

**Introduced by Senator Pan**  
(Principal coauthor: Assembly Member Bonta)

February 26, 2015

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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 591, as introduced, Pan. Cigarette and tobacco products taxes: California Tobacco Tax Act of 2015.

The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax of \$0.87 per package of 20 cigarettes on every distributor of cigarettes and a tax on the wholesale cost of tobacco products distributed at a tax rate that is equivalent to the combined rate of all taxes imposed on cigarettes, and at a rate equivalent to \$0.50 per pack cigarette tax. Revenues from taxes imposed under this law are deposited in specified accounts. These taxes are inclusive of the 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).

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 which would be \$2.00 per pack; 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 at the rate equal to the difference between the existing tax rate and the tax rate imposed by this bill 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 provide that the revenues collected from the additional tax be deposited in the California Tobacco Tax Act of 2015 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 2015 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 2015 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 2015-16, it is estimated that the General Fund cost of  
20 publicly funded health care programs to the state will be more than  
21 \$18 billion. In 2015-16, it is estimated that publicly funded health  
22 care programs will provide health care coverage to more than 12  
23 million Californians. At the same time, hundreds of thousands of  
24 families and children go without any medical coverage due to  
25 financial constraints upon the state and local government budgets  
26 and recent cutbacks in publicly funded health care programs.

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

33 (g) The California Tobacco Tax Act of 2015 will help fund the  
34 comprehensive California Tobacco Control Program designed to  
35 change social norms about tobacco and discourage individuals  
36 from taking up smoking and the use of other tobacco products  
37 through educational programs, thereby saving the state and local  
38 governments significant money now and in the future.

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

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

9 (j) California taxes cigarettes at only \$0.87 per pack, and ranks  
10 33rd in tobacco tax rates, reflecting one of the lowest tobacco taxes  
11 in the United States. Thirty states have cigarette tax rates of \$1 per  
12 pack or higher, and California is well below other west coast states  
13 (Washington: \$3.025, Oregon: \$1.18, and Arizona: \$2). California  
14 last raised its tobacco tax in 1998.

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

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

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

29 30104. The taxes imposed by this part shall not apply to the  
30 sale of cigarettes or tobacco products by a distributor to a common  
31 carrier engaged in interstate or foreign passenger service or to a  
32 person authorized to sell cigarettes or tobacco products on the  
33 facilities of the carrier. Whenever cigarettes or tobacco products  
34 are sold by distributors to common carriers engaged in interstate  
35 or foreign passenger service for use or sale on facilities of the  
36 carriers, or to persons authorized to sell cigarettes or tobacco  
37 products on those facilities, the tax imposed by ~~Sections 30101,~~  
38 ~~30123, and 30131.2~~ *under this part* shall not be levied with respect  
39 to the sales of the cigarettes or tobacco products by the distributors,  
40 but a tax is hereby levied upon the carriers or upon the persons

1 authorized to sell cigarettes or tobacco products on the facilities  
2 of the carriers, as the case may be, for the privilege of making sales  
3 in California at the same rate as set forth in Sections 30101, 30123,  
4 and 30131.2. *under this part.* Those common carriers and  
5 authorized persons shall pay the tax imposed by this section and  
6 file reports with the board, as provided in Section 30186.

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

9 30108. (a) Every distributor engaged in business in this state  
10 and selling or accepting orders for cigarettes or tobacco products  
11 with respect to the sale of which the tax imposed by Sections  
12 30101, 30123, and 30131.2 *under this part* is inapplicable shall,  
13 at the time of making the sale or accepting the order or, if the  
14 purchaser is not then obligated to pay the tax with respect to his  
15 or her distribution of the cigarettes or tobacco products, at the time  
16 the purchaser becomes so obligated, collect the tax from the  
17 purchaser, if the purchaser is other than a licensed distributor, and  
18 shall give to the purchaser a receipt therefor in the manner and  
19 form prescribed by the board.

