AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2676

Introduced by Assembly Member ~~Bass~~ *Ma*

February 19, 2010

An act to amend Sections 6452.1, 6453, 6487.3, *6829,* and 18510 of, *and to add Sections 6225.1, 7984, 9034, 43448.6, 45609.6, 46465, 55210, and 60494 to,* the Revenue and Taxation Code, *and to amend Section 1088.5 of the Unemployment Insurance Code,* relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2676, as amended, ~~Bass~~ *Ma*. ~~Sales and use taxes: use tax: income tax return.~~ *State Board of Equalization: administration.*

The Sales and Use Tax Law imposes a sales tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price. Use tax is imposed on the purchaser, who is liable for the tax and must pay the tax to the State Board of Equalization, unless he or she has paid the use tax to a retailer registered to collect the use tax.

Existing law requires retailers, as specified, to register with, and to obtain a seller's permit or certification of registration-use tax from, the State Board of Equalization~~, and also requires specified businesses to register with the board and to annually report their use tax owed for the previous calendar year~~. For taxable years beginning on January 1, 2003, and ending on December 31, 2009, persons not otherwise registered with the board *may* make an irrevocable election to report qualified use tax, as defined, on that person's income tax return. The Franchise Tax Board is required to revise the income tax returns to allow a person to report and remit qualified use taxes to it and to remit the qualified use taxes collected to the board.

This bill would continue the authorization for an eligible person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax return, for taxable years ending after December 31, 2009, and would require the Franchise Tax Board to continue to allow a person to report and remit qualified use taxes to it and to remit the qualified use taxes collected to the board.

The Sales and Use Tax Law also requires a person having annual gross receipts from business operations of $100,000 or more, who is not registered with the board, to register with the board and annually report and pay use tax, other than with respect to a purchase of a vehicle, vessel, or aircraft.

This bill would require a person not registered with the board, who regularly incurs a specified use tax liability annually, other than a liability with respect to the purchase of a vehicle, vessel, or aircraft, to also register with the board and annually report and pay use tax.

The Sales and Use Tax Law imposes personal liability for unpaid taxes, interest, and penalties on specified responsible persons who willfully fail to pay these amounts, upon the termination, dissolution, or abandonment of business of the corporation or other business entity, with the sum due to be collected by deficiency determination and collection in the manner provided under this law.

This bill would also impose personal liability under the Sales and Use Tax Law for unpaid taxes, interest, and penalties on specified responsible persons who fail to pay these amounts during the time the rights, powers, and responsibilities of a closely held corporation or closely held limited liability company are suspended, as specified.

This bill would additionally impose responsible person liability for unpaid taxes or fees, interest, and penalties on specified responsible persons who willfully fail to pay these amounts, upon the termination, dissolution, or abandonment of business of the corporation or other business entity, or who fail to pay these amounts during the time the rights, powers, and responsibilities of a closely held corporation or closely held limited liability company are suspended, as specified, under the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill

Response, Prevention, and Administration Fees Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

Existing law provides for the payment of unemployment compensation benefits to eligible unemployed individuals, and requires the Employment Development Department to implement and administer the unemployment insurance system in the state. Existing law requires each employer to file with the department a report of wages paid to his or her workers and to furnish to each employee a written statement showing, among other things, the total amount of wages, and total wages subject to personal income tax, as provided. Existing law also requires each employer to file with the department specified information on new employees, and authorizes the use of that information for specified purposes including, among other things, providing employer or employee information to the Franchise Tax Board for the purpose of tax enforcement.

This bill would also authorize the Employment Development Department to provide employer or employee information to the State Board of Equalization with information for tax or fee enforcement.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 6225.1 is added to the Revenue and Taxation Code, to read:

6225.1. (a) Notwithstanding Section 6225, every person who regularly incurs a use tax liability by purchasing tangible personal property from a retailer for storage, use, or other consumption in this state, which is stored, used, or otherwise consumed in this state, shall register with the board on a form prescribed by the board and shall set forth the name and location of the person, and other information as the board may require.

