that the consideration*  
27 *paid, if any, is not indicative of the true value or market price,*  
28 *then the department shall determine the value of the oil subject to*  
29 *the tax based on the cash price paid to producers for like quality*  
30 *oil in the vicinity of the well.*

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

35 (e) *“Producer” means any person or entity that takes oil from*  
36 *the earth or water in this state in any manner; any person that*  
37 *owns, controls, manages, or leases any oil well in the earth or*  
38 *water of this state; any person that produces or extracts in any*  
39 *manner any oil by taking it from the earth or water in this state;*  
40 *any person that acquires the severed oil from a person or agency*

1 *exempt from property taxation under the United States Constitution*  
2 *or other laws of the United States or under the California*  
3 *Constitution or other laws of the State of California; and any*  
4 *person that owns an interest, including a royalty interest, in oil or*  
5 *its value, whether the oil is produced by the person owning the*  
6 *interest or by another on the person's behalf by lease, contract,*  
7 *or other arrangement.*

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

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

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

27 42003. *On and after October 1, 2009, for the privilege of*  
28 *severing oil from the earth or water in this state for sale, transport,*  
29 *consumption, storage, profit, or use, a tax is hereby imposed upon*  
30 *all producers at the rate of 9.9 percent of the gross value of each*  
31 *barrel of oil severed. The tax shall be applied equally to all*  
32 *portions of the gross value of each barrel of oil severed.*

33 42004. *Except as otherwise provided in this part, the tax shall*  
34 *be upon the entire production in this state, regardless of the place*  
35 *of sale or to whom sold or by whom used, or the fact that the*  
36 *delivery may be made to points outside the state.*

37 42005. *The tax imposed by this part shall be in addition to any*  
38 *ad valorem taxes imposed by the state, or any of its political*  
39 *subdivisions, or any local business license taxes that may be*  
40 *incurred as a privilege of severing oil from the earth or water or*



1 *doing business in that locality. There shall be no exemption from*  
2 *payment of an ad valorem tax related to equipment, material, or*  
3 *property by reason of the payment of the gross severance tax*  
4 *pursuant to this part.*

5 *42006. Two or more producers that are corporations and are*  
6 *owned or controlled directly or indirectly, as defined in Section*  
7 *25105, by the same interests shall be considered as a single*  
8 *producer for purposes of application of the tax prescribed in this*  
9 *part.*

10 *42007. (a) There shall be exempted from the imposition of the*  
11 *oil severance tax imposed pursuant to this part oil produced by a*  
12 *stripper well in which the average value of oil as of January 1 of*  
13 *the prior year is less than thirty dollars (\$30) per barrel.*

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

19 *(c) There shall be exempted from the imposition of the oil*  
20 *severance tax imposed pursuant to this part all oil owned or*  
21 *produced by the state and any political subdivision's (including*  
22 *any local public entity, as defined by Section 900.4 of the*  
23 *Government Code) proprietary share of oil produced under any*  
24 *unit, cooperative, or other pooling agreement.*

25 *42008. The tax imposed by this part is due and payable to the*  
26 *department quarterly on or before the last day of the month next*  
27 *succeeding each calendar quarter.*

28 *42009. (a) Any person that fails to pay any tax within the time*  
29 *required shall pay, in addition to the amount of tax owed, interest*  
30 *at the rate of 1½ percent per month, or fraction thereof, from the*  
31 *date on which the tax became due and payable until and including*  
32 *the date of payment.*

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

35 *(1) First, to any interest due on the tax.*

36 *(2) Second, to any penalty imposed by this part.*

37 *(3) Third, to the balance, if any, of the tax due.*

38 *42010. On or before the last day of the month following each*  
39 *quarterly period of three months, a return for the preceding*

1 *quarterly period shall be filed with the department in the form as*  
2 *the department may prescribe.*

3 *42011. The department shall deposit all tax revenues, penalties,*  
4 *and interest collected pursuant to this part in the General Fund.*

5 *42012. The department may prescribe those forms and*  
6 *reporting requirements as necessary to implement the tax,*  
7 *including, but not limited to, information regarding the location*  
8 *of the well by county, the gross amount of oil produced, the quantity*  
9 *sold and the selling price, the prevailing market price of oil, and*  
10 *the amount of tax due.*

11 *42013. The department shall administer and collect the tax*  
12 *imposed by this part pursuant to the Fee Collection Procedures*  
13 *Law (Part 30 (commencing with Section 55001) of Division 2).*  
14 *For purposes of this part, the references in the Fee Collection*  
15 *Procedures Law to “fee” shall include the tax imposed by this*  
16 *part, to “feepayer” shall include a person required to pay the oil*  
17 *severance tax, and to “board” shall mean the Department of*  
18 *Conservation.*

19 *42014. The department may prescribe, adopt, and enforce*  
20 *emergency regulations relating to the administration and*  
21 *enforcement of this part. Any emergency regulations prescribed,*  
22 *adopted, or enforced pursuant to this section shall be adopted in*  
23 *accordance with Chapter 3.5 (commencing with Section 11340)*  
24 *of Part 1 of Division 3 of Title 2 of the Government Code, and for*  
25 *purposes of that chapter, including Section 11349.6 of the*  
26 *Government Code, the adoption of these regulations is an*  
27 *emergency and shall be considered by the Office of Administrative*  
28 *Law as necessary for the immediate preservation of the public*  
29 *peace, health and safety, and general welfare. Notwithstanding*  
30 *Chapter 3.5 (commencing with Section 11340) of Part 1 of Division*  
31 *3 of Title 2 of the Government Code, including subdivision (e) of*  
32 *Section 11346.1 of the Government Code, any emergency*  
33 *regulations adopted pursuant to this section shall be filed with,*  
34 *but not be repealed by, the Office of Administrative Law, and shall*  
35 *remain in effect until revised by the director.*

36 *42015. The provisions of this part are severable. If any*  
37 *provision of this part or its application is held invalid, that*  
38 *invalidity shall not affect other provisions or applications that can*  
39 *be given effect without the invalid provision or application.*

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

10     *SEC. 17. This act provides for a tax levy within the meaning*  
11 *of Article IV of the Constitution and shall go into immediate effect.*

12     ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
13 ~~changes relating to the Budget Act of 2009.~~