20 (b) Every person engaged in business in this state and making  
21 gifts of untaxed cigarettes or tobacco products as samples with  
22 respect to which the tax imposed by Sections 30101, 30123, and  
23 30131.2 *under this part* is inapplicable shall, at the time of making  
24 the gift or, if the donee is not then obligated to pay the tax with  
25 respect to his or her distribution of the cigarettes or tobacco  
26 products, at the time the donee becomes so obligated, collect the  
27 tax from the donee, if the donee is other than a licensed distributor,  
28 and shall give the donee a receipt therefor in the manner and form  
29 prescribed by the board. This section shall not apply to those  
30 distributions of cigarettes or tobacco products ~~which~~ *that* are  
31 exempt from tax under Section 30105.5.

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

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

39 (2) Having any representative, agent, salesperson, ~~canvasser~~  
40 *canvasser*, or solicitor operating in this state under the authority

1 of the distributor or its subsidiary for the purpose of selling,  
2 delivering, or the taking of orders for cigarettes or tobacco  
3 products.

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

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

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11 Article 2.5. The California Tobacco Tax Act of 2015

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13 30130.50. For the purposes of this article:

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

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

20 30130.51. In addition to any other taxes imposed upon the  
21 distribution of cigarettes, there shall be imposed an additional tax  
22 upon every distributor of cigarettes at the rate of one hundred mills  
23 (\$0.10) for each cigarette distributed on or after the first day of  
24 the first calendar quarter commencing more than 90 days after the  
25 effective date of this act.

26 30130.52. (a) (1) Every dealer and wholesaler, for the  
27 privilege of holding or storing cigarettes for sale, use, or  
28 consumption, shall pay a floor stock tax for each cigarette in its  
29 possession or under its control in this state at 12:01 a.m. on the  
30 first day of the first calendar quarter commencing more than 90  
31 days after the effective date of this act at the rate of one hundred  
32 mills (\$0.10) for each cigarette.

33 (2) Every dealer and wholesaler shall file a return with the State  
34 Board of Equalization on or before the first day of the first calendar  
35 quarter commencing more than 180 days after the effective date  
36 of this act on a form prescribed by the State Board of Equalization,  
37 showing the number of cigarettes in its possession or under its  
38 control in this state at 12:01 a.m. on the first day of the first  
39 calendar quarter commencing more than 90 days after the effective

1 date of this act. The amount of tax shall be computed and shown  
2 on the return.

3 (b) (1) Every licensed cigarette distributor, for the privilege of  
4 distributing cigarettes and for holding or storing cigarettes for sale,  
5 use, or consumption, shall pay a cigarette indicia adjustment tax  
6 for each California cigarette tax stamp that is affixed to any  
7 package of cigarettes and for each unaffixed California cigarette  
8 tax stamp in its possession or under its control at 12:01 a.m. on  
9 the first day of the first calendar quarter commencing more than  
10 90 days after the effective date of this act at the following rates:

11 (A) Two dollars and fifty cents (\$2.50) for each stamp bearing  
12 the designation “25.”

13 (B) Two dollars (\$2) for each stamp bearing the designation  
14 “20.”

15 (C) One dollar (\$1) for each stamp bearing the designation “10.”

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

22 (c) The taxes required to be paid by this section are due and  
23 payable on or before the first day of the first calendar quarter  
24 commencing 180 days after the effective date of this act. Payments  
25 shall be made by remittances payable to the board and the payments  
26 shall accompany the return and forms required to be filed by this  
27 section.

28 (d) Any amount required to be paid by this section that is not  
29 timely paid shall bear interest at the rate and by the method  
30 established pursuant to Section 30202 from the first day of the first  
31 calendar quarter commencing 180 days after the effective date of  
32 this act, until paid, and shall be subject to determination, and  
33 redetermination, and any penalties provided with respect to  
34 determinations and redeterminations.

