AMENDED IN SENATE JUNE 29, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MARCH 14, 2011

california legislature—2011–12 regular session

ASSEMBLY BILL No. 242

Introduced by Committee on Revenue and Taxation (Perea (Chair), Beall, Charles Calderon, Fuentes, and Gordon)

February 3, 2011

~~An act to add Sections 17131.10, 17131.11, 17131.12, 17131.13, 17131.14, 17134.1, 17202.1, and 24304 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~ *An act to amend Sections 1793.2 and 1793.25 of the Civil Code, and to amend Sections 6055, 6203.5, 6248, 6353, 6356.5, 6356.6, 6358.5, 7096, 7101, 8351, and 30474 of, and to add Sections 7157, 8407, 17131.10, 17131.11, 17131.12, 17134.1, 30483, and 60709 to, the Revenue and Taxation Code, relating to taxation.*

legislative counsel's digest

AB 242, as amended, Committee on Revenue and Taxation. ~~Income taxes: conformity: federal health care.~~ *Taxation.*

(1) Existing law requires the State Board of Equalization to reimburse a manufacturer for an amount equal to the sales tax which the manufacturer pays to or for the buyer when providing a replacement vehicle or making restitution pursuant to the Song-Beverly Consumer Warranty Act, subject to satisfactory proof, as specified.

This bill would require the board to reimburse a manufacturer for an amount equal to the use tax which the manufacturer pays to or for the buyer or lessee when providing a replacement vehicle or making *restitution pursuant to the Song-Beverly Consumer Warranty Act, subject to satisfactory proof, as specified.*

This bill would make other conforming changes, and would also state that the above provisions of the bill are declaratory of existing law.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price.

The Sales and Use Tax Law allows a retailer to be relieved from liability for sales or use tax when the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes. Retailers who sell their accounts receivables, or lenders who purchase them, are entitled to a refund or a deduction for the taxes paid to the board on that portion of the accounts receivable that is written off as worthless. In these circumstances, existing law requires the retailer and the lender, prior to claiming any deduction or refund, to file an election form with the board, signed by both parties, designating which party is entitled to claim the deduction or refund.

This bill would remove the requirement that the election form be filed with the board and would instead require the election form to be retained by the retailer and the lender.

(3) Under the Sales and Use Tax Law, there is a presumption that a vehicle, vessel, or aircraft shipped or brought into this state within 12 months from the date of its purchase was acquired for storage, use, or other consumption in this state and is subject to the use tax if specified conditions are met. Under existing law, this presumption does not apply if a vessel was brought into the state exclusively for the purpose of repair, retrofit, or modification performed in a permitted facility that is licensed to do business in the county in which it is located.

This bill would, for purposes of the exclusion from this presumption, also allow the repair, retrofit, or modification to be performed in a permitted facility that is licensed to do business in the city or city and county in which it is located, if the city or city and county so requires, or performed in a permitted facility in a county in which it is not required to be licensed.

The Bradley-Burns Uniform Local Sales and Use Tax authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts *to impose transactions and use taxes in accordance with the Transactions and Use Tax Law which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.*

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, an appropriation is not made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

(4) The Sales and Use Tax Law provides various exemptions from the taxes imposed by those laws, including partial exemptions for the sale of, or the storage, use, or other consumption of, liquified petroleum gas, farm equipment and machinery, timber harvesting equipment and machinery, and racehorse breeding stock, when purchased for use for specified activities by a qualified person, as defined. Existing law provides that those exemptions became effective September 1, 2001, unless the State Board of Equalization determined that implementation by that date was not feasible, in which case the board was required to report to the Legislature regarding the reason for delayed implementation and to implement the exemption no later than October 1, 2001. The State Board of Equalization adopted regulations implementing these exemptions, which were operative September 1, 2001.

This bill would delete the provisions relating to an authorization for a delayed implementation in 2001 of these exemptions.

(5) Existing law requires the State Board of Equalization to administer the Sales and Use Tax Law and authorizes the board to undertake collection action on delinquent accounts, including issuing a levy or notice to withhold. A taxpayer may file a claim with the board for reimbursement of bank charges or any other reasonable 3rd-party check charge fees incurred by the taxpayer as a direct result of an erroneous levy or notice to withhold by the board.

This bill would additionally authorize a taxpayer to file a reimbursement claim with the board for bank charges and other reasonable 3rd-party check charge fees incurred as a direct result of an erroneous processing action or erroneous collection action by the board.