(b) (1) Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a person who regularly incurs a use tax liability, except that a return showing the total sales price of the tangible personal property, purchased by the person who regularly incurs use tax, the storage, use, or other consumption of which became subject to the use tax during the calendar year, and which was not paid to a retailer required to collect the use tax or which was not paid to a retailer the person who regularly

incurred the use tax reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of tax due, with the board on or before April 15 of the next succeeding calendar year.

(2) The first returns due under this section shall be filed on or before April 15, 2011.

(c) "Regularly" means a person incurs or has incurred one thousand dollars ($1,000) or more in use tax liability each calendar year for a period of at least three consecutive calendar years.

(d) This section shall not apply to a person who meets any of the following conditions:

(1) The person is required to hold a seller's permit pursuant to this part.

(2) The person is required to be registered pursuant to Section 6226.

(3) The person is a holder of a use tax direct payment permit as described in Section 7051.3.

(4) The person is otherwise registered with the board to report use tax.

(e) This section shall not apply to the purchase of a vehicle, vessel, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

~~SECTION 1.~~

SEC. 2. Section 6452.1 of the Revenue and Taxation Code is amended to read:

6452.1. (a) Notwithstanding Section 6451, every person that purchases tangible personal property, the storage, use, or other consumption of which is subject to qualified use tax, as defined in subdivision (d), that is otherwise required to report and remit that tax pursuant to this part, may elect to report and remit qualified use tax on an acceptable tax return.

(b) (1) A person that reports qualified use tax on an acceptable tax return is deemed to have made the election authorized by this section.

(2) (A) In the case of a married individual filing a separate California personal income tax return, an election may be made to report either one-half of the qualified use tax or the entire qualified use tax on his or her separate California personal income tax return.

(B) If an individual elects to report one-half of the qualified use tax, that election will not be binding with respect to the remaining one-half of the qualified use tax owed by that individual and that individual's spouse.

(c) An election to report qualified use tax on an acceptable tax return shall be irrevocable. An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

(d) For purposes of this section:

(1) "Acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(2) (A) Except as provided in subparagraph (B), "qualified use tax" means the use tax imposed under this part, Section 35 of Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(B) "Qualified use tax" does not include:

(i) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax that applies to a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or to a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on a vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lessee of tangible personal property.

(e) If a person elects to report qualified use tax on an acceptable tax return, that person shall comply with all of the following:

(1) The qualified use tax shall be reported on and remitted with an acceptable tax return.

(2) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.

(2) Any claims for refunds or credits of any use tax reported as qualified use tax on an acceptable tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), if the qualified use tax is timely reported on and remitted with an acceptable tax return in accordance with the provisions of this section.

(g) Notwithstanding a person's election to remit and to report qualified use tax on an acceptable tax return, the State Board of Equalization is not precluded from making any determinations for understatements of qualified use tax against that person in accordance with Part 5 (commencing with Section 6451).

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18401).

(2) Qualified use tax reported on the acceptable tax return in accordance with this section.

(i) (1) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of this division.

(2) This section applies to purchases of tangible personal property made on or after January 1, 2003, in taxable years beginning on or after January 1, 2003.

~~SEC. 2.~~

SEC. 3. Section 6453 of the Revenue and Taxation Code is amended to read:

6453. For purposes of the sales tax, the return shall show the gross receipts of the seller during the preceding reporting period and, in the case of a person who is liable for the sales tax and is not a seller, the gross receipts of such person for the period in which the liability was incurred. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him or her, the storage, use, or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, except as provided in Section 6452.1, the return shall show the total sales price of the property purchased by him or her, the storage, use, or consumption of which became subject to the use tax during the preceding reporting period.

The return shall also show the amount of the taxes for the period covered by the return and any other information which the board deems necessary for the proper administration of this part.

