

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY JUNE 24, 2009

SENATE BILL

No. 76

Introduced by ~~Committee on Budget and Fiscal Review~~ *Committee on Public Safety*

(Principal coauthors: Assembly Members Huber and Torrico)

January 20, 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. *An act to amend Sections 2933 and 4019 of the Penal Code, relating to inmates, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 76, as amended, ~~Committee on Budget and Fiscal Review~~ *Committee on Public Safety*. ~~Income taxation: NOLs: credits: cigarettes and other tobacco products tax: oil severance tax.~~ *Committee on Public Safety: Inmates: incentive credits.*

Existing law provides time credit for work performance and good behavior to prisoners confined to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp. Specifically, except regarding certain prisoners who are limited to 15% credit against sentenced time, existing law provides that a term of 4 days will be deemed to have been served for every 2 days spent in actual custody in one of these facilities, except that a term of 6 days will be deemed to have been served for every 4 days in actual custody for prisoners

required to register as sex offenders, prisoners committed for a serious felony, or prisoners with a prior conviction for a serious or violent felony.

This bill would instead provide that prisoners sentenced to state prison for whom the sentence is executed, except for those required to register as sex offenders, committed for a serious felony, or with a previous conviction for a serious or violent felony, who are confined in a city or county jail, industrial farm, or road camp, from the date of arrest until state prison credits are applicable, shall have one day deducted from his or her period of confinement for every day the prisoner served in a city or county jail, industrial farm, or road camp. The bill would provide that a prisoner sentenced to state prison who is confined in a city or county jail, industrial farm, or road camp may not receive the day-for-day credit if it appears by the record that the prisoner refused to satisfactorily perform labor or failed to satisfactorily comply with rules and regulations, as specified. The bill would provide that, for prisoners otherwise in a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp for a crime committed on or after the effective date of this bill, except those subject to the 15% limitation on credits noted above, a term of 6 days will be deemed to have been served for every 4 days spent in actual custody. Because this bill would change the punishment for crimes, it would impose a state-mandated local program.

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

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

This bill would declare that it is to take effect immediately as an urgency statute.

~~(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 $\frac{2}{3}$ of the membership of each house of the Legislature.~~

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 2933 of the Penal Code is amended to
2 read:

3 2933. (a) It is the intent of the Legislature that persons
4 convicted of a crime and sentenced to the state prison under Section
5 1170 serve the entire sentence imposed by the court, except for a
6 reduction in the time served in the custody of the Secretary of the
7 Department of Corrections and Rehabilitation pursuant to this
8 section and Section 2933.05.

9 (b) For every six months of continuous incarceration, a prisoner
10 shall be awarded credit reductions from his or her term of
11 confinement of six months. A lesser amount of credit based on
12 this ratio shall be awarded for any lesser period of continuous
13 incarceration. Credit should be awarded pursuant to regulations
14 adopted by the secretary. Prisoners who are denied the opportunity
15 to earn credits pursuant to subdivision (a) of Section 2932 shall
16 be awarded no credit reduction pursuant to this section. Under no
17 circumstances shall any prisoner receive more than six months'
18 credit reduction for any six-month period under this section.

19 (c) Credit is a privilege, not a right. Credit must be earned and
20 may be forfeited pursuant to the provisions of Section 2932. Except
21 as provided in subdivision (a) of Section 2932, every eligible
22 prisoner shall have a reasonable opportunity to participate.

1 (d) Under regulations adopted by the Department of Corrections
2 and Rehabilitation, which shall require a period of not more than
3 one year free of disciplinary infractions, credit which has been
4 previously forfeited may be restored by the secretary. The
5 regulations shall provide for separate classifications of serious
6 disciplinary infractions as they relate to restoration of credits, the
7 time period required before forfeited credits or a portion thereof
8 may be restored, and the percentage of forfeited credits that may
9 be restored for these time periods. For credits forfeited as specified
10 in paragraph (1) of subdivision (a) of Section 2932, the Department
11 of Corrections and Rehabilitation may provide that up to 180 days
12 of lost credit shall not be restored and up to 90 days of credit shall
13 not be restored for a forfeiture resulting from conspiracy or
14 attempts to commit one of those acts. No credits may be restored
15 if they were forfeited for a serious disciplinary infraction in which
16 the victim died or was permanently disabled. Upon application of
17 the prisoner and following completion of the required time period
18 free of disciplinary offenses, forfeited credits eligible for restoration
19 under the regulations for disciplinary offenses other than serious
20 disciplinary infractions punishable by a credit loss of more than
21 90 days shall be restored unless, at a hearing, it is found that the
22 prisoner refused to accept or failed to perform in a credit qualifying
23 assignment, or extraordinary circumstances are present that require
24 that credits not be restored. "Extraordinary circumstances" shall
25 be defined in the regulations adopted by the secretary. However,
26 in any case in which credit was forfeited for a serious disciplinary
27 infraction punishable by a credit loss of more than 90 days,
28 restoration of credit shall be at the discretion of the secretary.

29 The prisoner may appeal the finding through the Department of
30 Corrections and Rehabilitation's review procedure, which shall
31 include a review by an individual independent of the institution
32 who has supervisory authority over the institution.

33 ~~(e) A prisoner sentenced to the state prison under Section 1170
34 shall receive one day of credit for every day served in a county
35 jail, city jail, industrial farm, or road camp after the date he or she
36 was sentenced to the state prison as specified in subdivision (f) of
37 Section 4019.~~

38 *(e) (1) Notwithstanding Section 4019 and subject to the*
39 *limitations of this subdivision, a prisoner sentenced to the state*
40 *prison under Section 1170 for whom the sentence is executed shall*

1 *have one day deducted from his or her period of confinement for*
2 *every day he or she served in a county jail, city jail, industrial*
3 *farm, or road camp from the date of arrest until state prison credits*
4 *pursuant to this article are applicable to the prisoner.*

5 (2) *A prisoner may not receive the credit specified in paragraph*
6 *(1) if it appears by the record that the prisoner has refused to*
7 *satisfactorily perform labor as assigned by, or has not satisfactorily*
8 *complied with the reasonable rules and regulations established*
9 *by, the sheriff, chief of police, or superintendent of an industrial*
10 *farm or road camp.*

11 (3) *Section 4019, and not this subdivision, shall apply if the*
12 *prisoner is required to register as a sex offender, pursuant to*
13 *Chapter 5.5 (commencing with Section 290), was committed for*
14 *a serious felony, as defined in Section 1192.7, or has a prior*
15 *conviction for a serious felony, as defined in Section 1192.7, or a*
16 *violent felony, as defined in Section 667.5.*

17 (f) *The provisions of subdivision (d) shall also apply in cases*
18 *of credit forfeited under Section 2931 for offenses and serious*
19 *disciplinary infractions occurring on or after January 1, 1983.*

20 *SEC. 2. Section 4019 of the Penal Code is amended to read:*

21 4019. (a) *The provisions of this section shall apply in all of*
22 *the following cases:*

23 (1) *When a prisoner is confined in or committed to a county*
24 *jail, industrial farm, or road camp, or any city jail, industrial farm,*
25 *or road camp, including all days of custody from the date of arrest*
26 *to the date on which the serving of the sentence commences, under*
27 *a judgment of imprisonment, or a fine and imprisonment until the*
28 *fine is paid in a criminal action or proceeding.*

29 (2) *When a prisoner is confined in or committed to the county*
30 *jail, industrial farm, or road camp or any city jail, industrial farm,*
31 *or road camp as a condition of probation after suspension of*
32 *imposition of a sentence or suspension of execution of sentence,*
33 *in a criminal action or proceeding.*

34 (3) *When a prisoner is confined in or committed to the county*
35 *jail, industrial farm, or road camp or any city jail, industrial farm,*
36 *or road camp for a definite period of time for contempt pursuant*
37 *to a proceeding, other than a criminal action or proceeding.*

38 (4) *When a prisoner is confined in a county jail, industrial farm,*
39 *or road camp, or a city jail, industrial farm, or road camp following*

1 arrest and prior to the imposition of sentence for a felony
2 conviction.