(6) Existing law authorizes the State Board of Equalization and the Controller's office to use specified collection tools with respect to delinquent accounts and liabilities.

This bill would authorize the board and the Controller's office to collect restitution orders under specified laws, and a specified penalty, awarded to the state by a court in criminal proceedings, in the same manner as tax liabilities.

~~The~~

(7) The Personal Income Tax Law and the Bank and Corporation Tax Law, among other things, allow various exclusions, deductions, and credit in modified conformity to federal income tax laws.

This bill would provide additional modified conformity to specified provisions of the federal Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 relating to simple cafeteria plans for small businesses, health care benefits of Indian tribe members, ~~free choice vouchers, therapeutic discovery project grants,~~ *adoption assistance programs,* and student loan repayment programs.

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

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ *yes*.

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

SECTION 1. Section 1793.2 of the Civil Code is amended to read:

1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) (A) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of those warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of the warranties.

(B) As a means of complying with this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work. However, the rates fixed by those contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, do not preclude a good faith discount that is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph may not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to Section 1793.5.

(3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(b) Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or its representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of that notice of nonconformity, the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

(A) In the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. The manufacturer also shall pay for, or to, the buyer the amount of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(B) In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges such as sales *or use* tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(C) When the manufacturer replaces the new motor vehicle pursuant to subparagraph (A), the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. When restitution is made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

(D) Pursuant to Section 1795.4, a buyer of a new motor vehicle shall also include a lessee of a new motor vehicle.

(e) (1) If the goods cannot practicably be serviced or repaired by the manufacturer or its representative to conform to the applicable express warranties because of the method of installation or because the goods have become so affixed to real property as to become a part thereof, the manufacturer shall either replace and install the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, including installation costs, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) With respect to claims arising out of deficiencies in the construction of a new residential dwelling, paragraph (1) shall not apply to either of the following:

(A) A product that is not a manufactured product, as defined in subdivision (g) of Section 896.

(B) A claim against a person or entity that is not the manufacturer that originally made the express warranty for that manufactured product.

SEC. 2. Section 1793.25 of the Civil Code is amended to read:

1793.25. (a) Notwithstanding Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax *or use tax* which the manufacturer pays to or for the buyer *or lessee* when providing a replacement vehicle pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 1793.2 or includes in making restitution to the buyer *or lessee* pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section 1793.2, when *the manufacturer provides satisfactory proof that it has complied with subdivision (c) of Section 1793.23, and* satisfactory proof is provided ~~that the~~ *for one of the following:*

(1) The retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle ~~and the manufacturer provides satisfactory proof that it has complied with subdivision (c) of Section 1793.23. The~~.

(2) The buyer of the motor vehicle has paid the use tax on the sales price for the storage, use, or other consumption of that motor vehicle in this state.

(3) The lessee of the motor vehicle has paid the use tax on the rentals payable from the lease of that motor vehicle.

(b) The State Board of Equalization may adopt rules and regulations to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section.

~~(b)~~

(c) ~~Nothing in this~~ *This* section shall ~~in any way~~ *not* change the application of the sales and use tax to the gross receipts, *the rentals payable,* and the sales price from the sale, *lease,* and the storage,

use, or other consumption, in this state ~~or~~ *of* tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

~~(c)~~

(d) The manufacturer's claim for reimbursement and the ~~board's~~ *State Board of Equalization's* approval or denial of the claim shall be subject to the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections ~~6902.1, 6903,~~ 6907~~,~~ and 6908 ~~thereof~~, insofar as those provisions are not inconsistent with this section.

(e) For purposes of this section, the amount of use tax that the State Board of Equalization is required to reimburse the manufacturer shall be limited to the amount of use tax the manufacturer is required to pay to or for the lessee pursuant to Section 1793.2.

SEC. 3. Section 6055 of the Revenue and Taxation Code is amended to read:

6055. (a) A retailer is relieved from liability for sales tax that became due and payable, insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the tax may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off by the retailer. If these accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the first return filed after the collection and the tax shall be paid with the return. For purposes of this subdivision, the term "retailer" shall include any entity affiliated with the retailer under Section 1504 of Title 26 of the United States Code.

(b) (1) In the case of accounts held by a lender, a retailer or lender who makes a proper election under paragraph (4) shall be entitled to a deduction or refund of the tax that the retailer has previously reported and paid if all of the following conditions are met:

(A) ~~No~~ *A* deduction was *not* previously claimed or allowed on any portion of the accounts.