~~SEC. 3.~~

SEC. 4. Section 6487.3 of the Revenue and Taxation Code is amended to read:

6487.3. (a) (1) For persons that elect to report qualified use tax in accordance with Section 6452.1, except in the case of fraud, intent to avoid this part or authorized rules and regulations issued by the board, or the gross understatement of qualified use taxes, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within three years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(2) In the case of a gross understatement of qualified use tax, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within six years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(3) For purposes of this subdivision a “gross understatement of qualified used tax” is a deficiency that is in excess of 25 percent of the amount of qualified use tax reported on a person’s acceptable tax return. In the case of married individuals filing separate California personal income tax returns, the total amount of qualified

use tax reported will be considered in determining whether there is a gross understatement of qualified use tax.

(4) For purposes of this section "acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(b) This section applies to reporting of purchases of tangible personal property made on or after January 1, 2003, in taxable years beginning on or after January 1, 2003.

SEC. 5. Section 6829 of the Revenue and Taxation Code is amended to read:

6829. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had included tax reimbursement in the selling price of, or added tax reimbursement to the selling price of, tangible personal property sold in the conduct of its business, or when it can be established that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company consumed tangible personal property and failed to pay the tax to the seller or has included use tax on the billing and collected the use tax or has issued a receipt for the use tax and failed to report and pay use tax.

(d) (1) Upon suspension of a closely held corporation or closely held limited liability company, a corporate officer, shareholder, or member with control over operations or management of the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any taxes due from the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable under the circumstances set forth below for any unpaid sales or use tax liability of that suspended corporation or limited liability company incurred during the period of that suspension. The corporate officer, shareholder, member, or responsible person shall be liable for the unpaid tax, and interest and penalties on those taxes not paid, regardless of the basis for the suspension of the corporation's or limited liability company's powers, rights, and privileges.

(2) Notwithstanding paragraph (1), if the closely held corporation or closely held limited liability company can establish that it has taken all actions necessary to qualify for revival within 60 days from the date the suspension was imposed, no corporate officer, shareholder, member, or responsible person shall be held to be personally liable for any unpaid tax, interest, or penalty incurred by the corporation or limited liability company during that period of suspension.

(e) Personal liability under subdivision (d) applies only when the board establishes that, during the period of suspension, the corporation or limited liability company did any of the following:

(1) Sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due.

(2) Collected use tax and failed to report and pay the tax.

(3) Consumed tangible personal property and failed to pay the applicable tax to the seller or the board.

(f) For purposes of subdivisions (d) and (e), all of the following definitions shall apply:

(1) "Closely held corporation" means a corporation in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business or have delegated or assigned the management to the corporate officers.

(2) "Closely held limited liability company" means a limited liability company in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority members manage the business or have delegated or assigned the management to the company officers.

(3) "Control over operations or management" means the power to manage or affect day-to-day operations of the business. For the purposes of subdivisions (d) and (e), it is rebuttably presumed that a corporate or company officer has control over operations and management of the closely held corporation or closely held limited liability company, respectively.

(4) (i) "Period of suspension" means that period of time, beginning on the date the suspension is imposed, during which a closely held corporation or closely held limited liability company was suspended for any reason.

(ii) Notwithstanding clause (i), "period of suspension" does not mean a period of time of 60 consecutive days or less, beginning on the day the suspension was imposed, during which a closely held corporation or closely held limited liability company was suspended, but only if the corporation or limited liability company has taken all actions necessary to qualify for revival on or before the 60th day.

(5) "Responsible person" means any officer, shareholder, or member who is charged with the responsibility for the filing of returns or the payment of tax or who has a duty to act for the closely held corporation or closely held limited liability company in complying with any provision of this part, and who derives a direct financial benefit from the failure to pay the tax liability.

(g) A suspended corporation or limited liability company shall remain liable for the unpaid tax, interest, and penalties incurred

during the period in which its corporate or limited liability company powers, rights, and privileges were suspended without regard to any personal liability determined under subdivisions (d), (e), and (f). Payments made pursuant to subdivisions (d), (e), and (f) shall be applied to the liability of the corporation or limited liability company.

~~(d)~~

(h) For purposes of ~~this section~~ *subdivisions (a), (b), and (c),* "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

~~(e)~~

(i) Except as provided in subdivision ~~(f)~~ *(j)*, the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701).

