

**ASSEMBLY BILL**

**No. 1424**

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

March 22, 2011

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An act to amend Sections 1793.2 and 1793.25 of the Civil Code, and to amend Sections 6055, 6203.5, 6248, 7096, and 30474 of, and to add Sections 7157, 8407, 30483, and 60709 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1424, as introduced, Committee on Revenue and Taxation. Tax administration: collection: lenders: vessels: vehicles.

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 also would also provide that the board is 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.

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 also 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.

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 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 Transactions and Use Tax Law 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, no appropriation is made and the state

shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

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 of Equalization 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.

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.

Vote: majority. 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 1793.2 of the Civil Code is amended to  
2 read:

3 1793.2. (a) Every manufacturer of consumer goods sold in  
4 this state and for which the manufacturer has made an express  
5 warranty shall:

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

12 (B) As a means of complying with this paragraph, a  
13 manufacturer may enter into warranty service contracts with  
14 independent service and repair facilities. The warranty service  
15 contracts may provide for a fixed schedule of rates to be charged

1 for warranty service or warranty repair work. However, the rates  
2 fixed by those contracts shall be in conformity with the  
3 requirements of subdivision (c) of Section 1793.3. The rates  
4 established pursuant to subdivision (c) of Section 1793.3, between  
5 the manufacturer and the independent service and repair facility,  
6 do not preclude a good faith discount that is reasonably related to  
7 reduced credit and general overhead cost factors arising from the  
8 manufacturer's payment of warranty charges direct to the  
9 independent service and repair facility. The warranty service  
10 contracts authorized by this paragraph may not be executed to  
11 cover a period of time in excess of one year, and may be renewed  
12 only by a separate, new contract or letter of agreement between  
13 the manufacturer and the independent service and repair facility.

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

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

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

31 (c) The buyer shall deliver nonconforming goods to the  
32 manufacturer's service and repair facility within this state, unless,  
33 due to reasons of size and weight, or method of attachment, or  
34 method of installation, or nature of the nonconformity, delivery  
35 cannot reasonably be accomplished. If the buyer cannot return the  
36 nonconforming goods for any of these reasons, he or she shall  
37 notify the manufacturer or its nearest service and repair facility  
38 within the state. Written notice of nonconformity to the  
39 manufacturer or its service and repair facility shall constitute return  
40 of the goods for purposes of this section. Upon receipt of that

1 notice of nonconformity, the manufacturer shall, at its option,  
2 service or repair the goods at the buyer's residence, or pick up the  
3 goods for service and repair, or arrange for transporting the goods  
4 to its service and repair facility. All reasonable costs of transporting  
5 the goods when a buyer cannot return them for any of the above  
6 reasons shall be at the manufacturer's expense. The reasonable  
7 costs of transporting nonconforming goods after delivery to the  
8 service and repair facility until return of the goods to the buyer  
9 shall be at the manufacturer's expense.

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

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

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

39 (B) In the case of restitution, the manufacturer shall make  
40 restitution in an amount equal to the actual price paid or payable

1 by the buyer, including any charges for transportation and  
2 manufacturer-installed options, but excluding nonmanufacturer  
3 items installed by a dealer or the buyer, and including any collateral  
4 charges such as sales *or use* tax, license fees, registration fees, and  
5 other official fees, plus any incidental damages to which the buyer  
6 is entitled under Section 1794, including, but not limited to,  
7 reasonable repair, towing, and rental car costs actually incurred  
8 by the buyer.

9 (C) When the manufacturer replaces the new motor vehicle  
10 pursuant to subparagraph (A), the buyer shall only be liable to pay  
11 the manufacturer an amount directly attributable to use by the  
12 buyer of the replaced vehicle prior to the time the buyer first  
13 delivered the vehicle to the manufacturer or distributor, or its  
14 authorized service and repair facility for correction of the problem  
15 that gave rise to the nonconformity. When restitution is made  
16 pursuant to subparagraph (B), the amount to be paid by the  
17 manufacturer to the buyer may be reduced by the manufacturer by  
18 that amount directly attributable to use by the buyer prior to the  
19 time the buyer first delivered the vehicle to the manufacturer or  
20 distributor, or its authorized service and repair facility for  
21 correction of the problem that gave rise to the nonconformity. The  
22 amount directly attributable to use by the buyer shall be determined  
23 by multiplying the actual price of the new motor vehicle paid or  
24 payable by the buyer, including any charges for transportation and  
25 manufacturer-installed options, by a fraction having as its  
26 denominator 120,000 and having as its numerator the number of  
27 miles traveled by the new motor vehicle prior to the time the buyer  
28 first delivered the vehicle to the manufacturer or distributor, or its  
29 authorized service and repair facility for correction of the problem  
30 that gave rise to the nonconformity. Nothing in this paragraph shall  
31 in any way limit the rights or remedies available to the buyer under  
32 any other law.

