

AMENDED IN SENATE MAY 1, 2013
AMENDED IN SENATE APRIL 17, 2013

SENATE BILL

No. 768

Introduced by Senator De León

February 22, 2013

An act to amend Sections 30104, 30108, and 30181 of, and to add Article 2.5 (commencing with Section 30130.50) to Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 768, as amended, De León. Cigarette and tobacco products taxes: California Tobacco Tax Act of 2014.

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 that is equivalent to the combined rate of all taxes imposed on cigarettes, which is deposited in specified accounts.

This bill would, 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 \$0.10 for each cigarette distributed; would require a dealer and a wholesaler to file a return with the State Board of Equalization showing the number of cigarettes in its possession or under its control on that date, and impose a related floor stock tax; and would require a licensed

cigarette distributor to file a return with the board and pay a cigarette indicia adjustment tax for cigarette tax stamps in its possession or under its control on that date. 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 require, not later than December 1 of the 2nd year following a specified date, and each 2nd December 1 thereafter, the State Board of Equalization to review the cigarette taxes imposed by other states, determine the 5 highest taxes imposed by other states, and calculate the median tax per cigarette. The bill would increase~~ *require the board, each fiscal year, to adjust* the tax on the distribution of cigarettes, as specified, ~~if the median of the 5 highest taxes imposed by other states is greater than a specified amount based upon the percentage increase in the California Consumer Price Index for all items, if any.~~

The bill would provide that the revenues collected from the additional tax be deposited in the California Tobacco Tax Act of 2014 Fund created by this bill, which would be a continuously appropriated fund, and transferred into the Tobacco Prevention and Education Account, the Tobacco Disease Related Health Care Account, and the Tobacco Law Enforcement Account to be expended for specified purposes. Because the California Tobacco Tax Act of 2014 Fund ~~is~~ *would be* a continuously appropriated fund, the bill would make an appropriation.

The bill would require moneys in the California Tobacco Tax Act of 2014 Fund to be transferred from the fund to the California Children and Families First Trust Fund, which is a continuously appropriated fund, the Cigarette and Tobacco Products Surtax Fund, the Breast Cancer Fund, and the General Fund, as necessary to offset revenue decreases to those funds 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.

Because this bill would impose new requirements under the Cigarette and Tobacco Products Tax Law, the violation of which is a crime, it would impose a state-mandated local program.

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

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

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

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 is the single most preventable cause of death
4 and disease in California, claiming the lives of more than ~~35,000~~
5 *36,000* people every year. California still has approximately 3.4
6 million adult smokers and ~~300,000~~ *200,000* youth smokers.

7 (b) The inevitable ~~health, environmental, and economic health~~
8 *care* costs of smoking come to ~~over \$22~~ *almost \$10* for every pack
9 of cigarettes sold in California.

10 (c) Tobacco use costs Californians more than ~~\$9.6~~ *\$9.1* billion
11 in *tobacco-related* medical expenses every year. The cost of lost
12 productivity due to tobacco use adds an additional estimated \$8.5
13 billion to the annual economic consequences of smoking in
14 California.

15 (d) The treatment of cancer, heart disease and stroke, lung
16 disease, diabetes, and other diseases related to tobacco use
17 continues to impose a significant burden upon California's
18 overstressed health care system, including publicly funded health
19 care programs.

20 (e) In 2013–14, it is estimated that the General Fund cost of
21 publicly funded health care programs to the state will be more than
22 \$15 billion. In 2013–14, it is estimated that publicly funded health
23 care programs will provide health care coverage to more than 1.4
24 million families and more than 700,000 children. At the same time,
25 hundreds of thousands of families and children go without any
26 medical coverage due to financial constraints upon the state and
27 local government budgets and recent cutbacks in publicly funded
28 health care programs.

