

Senate Bill No. 824

Passed the Senate May 9, 2013

Secretary of the Senate

Passed the Assembly August 15, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 25299.43 of the Health and Safety Code, and to amend Sections 55001 and 55332.5 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 824, Committee on Governance and Finance. State Board of Equalization: administration.

Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, which is repealed on January 1, 2016, every owner of an underground storage tank is required to pay a storage fee for each gallon of petroleum placed in the tank. Existing law requires this fee to be paid to the State Board of Equalization, as specified which administers the collection and administration of those fees under the Underground Storage Tank Maintenance Fee Law.

This bill would correct an incorrect cross-reference in the provision requiring the fee to be paid to the State Board of Equalization.

Existing law establishes the Fee Collection Procedures Law, which provides for the administration and collection of various fee programs by the State Board of Equalization.

This bill would correct an inaccurate reference in the provision that establishes that law.

The Sales and Use Tax Law and other laws administered by the State Board of Equalization, including the Fee Collection Procedures Law, allow the board to accept an offer in compromise on a final liability imposed under or in accordance with those laws.

This bill would make a technical, clarifying change to the offer-in-compromise provision of the Fee Collection Procedures Law.

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

SECTION 1. Section 25299.43 of the Health and Safety Code is amended to read:

25299.43. (a) To implement the changes to this chapter made by Chapter 1191 of the Statutes of 1994, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill (\$.001) for each gallon of petroleum placed in an underground storage tank that the person owns, in addition to the fee required by Section 25299.41.

(b) On and after January 1, 1996, the storage fee imposed under subdivision (a) shall be increased by two mills (\$.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee increased under subdivision (b) shall be increased by an additional three mills (\$.003) for each gallon of petroleum placed in an underground storage tank.

(d) On and after January 1, 2005, the storage fee increased under subdivision (c) shall be increased by an additional one mill (\$.001) for each gallon of petroleum placed in an underground storage tank.

(e) On and after January 1, 2006, the storage fee increased under subdivision (d) shall be increased by an additional one mill (\$.001) for each gallon of petroleum placed in an underground storage tank.

(f) On and after January 1, 2010, the storage fee increased under subdivision (e) shall be increased by an additional six mills (\$.006) for each gallon of petroleum placed in an underground storage tank. The increase provided for in this subdivision shall be effective until January 1, 2014, at which time, the fee shall revert back to the fee pursuant to subdivision (e).

(g) The fee imposed under this section shall be paid to the State Board of Equalization under Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed under Section 25299.41.

(h) The State Board of Equalization shall amend the regulations adopted under Section 25299.41 to carry out this section.

SEC. 2. Section 55001 of the Revenue and Taxation Code is amended to read:

55001. This part shall be known and may be cited as the Fee Collection Procedures Law.

SEC. 3. Section 55332.5 of the Revenue and Taxation Code, as amended by Section 16 of Chapter 285 of the Statutes of 2012, is amended to read:

55332.5. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final fee liability” means any final fee liability arising under Part 30 (commencing with Section 55001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer’s present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer

to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the feepayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(i) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the feepayer.
- (2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 55381. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

(k) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that a person did any of the following acts regarding the making of the offer:

(A) Concealed from the board property belonging to the estate of a feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(l) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from an officer or employee of this state property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(m) For purposes of this section, “person” means the feepayer, a member of the feepayer’s family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the feepayer, or another corporation or entity owned or

controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(n) This section shall become operative on January 1, 2018.

Approved _____, 2013

Governor