3 ~~(b) (1) Except as provided in Section 2933.1 and paragraph~~
4 ~~(2), subject~~ *Subject* to the provisions of subdivision (d), for each
5 ~~four-day six-day~~ period in which a prisoner is confined in or
6 committed to a facility as specified in this section, one day shall
7 be deducted from his or her period of confinement unless it appears
8 by the record that the prisoner has refused to satisfactorily perform
9 labor as assigned by the sheriff, chief of police, or superintendent
10 of an industrial farm or road camp.

11 ~~(2) If the prisoner is required to register as a sex offender~~
12 ~~pursuant to Chapter 5.5 (commencing with Section 290), was~~
13 ~~committed for a serious felony, as defined in Section 1192.7, or~~
14 ~~has a prior conviction for a serious felony, as defined in Section~~
15 ~~1192.7, or a violent felony, as defined in Section 667.5, subject to~~
16 ~~the provisions of subdivision (d), for each six-day period in which~~
17 ~~the prisoner is confined in or committed to a facility as specified~~
18 ~~in this section, one day shall be deducted from his or her period~~
19 ~~of confinement unless it appears by the record that the prisoner~~
20 ~~has refused to satisfactorily perform labor as assigned by the~~
21 ~~sheriff, chief of police, or superintendent of an industrial farm or~~
22 ~~road camp.~~

23 ~~(c) (1) Except as provided in Section 2933.1 and paragraph (2),~~
24 ~~for~~ *For* each ~~four-day six-day~~ period in which a prisoner is confined
25 in or committed to a facility as specified in this section, one day
26 shall be deducted from his or her period of confinement unless it
27 appears by the record that the prisoner has not satisfactorily
28 complied with the reasonable rules and regulations established by
29 the sheriff, chief of police, or superintendent of an industrial farm
30 or road camp.

31 ~~(2) If the prisoner is required to register as a sex offender~~
32 ~~pursuant to Chapter 5.5 (commencing with Section 290), was~~
33 ~~committed for a serious felony, as defined in Section 1192.7, or~~
34 ~~has a prior conviction for a serious felony, as defined in Section~~
35 ~~1192.7, or a violent felony, as defined in Section 667.5, for each~~
36 ~~six-day period in which the prisoner is confined in or committed~~
37 ~~to a facility as specified in this section, one day shall be deducted~~
38 ~~from his or her period of confinement unless is appears by the~~
39 ~~record that the prisoner has not satisfactorily complied with the~~

1 ~~reasonable rules and regulations established by the sheriff, chief~~
2 ~~of police, or superintendent of an industrial farm or road camp.~~

3 (d) Nothing in this section shall be construed to require the
4 sheriff, chief of police, or superintendent of an industrial farm or
5 road camp to assign labor to a prisoner if it appears from the record
6 that the prisoner has refused to satisfactorily perform labor as
7 assigned or that the prisoner has not satisfactorily complied with
8 the reasonable rules and regulations of the sheriff, chief of police,
9 or superintendent of any industrial farm or road camp.

10 (e) No deduction may be made under this section unless the
11 person is committed for a period of ~~four~~ six days or longer, ~~or six~~
12 ~~days or longer for persons described in paragraph (2) of subdivision~~
13 ~~(b) or (c).~~

14 (f) It is the intent of the Legislature that if all days are earned
15 under this section, a term of ~~four~~ six days will be deemed to have
16 been served for every ~~two~~ four days spent in actual custody, ~~except~~
17 ~~that a term of six days will be deemed to have been served for~~
18 ~~every four days spent in actual custody for persons described in~~
19 ~~paragraph (2) of subdivision (b) or (c).~~

20 (g) *The changes in this section as enacted by the act that added*
21 *this subdivision shall apply to prisoners who are confined to a*
22 *county jail, city jail, industrial farm, or road camp for a crime*
23 *committed on or after the effective date of that act.*

24 *SEC. 3. The Legislature intends that nothing in this act shall*
25 *affect Section 59 of Chapter 28 of the Third Extraordinary Session*
26 *of the Statutes of 2009, and that this act be construed in a manner*
27 *consistent with that section.*

28 *SEC. 4. No reimbursement is required by this act pursuant to*
29 *Section 6 of Article XIII B of the California Constitution because*
30 *the only costs that may be incurred by a local agency or school*
31 *district will be incurred because this act creates a new crime or*
32 *infraction, eliminates a crime or infraction, or changes the penalty*
33 *for a crime or infraction, within the meaning of Section 17556 of*
34 *the Government Code, or changes the definition of a crime within*
35 *the meaning of Section 6 of Article XIII B of the California*
36 *Constitution.*

37 *SEC. 5. This act is an urgency statute necessary for the*
38 *immediate preservation of the public peace, health, or safety within*
39 *the meaning of Article IV of the Constitution and shall go into*
40 *immediate effect. The facts constituting the necessity are:*

1 *In order to provide for local custody credits in a manner*
2 *consistent with historic practices and policies of local law*
3 *enforcement officials as soon as possible, it is necessary that this*
4 *act take effect immediately.*

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

7 ~~17276. Except as provided in Sections 17276.1, 17276.2,~~
8 ~~17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided~~
9 ~~by Section 172 of the Internal Revenue Code, relating to a net~~
10 ~~operating loss deduction, shall be modified as follows:~~

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

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

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

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

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

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

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

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

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

38 ~~(B) If the net operating loss is greater than the net loss from the~~
39 ~~new business, the net operating loss shall be carried over as~~
40 ~~follows:~~

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

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

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

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

16 (A) ~~If the net operating loss is equal to or less than the net loss~~
17 ~~from the eligible small business, 100 percent of the net operating~~
18 ~~loss shall be carried forward to the taxable years specified in~~
19 ~~subdivision (d).~~

20 (B) ~~If the net operating loss is greater than the net loss from the~~
21 ~~eligible small business, the net operating loss shall be carried over~~
22 ~~as follows:~~

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

26 (ii) ~~With respect to that portion of the net operating loss that~~
27 ~~exceeds the net loss from the eligible small business, the applicable~~
28 ~~percentage of that amount shall be carried forward as provided in~~
29 ~~subdivision (d).~~

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

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

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

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

14 ~~(e) Net operating loss carrybacks shall not be allowed.~~

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

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

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

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

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

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

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

38 ~~(A) By one year for a net operating loss attributable to taxable~~
39 ~~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 taxpayer that is
7 under the jurisdiction of the court in a Title 11 or similar case at
8 any time during the income year. The loss carryover provided in
9 the preceding sentence shall not apply to any loss incurred after
10 the date the taxpayer is no longer under the jurisdiction of the court
11 in a Title 11 or similar case.

12 (e) For purposes of this section:

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

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

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

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

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

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

38 For purposes of this paragraph only, the following rules shall apply:

39 (A) The determination of the relative fair market values of the
40 acquired assets and the total assets shall be made as of the last day

1 of the first taxable year in which the taxpayer (or any related
2 person) first uses any of the acquired trade or business assets in
3 its business activity.