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

35 (e) (1) If the goods cannot practicably be serviced or repaired  
36 by the manufacturer or its representative to conform to the  
37 applicable express warranties because of the method of installation  
38 or because the goods have become so affixed to real property as  
39 to become a part thereof, the manufacturer shall either replace and  
40 install the goods or reimburse the buyer in an amount equal to the

1 purchase price paid by the buyer, including installation costs, less  
2 that amount directly attributable to use by the buyer prior to the  
3 discovery of the nonconformity.

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

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

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

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

13 1793.25. (a) Notwithstanding Part 1 (commencing with Section  
14 6001) of Division 2 of the Revenue and Taxation Code, the State  
15 Board of Equalization shall reimburse the manufacturer of a new  
16 motor vehicle for an amount equal to the sales tax *or use tax* which  
17 the manufacturer pays to or for the buyer *or lessee* when providing  
18 a replacement vehicle pursuant to subparagraph (A) of paragraph  
19 (2) of subdivision (d) of Section 1793.2 or includes in making  
20 restitution to the buyer *or lessee* pursuant to subparagraph (B) of  
21 paragraph (2) of subdivision (d) of Section 1793.2, when *the*  
22 *manufacturer provides satisfactory proof that it has complied with*  
23 *subdivision (c) of Section 1793.23, and* satisfactory proof is  
24 provided ~~that the~~ *for one of the following:*

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

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

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

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

38 ~~(b)~~

39 (c) *Nothing in this section shall in any way change the*  
40 *application of the sales and use tax to the gross receipts, the rentals*

1 *payable*, and the sales price from the sale, *lease*, and the storage,  
 2 use, or other consumption, in this state ~~or~~ of tangible personal  
 3 property pursuant to Part 1 (commencing with Section 6001) of  
 4 Division 2 of the Revenue and Taxation Code.

5 (e)

6 (d) The manufacturer’s claim for reimbursement and the board’s  
 7 *State Board of Equalization’s* approval or denial of the claim shall  
 8 be subject to the provisions of Article 1 (commencing with Section  
 9 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and  
 10 Taxation Code, except Sections ~~6902.1, 6903, 6907, and 6908~~  
 11 ~~thereof~~, insofar as those provisions are not inconsistent with this  
 12 section.

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

15 6055. (a) A retailer is relieved from liability for sales tax that  
 16 became due and payable, insofar as the measure of the tax is  
 17 represented by accounts that have been found to be worthless and  
 18 charged off for income tax purposes by the retailer or, if the retailer  
 19 is not required to file income tax returns, charged off in accordance  
 20 with generally accepted accounting principles. A retailer that has  
 21 previously paid the tax may, under rules and regulations prescribed  
 22 by the board, take as a deduction the amount found worthless and  
 23 charged off by the retailer. If these accounts are thereafter in whole  
 24 or in part collected by the retailer, the amount collected shall be  
 25 included in the first return filed after the collection and the tax  
 26 shall be paid with the return. For purposes of this subdivision, the  
 27 term “retailer” shall include any entity affiliated with the retailer  
 28 under Section 1504 of Title 26 of the United States Code.

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

34 (A) No deduction was previously claimed or allowed on any  
 35 portion of the accounts.

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

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

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

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

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

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

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

13 (3) For purposes of this subdivision, the term “lender” means  
14 any of the following:

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

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

19 (C) Any person who is either an affiliated entity, under Section  
20 1504 of Title 26 of the United States Code, of a person described  
21 in subparagraph (A) or (B), or an assignee of a person described  
22 in subparagraph (A) or (B).

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

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

32 6203.5. (a) A retailer is relieved from liability to collect use  
33 tax that became due and payable, insofar as the measure of the tax  
34 is represented by accounts that have been found to be worthless  
35 and charged off for income tax purposes by the retailer or, if the  
36 retailer is not required to file income tax returns, charged off in  
37 accordance with generally accepted accounting principles. A  
38 retailer that has previously paid the amount of the tax may, under  
39 rules and regulations prescribed by the board, take as a deduction  
40 the amount found worthless and charged off by the retailer. If these

1 accounts are thereafter in whole or in part collected by the retailer,  
2 the amount collected shall be included in the first return filed after  
3 the collection and the amount of the tax shall be paid with the  
4 return. For purposes of this subdivision, the term “retailer” shall  
5 include any entity affiliated with the retailer under Section 1504  
6 of Title 26 of the United States Code.

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

12 (A) No deduction was previously claimed or allowed on any  
13 portion of the accounts.

