

AMENDED IN SENATE MAY 14, 2013

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 the board, each fiscal year, to adjust the tax on the distribution of cigarettes, as specified, 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 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 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 36,000
5 people every year. California still has approximately 3.4 million
6 adult smokers and 200,000 youth smokers.

7 (b) The inevitable health care costs of smoking come to almost
8 \$10 for every pack of cigarettes sold in California.

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

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

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

28 (f) A recent cost-benefit analysis concluded that if states
29 followed the United States Centers for Disease Control and
30 Prevention's Best Practices for Comprehensive Tobacco Control
31 Programs 2007 funding guidelines, up to 14 to 20 times the cost
32 of program implementation could be saved through reduced
33 medical and productivity costs as well as reduced Medicaid costs.

34 (g) The California Tobacco Tax Act of 2014 will help fund the
35 comprehensive California Tobacco Control Program designed to

1 change social norms about tobacco and discourage individuals
2 from taking up smoking and the use of other tobacco products
3 through educational programs, thereby saving the state and local
4 governments significant money now and in the future.

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

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

13 (j) California taxes cigarettes at only \$0.87 per pack, and ranks
14 33rd in tobacco tax rates, reflecting one of the lowest tobacco taxes
15 in the United States. Thirty states have cigarette tax rates of \$1 per
16 pack or higher, and California is well below other west coast states
17 (Washington: \$3.025, Oregon: \$1.18, and Arizona: \$2). California
18 last raised its tobacco tax in 1998.

19 (k) The burden of smoking is not equally shared across
20 California populations and communities. Tobacco use rates are
21 much higher than the general population in African Americans,
22 white men, Korean men, enlisted military personnel, lesbian, gay,
23 ~~bisexual~~ *bisexual*, and transgender, young adult, rural, and
24 low-income populations.

25 (l) A reinvigorated tobacco control program will allow targeted
26 public health and research efforts to combat the tobacco industry's
27 predatory marketing to ethnic groups, driving down smoking rates
28 and ultimately reducing heart disease, stroke, lung disease, and
29 cancer in these California communities, which together represent
30 more than half of our state's residents.

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

33 30104. The taxes imposed by this part shall not apply to the
34 sale of cigarettes or tobacco products by a distributor to a common
35 carrier engaged in interstate or foreign passenger service or to a
36 person authorized to sell cigarettes or tobacco products on the
37 facilities of the carrier. Whenever cigarettes or tobacco products
38 are sold by distributors to common carriers engaged in interstate
39 or foreign passenger service for use or sale on facilities of the
40 carriers, or to persons authorized to sell cigarettes or tobacco

1 products on those facilities, the tax imposed under this part shall
2 not be levied with respect to the sales of the cigarettes or tobacco
3 products by the distributors, but a tax is hereby levied upon the
4 carriers or upon the persons authorized to sell cigarettes or tobacco
5 products on the facilities of the carriers, as the case may be, for
6 the privilege of making sales in California at the same rate as set
7 forth under this part. Those common carriers and authorized
8 persons shall pay the tax imposed by this section and file reports
9 with the board, as provided in Section 30186.

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

12 30108. (a) Every distributor engaged in business in this state
13 and selling or accepting orders for cigarettes or tobacco products
14 with respect to the sale of which the tax imposed under this part
15 is inapplicable shall, at the time of making the sale or accepting
16 the order or, if the purchaser is not then obligated to pay the tax
17 with respect to his or her distribution of the cigarettes or tobacco
18 products, at the time the purchaser becomes so obligated, collect
19 the tax from the purchaser, if the purchaser is other than a licensed
20 distributor, and shall give to the purchaser a receipt therefor in the
21 manner and form prescribed by the board.

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

33 (c) "Engaged in business in the state" means and includes any
34 of the following:

35 (1) Maintaining, occupying, or using, permanently or
36 temporarily, directly or indirectly, or through a subsidiary, or agent,
37 by whatever name called, an office, place of distribution, sales or
38 sample room or place, warehouse or storage place, or other place
39 of business.