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

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

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

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

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

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

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

9 ~~(B) For purposes of this paragraph:~~

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

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

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

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

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

36 ~~(j) The Franchise Tax Board may reclassify any net operating~~
37 ~~loss carryover determined under either paragraph (2) or (3) of~~
38 ~~subdivision (b) as a net operating loss carryover under paragraph~~
39 ~~(1) of subdivision (b) upon a showing that the reclassification is~~
40 ~~necessary to prevent evasion of the purposes of this section.~~

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

4 ~~SEC. 2. Section 17276.9 of the Revenue and Taxation Code~~
5 ~~is amended to read:~~

6 ~~17276.9.—(a) Notwithstanding Sections 17276, 17276.1,~~
7 ~~17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and~~
8 ~~Section 172 of the Internal Revenue Code, no net operating loss~~
9 ~~deduction shall be allowed for any taxable year beginning on or~~
10 ~~after January 1, 2008, and before January 1, 2010.~~

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

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

17 ~~(2) By two years, for losses incurred in taxable years beginning~~
18 ~~before January 1, 2008.~~

19 ~~(c) The provisions of this section shall not apply to a taxpayer~~
20 ~~with net business income of less than five hundred thousand dollars~~
21 ~~(\$500,000) for the taxable year. For purposes of this subdivision,~~
22 ~~business income means:~~

23 ~~(1) Income from a trade or business, whether conducted by the~~
24 ~~taxpayer or by a passthrough entity owned directly or indirectly~~
25 ~~by the taxpayer. For purposes of this paragraph, the term~~
26 ~~“passthrough entity” means a partnership or an “S” corporation.~~

27 ~~(2) Income from rental activity.~~

28 ~~(3) Income attributable to a farming business.~~

29 ~~SEC. 3. Section 17276.10 of the Revenue and Taxation Code~~
30 ~~is amended to read:~~

31 ~~17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4,~~
32 ~~17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss~~
33 ~~attributable to a taxable year beginning on or after January 1, 2008,~~
34 ~~shall be a net operating carryover to each of the 20 taxable years~~
35 ~~following the year of the loss.~~

36 ~~SEC. 4. Section 23663 of the Revenue and Taxation Code is~~
37 ~~amended to read:~~

38 ~~23663. (a) (1) Notwithstanding any other law to the contrary,~~
39 ~~for each taxable year beginning on or after July 1, 2008, any credit~~
40 ~~allowed to a taxpayer under this chapter that is an “eligible credit~~

1 (within the meaning of paragraph (2) of subdivision (b)) may be
2 assigned by that taxpayer to any “eligible assignee” (within the
3 meaning of paragraph (3) of subdivision (b)).

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

7 (3) Except as specifically provided in this section, following an
8 assignment of any eligible credit under this section, the eligible
9 assignee shall be treated as if it was originally allowed the assigned
10 credit.

11 (b) For purposes of this section, the following definitions shall
12 apply:

13 (1) “Affiliated corporation” means a corporation that is a
14 member of a commonly controlled group as defined in Section
15 25105.

16 (2) “Eligible credit” means either of the following:

17 (A) Any credit allowed to by the taxpayer in a taxable year
18 beginning on or after July 1, 2008,

19 (B) Any credit allowed in any taxable year beginning before
20 July 1, 2008, that is eligible to be carried forward to the taxpayer’s
21 first taxable year beginning on or after July 1, 2008, under this
22 part.

23 (3) “Eligible assignee” means any affiliated corporation that is
24 properly treated as a member of the same combined reporting
25 group pursuant to Section 25101 or 25110 as the taxpayer assigning
26 the eligible credit as of:

27 (A) In the case of credits allowed in taxable years beginning
28 before July 1, 2008:

29 (i) June 30, 2008, and

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

32 (B) In the case of credits allowed in taxable years beginning on
33 or after July 1, 2008:

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

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

38 (c) (1) (A) The election to assign any credit under subdivision
39 (a) shall be irrevocable once made, and shall be made by the

1 taxpayer allowed that credit on its original return for the taxable
2 year in which the assignment is made.

3 ~~(B) A credit may be assigned under subdivision (a) only on an~~
4 ~~original return for a taxable year beginning on or after July 1, 2008,~~
5 ~~that was filed on or before the effective date of the act adding this~~
6 ~~subparagraph.~~

7 ~~(2) The taxpayer assigning any credit under this section shall~~
8 ~~reduce the amount of its unused credit by the face amount of any~~
9 ~~credit assigned under this section, and the amount of the assigned~~
10 ~~credit shall not be available for application against the assigning~~
11 ~~taxpayer's "tax" in any taxable year, nor shall it thereafter be~~
12 ~~included in the amount of any credit carryover of the assigning~~
13 ~~taxpayer.~~

14 ~~(3) The eligible assignee of any credit under this section may~~
15 ~~apply all or any portion of the assigned credits against the "tax"~~
16 ~~(as defined in Section 23036) of the eligible assignee for the taxable~~
17 ~~year in which the assignment occurs, or any subsequent taxable~~
18 ~~year, subject to any carryover period limitations that apply to the~~
19 ~~assigned credit and also subject to the limitation in paragraph (2)~~
20 ~~of subdivision (a).~~

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

23 ~~(d) (1) No consideration shall be required to be paid by the~~
24 ~~eligible assignee to the assigning taxpayer for assignment of any~~
25 ~~credit under this section.~~

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

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

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

33 ~~(e) (1) The Franchise Tax Board shall specify the form and~~
34 ~~manner in which the election required under this section shall be~~
35 ~~made, as well as any necessary information that shall be required~~
36 ~~to be provided by the taxpayer assigning the credit to the eligible~~
37 ~~assignee.~~

38 ~~(2) Any taxpayer who assigns any credit under this section shall~~
39 ~~report any information, in the form and manner specified by the~~
40 ~~Franchise Tax Board, necessary to substantiate any credit assigned~~

1 under this section and verify the assignment and subsequent
2 application of any assigned credit.

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

8 ~~(4) The Franchise Tax Board may issue any regulations~~
9 ~~necessary to implement the purposes of this section, including any~~
10 ~~regulations necessary to specify the treatment of any assignment~~
11 ~~that does not comply with the requirements of this section~~
12 ~~(including, for example, where the taxpayer and eligible assignee~~
13 ~~are not properly treated as members of the same combined~~
14 ~~reporting group on any of the dates specified in paragraph (3) of~~
15 ~~subdivision (b).~~

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

20 ~~(2) Nothing in this section shall limit the authority of the~~
21 ~~Franchise Tax Board to audit either the assigning taxpayer or the~~
22 ~~eligible assignee with respect to any eligible credit assigned under~~
23 ~~this section.~~

24 ~~(g) On or before June 30, 2013, the Franchise Tax Board shall~~
25 ~~report to the Joint Legislative Budget Committee, the Legislative~~
26 ~~Analyst, and the relevant policy committees of both houses on the~~
27 ~~effects of this section. The report shall include, but need not be~~
28 ~~limited to, the following:~~

29 ~~(1) An estimate of use of credits in the 2010 and 2011 taxable~~
30 ~~years by eligible taxpayers.~~

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

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

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

37 ~~SEC. 5. Section 24416 of the Revenue and Taxation Code is~~
38 ~~amended to read:~~

39 ~~24416. Except as provided in Sections 24416.1, 24416.2,~~
40 ~~24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss~~

1 deduction shall be allowed in computing net income under Section
2 24341 and shall be determined in accordance with Section 172 of
3 the Internal Revenue Code, except as otherwise provided.