~~(f)~~

(j) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, *or of the suspension of the closely held corporation or closely held limited liability company*, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned *or in which the closely held corporation or closely held limited liability company was suspended*, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, *or if the Secretary of State held limited liability company that it is suspended*, this filing shall not constitute actual knowledge by the board under this section.

(k) Notwithstanding subdivision (j), when the board mails acknowledgment to a closely held corporation or closely held

limited liability company that the closely held corporation or closely held limited liability company has been suspended and the acknowledgment is mailed within three years of the date on which the board obtained actual knowledge as described in subdivision (j) of the suspension of the closely held corporation or closely held limited liability company, a notice of deficiency determination under this section shall be mailed, at the latest, within three years after the last day of the calendar month following the quarterly period following the revival of that closely held corporation or closely held limited liability company.

SEC. 6. Section 7984 is added to the Revenue and Taxation Code, to read:

7984. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax under this part, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had included the tax in the selling price of, or added the tax to the selling price of, motor vehicle fuel or aircraft jet fuel sold in the conduct of its business.

(d) (1) Upon suspension of a closely held corporation or closely held limited liability company, a corporate officer, shareholder, or member with control over operations or management of the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any taxes due from the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable under the circumstances set forth below for any unpaid tax liability of that suspended corporation or limited liability company incurred during the period of that suspension. The corporate officer, shareholder, member, or responsible person shall be liable for the unpaid tax, and interest and penalties on those taxes not paid, regardless of the basis for the suspension of the corporation's or limited liability company's powers, rights, and privileges.

(2) Notwithstanding paragraph (1), if the closely held corporation or closely held limited liability company can establish that it has taken all actions necessary to qualify for revival within 60 days from the date the suspension was imposed, no corporate officer, shareholder, member, or responsible person shall be held to be personally liable for any unpaid tax, interest, or penalty incurred by the corporation or limited liability company during that period of suspension.

(e) Personal liability under subdivision (d) applies only when the board establishes that, during the period of suspension, the closely held corporation or closely held limited liability company sold motor vehicle fuel or aircraft jet fuel in the conduct of its business and collected tax on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due.

(f) For purposes of subdivisions (d) and (e), all of the following definitions shall apply:

(1) "Closely held corporation" means a corporation in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the

business or have delegated or assigned the management to the corporate officers.

(2) "Closely held limited liability company" means a limited liability company in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority members manage the business or have delegated or assigned the management to the company officers.

(3) "Control over operations or management" means the power to manage or affect day-to-day operations of the business. For the purposes of subdivisions (d) and (e), it is rebuttably presumed that a corporate or company officer has control over operations and management of the closely held corporation or closely held limited liability company, respectively.

(4) (i) "Period of suspension" means that period of time, beginning on the date the suspension is imposed, during which a closely held corporation or closely held limited liability company was suspended for any reason.

(ii) Notwithstanding clause (i), "period of suspension" does not mean a period of time of 60 consecutive days or less, beginning on the day the suspension was imposed, during which a closely held corporation or closely held limited liability company was suspended, but only if the corporation or limited liability company has taken all actions necessary to qualify for revival on or before the 60th day.

(5) "Responsible person" means any officer, shareholder, or member who is charged with the responsibility for the filing of returns or the payment of tax or who has a duty to act for the closely held corporation or closely held limited liability company in complying with any provision of this part, and who derives a direct financial benefit from the failure to pay the tax liability.

(g) A suspended corporation or limited liability company shall remain liable for the unpaid tax, interest, and penalties incurred during the period in which its corporate or limited liability company powers, rights, and privileges were suspended without regard to any personal liability determined under subdivisions (d), (e), and (f). Payments made pursuant to subdivisions (d), (e), and (f) shall be applied to the liability of the corporation or limited liability company.

(h) For purposes of subdivisions (a), (b), and (c), "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(i) Except as provided in subdivision (j), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 5 (commencing with Section 7651) and Chapter 6 (commencing with Section 7851).

(j) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or of the suspension of the closely held corporation or closely held limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned or in which the closely held corporation or closely held limited liability company was suspended, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, or if the Secretary of State or the Franchise Tax Board notifies a closely held corporation or closely held limited liability company that it is suspended, such filing or notice shall not constitute actual knowledge by the board under this section.