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

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

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

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

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

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

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

31 (3) For purposes of this subdivision, the term “lender” means  
32 any of the following:

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

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

37 (C) Any person who is either an affiliated entity, under Section  
38 1504 of Title 26 of the United States Code, of a person described  
39 in subparagraph (A) or (B), or an assignee of a person described  
40 in subparagraph (A) or (B).

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

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

10 6248. (a) There shall be a rebuttable presumption that any  
11 vehicle, vessel, or aircraft bought outside of this state on or after  
12 the effective date of this section, and which is brought into  
13 California within 12 months from the date of its purchase, was  
14 acquired for storage, use, or other consumption in this state and is  
15 subject to use tax if any of the following occurs:

16 (1) The vehicle, vessel, or aircraft was purchased by a California  
17 resident as defined in Section 516 of the Vehicle Code. For  
18 purposes of this section, a closely held corporation or limited  
19 liability company shall also be considered a California resident if  
20 50 percent or more of the shares or membership interests are held  
21 by shareholders or members who are residents of California as  
22 defined in Section 516 of the Vehicle Code.

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

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

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

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

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

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

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

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

31 SEC. 6. Section 7096 of the Revenue and Taxation Code is  
32 amended to read:

33 7096. (a) A taxpayer may file a claim with the board for  
34 reimbursement of bank charges and any other reasonable  
35 third-party check charge fees incurred by the taxpayer as the direct  
36 result of an erroneous levy or notice to withhold, *erroneous*  
37 *processing action, or erroneous collection action* by the board.  
38 Bank and third-party charges include a financial institution's or  
39 third party's customary charge for complying with the levy or  
40 notice to withhold instructions and reasonable charges for

1 overdrafts that are a direct consequence of the erroneous levy or  
2 notice to withhold, *erroneous processing action*, or *erroneous*  
3 *collection action*. The charges are those paid by the taxpayer and  
4 not waived or reimbursed by the financial institution or third party.  
5 Each claimant applying for reimbursement shall file a claim with  
6 the board that shall be in the form as may be prescribed by the  
7 board. In order for the board to grant a claim, the board shall  
8 determine that both of the following conditions have been satisfied:

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

12 (2) Prior to the *erroneous* levy or notice to withhold, *erroneous*  
13 *processing action*, or *erroneous collection action*, the taxpayer  
14 responded to all contacts by the board and provided the board with  
15 any requested information or documentation sufficient to establish  
16 the taxpayer's position. This provision may be waived by the board  
17 for reasonable cause.

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

25 SEC. 7. Section 7157 is added to the Revenue and Taxation  
26 Code, to read:

27 7157. (a) (1) Restitution orders or any other amounts imposed  
28 by a court of competent jurisdiction for criminal offenses upon a  
29 person or any other entity that are due and payable to the board  
30 may be collected by the board in any manner provided by law for  
31 collection of a delinquent sales and use tax liability, including, but  
32 not limited to, issuance of an order and levy under Article 4  
33 (commencing with Section 706.070) of Chapter 5 of Division 2  
34 of Title 9 of Part 2 of the Code of Civil Procedure in the manner  
35 provided for earnings withholding orders for taxes.

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

1 (b) Part 1 (commencing with Section 6001), Part 1.5  
 2 (commencing with Section 7200), Part 1.6 (commencing with  
 3 Section 7251), and Part 1.7 (commencing with Section 7285) shall  
 4 apply to amounts collected under this section in the same manner  
 5 and with the same force and effect and to the full extent as if the  
 6 language of those laws had been incorporated in full into this  
 7 section, except to the extent that any provision is either inconsistent  
 8 with this section or is not relevant to this section.

9 (c) Notwithstanding Chapter 7 (commencing with Section 6901),  
 10 no refund or credit may be allowed for any amounts paid or  
 11 payments applied under this section.

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

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

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

27 (g) This section shall apply on and after January 1, 2012, to  
 28 amounts authorized to be collected pursuant to this section that  
 29 are due and payable to the board before, on, or after January 1,  
 30 2012.

31 SEC. 8. Section 8407 is added to the Revenue and Taxation  
 32 Code, to read:

33 8407. (a) (1) Restitution orders or any other amounts imposed  
 34 by a court of competent jurisdiction for criminal offenses upon a  
 35 person or any other entity that are due and payable to the board  
 36 may be collected by the Controller in any manner provided by law  
 37 for collection of a delinquent motor vehicle fuel tax liability,  
 38 including, but not limited to, issuance of an order and levy under  
 39 Article 4 (commencing with Section 706.070) of Chapter 5 of

1 Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in  
2 the manner provided for earnings withholding orders for taxes.