1 (f) A recent cost-benefit analysis concluded that if states
2 followed the United States Centers for Disease Control and
3 Prevention’s Best Practices for Comprehensive Tobacco Control
4 Programs 2007 funding guidelines, up to 14 to 20 times the cost
5 of program implementation could be saved through reduced
6 medical and productivity costs as well as reduced Medicaid costs.

7 (g) The California Tobacco Tax Act of 2014 will help fund the
8 comprehensive California Tobacco Control Program designed to
9 change social norms about tobacco and discourage individuals
10 from taking up smoking and the use of other tobacco products
11 through educational programs, thereby saving the state and local
12 governments significant money now and in the future.

13 (h) Tobacco tax increases are an appropriate way to mitigate
14 the impacts of tobacco-related diseases and improve existing
15 programs providing for quality and access to health care services
16 for families and children.

17 (i) An increase in the tobacco tax will have an immediate effect
18 on smoking and is the most appropriate mechanism to fund services
19 to prevent tobacco use, help people quit smoking, and discourage
20 many people from taking up smoking.

21 (j) California taxes cigarettes at only \$0.87 per pack, and ranks
22 33rd in tobacco tax rates, reflecting one of the lowest tobacco taxes
23 in the United States. Thirty states have cigarette tax rates of \$1 per
24 pack or higher, and California is well below other west coast states
25 (Washington: \$3.025, Oregon: \$1.18, and Arizona: \$2). California
26 last raised its tobacco tax in 1998.

27 (k) The burden of smoking is not equally shared across
28 California populations and communities. Tobacco use rates are
29 much higher than the general population in African Americans,
30 white men, Korean men, enlisted military personnel, lesbian, gay,
31 bisexual and transgender, young adult, rural, and low-income
32 populations.

33 (l) A reinvigorated tobacco control program will allow targeted
34 public health and research efforts to combat the tobacco industry’s
35 predatory marketing to ethnic groups, driving down smoking rates
36 and ultimately reducing heart disease, stroke, lung disease, and
37 cancer in these California communities, which together represent
38 more than half of our state’s residents.

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

1 30104. The taxes imposed by this part shall not apply to the
2 sale of cigarettes or tobacco products by a distributor to a common
3 carrier engaged in interstate or foreign passenger service or to a
4 person authorized to sell cigarettes or tobacco products on the
5 facilities of the carrier. Whenever cigarettes or tobacco products
6 are sold by distributors to common carriers engaged in interstate
7 or foreign passenger service for use or sale on facilities of the
8 carriers, or to persons authorized to sell cigarettes or tobacco
9 products on those facilities, the tax imposed under this part shall
10 not be levied with respect to the sales of the cigarettes or tobacco
11 products by the distributors, but a tax is hereby levied upon the
12 carriers or upon the persons authorized to sell cigarettes or tobacco
13 products on the facilities of the carriers, as the case may be, for
14 the privilege of making sales in California at the same rate as set
15 forth under this part. Those common carriers and authorized
16 persons shall pay the tax imposed by this section and file reports
17 with the board, as provided in Section 30186.

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

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

30 (b) Every person engaged in business in this state and making
31 gifts of untaxed cigarettes or tobacco products as samples with
32 respect to which the tax imposed under this part is inapplicable
33 shall, at the time of making the gift or, if the donee is not then
34 obligated to pay the tax with respect to his or her distribution of
35 the cigarettes or tobacco products, at the time the donee becomes
36 so obligated, collect the tax from the donee, if the donee is other
37 than a licensed distributor, and shall give the donee a receipt
38 therefor in the manner and form prescribed by the board. This
39 section shall not apply to those distributions of cigarettes or tobacco
40 products ~~which~~ *that* are exempt 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 2.5 (commencing with Section 30130.50) is
16 added to Chapter 2 of Part 13 of Division 2 of the Revenue and
17 Taxation Code, to read:

18

19 Article 2.5. The California Tobacco Tax Act of 2014

20

21 30130.50. For the purposes of this article:

22 (a) “Cigarette” has the same meaning as in Section 30003 as it
23 read on January 1, 2013.