(k) Notwithstanding subdivision (j), when the board mails acknowledgment to a closely held corporation or closely held limited liability company that the closely held corporation or closely held limited liability company has been suspended and the acknowledgment is mailed within three years of the date on which the board obtained actual knowledge as described in subdivision (j) of the suspension of the closely held corporation or closely held limited liability company, a notice of deficiency determination under this section shall be mailed, at the latest, within three years after the last day of the calendar month following the quarterly

period following the revival of that closely held corporation or closely held limited liability company.

SEC. 7. Section 9034 is added to the Revenue and Taxation Code, to read:

9034. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax under this part, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had included the tax in the selling price of, or added the tax to the selling price of, fuel, as defined in Section 8604, sold in the conduct of its business.

(d) (1) Upon suspension of a closely held corporation or closely held limited liability company, a corporate officer, shareholder, or member with control over operations or management of the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any taxes due from the closely held corporation or closely held limited

liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable under the circumstances set forth below for any unpaid tax liability of that suspended corporation or limited liability company incurred during the period of that suspension. The corporate officer, shareholder, member, or responsible person shall be liable for the unpaid tax, and interest and penalties on those taxes not paid, regardless of the basis for the suspension of the corporation's or limited liability company's powers, rights, and privileges.

(2) Notwithstanding paragraph (1), if the closely held corporation or closely held limited liability company can establish that it has taken all actions necessary to qualify for revival within 60 days from the date the suspension was imposed, no corporate officer, shareholder, member, or responsible person shall be held to be personally liable for any unpaid tax, interest, or penalty incurred by the corporation or limited liability company during that period of suspension.

(e) Personal liability under subdivision (d) applies only when the board establishes that, during the period of suspension, the closely held corporation or closely held limited liability company sold fuel, as defined in Section 8604, in the conduct of its business and collected tax on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due.

(f) For purposes of subdivisions (d) and (e), all of the following definitions shall apply:

(1) "Closely held corporation" means a corporation in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business or have delegated or assigned the management to the corporate officers.

(2) "Closely held limited liability company" means a limited liability company in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority members manage the business or have delegated or assigned the management to the company officers.

(3) "Control over operations or management" means the power to manage or affect day-to-day operations of the business. For the

purposes of subdivisions (d) and (e), it is rebuttably presumed that a corporate or company officer has control over operations and management of the closely held corporation or closely held limited liability company, respectively.

(4) (i) "Period of suspension" means that period of time, beginning on the date the suspension is imposed, during which a closely held corporation or closely held limited liability company was suspended for any reason.

(ii) Notwithstanding clause (i), "period of suspension" does not mean a period of time of 60 consecutive days or less, beginning on the day the suspension was imposed, during which a closely held corporation or closely held limited liability company was suspended, but only if the corporation or limited liability company has taken all actions necessary to qualify for revival on or before the 60th day.

(5) "Responsible person" means any officer, shareholder, or member who is charged with the responsibility for the filing of returns or the payment of tax or who has a duty to act for the closely held corporation or closely held limited liability company in complying with any provision of this part, and who derives a direct financial benefit from the failure to pay the tax liability.

(g) A suspended corporation or limited liability company shall remain liable for the unpaid tax, interest, and penalties incurred during the period in which its corporate or limited liability company powers, rights, and privileges were suspended without regard to any personal liability determined under subdivisions (d), (e), and (f). Payments made pursuant to subdivisions (d), (e), and (f) shall be applied to the liability of the corporation or limited liability company.

(h) For purposes of subdivisions (a), (b), and (c), "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(i) Except as provided in subdivision (j), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 4 (commencing with Section 8751) and Chapter 5 (commencing with Section 8951).

(j) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or

by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or of the suspension of the closely held corporation or closely held limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned or in which the closely held corporation or closely held limited liability company was suspended, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, or if the Secretary of State or the Franchise Tax Board notifies a closely held corporation or closely held limited liability company that it is suspended, such filing or notice shall not constitute actual knowledge by the board under this section.