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

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

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

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

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

23 (f) Notwithstanding Section 7872 or Chapter 14 (commencing  
24 with Section 7150) of Division 7 of Title 1 of the Government  
25 Code, any portion of the amounts authorized to be collected under  
26 this section that remain unsatisfied may be collected by the  
27 recording of a notice of state tax lien. The board may record or  
28 extend a recorded notice of state tax lien at any time until the  
29 amount due, including any accrued interest, is paid in full.

30 (g) This section shall apply on and after January 1, 2012, to  
31 amounts authorized to be collected pursuant to this section that  
32 are due and payable to the board before, on, or after January 1,  
33 2012.

34 SEC. 9. Section 30474 of the Revenue and Taxation Code is  
35 amended to read:

36 30474. (a) Any person who knowingly possesses, or keeps,  
37 stores, or retains for the purpose of sale, or sells or offers to sell,  
38 any package of cigarettes to which there is not affixed the stamp  
39 or meter impression required to be affixed under this part, when  
40 those cigarettes have been obtained from any source whatever, is

1 guilty of a misdemeanor and shall for each offense be fined an  
 2 amount not to exceed twenty-five thousand dollars (\$25,000), or  
 3 be imprisoned for a period not to exceed one year in the county  
 4 jail, or, at the discretion of the court, be subject to both fine and  
 5 imprisonment in the county jail.

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

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

20 SEC. 10. Section 30483 is added to the Revenue and Taxation  
 21 Code, to read:

22 30483. (a) (1) Restitution orders or any other amounts imposed  
 23 by a court of competent jurisdiction for criminal offenses upon a  
 24 person or any other entity that are due and payable to the board  
 25 may be collected by the board in any manner provided by law for  
 26 collection of a delinquent cigarette and tobacco products tax  
 27 liability, including, but not limited to, issuance of an order and  
 28 levy under Article 4 (commencing with Section 706.070) of  
 29 Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil  
 30 Procedure in the manner provided for earnings withholding orders  
 31 for taxes.

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

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

1 (c) Notwithstanding Chapter 6 (commencing with Section  
2 30361), no refund or credit may be allowed for any amounts paid  
3 or payments applied under this section.

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

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

12 (f) Notwithstanding Chapter 14 (commencing with Section  
13 7150) of Division 7 of Title 1 of the Government Code, any portion  
14 of the amounts authorized to be collected under this section that  
15 remain unsatisfied may be collected by the recording of a notice  
16 of state tax lien. The board may record or extend a recorded notice  
17 of state tax lien at any time until the amount due, including any  
18 accrued interest, is paid in full.

19 (g) This section shall apply on and after January 1, 2012, to  
20 amounts authorized to be collected pursuant to this section that  
21 are due and payable to the board before, on, or after January 1,  
22 2012.

23 SEC. 11. Section 60709 is added to the Revenue and Taxation  
24 Code, to read:

25 60709. (a) (1) Restitution orders or any other amounts imposed  
26 by a court of competent jurisdiction for criminal offenses upon a  
27 person or any other entity that are due and payable to the board  
28 may be collected by the board in any manner provided by law for  
29 collection of a delinquent diesel fuel tax liability, including, but  
30 not limited to, issuance of an order and levy under Article 4  
31 (commencing with Section 706.070) of Chapter 5 of Division 2  
32 of Title 9 of Part 2 of the Code of Civil Procedure in the manner  
33 provided for earnings withholding orders for taxes.

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

38 (b) Part 31 (commencing with Section 60001) shall apply to  
39 amounts collected under this section in the same manner and with  
40 the same force and effect and to the full extent as if the language

1 of those laws had been incorporated in full into this section, except  
2 to the extent that any provision is either inconsistent with this  
3 section or is not relevant to this section.

4 (c) Notwithstanding Chapter 8 (commencing with Section  
5 60501), no refund or credit may be allowed for any amounts paid  
6 or payments applied under this section.

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

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

15 (f) Notwithstanding Sections 60441 to 60445, inclusive, or  
16 Chapter 14 (commencing with Section 7150) of Division 7 of Title  
17 1 of the Government Code, any portion of the amounts authorized  
18 to be collected under this section that remain unsatisfied may be  
19 collected by the recording of a notice of state tax lien. The board  
20 may record or extend a recorded notice of state tax lien at any time  
21 until the amount due, including any accrued interest, is paid in  
22 full.

23 (g) This section shall apply on and after January 1, 2012, to  
24 amounts authorized to be collected pursuant to this section that  
25 are due and payable to the board before, on, or after January 1,  
26 2012.

27 SEC. 12. Sections 1 and 2 of this act are declaratory of existing  
28 law.

29 SEC. 13. Notwithstanding Section 2230 of the Revenue and  
30 Taxation Code, no appropriation is made by this act and the state  
31 shall not reimburse any local agency for any sales and use tax  
32 revenues lost by it under this act.

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