

Introduced by Senator PadillaFebruary 15, 2011

An act to amend Sections 30104, 30108, and 30181 of, and to add Article 4 (commencing with Section 30135) to Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 330, as introduced, Padilla. Cigarette and tobacco products taxes: Tobacco Tax and Health Protection Fund.

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

This bill would, commencing on or after the first day of the first calendar quarter commencing more than 90 days on or after the effective date of the bill, impose an additional tax on the distribution of cigarettes at the rate of (\$0.075) or 75 mills for each cigarette distributed which would be reset by the State Board of Equalization each fiscal year to reflect any increase in the California Consumer Price Index, and would require a dealer or wholesaler to file a return with the board showing the number of cigarettes in his or her possession or under his or her control on that date, as specified. Because the bill would impose an additional tax on cigarettes under the Cigarette and Tobacco Products Tax Law, it would increase the tax upon the distribution of tobacco

products under that law. The bill would provide that the revenues collected from the additional tax would be allocated, upon appropriation by the Legislature, for certain purposes. The bill would require funds to be transferred from the fund to the California Children and Families First Trust Fund, which is a continuously appropriated fund, the Hospital Services Account, the Physician Services Account, the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund, the Public Resources Account, and the Breast Cancer Fund, as necessary to offset revenue decreases to those accounts directly resulting from imposition of additional taxes by these provisions. Because this bill would require funds to be transferred to a continuously appropriated fund, it would make an appropriation.

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

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

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Tobacco use and tobacco-related diseases place a tremendous
- 4 financial burden upon the persons with the disease, their families,
- 5 the health care delivery system, local and state governments, and
- 6 society as a whole.
- 7 (b) Smoking related diseases have a major negative economic
- 8 impact on all taxpayers and the entire health care system, which
- 9 justifies the use of tobacco taxes to fund prevention, early detection,
- 10 treatment, and research of major diseases.
- 11 (c) Tobacco use costs Californians more than \$8.6 billion in
- 12 medical expenses every year. The cost of lost productivity due to

1 tobacco use adds an additional estimated \$7.2 billion to the annual
2 economic consequences of smoking in California.

3 (d) Smoking is the single most preventable cause of death and
4 disease in California. Fully one in five deaths in California is
5 attributable to smoking: more than 40,000 every year.

6 (e) Tobacco use is a major contributor to all the leading causes
7 of death in California, including heart disease and stroke, cancer,
8 diabetes, and lung disease.

9 (f) Smoking can have an adverse health effect on all Californians
10 because secondhand smoke has been proven to be a leading cause
11 of disability, disease, and death in California. Secondhand smoke
12 is causally associated with lung disease, heart disease, cancer, and
13 obesity.

14 (g) Increasing the cost of cigarettes and other tobacco products
15 has proven to be one of the most effective ways to reduce smoking,
16 especially among youth.

17 (h) Funding for California's pioneering tobacco prevention and
18 control program has dropped to the point where it is now far below
19 what is recommended by federal public health agencies.

20 (i) Tobacco companies spend approximately 10 times more to
21 promote tobacco use than the state spends to prevent it and to help
22 tobacco users quit.

23 (j) California currently ranks 32nd among the states in the level
24 of cigarette taxes. If this measure were approved, four states would
25 still have higher cigarette taxes than California.

26 (k) Forty-four states have raised their tobacco taxes since
27 California last raised its tax.

28 (l) Providing new funding for enforcement of tobacco laws will
29 reduce cigarette smuggling, the sale of black market cigarettes,
30 and illegal sales of tobacco products to minors.

31 (m) Increasing tobacco taxes and directing a portion of the
32 revenues for smoking cessation programs will assist smokers to
33 quit smoking, especially persons of low socioeconomic status who
34 comprise the largest number of current smokers.