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

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

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

15 ~~(A) Fifty percent for any taxable year beginning before January~~
16 ~~1, 2000.~~

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

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

21 ~~(D) One hundred percent for any taxable year beginning on or~~
22 ~~after January 1, 2004.~~

23 ~~(2) In the case of a taxpayer who has a net operating loss in any~~
24 ~~taxable year beginning on or after January 1, 1994, and who~~
25 ~~operates a new business during that taxable year, each of the~~
26 ~~following shall apply to each loss incurred during the first three~~
27 ~~taxable years of operating the new business:~~

28 ~~(A) If the net operating loss is equal to or less than the net loss~~
29 ~~from the new business, 100 percent of the net operating loss shall~~
30 ~~be carried forward as provided in subdivision (c).~~

31 ~~(B) If the net operating loss is greater than the net loss from the~~
32 ~~new business, the net operating loss shall be carried over as~~
33 ~~follows:~~

34 ~~(i) With respect to an amount equal to the net loss from the new~~
35 ~~business, 100 percent of that amount shall be carried forward as~~
36 ~~provided in subdivision (c).~~

37 ~~(ii) With respect to the portion of the net operating loss that~~
38 ~~exceeds the net loss from the new business, the applicable~~
39 ~~percentage of that amount shall be carried forward as provided in~~
40 ~~subdivision (d).~~

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

5 (3) 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 an eligible small business during that taxable year, each
8 of the following shall apply:

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

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

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

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

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

33 (5) In the case of a taxpayer who has a net operating loss in a
34 taxable year beginning on or after January 1, 1994, and who
35 operates more than one business, and more than one of those
36 businesses qualifies as either a new business or an eligible small
37 business under this section, paragraph (2) shall be applied first,
38 except that if there is any remaining portion of the net operating
39 loss after application of clause (i) of subparagraph (B) of paragraph
40 (2), paragraph (3) shall be applied to the remaining portion of the

1 net operating loss as though that remaining portion of the net
2 operating loss constituted the entire net operating loss.

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

6 (e) For any taxable year in which the taxpayer has in effect a
7 water’s-edge election under Section 25110, the deduction of a net
8 operating loss carryover shall be denied to the extent that the net
9 operating loss carryover was determined by taking into account
10 the income and factors of an affiliated corporation in a combined
11 report whose income and apportionment factors would not have
12 been taken into account if a water’s-edge election under Section
13 25110 had been in effect for the taxable year in which the loss was
14 incurred.

15 (d) Net operating loss carrybacks shall not be allowed.

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 (c).

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 who is related to~~
2 ~~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~~
12 ~~is 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 ~~(c) The provisions of this section shall not apply to a taxpayer~~
27 ~~with income subject to tax under this part of less than five hundred~~
28 ~~thousand dollars (\$500,000) for the taxable year.~~

29 ~~SEC. 7. Section 24416.10 of the Revenue and Taxation Code~~
30 ~~is amended to read:~~

31 ~~24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4,~~
32 ~~24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss~~
33 ~~attributable to a taxable year beginning on or after January 1, 2008,~~
34 ~~shall be a net operating carryover to each of the 20 taxable years~~
35 ~~following the year of the loss.~~

36 ~~SEC. 8. Section 30016 of the Revenue and Taxation Code is~~
37 ~~amended to read:~~

38 ~~30016. “Wholesaler” includes:~~

39 ~~(a) Any person, other than a licensed distributor, who engages~~
40 ~~in this state in making sales for resale of cigarettes that are~~

1 contained in packages to which are affixed stamps or meter
2 impressions.

3 (b) Any person, other than a licensed distributor, who engages
4 in this state in making sales for resale of tobacco products on which
5 the tax imposed under this part has been paid.

6 ~~SEC. 9. Section 30104 of the Revenue and Taxation Code is~~
7 ~~amended to read:~~

8 30104. ~~The taxes imposed by this part shall not apply to the~~
9 ~~sale of cigarettes or tobacco products by a distributor to a common~~
10 ~~carrier engaged in interstate or foreign passenger service or to a~~
11 ~~person authorized to sell cigarettes or tobacco products on the~~
12 ~~facilities of the carrier. Whenever cigarettes or tobacco products~~
13 ~~are sold by distributors to common carriers engaged in interstate~~
14 ~~or foreign passenger service for use or sale on facilities of the~~
15 ~~carriers, or to persons authorized to sell cigarettes or tobacco~~
16 ~~products on those facilities, the tax imposed under this part shall~~
17 ~~not be levied with respect to the sales of the cigarettes or tobacco~~
18 ~~products by the distributors, but a tax is hereby levied upon the~~
19 ~~carriers or upon the persons authorized to sell cigarettes or tobacco~~
20 ~~products on the facilities of the carriers, as the case may be, for~~
21 ~~the privilege of making sales in California at the same rate as set~~
22 ~~forth under this part. Those common carriers and authorized~~
23 ~~persons shall pay the tax imposed by this section and file reports~~
24 ~~with the board, as provided in Section 30186.~~

25 ~~SEC. 10. Section 30108 of the Revenue and Taxation Code is~~
26 ~~amended to read:~~

27 30108. (a) ~~Every distributor engaged in business in this state~~
28 ~~and selling or accepting orders for cigarettes or tobacco products~~
29 ~~with respect to the sale of which the tax imposed under this part~~
30 ~~is inapplicable shall, at the time of making the sale or accepting~~
31 ~~the order or, if the purchaser is not then obligated to pay the tax~~
32 ~~with respect to his or her distribution of the cigarettes or tobacco~~
33 ~~products, at the time the purchaser becomes so obligated, collect~~
34 ~~the tax from the purchaser, if the purchaser is other than a licensed~~
35 ~~distributor, and shall give to the purchaser a receipt therefor in the~~
36 ~~manner and form prescribed by the board.~~

37 (b) ~~Every person engaged in business in this state and making~~
38 ~~gifts of untaxed cigarettes or tobacco products as samples with~~
39 ~~respect to which the tax imposed under this part is inapplicable~~
40 ~~shall, at the time of making the gift or, if the donee is not then~~

1 obligated to pay the tax with respect to his or her distribution of
2 the cigarettes or tobacco products, at the time the donee becomes
3 so obligated, collect the tax from the donee, if the donee is other
4 than a licensed distributor, and shall give the donee a receipt
5 therefor in the manner and form prescribed by the board. This
6 section shall not apply to those distributions of cigarettes or tobacco
7 products which are exempt from tax under Section 30105.5.

8 (e) “Engaged in business in the state” means and includes any
9 of the following:

10 (1) Maintaining, occupying, or using, permanently or
11 temporarily, directly or indirectly, or through a subsidiary, or agent,
12 by whatever name called, an office, place of distribution, sales or
13 sample room or place, warehouse or storage place, or other place
14 of business.

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

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

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

25
26 Article 2.5. Cigarette and Tobacco Products Excise Tax

27
28 30130.3. The following definitions apply for purposes of this
29 article:

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

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

36 30130.5. In addition to any other tax imposed under this part,
37 an excise tax is hereby imposed upon every distributor of cigarettes
38 at the rate of seventy-five mills (\$0.075) for each cigarette
39 distributed on and after October 1, 2009.

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

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

13 ~~(b) (1) Every licensed cigarette distributor, for the privilege of~~
14 ~~distributing cigarettes and for holding or storing cigarettes for sale,~~
15 ~~use, or consumption, shall pay a cigarette indicia adjustment tax~~
16 ~~for each California cigarette tax stamp that is affixed to any~~
17 ~~package of cigarettes and for each unaffixed California cigarette~~
18 ~~tax stamp in his or her possession or under his or her control at~~
19 ~~12:01 a.m. on October 1, 2009, at the following rates:~~

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

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

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

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

31 ~~(e) The taxes required to be paid by this section are due and~~
32 ~~payable on November 16, 2009. Payments shall be made by~~
33 ~~remittances payable to the State Board of Equalization and the~~
34 ~~payments shall accompany the forms required to be filed by this~~
35 ~~section.~~

36 ~~(d) Any amount required to be paid by this section that is not~~
37 ~~timely paid shall bear interest at the rate and by the method~~
38 ~~established pursuant to Section 30202 from November 16, 2009,~~
39 ~~until paid, and shall be subject to determination, and~~

1 redetermination, and any penalties provided with respect to
2 determinations and redeterminations:

3 30130.54. (a) In addition to the taxes imposed upon the
4 distribution of tobacco products by this chapter, there shall be
5 imposed, on and after July 1, 2010, an additional tax upon every
6 distributor of tobacco products, based on the wholesale cost of
7 these products, at a tax rate, as determined annually by the State
8 Board of Equalization, that is equivalent to the rate of tax imposed
9 on cigarettes by Section 30130.5.