(k) Notwithstanding subdivision (j), when the board mails acknowledgment to a closely held corporation or closely held limited liability company that the closely held corporation or closely held limited liability company has been suspended and the acknowledgment is mailed within three years of the date on which the board obtained actual knowledge as described in subdivision (j) of the suspension of the closely held corporation or closely held limited liability company, a notice of deficiency determination under this section shall be mailed, at the latest, within three years after the last day of the calendar month following the quarterly period following the revival of that closely held corporation or closely held limited liability company.

~~SEC. 4.~~

SEC. 8. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11 in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns that shall be incorporated before the State Board of Equalization approves the form and manner of the returns.

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under this part.

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, and any information the State Board of Equalization deems necessary for its administration of the use tax, to the State Board of Equalization within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

(d) This section shall be operative for returns filed for taxable years on and after January 1, 2003.

SEC. 9. Section 43448.6 is added to the Revenue and Taxation Code, to read:

43448.6. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax or fees under Sections 43051 and 43151 of this part, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part pertaining to the tax or fee imposed pursuant to Sections 43051 and 43151, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid taxes or fees and *interest and penalties on those taxes or fees, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes or fees due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Sections 43051 and 43151 of this part.*

(b) The officer, member, manager, partner, or other person shall be liable only for taxes or fees that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes or fees.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had collected the tax or fee on the hazardous waste submitted to it, pursuant to Section 25174.1 of the Health and Safety Code, in the conduct of its business.

(d) (1) Upon suspension of a closely held corporation or closely held limited liability company, a corporate officer, shareholder, or member with control over operations or management of the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any taxes or fees due from the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable under the circumstances set forth below for any unpaid tax or fee liability of that suspended corporation or limited liability company incurred during the period of that suspension. The corporate officer, shareholder, member, or responsible person shall be liable for the unpaid tax or fees, and interest and penalties on those taxes or fees not paid, regardless of the basis for the suspension of the corporation's or limited liability company's powers, rights, and privileges.

(2) Notwithstanding paragraph (1), if the closely held corporation or closely held limited liability company can establish that it has taken all actions necessary to qualify for revival within

60 days from the date the suspension was imposed, no corporate officer, shareholder, member, or responsible person shall be held to be personally liable for any unpaid tax or fees, interest, or penalty incurred by the corporation or limited liability company during that period of suspension.

(e) Personal liability under subdivision (d) applies only when the board establishes that, during the period of suspension, the closely held corporation or closely held limited liability company collected the tax or fee on the hazardous waste submitted to it, pursuant to Section 25174.1 of the Health and Safety Code, in the conduct of its business and failed to remit such tax or fee when due.

(f) For purposes of subdivisions (d) and (e), all of the following definitions shall apply:

(1) "Closely held corporation" means a corporation in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business or have delegated or assigned the management to the corporate officers.

(2) "Closely held limited liability company" means a limited liability company in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority members manage the business or have delegated or assigned the management to the company officers.

(3) "Control over operations or management" means the power to manage or affect day-to-day operations of the business. For the purposes of subdivisions (d) and (e), it is rebuttably presumed that a corporate or company officer has control over operations and management of the closely held corporation or closely held limited liability company, respectively.

(4) (i) "Period of suspension" means that period of time, beginning on the date the suspension is imposed, during which a closely held corporation or closely held limited liability company was suspended for any reason.

(ii) Notwithstanding clause (i), "period of suspension" does not mean a period of time of 60 consecutive days or less, beginning on the day the suspension was imposed, during which a closely held corporation or closely held limited liability company was suspended, but only if the corporation or limited liability company

has taken all actions necessary to qualify for revival on or before the 60th day.

(5) "Responsible person" means any officer, shareholder, or member who is charged with the responsibility for the filing of returns or the payment of tax or fees or who has a duty to act for the closely held corporation or closely held limited liability company in complying with any provision of this part, and who derives a direct financial benefit from the failure to pay the tax or fee liability.