35 SEC. 2. Section 30104 of the Revenue and Taxation Code is
36 amended to read:

37 30104. The taxes imposed by this part shall not apply to the
38 sale of cigarettes or tobacco products by a distributor to a common
39 carrier engaged in interstate or foreign passenger service or to a
40 person authorized to sell cigarettes or tobacco products on the

1 facilities of the carrier. Whenever cigarettes or tobacco products
2 are sold by distributors to common carriers engaged in interstate
3 or foreign passenger service for use or sale on facilities of the
4 carriers, or to persons authorized to sell cigarettes or tobacco
5 products on those facilities, the tax imposed by Sections 30101,
6 30123, and 30131.2 *under this part* shall not be levied with respect
7 to the sales of the cigarettes or tobacco products by the distributors,
8 but a tax is hereby levied upon the carriers or upon the persons
9 authorized to sell cigarettes or tobacco products on the facilities
10 of the carriers, as the case may be, for the privilege of making sales
11 in California at the same rate as set forth in Sections 30101, 30123,
12 and 30131.2 *under this part*. Those common carriers and authorized
13 persons shall pay the tax imposed by this section and file reports
14 with the board, as provided in Section 30186.

15 SEC. 3. Section 30108 of the Revenue and Taxation Code is
16 amended to read:

17 30108. (a) Every distributor engaged in business in this state
18 and selling or accepting orders for cigarettes or tobacco products
19 with respect to the sale of which the tax imposed by Sections
20 30101, 30123, and 30131.2 *under this part* is inapplicable shall,
21 at the time of making the sale or accepting the order or, if the
22 purchaser is not then obligated to pay the tax with respect to his
23 or her distribution of the cigarettes or tobacco products, at the time
24 the purchaser becomes so obligated, collect the tax from the
25 purchaser, if the purchaser is other than a licensed distributor, and
26 shall give to the purchaser a receipt therefor in the manner and
27 form prescribed by the board.

28 (b) Every person engaged in business in this state and making
29 gifts of untaxed cigarettes or tobacco products as samples with
30 respect to which the tax imposed by Sections 30101, 30123, and
31 30131.2 *under this part* is inapplicable shall, at the time of making
32 the gift or, if the donee is not then obligated to pay the tax with
33 respect to his or her distribution of the cigarettes or tobacco
34 products, at the time the donee becomes so obligated, collect the
35 tax from the donee, if the donee is other than a licensed distributor,
36 and shall give the donee a receipt therefor in the manner and form
37 prescribed by the board. This section shall not apply to those
38 distributions of cigarettes or tobacco products which are exempt
39 from tax under Section 30105.5.

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

3 (1) Maintaining, occupying, or using, permanently or
4 temporarily, directly or indirectly, or through a subsidiary, or agent,
5 by whatever name called, an office, place of distribution, sales or
6 sample room or place, warehouse or storage place, or other place
7 of business.

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

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

15 SEC. 4. Article 4 (commencing with Section 30135) is added
16 to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation
17 Code, to read:

18

19 Article 4. Tobacco Tax and Health Protection Fund

20

21 30135. Notwithstanding any other law, the Tobacco Tax and
22 Health Protection Fund is hereby created in the State Treasury for
23 the purposes set forth in this article.

24 30135.1. (a) Except for payments of refunds made pursuant
25 to Article 1 (commencing with Section 30361) of Chapter 6, and
26 reimbursement of the State Board of Equalization for expenses
27 incurred in the administration and collection of the tax imposed
28 by this article, all revenues raised pursuant to the tax imposed by
29 this article shall be deposited in the Tobacco Tax and Health
30 Protection Fund.

31 (b) Money in the Tobacco Tax and Health Protection Fund,
32 except for money necessary for the purposes set forth in Section
33 30135.6, shall be transferred as follows:

34 (1) Fifteen percent in the Tobacco Control and Lung Cancer
35 Research Account, which is hereby created in the Tobacco Tax
36 and Health Protection Fund.

37 (2) Eighty-five percent in the Tobacco Tax General Fund
38 Account, which is hereby created in the General Fund.