1 (2) Having any representative, agent, salesperson, ~~canvasser~~
2 *canvasser*, or solicitor operating in this state under the authority
3 of the distributor or its subsidiary for the purpose of selling,
4 delivering, or the taking of orders for cigarettes or tobacco
5 products.

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

9 SEC. 4. Article 2.5 (commencing with Section 30130.50) is
10 added to Chapter 2 of Part 13 of Division 2 of the Revenue and
11 Taxation Code, to read:

12
13 Article 2.5. The California Tobacco Tax Act of 2014

14
15 30130.50. For the purposes of this article:

16 (a) "Cigarette" has the same meaning as in Section 30003 as it
17 read on January 1, 2013.

18 (b) "Tobacco products" includes, but is not limited to, all forms
19 of cigars, smoking tobacco, chewing tobacco, snuff, and any other
20 articles or products made of, or containing at least 50 percent,
21 tobacco, but does not include cigarettes.

22 30130.51. ~~(a)~~ In addition to any other taxes imposed upon the
23 distribution of cigarettes, there shall be imposed an additional tax
24 upon every distributor of cigarettes at the rate of one hundred mills
25 (\$0.10) for each cigarette distributed on or after the first day of
26 the first calendar quarter commencing more than 90 days after the
27 effective date of this act.

28 ~~(b) (1) To offset the effects of inflation and further reduce~~
29 ~~smoking prevalence, on or before March 1 of each year, the State~~
30 ~~Board of Equalization shall calculate the percentage increase in~~
31 ~~the California Consumer Price Index for all items in December of~~
32 ~~the prior calendar year over the December of the preceding calendar~~
33 ~~year immediately preceding the prior calendar year. Each fiscal~~
34 ~~year, the tax imposed by subdivision (a) on the distribution of~~
35 ~~cigarettes and tobacco products shall be adjusted by the State Board~~
36 ~~of Equalization to reflect the percentage increase in the California~~
37 ~~Consumer Price Index for all items, if any. The adjusted tax shall~~
38 ~~be effective during the state's next fiscal year.~~

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

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

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

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

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

27 (B) Two dollars (\$2) for each stamp bearing the designation
28 "20."

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

30 (2) Every licensed cigarette distributor shall file a return with
31 the board on or before the first day of the first calendar quarter
32 commencing 180 days after the effective date of this act on a form
33 prescribed by the board, showing the number of stamps described
34 in subparagraphs (A), (B), and (C) of paragraph (1). The amount
35 of tax shall be computed and shown on the return.

36 (c) The taxes required to be paid by this section are due and
37 payable on or before the first day of the first calendar quarter
38 commencing 180 days after the effective date of this act. Payments
39 shall be made by remittances payable to the board and the payments

1 shall accompany the return and forms required to be filed by this
2 section.

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

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

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

34 (c) Transfers under this section shall be made by the board at
35 times as the board determines necessary to further the intent of
36 this section.

37 30130.54. (a) The California Tobacco Tax Act of 2014 Fund
38 is hereby established in the State Treasury for the purposes set
39 forth in this article. All revenues, less refunds, derived from the

1 taxes imposed by this article shall be deposited in the California
2 Tobacco Tax Act of 2014 Fund.

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

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

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

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

15 (c) Funds deposited into the California Tobacco Tax Act of
16 2014 Fund may be placed into the Pooled Money Investment
17 Account for investment only, and interest earned shall be credited
18 to the fund and deposited, apportioned, and expended only in
19 accordance with this article and its purposes.

20 (d) Notwithstanding any other law, the California Tobacco Tax
21 Act of 2014 Fund is a trust fund established solely to carry out the
22 purposes set forth in this article and all revenues deposited into
23 the California Tobacco Tax Act of 2014 Fund, together with
24 interest earned by the fund, are hereby continuously appropriated
25 without regard to fiscal year to be expended only in accordance
26 with this article and its purposes.