(B) The accounts have been found worthless and written off by the lender in accordance with the requirements of subdivision (a).

(C) The contract between the retailer and the lender contains an irrevocable relinquishment of all rights to the account from the retailer to the lender.

(D) The retailer remitted the tax on or after January 1, 2000.

(E) The party electing to claim the deduction or refund under paragraph (4) files a claim in a manner prescribed by the board.

(2) If the retailer or the lender thereafter collects in whole or in part any accounts, one of the following shall apply:

(A) If the retailer is entitled to the deduction or refund under the election specified in paragraph (4), the retailer shall include the amount collected in its first return filed after the collection and pay tax on that amount with the return.

(B) If the lender is entitled to the deduction or refund under the election specified in paragraph (4), the lender shall pay the tax to the board in accordance with Section 6451.

(3) For purposes of this subdivision, the term "lender" means any of the following:

(A) Any person who holds a retail account which that person purchased directly from a retailer who reported the tax.

(B) Any person who holds a retail account pursuant to that person's contract directly with the retailer who reported the tax.

(C) Any person who is either an affiliated entity, under Section 1504 of Title 26 of the United States Code, of a person described in subparagraph (A) or (B), or an assignee of a person described in subparagraph (A) or (B).

(4) Prior to claiming any deduction or refund under this subdivision, the retailer who reported the tax and the lender shall ~~file~~ *prepare and retain* an election ~~with the board~~, signed by both parties, designating which party is entitled to claim the deduction or refund. This election may not be amended or revoked unless a new election, signed by both parties, is ~~filed with the board~~ *prepared and retained by the retailer and the lender*.

SEC. 4. Section 6203.5 of the Revenue and Taxation Code is amended to read:

6203.5. (a) A retailer is relieved from liability to collect use tax that became due and payable, insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the amount of the tax may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off by the retailer. If these accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the first return filed after the collection and the amount of the tax shall be paid with the return. For purposes of this subdivision, the term "retailer" shall include any entity affiliated with the retailer under Section 1504 of Title 26 of the United States Code.

(b) (1) In the case of accounts held by a lender, a retailer or lender who makes a proper election under paragraph (4) shall be entitled to a deduction or refund of the tax that the retailer has previously reported and paid if all of the following conditions are met:

(A) ~~No~~ *A* deduction was *not* previously claimed or allowed on any portion of the accounts.

(B) The accounts have been found worthless and written off by the lender in accordance with the requirements of subdivision (a).

(C) The contract between the retailer and the lender contains an irrevocable relinquishment of all rights to the account from the retailer to the lender.

(D) The retailer remitted the tax on or after January 1, 2000.

(E) The party electing to claim the deduction or refund under paragraph (4) files a claim in a manner prescribed by the board.

(2) If the retailer or the lender thereafter collects in whole or in part any accounts, one of the following shall apply:

(A) If the retailer is entitled to the deduction or refund under the election specified in paragraph (4), the retailer shall include the amount collected in its first return filed after the collection and pay tax on that amount with the return.

(B) If the lender is entitled to the deduction or refund under the election specified in paragraph (4), the lender shall pay the tax to the board in accordance with Section 6451.

(3) For purposes of this subdivision, the term "lender" means any of the following:

(A) Any person who holds a retail account which that person purchased directly from a retailer who reported the tax.

(B) Any person who holds a retail account pursuant to that person's contract directly with the retailer who reported the tax.

(C) Any person who is either an affiliated entity, under Section 1504 of Title 26 of the United States Code, of a person described in subparagraph (A) or (B), or an assignee of a person described in subparagraph (A) or (B).

(4) Prior to claiming any deduction or refund under this subdivision, the retailer who reported the tax and the lender shall ~~file~~ *prepare and retain* an election ~~with the board~~, signed by both parties, designating which party is entitled to claim the deduction or refund. This election may not be amended or revoked unless a new election, signed by both parties, is ~~filed with the board~~ *prepared and retained by the retailer and the lender*.

SEC. 5. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) There shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state on or after the effective date of this section, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code. For purposes of this section, a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) Notwithstanding subdivision (a), any aircraft or vessel brought into this state exclusively for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the board and is licensed to do business by the *city,* county*, or city and county* in which it is located *if the city, county, or city and county so requires*, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 6. Section 6353 of the Revenue and Taxation Code is amended to read:

6353. There are exempted from the taxes imposed by this part the gross receipts derived from the sales, furnishing, or service of and the storage, use, or other consumption in this state of, all of the following:

(a) Gas, electricity, and water, including steam and geothermal steam, brines, and heat, when delivered to consumers through mains, lines, or pipes.