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

23 30130.56. The taxes imposed under this article shall be
24 administered and collected in accordance with this part.

25 30130.58. (a) Except for payments of refunds made pursuant
26 to Article 1 (commencing with Section 30361) of Chapter 6, and
27 reimbursement to the State Board of Equalization for expenses
28 incurred in the administration and collection of the tax imposed
29 by this article, all moneys derived from a tax imposed pursuant to
30 this article shall be transferred to the General Fund.

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

33 30130.59. The annual determination required of the State Board
34 of Equalization pursuant to Section 30130.54 shall be made based
35 on the wholesale cost of tobacco products as of March 1, and shall
36 be effective during the state's next fiscal year.

37 SEC. 12. Section 30165.1 of the Revenue and Taxation Code
38 is amended to read:

39 30165.1. (a) The following definitions shall apply for purposes
40 of this section:

- 1 (1) “Board” means the State Board of Equalization.
- 2 (2) “Brand family” means all styles of cigarettes sold under the
3 same trademark and differentiated from one another by means of
4 additional modifiers, including, but not limited to, “menthol,”
5 “lights,” “kings,” and “100s” and includes any brand name, alone
6 or in conjunction with any other word, trademark, logo, symbol,
7 motto, selling message, recognizable pattern of colors, or any other
8 indicia of product identification identical or similar to, or
9 identifiable with, a previously known brand of cigarettes.
- 10 (3) “Cigarette” has the same meaning as in subdivision (d) of
11 Section 104556 of the Health and Safety Code and includes tobacco
12 products defined as a cigarette under that subdivision.
- 13 (4) “Distributor” has the same meaning as in Section 30011.
- 14 (5) “MSA” means the Master Settlement Agreement, as defined
15 in subdivision (c) of Section 104556 of the Health and Safety Code.
- 16 (6) “Nonparticipating manufacturer” means any tobacco product
17 manufacturer that is not a participating manufacturer.
- 18 (7) “Participating manufacturer” has the same meaning as in
19 subsection H(jj) of the MSA.
- 20 (8) “Qualified escrow fund” has the same meaning as in
21 subdivision (f) of Section 104556 of the Health and Safety Code.
- 22 (9) “Tobacco product manufacturer” has the same meaning as
23 in subdivision (i) of Section 104556 of the Health and Safety Code.
- 24 (10) “Units sold” has the same meaning as in subdivision (j) of
25 Section 104556 of the Health and Safety Code.
- 26 (b) Every tobacco product manufacturer whose cigarettes are
27 sold in this state, whether directly or through a distributor, retailer,
28 or similar intermediary or intermediaries, shall execute and deliver
29 on a form and in the manner prescribed by the Attorney General
30 a certification to the Attorney General no later than the 30th day
31 of April each year that, as of the date of the certification, the
32 tobacco product manufacturer is either a participating manufacturer,
33 or is in full compliance with Article 3 (commencing with Section
34 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
35 Safety Code, including all installment payments required by that
36 article and this section, and any regulations promulgated pursuant
37 thereto. Any person who makes a certification pursuant to this
38 subdivision that asserts the truth of any material matter that he or
39 she knows to be false is guilty of a misdemeanor punishable by
40 imprisonment of up to one year in the county jail, or a fine of not

1 more than one thousand dollars (\$1,000), or both the imprisonment
2 and the fine.

3 (1) A participating manufacturer shall include in its certification
4 a complete list of its brand families. The participating manufacturer
5 shall update the list 30 days prior to any addition to or modification
6 of its brand families by executing and delivering a supplemental
7 certification to the Attorney General.

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

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

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

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

19 (D) Identifying by name and address any other manufacturer,
20 including all fabricators or makers of the brand families in the
21 preceding or current calendar year in a form, manner, and detail
22 as required by the Attorney General. The nonparticipating
23 manufacturer shall update the list 30 days prior to any change in
24 a fabricator for any brand family or any addition to or modification
25 of its brand families by executing and delivering a supplemental
26 certification to the Attorney General.

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

29 (A) That the nonparticipating manufacturer is registered to do
30 business in the state, or has appointed a resident agent for service
31 of process and provided notice thereof as required by subdivision
32 (f):

33 (B) That the nonparticipating manufacturer has done all of the
34 following:

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

38 (ii) Executed a qualified escrow agreement that has been
39 reviewed and approved by the Attorney General and that governs
40 the qualified escrow fund.

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

8 ~~(C) That the nonparticipating manufacturer is in full compliance~~
9 ~~with Article 3 (commencing with Section 104555) of Chapter 1~~
10 ~~of Part 3 of Division 103 of the Health and Safety Code, including~~
11 ~~paragraph (2) of subdivision (a) of Section 104557 of the Health~~
12 ~~and Safety Code, this section, and any regulations promulgated~~
13 ~~pursuant thereto.~~

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

15 ~~(i) The name, address, and telephone number of the financial~~
16 ~~institution where the nonparticipating manufacturer has established~~
17 ~~the qualified escrow fund required pursuant to Article 3~~
18 ~~(commencing with Section 104555) of Chapter 1 of Part 3 of~~
19 ~~Division 103 of the Health and Safety Code and all regulations~~
20 ~~promulgated thereto.~~

21 ~~(ii) The account number of the qualified escrow fund and~~
22 ~~subaccount number for the State of California.~~

23 ~~(iii) The amount the nonparticipating manufacturer placed in~~
24 ~~the fund for cigarettes sold in the state during the preceding~~
25 ~~calendar year, the date and amount of each deposit, and any~~
26 ~~confirming evidence or verification as may be deemed necessary~~
27 ~~by the Attorney General.~~

28 ~~(iv) The amounts and dates of any withdrawal or transfer of~~
29 ~~funds the nonparticipating manufacturer made at any time from~~
30 ~~the fund or from any other qualified escrow fund into which it ever~~
31 ~~made escrow payments pursuant to Article 3 (commencing with~~
32 ~~Section 104555) of Chapter 1 of Part 3 of Division 103 of the~~
33 ~~Health and Safety Code and all regulations promulgated thereto.~~

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

37 ~~(i) In the case of a participating manufacturer, the participating~~
38 ~~manufacturer affirms that the brand family is to be deemed to be~~
39 ~~its cigarettes for purposes of calculating its payments under the~~

1 MSA for the relevant year, in the volume and shares determined
2 pursuant to the MSA.

3 (ii) In the case of a nonparticipating manufacturer, the
4 nonparticipating manufacturer affirms that the brand family is to
5 be deemed to be its cigarettes for purposes of Article 3
6 (commencing with Section 104555) of Chapter 1 of Part 3 of
7 Division 103 of the Health and Safety Code, including paragraph
8 (2) of subdivision (a) of Section 104557 of the Health and Safety
9 Code, and any regulations promulgated pursuant thereto and this
10 section.

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

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

22 (e) Not later than June 30, 2004, the Attorney General shall
23 develop and publish on its Internet Web site a directory listing of
24 all tobacco product manufacturers that have provided current,
25 timely, and accurate certifications conforming to the requirements
26 of subdivision (b) and all brand families that are listed in the
27 certifications, except as specified below.

28 (1) The Attorney General may not include or retain in the
29 directory the name or brand families of any nonparticipating
30 manufacturer that fails to provide the required certification or
31 whose certification the Attorney General determines is not in
32 compliance with subdivision (b), unless the Attorney General has
33 determined that the violation has been cured to the satisfaction of
34 the Attorney General.

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

38 (A) In the case of a nonparticipating manufacturer, any escrow
39 deposit required pursuant to Section 104557 of the Health and
40 Safety Code for any period for any brand family, whether or not

1 listed by the nonparticipating manufacturer, has not been fully
2 deposited into a qualified escrow fund governed by a qualified
3 escrow agreement that has been approved by the Attorney General.