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

28 30130.51. (a) In addition to any other taxes imposed upon the
29 distribution of cigarettes, there shall be imposed an additional tax
30 upon every distributor of cigarettes at the rate of one hundred mills
31 (\$0.10) for each cigarette distributed on or after the first day of
32 the first calendar quarter commencing more than 90 days after the
33 effective date of this act.

34 (b) (1) To offset the effects of inflation and further reduce
35 smoking prevalence, on or before March 1 of each year, the State
36 Board of Equalization shall calculate the percentage increase in
37 the California Consumer Price Index for all items ~~of~~ in December
38 of the prior calendar year over the December of the preceding
39 calendar year immediately preceding the prior calendar year. Each
40 fiscal year, the tax imposed by subdivision (a) on the distribution

1 of cigarettes and tobacco products shall be adjusted by the State
2 Board of Equalization to reflect the *percentage increase in the*
3 *California Consumer Price Index for all items*~~percentage increase~~,
4 if any. The adjusted tax shall be effective during the state's next
5 fiscal year.

6 (2) In no event shall the tax be less than the tax imposed under
7 this part as of the effective date of this act.

8 30130.52. (a) (1) Every dealer and wholesaler, for the
9 privilege of holding or storing cigarettes for sale, use, or
10 consumption, shall pay a floor stock tax for each cigarette in its
11 possession or under its control in this state at 12:01 a.m. on the
12 first day of the first calendar quarter commencing more than 90
13 days after the effective date of this act at the rate of one hundred
14 mills (\$0.10) for each cigarette.

15 (2) Every dealer and wholesaler shall file a return with the State
16 Board of Equalization on or before the first day of the first calendar
17 quarter commencing more than 180 days after the effective date
18 of this act on a form prescribed by the State Board of Equalization,
19 showing the number of cigarettes in its possession or under its
20 control in this state at 12:01 a.m. on the first day of the first
21 calendar quarter commencing more than 90 days after the effective
22 date of this act. The amount of tax shall be computed and shown
23 on the return.

24 (b) (1) Every licensed cigarette distributor, for the privilege of
25 distributing cigarettes and for holding or storing cigarettes for sale,
26 use, or consumption, shall pay a cigarette indicia adjustment tax
27 for each California cigarette tax stamp that is affixed to any
28 package of cigarettes and for each unaffixed California cigarette
29 tax stamp in its possession or under its control at 12:01 a.m. on
30 the first day of the first calendar quarter commencing more than
31 90 days after the effective date of this act at the following rates:

32 (A) Two dollars and fifty cents (\$2.50) for each stamp bearing
33 the designation "25."

34 (B) Two dollars (\$2) for each stamp bearing the designation
35 "20."

36 (C) One dollar (\$1) for each stamp bearing the designation "10."

37 (2) Every licensed cigarette distributor shall file a return with
38 the board on or before the first day of the first calendar quarter
39 commencing 180 days after the effective date of this act on a form
40 prescribed by the board, showing the number of stamps described

1 in subparagraphs (A), (B), and (C) of paragraph (1). The amount
2 of tax shall be computed and shown on the return.

3 (c) The taxes required to be paid by this section are due and
4 payable on or before the first day of the first calendar quarter
5 commencing 180 days after the effective date of this act. Payments
6 shall be made by remittances payable to the board and the payments
7 shall accompany the return and forms required to be filed by this
8 section.

9 (d) Any amount required to be paid by this section that is not
10 timely paid shall bear interest at the rate and by the method
11 established pursuant to Section 30202 from the first day of the first
12 calendar quarter commencing 180 days after the effective date of
13 this act, until paid, and shall be subject to determination, and
14 redetermination, and any penalties provided with respect to
15 determinations and redeterminations.

