

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1218**

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**Introduced by Assembly Member Pan**

February 18, 2011

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~~An act to amend Section 6093 of the Revenue and Taxation Code, relating to taxation. An act to add Sections 17290 and 24430 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1218, as amended, Pan. ~~Sales and use tax. Income taxes: disallowance of deductions: advertising: tobacco.~~

*The Personal Income Tax Law and Corporation Tax Law allow deductions for various expenditures in computing taxable or net income, including, with certain exceptions, all ordinary and necessary expenses paid or incurred during the taxable and income year in carrying on any trade or business.*

*This bill would provide under both laws that a deduction shall not be allowed for specified expenses paid or incurred to advertise, as defined, the sale, use, or consumption of cigarettes or other tobacco products.*

*This bill would include a change in state statute that would result in a taxpayer paying a higher tax 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.*

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

~~The Sales and Use Tax Law presumes that all gross receipts are subject to tax until the contrary is established. This law relieves a seller from liability for sales tax if the seller in good faith takes a resale certificate from a purchaser holding a seller’s permit, and the resale certificate is signed and completed as specified.~~

~~This bill would make nonsubstantive, technical changes to this provision.~~

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

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

1 SECTION 1. Section 17290 is added to the Revenue and  
2 Taxation Code, to read:

3 17290. (a) Notwithstanding any other provision in this part  
4 to the contrary, a deduction shall not be allowed for any expenses  
5 paid or incurred by the taxpayer to advertise the sale, use, or other  
6 consumption of cigarettes or any other tobacco products.

7 (b) For purposes of this section:

8 (1) “Advertise” includes the use of a newspaper, magazine, or  
9 other publication, book, notice, circular, pamphlet, letter, handbill,  
10 tip sheet, poster, bill, sign, placard, card, label, tag, window  
11 display, store sign, or any other means or methods now or hereafter  
12 employed to sell or promote cigarettes or any other tobacco  
13 products.

14 (2) “Advertising” includes all cigarette and tobacco product  
15 advertising done by cigarette or tobacco products manufacturers,  
16 distributors, and retailers.

17 (3) “Cigarette” means a cigarette, as defined in Section 30003.

18 (4) “Tobacco products” means tobacco products, as defined in  
19 subdivision (b) of Section 30121.

20 (c) In cases where the advertising space is shared by several  
21 products, including cigarettes or other tobacco products, the  
22 cigarette or other tobacco product portion of the advertisement  
23 shall be prorated for disallowance of the deduction.

24 (d) This section shall not apply to advertising aimed at  
25 discouraging smoking or the use of cigarettes or other tobacco  
26 products.

27 SEC. 2. Section 24430 is added to the Revenue and Taxation  
28 Code, to read:

1 24430. (a) Notwithstanding Section 24343 or any other  
2 provision in this part to the contrary, in computing business income  
3 as defined in Section 25120, a deduction shall not be allowed for  
4 any expenses paid or incurred by the taxpayer to advertise the  
5 sale, use, or other consumption of cigarettes or any other products  
6 containing tobacco.

7 (b) For purposes of this section:

8 (1) "Advertise" includes the use of a newspaper, magazine, or  
9 other publication, book, notice, circular, pamphlet, letter, handbill,  
10 tip sheet, poster, bill, sign, placard, card, label, tag, window  
11 display, store sign, or any other means or methods now or hereafter  
12 employed to sell or promote cigarettes or any other products  
13 containing tobacco.

14 (2) "Advertising" includes all cigarette and tobacco product  
15 advertising done by cigarette or tobacco products manufacturers,  
16 distributors, and retailers.

17 (3) "Cigarette" means a cigarette, as defined in Section 30003.

18 (4) "Tobacco products" means tobacco products, as defined in  
19 subdivision (b) of Section 30121.

20 (c) In cases where the advertising space is shared by several  
21 products, including cigarettes or any other products containing  
22 tobacco, the tobacco portion of the advertisement shall be prorated  
23 for disallowance of the deduction.

24 (d) This section shall not apply to advertising aimed at  
25 discouraging smoking or the use of cigarettes or any other products  
26 containing tobacco.

27 SEC. 3. This act provides for a tax levy within the meaning of  
28 Article IV of the Constitution and shall go into immediate effect.

29 SECTION 1. ~~Section 6093 of the Revenue and Taxation Code~~  
30 ~~is amended to read:~~

31 ~~6093. The certificate shall be signed by and bear the name and~~  
32 ~~address of the purchaser, indicate the number of the permit issued~~  
33 ~~to the purchaser, and indicate the general character of the tangible~~  
34 ~~personal property sold by the purchaser in the regular course of~~  
35 ~~business. The certificate shall be substantially in such form as the~~  
36 ~~board may prescribe.~~