(b) (1) Liquefied petroleum gas, delivered to a qualified residence by the seller, that is sold for household use in the qualified residence, or liquefied petroleum gas that is purchased for use by a qualified person to be used in producing and harvesting agricultural products; provided, in either case, the liquefied petroleum gas is delivered into a tank with a storage capacity for liquefied petroleum gas that is equal to or greater than 30 gallons. This subdivision may not be construed to provide any exemption from any tax levied by a city, county, or city and county pursuant to Section 7284.3, or any successor to that section.

(2) For purposes of this subdivision:

(A) "Qualified residence" means a primary residence, not serviced by gas mains and pipes.

(B) "Qualified person" means any person engaged in a line of business described in Codes 0111 to 0291, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 Edition, and any other person that assists that person in the lines of business described in this paragraph in producing and harvesting agricultural products.

(c) Water, when sold to an individual in bulk quantities of 50 gallons or more, for general household use in his or her residence if the residence is located in an area not serviced by mains, lines or pipes.

(d) Exhaust steam, waste steam, heat, or resultant energy, produced in connection with cogeneration technology, as defined in Section 25134 of the Public Resources Code.

(e) The exemptions provided by subdivision (b) shall be effective starting September 1, 2001~~, unless the State Board of Equalization determines that implementation by that date is not feasible, in which case the board shall, on or before that date, report to the Legislature regarding the reasons why it must delay implementation, and shall thereafter implement these exemptions no later than October 1, 2001~~.

SEC. 7. Section 6356.5 of the Revenue and Taxation Code is amended to read:

6356.5. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage and use of, or other consumption in this state of, farm equipment and machinery, and the parts thereof, purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products.

(b) For purposes of this section, both of the following shall apply:

(1) "Qualified person" means any person engaged in a line of business described in Codes 0111 to 0291, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 Edition, and any other person that uses farm equipment and machinery to assist this person in the lines of business described in this paragraph in producing and harvesting agricultural products.

(2) "Farm equipment and machinery" means implements of husbandry, as defined in Section 411.

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

(2) Notwithstanding subdivision (a), the exemption established by this section does not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(d) The exemption provided by this section shall be effective starting September 1, 2001~~, unless the State Board of Equalization determines that implementation by that date is not feasible, in which case the board shall, on or before that date, report to the Legislature regarding the reasons why it must delay implementation, and shall thereafter implement the exemption provided by this section no later than October 1, 2001~~.

SEC. 8. Section 6356.6 of the Revenue and Taxation Code is amended to read:

6356.6. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage and use of, or other consumption in this state of, equipment and machinery designed primarily for off-road use in commercial timber harvesting operations, and the parts thereof, that is purchased for use by a qualified person to be used primarily in harvesting timber.

(b) The State Board of Equalization may adopt emergency regulations to specify equipment and machinery exempted by this section, and may revise those regulations from time to time.

(c) For purposes of this section, "qualified person" means any person engaged in commercial timber harvesting.

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

(2) Notwithstanding subdivision (a), the exemption established by this section does not apply with respect to any tax levied pursuant to Section 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(e) The exemption provided by this section shall be effective starting September 1, 2001~~, unless the State Board of Equalization determines that implementation by that date is not feasible, in which case the board shall, on or before that date, report to the Legislature regarding the reasons why it must delay implementation, and shall thereafter implement the exemption provided by this section no later than October 1, 2001~~.

SEC. 9. Section 6358.5 of the Revenue and Taxation Code is amended to read:

6358.5. (a) (1) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, any racehorse breeding stock.

(2) For purposes of this section "racehorse breeding stock" means a horse that is capable of reproduction and for which the purchaser states that it is the purchaser's sole intent to use the horse for breeding purposes.

(b) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part

1.6 (commencing with Section 7251)), the exemption established by this section does not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

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

(c) The exemption provided by this section shall be effective starting September 1, 2001~~, unless the State Board of Equalization determines that implementation by that date is not feasible, in which case the board shall, on or before that date, report to the Legislature regarding the reasons why it must delay implementation, and shall thereafter implement the exemption provided by this section no later than October 1, 2001~~.