16 30130.53. (a) The State Board of Equalization shall determine
17 within one year of the effective date of this act, and annually
18 thereafter, the effect that the additional taxes imposed on cigarettes
19 by this article, and the resulting increase in the tax on tobacco
20 products required by subdivision (b) of Section 30123, have on
21 the consumption of cigarettes and tobacco products in this state.
22 To the extent that a decrease in consumption is determined by the
23 State Board of Equalization to be a direct result of the additional
24 tax imposed by this article, or the resulting increase in the tax on
25 tobacco products required by subdivision (b) of Section 30123,
26 the State Board of Equalization shall determine the fiscal effect
27 the decrease in consumption has on the Cigarette and Tobacco
28 Products Surtax Fund created by Section 30122 (Proposition 99
29 as approved by the voters at the November 8, 1988, statewide
30 general election), the Breast Cancer Fund created by Section
31 30461.6, the California Children and Families Trust Fund created
32 by Section 30131 (Proposition 10 as approved by the voters at the
33 November 3, 1998, statewide general election), and the General
34 Fund with respect to revenues derived from Section 30101.

35 (b) Funds shall be transferred from the California Tobacco Tax
36 Act of 2014 Fund to the Cigarette and Tobacco Products Surtax
37 Fund, the Breast Cancer Fund, the California Children and Families
38 Trust Fund, and the General Fund, to offset the revenue decrease
39 directly resulting from imposition of additional taxes by this article.

1 (c) Transfers under this section shall be made by the board at
2 times as the board determines necessary to further the intent of
3 this section.

4 30130.54. (a) The California Tobacco Tax Act of 2014 Fund
5 is hereby established in the State Treasury for the purposes set
6 forth in this article. All revenues, less refunds, derived from the
7 taxes imposed by this article shall be deposited in the California
8 Tobacco Tax Act of 2014 Fund.

9 (b) Moneys in the California Tobacco Tax Act of 2014 Fund,
10 less moneys transferred pursuant to Section 30130.53, shall be
11 transferred as follows:

12 (1) ___ percent to the Tobacco Prevention and Education
13 Account, which is hereby created in the California Tobacco Tax
14 Act of 2014 Fund.

15 (2) ___ percent to the Tobacco Disease Related Health Care
16 Account, which is hereby created in the California Tobacco Tax
17 Act of 2014 Fund.

18 (3) ___ percent to the Tobacco Law Enforcement Account,
19 which is hereby created in the California Tobacco Tax Act of 2014
20 Fund.

21 (c) Funds deposited into the California Tobacco Tax Act of
22 2014 Fund may be placed into the Pooled Money Investment
23 Account for investment only, and interest earned shall be credited
24 to the fund and deposited, apportioned, and expended only in
25 accordance with ~~the act that added this section~~ *this article* and its
26 purposes.

27 (d) Notwithstanding any other law, the California Tobacco Tax
28 Act of 2014 Fund is a trust fund established solely to carry out the
29 purposes ~~of this act~~ *set forth in this article* and all revenues
30 deposited into the California Tobacco Tax Act of 2014 Fund,
31 together with interest earned by the fund, are hereby continuously
32 appropriated ~~for the purposes of the act that added this section~~
33 without regard to fiscal year ~~and shall~~ *to* be expended only in
34 accordance with ~~this act~~ *article* and its purposes.

35 (e) Notwithstanding any other law, the taxes imposed by ~~the~~
36 ~~act that added this section~~ *this article* and the revenue derived
37 therefrom, including investment interest, shall not be considered
38 to be part of the General Fund, as that term is used in Chapter 1
39 (commencing with Section 16300) of Part 2 of Division 4 of the
40 Government Code, shall not be considered General Fund revenue

1 for purposes of Section 8 of Article XVI of the California
 2 Constitution, and its implementing statutes, and shall not be
 3 considered “moneys to be applied by the state for the support of
 4 school districts and community college districts” pursuant to
 5 Section 8 of Article XVI of the California Constitution, and its
 6 implementing statutes.