4 (B) Any outstanding final judgment, including interest thereon,
5 for violations of Article 3 (commencing with Section 104555) of
6 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,
7 this section, and any regulations promulgated pursuant thereto,
8 has not been fully satisfied for the brand family and the
9 manufacturer.

10 (3) The Attorney General shall update the directory as necessary
11 in order to correct mistakes and to add or remove a tobacco product
12 manufacturer or brand family to keep the directory in conformity
13 with the requirements of this section. The Attorney General shall
14 promptly provide distributors with written notice of each tobacco
15 product manufacturer and brand family that the Attorney General
16 has added to, or excluded or removed from the list.

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

20 (5) The Attorney General shall provide each tobacco product
21 manufacturer that has provided all certifications and other
22 information required by this section with a written acknowledgment
23 of receipt within seven business days after receiving the
24 certifications and other materials. Each tobacco product
25 manufacturer shall provide to each distributor to whom it sells or
26 ships cigarettes, or any tobacco product defined as a cigarette under
27 this section, a copy of each acknowledgment of receipt provided
28 to the manufacturer by the Attorney General. Upon request, the
29 Attorney General shall provide any distributor with a copy of the
30 most recent written acknowledgment of receipt provided to the
31 tobacco product manufacturer.

32 (d) (1) The Attorney General may exclude or remove from the
33 list required by subdivision (c) a tobacco product manufacturer or
34 any of its brand families, based on a determination that the
35 manufacturer is not a participating manufacturer and has not made
36 all escrow payments required by paragraph (2) of subdivision (a)
37 of Section 104557 of the Health and Safety Code, in accordance
38 with that subdivision, or has not complied with this section. Before
39 the exclusion or removal may take effect, the Attorney General
40 shall notify the manufacturer of this determination.

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

15 ~~(e) (1) No person shall affix, or cause to be affixed, any tax~~
16 ~~stamp or meter impression to a package of cigarettes pursuant to~~
17 ~~subdivision (a) of Section 30163, or pay the tax levied pursuant~~
18 ~~to this part on a tobacco product defined as a cigarette under this~~
19 ~~section, unless the brand family of the cigarettes or tobacco~~
20 ~~product, and the tobacco product manufacturer that makes or sells~~
21 ~~the cigarettes or tobacco product, are included on the list posted~~
22 ~~by the Attorney General pursuant to subdivision (c).~~

23 ~~(2) No person shall sell, offer, or possess for sale in this state,~~
24 ~~or import for personal consumption in this state, cigarettes of a~~
25 ~~tobacco product manufacturer or brand family not included in the~~
26 ~~directory.~~

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

28 ~~(A) Sell or distribute cigarettes that the person knows or should~~
29 ~~know are intended to be distributed in violation of paragraphs (1)~~
30 ~~and (2).~~

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

34 ~~(f) (1) Any nonresident or foreign nonparticipating manufacturer~~
35 ~~that has not registered to do business in the state as a foreign~~
36 ~~corporation or business entity shall, as a condition precedent to~~
37 ~~having its brand families listed or retained in the directory, appoint~~
38 ~~and continually engage without interruption the services of an~~
39 ~~agent in this state to act as agent for the service of process on whom~~
40 ~~all process, and any action or proceeding against it concerning or~~

1 arising out of the enforcement of this section, Article 3
2 (commencing with Section 104555) of Chapter 1 of Part 3 of
3 Division 103 of the Health and Safety Code, and any regulations
4 promulgated pursuant thereto, may be served in any manner
5 authorized by law. This service shall constitute legal and valid
6 service of process on the nonparticipating manufacturer. The
7 nonparticipating manufacturer shall provide the name, address,
8 telephone number, and proof of the appointment and availability
9 of the agent to the satisfaction of the Attorney General.

10 (2) The nonparticipating manufacturer shall provide notice to
11 the Attorney General 30 calendar days prior to termination of the
12 authority of an agent and shall further provide proof to the
13 satisfaction of the Attorney General of the appointment of a new
14 agent no less than five calendar days prior to the termination of
15 an existing agent appointment. In the event an agent terminates an
16 agency appointment, the nonparticipating manufacturer shall notify
17 the Attorney General of said termination within five calendar days
18 and shall include proof to the satisfaction of the Attorney General
19 of the appointment of a new agent.

20 (3) Any nonparticipating manufacturer whose products are sold
21 in this state without appointing or designating an agent as herein
22 required shall be deemed to have appointed the Secretary of State
23 as its agent, as provided in Section 2105 of the Corporations Code,
24 and may be proceeded against in courts of this state by service of
25 process upon the Secretary of State. However, the appointment of
26 the Secretary of State pursuant to this provision as the agent for
27 service of process does not satisfy the condition precedent specified
28 in paragraph (1) to having its brand families listed or retained in
29 the directory.

30 (g) (1) Not later than 25 days after the end of each calendar
31 quarter, and more frequently if so directed by the board or the
32 Attorney General, each distributor shall submit any information
33 as the board or Attorney General requires to facilitate compliance
34 with this section, including, but not limited to, a list by brand
35 family of the total number of cigarettes or in the case of roll your
36 own, the total ounces for which the distributor affixed stamps
37 during the previous calendar month or otherwise paid the tax due
38 for those cigarettes. The distributor shall maintain, and shall make
39 available to the board and the Attorney General, all invoices and
40 documentation of sales of all nonparticipating manufacturer

1 cigarettes and any other information relied upon in reporting to
2 the board and the Attorney General for a period of five years.

3 (2) ~~Notwithstanding Section 30455, the board is authorized to~~
4 ~~disclose to the Attorney General any information received under~~
5 ~~this part for purposes of determining compliance with and~~
6 ~~enforcing the provisions of this section and Article 3 (commencing~~
7 ~~with Section 104555) of Chapter 1 of Part 3 of Division 103 of~~
8 ~~the Health and Safety Code, and any regulations promulgated~~
9 ~~pursuant thereto. The board and Attorney General shall share with~~
10 ~~each other the information received under this section, and may~~
11 ~~share that information with other federal, state, or local agencies,~~
12 ~~only for purposes of enforcement of this section, Article 3~~
13 ~~(commencing with Section 104555) of Chapter 1 of Part 3 of~~
14 ~~Division 103 of the Health and Safety Code, and any regulations~~
15 ~~promulgated pursuant thereto, or corresponding laws of other~~
16 ~~states.~~

17 (3) ~~At any time, the Attorney General may require from the~~
18 ~~nonparticipating manufacturer proof from the financial institution~~
19 ~~in which the manufacturer has established a qualified escrow fund~~
20 ~~for the purpose of compliance with Article 3 (commencing with~~
21 ~~Section 104555) of Chapter 1 of Part 3 of Division 103 of the~~
22 ~~Health and Safety Code, and any regulations promulgated pursuant~~
23 ~~thereto, of the amount of money in the fund being held on behalf~~
24 ~~of the state and the dates of deposits, and listing the amounts of~~
25 ~~all withdrawals from the fund and the dates thereof.~~

26 (4) ~~In addition to the information required to be submitted~~
27 ~~pursuant to this section or Article 3 (commencing with Section~~
28 ~~104555) of Chapter 1 of Part 3 of Division 103 of the Health and~~
29 ~~Safety Code and any regulations promulgated pursuant thereto,~~
30 ~~the board or the Attorney General may require a retailer,~~
31 ~~wholesaler, distributor, or tobacco product manufacturer to submit~~
32 ~~any additional information, including, but not limited to, samples~~
33 ~~of the packaging or labeling of each brand family, as is necessary~~
34 ~~to enable the Attorney General to determine whether a tobacco~~
35 ~~product manufacturer is in compliance with this section, or Article~~
36 ~~3 (commencing with Section 104555) of Chapter 1 of Part 3 of~~
37 ~~Division 103 of the Health and Safety Code, and any regulations~~
38 ~~promulgated pursuant thereto.~~

39 (h) ~~To promote compliance with this section, the Attorney~~
40 ~~General may promulgate regulations requiring a tobacco product~~

1 manufacturer subject to the requirements of paragraph (2) of
2 subdivision (a) of Section 104557 to make the escrow deposits
3 required in quarterly or other specified installments during the year
4 in which the sales covered by the deposits are made. The Attorney
5 General may require production of information sufficient to enable
6 the Attorney General to determine the adequacy of the amount of
7 the installment deposit.