SEC. 10. Section 7096 of the Revenue and Taxation Code is amended to read:

7096. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, *erroneous processing action, or erroneous collection action* by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, *erroneous processing action, or erroneous collection action*. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, *erroneous processing action, or erroneous collection action* was caused by board error.

(2) Prior to the *erroneous* levy or notice to withhold, *erroneous processing action, or erroneous collection action,* the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish

the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the *erroneous* levy or notice to withhold, *erroneous processing action, or erroneous collection action*. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 11. Section 7101 of the Revenue and Taxation Code is amended to read:

7101. All fees, taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state under this part, *and restitution orders or any other amounts otherwise authorized by law to be collected by the board, or any other amounts imposed by a court of competent jurisdiction to be paid to the board* shall, except as provided in Section 6452.1, be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Retail Sales Tax Fund.

SEC. 12. Section 7157 is added to the Revenue and Taxation Code, to read:

7157. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the board may be collected by the board in any manner provided by law for collection of a delinquent sales and use tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the board.

(b) Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7285) shall apply to amounts collected under this section in the same manner

and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 7 (commencing with Section 6901), a refund or credit shall not be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the board.

(e) Amounts authorized to be collected pursuant to this section shall not be subject to any statute of limitations set forth in Chapter 6 (commencing with Section 6701).

(f) Notwithstanding Section 6738 or Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a notice of state tax lien. The board may record or extend a recorded notice of state tax lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the board before, on, or after January 1, 2012.

SEC. 13. Section 8351 of the Revenue and Taxation Code is amended to read:

8351. The Controller shall transmit all money received by him or her in payment of taxes, interest, and penalties due under this part*, and restitution orders or any other amounts otherwise authorized by law to be collected by the Controller, or any other amounts imposed by a court of competent jurisdiction to be paid to the Controller,* to the State Treasurer who shall deposit it in the State Treasury and credit it to the Motor Vehicle Fuel Fund, which is continued in existence as the Motor Vehicle Fuel Account in the Transportation Tax Fund, which fund is hereby created. All fees paid and accepted for issuance or reinstatement of licenses under this part shall be deposited by the board in the State Treasury to the credit of the same account.

Any reference in any law or regulation to the Motor Vehicle Fuel Fund shall be deemed to refer to the Motor Vehicle Fuel Account in the Transportation Tax Fund.

SEC. 14. Section 8407 is added to the Revenue and Taxation Code, to read:

8407. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due to the State of California and payable to the Controller may be collected by the Controller in any manner provided by law for collection of a delinquent motor vehicle fuel tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the board.

(b) This part shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 7 (commencing with Section 8101), no refund or credit may be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the board.

(e) Amounts authorized to be collected pursuant to this section are not subject to any statute of limitations set forth in Chapter 6 (commencing with Section 7851).

(f) Notwithstanding Section 7872 or Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a notice of state tax lien. The Controller may record or extend

a recorded notice of state tax lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due to the State of California and payable to the Controller before, on, or after January 1, 2012.

~~SECTION 1.~~

SEC. 15. Section 17131.10 is added to the Revenue and Taxation Code, to read:

17131.10. (a) For taxable years beginning on or after January 1, 2011, Section 125(j) of the Internal Revenue Code, relating to simple cafeteria plans for small businesses, as added by Section 9022 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

(b) For taxable years beginning on or after January 1, 2014, Section 125(f) of the Internal Revenue Code, relating to qualified benefits defined, as amended by Section 1515 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

~~SEC. 2.~~

SEC. 16. Section 17131.11 is added to the Revenue and Taxation Code, to read:

17131.11. For taxable years beginning on or after January 1, 2010, Section 137 of the Internal Revenue Code, relating to adoption assistance programs, as amended by Section 10909(a)(2) of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

~~SEC. 3.~~

SEC. 17. Section 17131.12 is added to the Revenue and Taxation Code, to read:

17131.12. (a) Section 139D of the Internal Revenue Code, relating to Indian health care benefits, as added by Section 9021 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

(b) This section shall apply to benefits and coverage provided after March 23, 2010.

(c) This section shall not be construed to create an inference with respect to the exclusion from gross income of either of the following:

(1) Benefits provided by an Indian tribe or tribal organization that are not within the scope of this section.

(2) Benefits provided prior to the effective date of the act adding this section.