39 30135.2. For the purposes of this article:

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

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

7 30135.3. In addition to any other taxes imposed upon the
8 distribution of cigarettes, there shall be imposed an additional tax
9 upon every distributor of cigarettes at the rate of seventy-five mills
10 (\$0.075) for each cigarette distributed on or after the first calendar
11 quarter commencing more than 90 days after the effective date of
12 this section.

13 30135.4. (a) (1) Every dealer and wholesaler, for the privilege
14 of holding or storing cigarettes for sale, use, or consumption, shall
15 pay a floor stock tax for each cigarette in his or her possession or
16 under his or her control in this state at 12:01 a.m. on the first day
17 of the first calendar quarter commencing more than 90 days after
18 the effective date of this section at the rate of seventy-five mills
19 (\$0.075) for each cigarette or the equivalent rate of tax for each
20 cigarette.

21 (2) Every dealer and wholesaler shall file a return with the State
22 Board of Equalization on or before the first day of the first calendar
23 quarter commencing more than 180 days after the effective date
24 of Section 30135.3 on a form prescribed by the board, showing
25 the number of cigarettes in his or her possession or under his or
26 her control at 12:01 a.m. on the first day of the first calendar quarter
27 commencing more than 90 days after the effective date of Section
28 30135.3. The amount of tax shall be computed and shown on the
29 return.

30 (b) (1) Every licensed cigarette distributor, for the privilege of
31 distributing cigarettes and for holding or storing cigarettes for sale,
32 use, or consumption, shall pay a cigarette indicia adjustment tax
33 for each California cigarette tax stamp that is affixed to any
34 package of cigarettes and for each unaffixed California cigarette
35 tax stamp in his or her possession or under his or her control at
36 12:01 a.m. on the first day of the first calendar quarter commencing
37 more than 90 days after the effective date of Section 30135.3 at
38 the following rates:

39 (A) One dollar and eighty-seven and one-half cents (\$1.875)
40 for each stamp bearing the designation “25.”

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

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

5 (2) Every licensed cigarette distributor shall file a return with
6 the board on or before the first day of the first calendar quarter
7 commencing 180 days after the effective date of Section 30135.3
8 on a form prescribed by the board, showing the number of stamps
9 described in subparagraphs (A), (B), and (C), of paragraph (1).
10 The amount of tax shall be computed and shown on the return.

11 (c) The taxes required to be paid by this section are due and
12 payable on or before the first day of the first calendar quarter
13 commencing 180 days after the effective date of Section 30135.3.
14 Payments shall be made by remittances payable to the board and
15 the payments shall accompany the forms required to be filed by
16 this section.

17 (d) Any amount required to be paid by this section that is not
18 timely paid shall bear interest at the rate and by the method
19 established pursuant to Section 30202 from the first day of the first
20 calendar quarter commencing 180 days after the effective date of
21 Section 30135.3, until paid, and shall be subject to determination,
22 and redetermination, and any penalties provided with respect to
23 determinations and redeterminations.

24 (e) The taxes imposed under Section 30135.3 and this section
25 shall be administered and collected by the State Board of
26 Equalization in accordance with this part.

27 30135.5. To offset the effects of inflation and further reduce
28 smoking prevalence, on or before March 1 of each year, the State
29 Board of Equalization shall calculate the percentage increase in
30 the California Consumer Price Index of December of the prior
31 calendar year over December of the calendar year immediately
32 preceding the prior calendar year. Each fiscal year, the tax imposed
33 by Section 30135.3 on cigarettes shall be reset by the State Board
34 of Equalization to reflect the California Consumer Price Index
35 percentage increase, if any. The reset tax shall be effective during
36 the state’s next fiscal year. For purposes of this section, the term
37 “California Consumer Price Index” means the Consumer Price
38 Index as determined by the Department of Industrial Relations.