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

12 (A) In the case of the first offense, the board may revoke or
13 suspend the license or licenses of the distributor pursuant to the
14 procedures applicable to the revocation of a license set forth in
15 Section 30148.

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

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

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

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

25 (A) At the time of the violation, the cigarettes or tobacco
26 products claimed to be the subject of the alleged violation belonged
27 to a brand family that was included on the list required by
28 subdivision (e).

29 (B) At the time of the violation, the distributor possessed a copy
30 of the Attorney General's most recent written acknowledgment of
31 receipt of the certifications and other information required as a
32 condition of including the brand family on the list required by
33 subdivision (e).

34 (3) The defense described in subparagraph (B) of paragraph (2)
35 is not available to a distributor if, at the time of the violation, the
36 Attorney General had provided the distributor with written notice
37 that the brand family had been excluded or removed from the list
38 required by subdivision (e), or the distributor failed to provide the
39 Attorney General with a current address for the receipt of written

1 notice through electronic mail as required by paragraph (4) of
2 subdivision (e):

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

5 (j) If a distributor affixes a stamp or meter impression to a
6 package of cigarettes under subdivision (a) of Section 30163, or
7 pays the tax levied under this part on a tobacco product defined
8 as a cigarette under this section, during the period between the
9 date on which the brand family of the cigarettes or tobacco product
10 was excluded or removed from the list required by subdivision (e)
11 and the date on which the distributor received notice of the
12 exclusion or removal under paragraph (4) of subdivision (e), then
13 both of the following shall apply:

14 (1) The distributor shall be entitled to a credit for the tax paid
15 by the distributor with respect to the cigarette or tobacco product
16 to which the stamp or meter impression was affixed, or the tax
17 paid during that period. The distributor shall comply with
18 regulations prescribed by the board regarding refunds and credits
19 that are adopted pursuant to Section 30177.5. If the distributor has
20 sold the cigarette or tobacco product to a wholesaler or retailer,
21 and has received payment from the wholesaler or retailer, the
22 distributor shall provide the credit to the wholesaler or retailer.

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

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

31 (1) Any information required under subdivision (b):

32 (2) That the tobacco product manufacturer is a participating
33 manufacturer.

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

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

1 ~~(l) A violation of subdivision (e) shall constitute unfair~~
2 ~~competition under Section 17200 of the Business and Professions~~
3 ~~Code.~~

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

12 ~~(n) For the year 2003, if the effective date of the act that added~~
13 ~~this section is later than March 16, 2003, the first report of~~
14 ~~distributors required by paragraph (1) of subdivision (g) shall be~~
15 ~~due 30 days after that effective date, the certifications by a tobacco~~
16 ~~product manufacturer described in subdivision (b) shall be due 45~~
17 ~~days after that effective date, and the directory described in~~
18 ~~subdivision (c) shall be published or made available within 90~~
19 ~~days after that effective date.~~

20 ~~(o) The Attorney General may adopt rules and regulations to~~
21 ~~implement this section. The rules and regulations may establish~~
22 ~~procedures for including in the list described in subdivision (e)~~
23 ~~tobacco product manufacturers that are not participating~~
24 ~~manufacturers and were not required to make eserow payments~~
25 ~~under paragraph (2) of subdivision (a) of Section 104557 of the~~
26 ~~Health and Safety Code, for sales made during any preceding~~
27 ~~calendar year, and brand families of those manufacturers. The rules~~
28 ~~and regulations may also establish procedures for seizure and~~
29 ~~destruction of cigarettes forfeited to the state pursuant to Section~~
30 ~~30436 or Section 30449, including, but not limited to, the state~~
31 ~~facilities that may be used for the destruction of contraband~~
32 ~~cigarettes. Nothing in this section shall affect the authority of local~~
33 ~~law enforcement and local government officials to seize and destroy~~
34 ~~contraband under existing state or local law. The regulations~~
35 ~~adopted to effect the purposes of this section are emergency~~
36 ~~regulations in accordance with Chapter 3.5 (commencing with~~
37 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
38 ~~Code. For purposes of that chapter, including Section 11349.6 of~~
39 ~~the Government Code, the adoption of the regulations shall be~~
40 ~~considered by the Office of Administrative Law to be necessary~~

1 for the immediate preservation of the public peace, health and
2 safety, and general welfare. Notwithstanding subdivision (c) of
3 Section 11346.1 of the Government Code, the regulations shall be
4 repealed 180 days after their effective date, unless the adopting
5 authority or agency complies with that chapter, as provided in
6 subdivision (c) of Section 11346.1 of the Government Code.

7 (p) In any action brought by the state to enforce this section,
8 the state shall be entitled to recover the costs of investigation,
9 expert witness fees, costs of the action, and reasonable attorney's
10 fees.

11 (q) Unless otherwise expressly provided, the remedies or
12 penalties provided by this section are cumulative to each other and
13 to the remedies or penalties available under all other laws of this
14 state.

15 SEC. 13. Section 30181 of the Revenue and Taxation Code is
16 amended to read:

17 30181. (a) When any tax imposed upon cigarettes under this
18 part is not paid through the use of stamps or meter impressions,
19 the tax shall be due and payable monthly on or before the 25th day
20 of the month following the calendar month in which a distribution
21 of cigarettes occurs, or in the case of a sale of cigarettes on the
22 facilities of a common carrier for which the tax is imposed pursuant
23 to Section 30104, the tax shall be due and payable monthly on or
24 before the 25th day of the month following the calendar month in
25 which a sale of cigarettes on the facilities of the carrier occurs.

26 (b) Each distributor of tobacco products shall file a return in the
27 form, as prescribed by the board, which may include, but not be
28 limited to, electronic media respecting the distributions of tobacco
29 products and their wholesale cost during the preceding month, and
30 any other information as the board may require to carry out this
31 part. The return shall be filed with the board on or before the 25th
32 day of the calendar month following the close of the monthly
33 period for which it relates, together with a remittance payable to
34 the board, of the amount of tax, if any, due under this part for that
35 period.

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

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

1 ~~SEC. 14.~~ Section 30436 of the Revenue and Taxation Code is
2 amended to read:

3 ~~30436.~~ The following property, upon seizure by the board, is
4 hereby forfeited to the state:

5 ~~(a) Cigarettes or tobacco products transported upon the~~
6 ~~highways, roads, or streets of this state in violation of Section~~
7 ~~30431 or Section 30432.~~

8 ~~(b) Cigarettes not contained in packages to which are affixed~~
9 ~~California cigarette tax stamp or meter impressions or tobacco~~
10 ~~products upon which the tobacco products surtax has not been~~
11 ~~paid, which are offered for sale, possessed, kept, stored, or owned~~
12 ~~by any person with the intent of the person to sell the cigarettes or~~
13 ~~tobacco products without payment of the taxes imposed by this~~
14 ~~part.~~

15 ~~(c) Any cigarette or tobacco product vending machine, together~~
16 ~~with the cigarettes, tobacco products, money or other contents~~
17 ~~thereof, that has been loaded, in whole or in part, with packages~~
18 ~~of cigarettes that do not have California cigarette tax stamps or~~
19 ~~meter impressions affixed or tobacco products upon which the~~
20 ~~tobacco products surtax has not been paid.~~

21 ~~(d) Cigarettes contained in packages to which are affixed~~
22 ~~California cigarette tax stamps or meter impressions in violation~~
23 ~~of Section 30163.~~

24 ~~(e) Cigarettes or tobacco products to which are affixed California~~
25 ~~cigarette tax stamps or meter impressions, or for which tax is paid~~
26 ~~pursuant to this part, in violation of Section 30165.1, regardless~~
27 ~~of whether the violation is subject to the defense described in~~
28 ~~paragraph (2) of subdivision (i) of Section 30165.1.~~

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

31

32 PART 21. OIL SEVERANCE TAX LAW

33

34 ~~42001.~~ This part shall be known and may be cited as the Oil
35 Severance Tax Law.