35 30130.53. (a) The State Board of Equalization shall determine  
36 within one year of the effective date of this act, and annually  
37 thereafter, the effect that the additional taxes imposed on cigarettes  
38 by this article, and the resulting increase in the tax on tobacco  
39 products required by subdivision (b) of Section 30123, have on  
40 the consumption of cigarettes and tobacco products in this state.

1 To the extent that a decrease in consumption is determined by the  
2 State Board of Equalization to be a direct result of the additional  
3 tax imposed by this article, or the resulting increase in the tax on  
4 tobacco products required by subdivision (b) of Section 30123,  
5 the State Board of Equalization shall determine the fiscal effect  
6 the decrease in consumption has on the Cigarette and Tobacco  
7 Products Surtax Fund created by Section 30122 (Proposition 99  
8 as approved by the voters at the November 8, 1988, statewide  
9 general election), the Breast Cancer Fund created by Section  
10 30461.6, the California Children and Families Trust Fund created  
11 by Section 30131 (Proposition 10 as approved by the voters at the  
12 November 3, 1998, statewide general election), and the General  
13 Fund with respect to revenues derived from Section 30101.

14 (b) Funds shall be transferred from the California Tobacco Tax  
15 Act of 2015 Fund to the Cigarette and Tobacco Products Surtax  
16 Fund, the Breast Cancer Fund, the California Children and Families  
17 Trust Fund, and the General Fund, to offset the revenue decrease  
18 directly resulting from imposition of additional taxes by this article.

19 (c) Transfers under this section shall be made by the board at  
20 times as the board determines necessary to further the intent of  
21 this section.

22 30130.54. (a) The California Tobacco Tax Act of 2015 Fund  
23 is hereby established in the State Treasury for the purposes set  
24 forth in this article. All revenues, less refunds, derived from the  
25 taxes imposed by this article shall be deposited in the California  
26 Tobacco Tax Act of 2015 Fund.

27 (b) Moneys in the California Tobacco Tax Act of 2015 Fund,  
28 less moneys transferred pursuant to Section 30130.53, shall be  
29 transferred as follows:

30 (1) \_\_\_ percent to the Tobacco Prevention and Education  
31 Account, which is hereby created in the California Tobacco Tax  
32 Act of 2015 Fund.

33 (2) \_\_\_ percent to the Tobacco Disease Related Health Care  
34 Account, which is hereby created in the California Tobacco Tax  
35 Act of 2015 Fund.

36 (3) \_\_\_ percent to the Tobacco Law Enforcement Account,  
37 which is hereby created in the California Tobacco Tax Act of 2015  
38 Fund.

39 (c) Funds deposited into the California Tobacco Tax Act of  
40 2015 Fund may be placed into the Pooled Money Investment

1 Account for investment only, and interest earned shall be credited  
2 to the fund and deposited, apportioned, and expended only in  
3 accordance with this article and its purposes.

4 (d) Notwithstanding any other law, the California Tobacco Tax  
5 Act of 2015 Fund is a trust fund established solely to carry out the  
6 purposes set forth in this article and all revenues deposited into  
7 the California Tobacco Tax Act of 2015 Fund, together with  
8 interest earned by the fund, are hereby continuously appropriated  
9 without regard to fiscal year to be expended only in accordance  
10 with this article and its purposes.

11 (e) Notwithstanding any other law, the taxes imposed by this  
12 article and the revenue derived therefrom, including investment  
13 interest, shall not be considered to be part of the General Fund, as  
14 that term is used in Chapter 1 (commencing with Section 16300)  
15 of Part 2 of Division 4 of the Government Code, shall not be  
16 considered General Fund revenue for purposes of Section 8 of  
17 Article XVI of the California Constitution, and its implementing  
18 statutes, and shall not be considered “moneys to be applied by the  
19 state for the support of school districts and community college  
20 districts” pursuant to Section 8 of Article XVI of the California  
21 Constitution, and its implementing statutes.