~~SEC. 4. Section 17131.13 is added to the Revenue and Taxation Code, to read:~~

~~17131.13. For vouchers provided on or after January 1, 2014, Section 139D of the Internal Revenue Code, relating to free choice vouchers, as added by Section 10108(f) of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.~~

~~SEC. 5. Section 17131.14 is added to the Revenue and Taxation Code, to read:~~

~~17131.14. (a) Any grant made in any year by the Secretary of the Treasury under Section 9023(e) of the Patient Protection and Affordable Care Act (Public Law 111-148), to a person that places in service qualified therapeutic discovery project property, shall not be includable in the gross income or the alternative minimum taxable income of the taxpayer.~~

~~(b) This section shall apply in the same manner and to the same periods as Section 48D(f)(3) of the Internal Revenue Code, as added by Section 9023(a) of the Patient Protection and Affordable Care Act (Public Law 111-148), relating to treatment of grants, applies for federal purposes, except as otherwise provided.~~

~~SEC. 6.~~

SEC. 18. Section 17134.1 is added to the Revenue and Taxation Code, to read:

17134.1. For taxable years beginning on or after January 1, 2010, Section 108(f)(4) of the Internal Revenue Code, relating to payments under the National Health Service Corps loan repayment program and certain state loan repayment programs, as amended by Section 10908 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

~~SEC. 7. Section 17202.1 is added to the Revenue and Taxation Code, to read:~~

~~17202.1. For taxable years beginning on or after January 1, 2014, Section 162(a) of the Internal Revenue Code, as amended by Section 10108(g) of the Patient Protection and Affordable Care~~

~~Act (Public Law 111-148), shall apply, except as otherwise provided.~~

~~SEC. 8. Section 24304 is added to the Revenue and Taxation Code, to read:~~

~~24304. (a) Any grant made in any year by the Secretary of the Treasury under Section 9023(e) of the Patient Protection and Affordable Care Act (Public Law 111-148), to a person that places in service qualified therapeutic discovery project property, shall not be includable in the gross income or the alternative minimum taxable income of the taxpayer.~~

~~(b) This section shall apply in the same manner and to the same periods as Section 48D(f)(3) of the Internal Revenue Code, as added by Section 9023(a) of the Patient Protection and Affordable Care Act (Public Law 111-148), relating to treatment of grants, applies for federal purposes, except as otherwise provided.~~

~~SEC. 9. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.~~

SEC. 19. Section 30474 of the Revenue and Taxation Code is amended to read:

30474. (a) Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined an amount not to exceed twenty-five thousand dollars ($25,000), or be imprisoned for a period not to exceed one year in the county jail, or, at the discretion of the court, be subject to both fine and imprisonment in the county jail.

(b) In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars ($100) for each carton of 200 cigarettes, or portion thereof, if that person knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the ~~State Board of Equalization~~ *board. The board may collect the penalty due pursuant to this section in the manner prescribed in Section 30483.*

(c) This section ~~does~~ *shall* not apply to a licensed distributor that possesses, keeps, stores, or retains cigarettes before the necessary stamp or meter impression is affixed.

SEC. 20. Section 30483 is added to the Revenue and Taxation Code, to read:

30483. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the board may be collected by the board in any manner provided by law for collection of a delinquent cigarette and tobacco products tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the board.

(b) This part shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 6 (commencing with Section 30361), a refund or credit shall not be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the board.

(e) Amounts authorized to be collected pursuant to this section shall not be subject to any statute of limitations set forth in Chapter 5 (commencing with Section 30301).

(f) Notwithstanding Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a notice of state tax lien. The board may record or extend a recorded notice

of state tax lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the board before, on, or after January 1, 2012.

SEC. 21. Section 60709 is added to the Revenue and Taxation Code, to read:

60709. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the board may be collected by the board in any manner provided by law for collection of a delinquent diesel fuel tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the board.

(b) Part 31 (commencing with Section 60001) shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 8 (commencing with Section 60501), a refund or credit shall not be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the board.

(e) Amounts authorized to be collected pursuant to this section are not subject to any statute of limitations set forth in Chapter 7 (commencing with Section 60401).

(f) Notwithstanding Sections 60441 to 60445, inclusive, or Chapter 14 (commencing with Section 7150) of Division 7 of Title

1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a notice of state tax lien. The board may record or extend a recorded notice of state tax lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the board before, on, or after January 1, 2012.

SEC. 22. Sections 1 and 2 of this act are declaratory of existing law.

SEC. 23. Notwithstanding Section 2230 of the Revenue and Taxation Code, an appropriation is not made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

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