39 30135.6. (a) The State Board of Equalization shall determine
40 within one year of the operative date of this article, and annually

1 thereafter, the effect that the additional tax imposed on cigarettes
2 by this article, and the resulting increase in the tax on tobacco
3 products required by subdivision (b) of Section 30123, have on
4 the consumption of cigarettes and tobacco products in this state.
5 To the extent that a decrease in consumption is determined by the
6 State Board of Equalization to be a direct result of the additional
7 tax imposed by this article, or the resulting increase in the tax on
8 tobacco products required by subdivision (b) of Section 30123,
9 the State Board of Equalization shall determine the fiscal effect
10 the decrease in consumption has on the California Children and
11 Families First Trust Fund created by Proposition 10 as approved
12 by the voters at the November 4, 1998, statewide general election,
13 the Hospital Services Account, the Physician Services Account,
14 the Public Resources Account, the Unallocated Account of the
15 Cigarette and Tobacco Products Surtax Fund created by Section
16 30122 (Proposition 99 as approved by the voters at the November
17 8, 1988, statewide general election), and the Breast Cancer Fund
18 created by Section 30461.6.

19 (b) Funds shall be transferred from the Tobacco Tax and Health
20 Protection Fund to the California Children and Families First Trust
21 Fund, the Hospital Services Account, the Physician Services
22 Account, the Public Resources Account, the Unallocated Account
23 of the Cigarette and Tobacco Products Surtax Fund, and the Breast
24 Cancer Fund, as necessary to offset the revenue decrease directly
25 resulting from imposition of additional taxes by this article.

26 (c) Transfers under this section shall be made by the board at
27 such times as the board determines necessary to further the intent
28 of this section.

29 30135.7. The Tobacco Control and Lung Cancer Research
30 Account shall, upon appropriation by the Legislature annually, be
31 distributed as follows:

32 (a) Forty-five percent to the State Department of Public Health
33 Tobacco Control Program for carrying out tobacco prevention and
34 control programs. These programs include, but are not limited to,
35 the following:

36 (1) Media advertisements and public relations programs to
37 prevent and reduce the use of tobacco products, as described in
38 paragraph (1) of subdivision (e) of Section 104375 of the Health
39 and Safety Code.

1 (2) Competitive grants directed at the prevention of
2 tobacco-related diseases, as described in Section 104385 of the
3 Health and Safety Code.

4 (3) Local health department tobacco prevention and control
5 programs to prevent tobacco use, as described in Section 104400
6 of the Health and Safety Code. Notwithstanding Section 104380
7 of the Health and Safety Code, funds shall be appropriated to local
8 lead agencies based on each county's proportion of the statewide
9 population.

10 (4) Tobacco cessation programs and services to assist adult and
11 minor tobacco users to quit tobacco, including, but not limited to,
12 counseling, referral and support services, pharmaceutical tobacco
13 cessation products, and training and technical assistance activities.

14 (5) Oversight and evaluation of tobacco control programs as
15 required by subdivisions (b) and (c) of Section 104375 of the
16 Health and Safety Code.

17 (b) Ten percent to the State Department of Education to be used
18 solely for programs to prevent or reduce the use of tobacco products
19 as described in Section 104420 of the Health and Safety Code.
20 Any program receiving funds pursuant to this section must
21 participate in program evaluations conducted by the State
22 Department of Health Care Services pursuant to Article 1
23 (commencing with Section 104350) of Chapter 1 of Part 3 of
24 Division 103 of the Health and Safety Code.

25 (c) Ten percent to the University of California to supplement
26 the Cigarette and Tobacco Products Surtax Medical Research
27 Program described in Article 2 (commencing with Section 104500)
28 of Chapter 1 of Part 3 of Division 103 of the Health and Safety
29 Code. The research funded by the program with these
30 supplementary funds shall include, but not be limited to:

31 (1) Research to improve the effectiveness of tobacco control
32 efforts in California, including programs and strategies for
33 governmental and other organizations to reduce tobacco use and
34 exposure to secondhand smoke.

35 (2) Research on the prevention, causes, and treatment of
36 tobacco-related diseases, including, but not limited to, coronary
37 heart disease, cerebrovascular disease, chronic obstructive lung
38 disease, and cancer.