(g) A suspended corporation or limited liability company shall remain liable for the unpaid tax or fees, interest, and penalties incurred during the period in which its corporate or limited liability company powers, rights, and privileges were suspended without regard to any personal liability determined under subdivisions (d), (e), and (f). Payments made pursuant to subdivisions (d), (e), and (f) shall be applied to the liability of the corporation or limited liability company.

(h) For purposes of subdivisions (a), (b), and (c), "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(i) Except as provided in subdivision (j), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 3 (commencing with Section 43151) and Chapter 4 (commencing with Section 43401), as they pertain to the tax or fee imposed pursuant to Sections 43051 and 43151.

(j) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or of the suspension of the closely held corporation or closely held limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned or in which the closely held corporation or closely

held limited liability company was suspended, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, or if the Secretary of State or the Franchise Tax Board notifies a closely held corporation or closely held limited liability company that it is suspended, such filing or notice shall not constitute actual knowledge by the board under this section.

(k) Notwithstanding subdivision (j), when the board mails acknowledgment to a closely held corporation or closely held limited liability company that the closely held corporation or closely held limited liability company has been suspended and the acknowledgment is mailed within three years of the date on which the board obtained actual knowledge as described in subdivision (j) of the suspension of the closely held corporation or closely held limited liability company, a notice of deficiency determination under this section shall be mailed, at the latest, within three years after the last day of the calendar month following the quarterly period following the revival of that closely held corporation or closely held limited liability company.

SEC. 10. Section 45609.6 is added to the Revenue and Taxation Code, to read:

45609.6. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of fees under this part, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid fees and interest and penalties on those fees, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any fees due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for fees that became due during the period he

or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those fees.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had collected the fee on the solid waste disposed of at each disposal site, pursuant to Section 48000 of the Public Resources Code, in the conduct of its business.

(d) (1) Upon suspension of a closely held corporation or closely held limited liability company, a corporate officer, shareholder, or member with control over operations or management of the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any fees due from the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable under the circumstances set forth below for any unpaid fee liability of that suspended corporation or limited liability company incurred during the period of that suspension. The corporate officer, shareholder, member, or responsible person shall be liable for the unpaid fees, and interest and penalties on those fees not paid, regardless of the basis for the suspension of the corporation's or limited liability company's powers, rights, and privileges.

(2) Notwithstanding paragraph (1), if the closely held corporation or closely held limited liability company can establish that it has taken all actions necessary to qualify for revival within 60 days from the date the suspension was imposed, no corporate officer, shareholder, member, or responsible person shall be held to be personally liable for any unpaid fees, interest, or penalty incurred by the corporation or limited liability company during that period of suspension.

(e) Personal liability under subdivision (d) applies only when the board establishes that, during the period of suspension, the closely held corporation or closely held limited liability company

collected the fee on the solid waste disposed of at each disposal site, pursuant to Section 48000 of the Public Resources Code, in the conduct of its business and failed to remit such fee when due.

(f) For purposes of subdivisions (d) and (e), all of the following definitions shall apply:

(1) "Closely held corporation" means a corporation in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business or have delegated or assigned the management to the corporate officers.

(2) "Closely held limited liability company" means a limited liability company in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority members manage the business or have delegated or assigned the management to the company officers.

(3) "Control over operations or management" means the power to manage or affect day-to-day operations of the business. For the purposes of subdivisions (d) and (e), it is rebuttably presumed that a corporate or company officer has control over operations and management of the closely held corporation or closely held limited liability company, respectively.

(4) (i) "Period of suspension" means that period of time, beginning on the date the suspension is imposed, during which a closely held corporation or closely held limited liability company was suspended for any reason.

(ii) Notwithstanding clause (i), "period of suspension" does not mean a period of time of 60 consecutive days or less, beginning on the day the suspension was imposed, during which a closely held corporation or closely held limited liability company was suspended, but only if the corporation or limited liability company has taken all actions necessary to qualify for revival on or before the 60th day.

(5) "Responsible person" means any officer, shareholder, or member who is charged with the responsibility for the filing of returns or the payment of fees or who has a duty to act for the closely held corporation or closely held limited liability company in complying with any provision of this part, and who derives a direct financial benefit from the failure to pay the fee liability.