27 (e) Notwithstanding any other law, the taxes imposed by this
28 article and the revenue derived therefrom, including investment
29 interest, shall not be considered to be part of the General Fund, as
30 that term is used in Chapter 1 (commencing with Section 16300)
31 of Part 2 of Division 4 of the Government Code, shall not be
32 considered General Fund revenue for purposes of Section 8 of
33 Article XVI of the California Constitution, and its implementing
34 statutes, and shall not be considered “moneys to be applied by the
35 state for the support of school districts and community college
36 districts” pursuant to Section 8 of Article XVI of the California
37 Constitution, and its implementing statutes.

38 (f) Notwithstanding any other law, revenues deposited into the
39 California Tobacco Tax Act of 2014 Fund, and any interest earned
40 by the fund, shall only be used for the specific purposes set forth

1 in this article. Revenues deposited into *the* California Tobacco Tax
2 Act of 2014 Fund shall not be subject to appropriation, reversion,
3 or transfer by the Legislature, the Governor, the Director of
4 Finance, or the Controller for any other purpose, nor shall the funds
5 be loaned to the General Fund or any other fund of the state or any
6 local government fund.

7 (g) All revenues deposited into the California Tobacco Tax Act
8 of 2014 Fund shall be expended only for the purposes expressed
9 in this article, and shall be used only to supplement existing levels
10 of service and not to fund existing levels of service. Moneys in
11 the fund shall not be used to supplant state or local general fund
12 moneys for any purpose.

13 30130.55. After transferring the moneys as required pursuant
14 to subdivision (b) of Section 30130.53 and pursuant to subdivision
15 (b) of Section 30130.54, the Controller shall allocate the moneys
16 from the accounts in the California Tobacco Tax Act of 2014 Fund
17 as follows:

18 (a) The Tobacco Prevention and Education Account shall be
19 allocated to supplement tobacco prevention and control programs
20 as follows:

21 (1) ___ percent to the State Department of Public Health.

22 (2) ___ percent to the State Department of Education.

23 (3) ___percent to the University of California.

24 (b) Funds in the Tobacco Disease Related Health Care Account
25 shall be allocated to the State Department of Health Care Services
26 to improve existing programs to provide quality and access to
27 health care programs for families and children pursuant to Chapter
28 7 (commencing with Section 14000) to Chapter 8.9 (commencing
29 with Section 14700), inclusive, of Part 3 of Division 9 of the
30 Welfare and Institutions Code.

31 (c) Funds in the Tobacco Law Enforcement Account shall be
32 allocated to the State Board of Equalization, *the* Department of
33 Justice, and the State Department of Public Health for the purpose
34 of supplementing funding for the enforcement of laws that regulate
35 the distribution and sale of cigarettes and other tobacco products,
36 including, but not limited to, laws that prohibit cigarette smuggling,
37 counterfeiting, selling untaxed tobacco, selling tobacco without a
38 proper license *license*, and selling tobacco to minors, and enforcing
39 tobacco-related laws, court judgments, and settlements.

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

4 (e) The Department of Justice, the State Department of Public
5 Health, the State Department of Education, the State Department
6 of Health Care Services, and the University of California shall, on
7 an annual basis, publish on their respective Internet Web sites an
8 accounting of moneys received from the California Tobacco Tax
9 Act of 2014 Fund and how the moneys were spent.

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

12 30181. (a) If any tax imposed upon cigarettes under this part
13 is not paid through the use of stamps or meter impressions, the tax
14 shall be due and payable monthly on or before the 25th day of the
15 month following the calendar month in which a distribution of
16 cigarettes occurs, or in the case of a sale of cigarettes on the
17 facilities of a common carrier for which the tax is imposed pursuant
18 to Section 30104, the tax shall be due and payable monthly on or
19 before the 25th day of the month following the calendar month in
20 which a sale of cigarettes on the facilities of the carrier occurs.

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

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

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

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

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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

O