22 (f) Notwithstanding any other law, revenues deposited into the  
23 California Tobacco Tax Act of 2015 Fund, and any interest earned  
24 by the fund, shall only be used for the specific purposes set forth  
25 in this article. Revenues deposited into the California Tobacco Tax  
26 Act of 2015 Fund shall not be subject to appropriation, reversion,  
27 or transfer by the Legislature, the Governor, the Director of  
28 Finance, or the Controller for any other purpose, nor shall the funds  
29 be loaned to the General Fund or any other fund of the state or any  
30 local government fund.

31 (g) All revenues deposited into the California Tobacco Tax Act  
32 of 2015 Fund shall be expended only for the purposes expressed  
33 in this article, and shall be used only to supplement existing levels  
34 of service and not to fund existing levels of service. Moneys in  
35 the fund shall not be used to supplant state or local general fund  
36 moneys for any purpose.

37 30130.55. After transferring the moneys as required pursuant  
38 to subdivision (b) of Section 30130.53 and pursuant to subdivision  
39 (b) of Section 30130.54, the Controller shall allocate the moneys

1 from the accounts in the California Tobacco Tax Act of 2015 Fund  
2 as follows:

3 (a) The Tobacco Prevention and Education Account shall be  
4 allocated to supplement tobacco prevention and control programs  
5 as follows:

6 (1) \_\_\_ percent to the State Department of Public Health.

7 (2) \_\_\_ percent to the State Department of Education.

8 (3) \_\_\_percent to the University of California.

9 (b) Funds in the Tobacco Disease Related Health Care Account  
10 shall be allocated to the State Department of Health Care Services  
11 to improve existing programs to provide quality and access to  
12 health care programs for families and children pursuant to Chapter  
13 7 (commencing with Section 14000) to Chapter 8.9 (commencing  
14 with Section 14700), inclusive, of Part 3 of Division 9 of the  
15 Welfare and Institutions Code.

16 (c) Funds in the Tobacco Law Enforcement Account shall be  
17 allocated to the State Board of Equalization, the Department of  
18 Justice, and the State Department of Public Health for the purpose  
19 of supplementing funding for the enforcement of laws that regulate  
20 the distribution and sale of cigarettes and other tobacco products,  
21 including, but not limited to, laws that prohibit cigarette smuggling,  
22 counterfeiting, selling untaxed tobacco, selling tobacco without a  
23 proper license, and selling tobacco to minors, and enforcing  
24 tobacco-related laws, court judgments, and settlements.

25 (d) Not more than 2 percent of the funds received from the  
26 California Tobacco Tax Act of 2015 Fund shall be used by any  
27 department for administrative costs.

28 (e) The Department of Justice, the State Department of Public  
29 Health, the State Department of Education, the State Department  
30 of Health Care Services, and the University of California shall, on  
31 an annual basis, publish on their respective Internet Web sites an  
32 accounting of moneys received from the California Tobacco Tax  
33 Act of 2015 Fund and how the moneys were spent.

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

36 30181. (a) ~~When~~ *If* any tax imposed upon cigarettes under  
37 ~~Article 1 (commencing with Section 30101), Article 2~~  
38 ~~(commencing with Section 30121), and Article 3 (commencing~~  
39 ~~with Section 30131) of Chapter 2~~ *this part* is not paid through the  
40 use of stamps or meter impressions, the tax shall be due and

1 payable monthly on or before the 25th day of the month following  
2 the calendar month in which a distribution of cigarettes occurs, or  
3 in the case of a sale of cigarettes on the facilities of a common  
4 carrier for which the tax is imposed pursuant to Section 30104,  
5 the tax shall be due and payable monthly on or before the 25th day  
6 of the month following the calendar month in which a sale of  
7 cigarettes on the facilities of the carrier occurs.

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

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

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

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

24 SEC. 6. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.

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