39 (d) Twenty percent to the University of California, for the
40 establishment and administration of a Lung Cancer Early Detection

1 and Treatment Research Program. Funds appropriated for the Lung
2 Cancer Early Detection and Treatment Research Program shall be
3 used to support research efforts related to lung cancer early
4 detection and treatment and a program for the collection,
5 assessment, and periodic publication of data pertinent to the
6 research.

7 (e) Fifteen percent to support law enforcement efforts to reduce
8 cigarette smuggling, tobacco tax evasion, and counterfeit tobacco
9 products, to reduce illegal sales of tobacco products to minors, and
10 to enforce legal settlement provisions and conduct law enforcement
11 training and technical assistance activities for tobacco-related
12 statutes, which money shall be directed in the following manner:

13 (1) Forty percent to the State Board of Equalization to be used
14 to enforce laws that regulate the distribution and retail sale of
15 cigarettes and other tobacco products, such as laws that prohibit
16 untaxed cigarette and tobacco product smuggling and counterfeiting
17 and sales of cigarettes and other tobacco products without a proper
18 license.

19 (2) Forty percent to the State Department of Public Health to
20 be used to support programs, including, but not limited to,
21 providing grants to local law enforcement agencies to provide
22 training and funding for the enforcement of state and local laws
23 related to the illegal sales of tobacco to minors, and increasing
24 investigative activities, compliance checks, and other appropriate
25 activities to reduce illegal sales of tobacco products to minors
26 under the Stop Tobacco Access to Kids Enforcement (STAKE)
27 Act, pursuant to Section 22952 of the Business and Professions
28 Code.

29 (3) Twenty percent to the Attorney General to be used for
30 activities including, but not limited to, enforcing laws that regulate
31 the distribution and sale of cigarettes and other tobacco products,
32 such as laws that prohibit cigarette smuggling, counterfeiting,
33 selling untaxed tobacco, selling tobacco without a proper license,
34 and selling tobacco to minors, and enforcing tobacco-related laws,
35 court judgments, and settlements.

36 30135.8. All moneys deposited in the Tobacco Tax and Health
37 Protection Fund shall be appropriated and expended only for the
38 purposes expressed in this article, and shall be used only to
39 supplement existing levels of service and not to fund existing levels

1 of service. No moneys in the fund shall be used to supplant state
2 or local General Fund money for any purpose.

3 SEC. 5. Section 30181 of the Revenue and Taxation Code is
4 amended to read:

5 30181. (a) When any tax imposed upon cigarettes under Article
6 ~~1 (commencing with Section 30101), Article 2 (commencing with~~
7 ~~Section 30121), and Article 3 (commencing with Section 30131)~~
8 ~~of Chapter 2~~ *this part* is not paid through the use of stamps or
9 meter impressions, the tax shall be due and payable monthly on
10 or before the 25th day of the month following the calendar month
11 in which a distribution of cigarettes occurs, or in the case of a sale
12 of cigarettes on the facilities of a common carrier for which the
13 tax is imposed pursuant to Section 30104, the tax shall be due and
14 payable monthly on or before the 25th day of the month following
15 the calendar month in which a sale of cigarettes on the facilities
16 of the carrier occurs.

17 (b) Each distributor of tobacco products shall file a return in the
18 form, as prescribed by the board, which may include, but not be
19 limited to, electronic media respecting the distributions of tobacco
20 products and their wholesale cost during the preceding month, and
21 any other information as the board may require to carry out this
22 part. The return shall be filed with the board on or before the 25th
23 day of the calendar month following the close of the monthly
24 period to which it relates, together with a remittance payable to
25 the board, of the amount of tax, if any, due under Article 2
26 (commencing with Section 30121) ~~or~~, Article 3 (commencing with
27 Section 30131) *or Article 4 (commencing with Section 20135)* of
28 Chapter 2 for that period.

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

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

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

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

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.
3 SEC. 7. This act provides for a tax levy within the meaning of
4 Article IV of the Constitution and shall go into immediate effect.

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