36 ~~42002.~~ For purposes of this part, the following definitions shall
37 apply:

38 ~~(a) “Barrel of oil” means 42 United States gallons of 231 cubic~~
39 ~~inches per gallon computed at a temperature of 60 degrees~~
40 ~~Fahrenheit.~~

1 (b) ~~“Department” means the Department of Conservation.~~

2 (e) ~~“Gross value” means the sale price at the mouth of the well~~
3 ~~in the case of oil, including any bonus, premium, or other thing of~~
4 ~~value paid for the oil. If there is no sale at the time of severance,~~
5 ~~“gross value” means the sale price when the oil is sold, including~~
6 ~~any bonus, premium, or other thing of value paid for the oil. If oil~~
7 ~~is exchanged for something other than cash, or if the relation~~
8 ~~between the buyer and the seller is such that the consideration~~
9 ~~paid, if any, is not indicative of the true value or market price, then~~
10 ~~the department shall determine the value of the oil subject to the~~
11 ~~tax based on the cash price paid to producers for like quality oil~~
12 ~~in the vicinity of the well.~~

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

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

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

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

39 (h) ~~“Stripper well” means a well that has been certified by the~~
40 ~~department as an oil well incapable of producing an average of~~

1 more than 10 barrels of oil per day during the entire taxable month.
2 Once a well has been certified as a stripper well, that stripper well
3 shall remain certified as a stripper well until the well produces an
4 average of more than 10 barrels of oil per day during an entire
5 taxable month.

6 ~~42003. On and after October 1, 2009, for the privilege of~~
7 ~~severing oil from the earth or water in this state for sale, transport,~~
8 ~~consumption, storage, profit, or use, a tax is hereby imposed upon~~
9 ~~all producers at the rate of 9.9 percent of the gross value of each~~
10 ~~barrel of oil severed. The tax shall be applied equally to all portions~~
11 ~~of the gross value of each barrel of oil severed.~~

12 ~~42004. Except as otherwise provided in this part, the tax shall~~
13 ~~be upon the entire production in this state, regardless of the place~~
14 ~~of sale or to whom sold or by whom used, or the fact that the~~
15 ~~delivery may be made to points outside the state.~~

16 ~~42005. The tax imposed by this part shall be in addition to any~~
17 ~~ad valorem taxes imposed by the state, or any of its political~~
18 ~~subdivisions, or any local business license taxes that may be~~
19 ~~incurred as a privilege of severing oil from the earth or water or~~
20 ~~doing business in that locality. There shall be no exemption from~~
21 ~~payment of an ad valorem tax related to equipment, material, or~~
22 ~~property by reason of the payment of the gross severance tax~~
23 ~~pursuant to this part.~~

24 ~~42006. Two or more producers that are corporations and are~~
25 ~~owned or controlled directly or indirectly, as defined in Section~~
26 ~~25105, by the same interests shall be considered as a single~~
27 ~~producer for purposes of application of the tax prescribed in this~~
28 ~~part.~~

29 ~~42007. (a) There shall be exempted from the imposition of~~
30 ~~the oil severance tax imposed pursuant to this part oil produced~~
31 ~~by a stripper well in which the average value of oil as of January~~
32 ~~1 of the prior year is less than thirty dollars (\$30) per barrel.~~

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

38 ~~(c) There shall be exempted from the imposition of the oil~~
39 ~~severance tax imposed pursuant to this part all oil owned or~~
40 ~~produced by the state and any political subdivision's (including~~

1 any local public entity, as defined by Section 900.4 of the
2 Government Code) proprietary share of oil produced under any
3 unit, cooperative, or other pooling agreement.

4 42008. The tax imposed by this part is due and payable to the
5 department quarterly on or before the last day of the month next
6 succeeding each calendar quarter.

7 42009. (a) Any person that fails to pay any tax within the time
8 required shall pay, in addition to the amount of tax owed, interest
9 at the rate of 1 ½ percent per month, or fraction thereof, from the
10 date on which the tax became due and payable until and including
11 the date of payment.

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

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

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

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

17 42010. On or before the last day of the month following each
18 quarterly period of three months, a return for the preceding
19 quarterly period shall be filed with the department in the form as
20 the department may prescribe.

21 42011. The department shall deposit all tax revenues, penalties,
22 and interest collected pursuant to this part in the General Fund.

23 42012. The department may prescribe those forms and reporting
24 requirements as necessary to implement the tax, including, but not
25 limited to, information regarding the location of the well by county,
26 the gross amount of oil produced, the quantity sold and the selling
27 price, the prevailing market price of oil, and the amount of tax
28 due.

29 42013. The department shall administer and collect the tax
30 imposed by this part pursuant to the Fee Collection Procedures
31 Law (Part 30 (commencing with Section 55001) of Division 2).
32 For purposes of this part, the references in the Fee Collection
33 Procedures Law to “fee” shall include the tax imposed by this part,
34 to “feepayer” shall include a person required to pay the oil
35 severance tax, and to “board” shall mean the Department of
36 Conservation.

37 42014. The department may prescribe, adopt, and enforce
38 emergency regulations relating to the administration and
39 enforcement of this part. Any emergency regulations prescribed,
40 adopted, or enforced pursuant to this section shall be adopted in

1 ~~accordance with Chapter 3.5 (commencing with Section 11340)~~
 2 ~~of Part 1 of Division 3 of Title 2 of the Government Code, and for~~
 3 ~~purposes of that chapter, including Section 11349.6 of the~~
 4 ~~Government Code, the adoption of these regulations is an~~
 5 ~~emergency and shall be considered by the Office of Administrative~~
 6 ~~Law as necessary for the immediate preservation of the public~~
 7 ~~peace, health and safety, and general welfare. Notwithstanding~~
 8 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of Division~~
 9 ~~3 of Title 2 of the Government Code, including subdivision (e) of~~
 10 ~~Section 11346.1 of the Government Code, any emergency~~
 11 ~~regulations adopted pursuant to this section shall be filed with, but~~
 12 ~~not be repealed by, the Office of Administrative Law, and shall~~
 13 ~~remain in effect until revised by the director.~~

14 ~~42015. The provisions of this part are severable. If any~~
 15 ~~provision of this part or its application is held invalid, that~~
 16 ~~invalidity shall not affect other provisions or applications that can~~
 17 ~~be given effect without the invalid provision or application.~~

18 ~~SEC. 16. No reimbursement is required by this act pursuant to~~
 19 ~~Section 6 of Article XIII B of the California Constitution because~~
 20 ~~the only costs that may be incurred by a local agency or school~~
 21 ~~district will be incurred because this act creates a new crime or~~
 22 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
 23 ~~for a crime or infraction, within the meaning of Section 17556 of~~
 24 ~~the Government Code, or changes the definition of a crime within~~
 25 ~~the meaning of Section 6 of Article XIII B of the California~~
 26 ~~Constitution.~~

27 ~~SEC. 17. This act provides for a tax levy within the meaning~~
 28 ~~of Article IV of the Constitution and shall go into immediate effect.~~