7 (f) Notwithstanding any other law, revenues deposited into the
 8 California Tobacco Tax Act of 2014 Fund, and any interest earned
 9 by the fund, shall only be used for the specific purposes set forth
 10 in ~~Section 30130.55~~ *this article*. Revenues deposited into California
 11 Tobacco Tax Act of 2014 Fund shall not be subject to
 12 appropriation, reversion, or transfer by the Legislature, the
 13 Governor, the Director of Finance, or the Controller for any other
 14 purpose, nor shall the funds be loaned to the General Fund or any
 15 other fund of the state or any local government fund.

16 (g) All revenues deposited into the California Tobacco Tax Act
 17 of 2014 Fund shall be ~~appropriated~~ and expended only for the
 18 purposes expressed in this article, and shall be used only to
 19 supplement existing levels of service and not to fund existing levels
 20 of service. Moneys in the fund shall not be used to supplant state
 21 or local general fund moneys for any purpose.

22 30130.55. After transferring the moneys as required pursuant
 23 to subdivision (b) of Section 30130.53 and pursuant to subdivision
 24 (b) of Section 30130.54, the Controller shall ~~appropriate~~ *allocate*
 25 the moneys from the accounts in the California Tobacco Tax Act
 26 of 2014 Fund as follows:

27 (a) The Tobacco Prevention and Education Account shall be
 28 allocated to supplement tobacco prevention and control programs
 29 as follows:

- 30 (1) ___ percent to the State Department of Public Health.
- 31 (2) ___ percent to the State Department of Education.
- 32 (3) ___ percent to the University of California.

33 (b) ~~The Funds in the~~ Tobacco Disease Related Health Care
 34 Account shall be allocated to the State Department of Health Care
 35 Services to improve existing programs to provide quality and
 36 access to health care programs for families and children pursuant
 37 to Chapter 7 (commencing with Section 14000) to Chapter 8.9
 38 (commencing with Section 14700), inclusive, of Part 3 of Division
 39 9 of the Welfare and Institutions Code.

1 (c) ~~The Funds in the~~ Tobacco Law Enforcement Account shall
2 be allocated to the State Board of Equalization, Department of
3 Justice, and the State Department of Public Health for the purpose
4 of supplementing funding for the enforcement of laws that regulate
5 the distribution and sale of cigarettes and other tobacco products,
6 including, but not limited to, laws that prohibit cigarette smuggling,
7 counterfeiting, selling untaxed tobacco, selling tobacco without a
8 proper license and selling tobacco to minors, and enforcing
9 tobacco-related laws, court judgments, and settlements.

10 (d) Not more than 2 percent of the funds received from the
11 California Tobacco Tax Act of 2014 Fund shall be used by any
12 department for administrative costs.

13 (e) The Department of Justice, the State Department of Public
14 Health, the State Department of Education, the State Department
15 of Health Care Services, and the University of California shall, on
16 an annual basis, publish on their respective Internet Web sites an
17 accounting of moneys received from the California Tobacco Tax
18 Act of 2014 Fund and how the moneys were spent.

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

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

30 (b) Each distributor of tobacco products shall file a return in the
31 form, as prescribed by the board, ~~which~~ *that* may include, but not
32 be limited to, electronic media respecting the distributions of
33 tobacco products and their wholesale cost during the preceding
34 month, and any other information as the board may require to carry
35 out this part. The return shall be filed with the board on or before
36 the 25th day of the calendar month following the close of the
37 monthly period for which it relates, together with a remittance
38 payable to the board, of the amount of tax, if any, due under Article
39 2 (commencing with Section 30121) or Article 3 (commencing
40 with Section 30131) of Chapter 2 for that period.

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

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

5 SEC. 6. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

14 SEC. 7. This act provides for a tax levy within the meaning of
15 Article IV of the Constitution and shall go into immediate effect.