(g) A suspended corporation or limited liability company shall remain liable for the unpaid fees, interest, and penalties incurred

during the period in which its corporate or limited liability company powers, rights, and privileges were suspended without regard to any personal liability determined under subdivisions (d), (e), and (f). Payments made pursuant to subdivisions (d), (e), and (f) shall be applied to the liability of the corporation or limited liability company.

(h) For purposes of subdivisions (a), (b), and (c), "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(i) Except as provided in subdivision (j), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 3 (commencing with Section 45151) and Chapter 4 (commencing with Section 45401).

(j) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or of the suspension of the closely held corporation or closely held limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned or in which the closely held corporation or closely held limited liability company was suspended, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, or if the Secretary of State or the Franchise Tax Board notifies a closely held corporation or closely held limited liability company that it is suspended, such filing or notice shall not constitute actual knowledge by the board under this section.

(k) Notwithstanding subdivision (j), when the board mails acknowledgment to a closely held corporation or closely held limited liability company that the closely held corporation or closely held limited liability company has been suspended and the acknowledgment is mailed within three years of the date on which

the board obtained actual knowledge as described in subdivision (j) of the suspension of the closely held corporation or closely held limited liability company, a notice of deficiency determination under this section shall be mailed, at the latest, within three years after the last day of the calendar month following the quarterly period following the revival of that closely held corporation or closely held limited liability company.

SEC. 11. Section 46465 is added to the Revenue and Taxation Code, to read:

46465. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of fees under this part, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid fees and interest and penalties on those fees, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any fees due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for fees that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those fees.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had collected the fees on crude oil and petroleum products, pursuant to Sections 8670.40 and 8670.48 of the Government Code, in the conduct of its business.

(d) (1) Upon suspension of a closely held corporation or closely held limited liability company, a corporate officer, shareholder, or member with control over operations or management of the

closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any fees due from the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable under the circumstances set forth below for any unpaid fee liability of that suspended corporation or limited liability company incurred during the period of that suspension. The corporate officer, shareholder, member, or responsible person shall be liable for the unpaid fees, and interest and penalties on those fees not paid, regardless of the basis for the suspension of the corporation's or limited liability company's powers, rights, and privileges.

(2) Notwithstanding paragraph (1), if the closely held corporation or closely held limited liability company can establish that it has taken all actions necessary to qualify for revival within 60 days from the date the suspension was imposed, no corporate officer, shareholder, member, or responsible person shall be held to be personally liable for any unpaid fees, interest, or penalty incurred by the corporation or limited liability company during that period of suspension.

(e) Personal liability under subdivision (d) applies only when the board establishes that, during the period of suspension, the closely held corporation or closely held limited liability company collected the fees on crude oil and petroleum products, pursuant to Sections 8670.40 and 8670.48 of the Government Code, in the conduct of its business and failed to remit such fee when due.

(f) For purposes of subdivisions (d) and (e), all of the following definitions shall apply:

(1) "Closely held corporation" means a corporation in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business or have delegated or assigned the management to the corporate officers.

(2) "Closely held limited liability company" means a limited liability company in which ownership is concentrated in one individual, one family, or a small number of individuals and the

majority members manage the business or have delegated or assigned the management to the company officers.

(3) "Control over operations or management" means the power to manage or affect day-to-day operations of the business. For the purposes of subdivisions (d) and (e), it is rebuttably presumed that a corporate or company officer has control over operations and management of the closely held corporation or closely held limited liability company, respectively.

(4) (i) "Period of suspension" means that period of time, beginning on the date the suspension is imposed, during which a closely held corporation or closely held limited liability company was suspended for any reason.

(ii) Notwithstanding clause (i), "period of suspension" does not mean a period of time of 60 consecutive days or less, beginning on the day the suspension was imposed, during which a closely held corporation or closely held limited liability company was suspended, but only if the corporation or limited liability company has taken all actions necessary to qualify for revival on or before the 60th day.

(5) "Responsible person" means any officer, shareholder, or member who is charged with the responsibility for the filing of returns or the payment of fees or who has a duty to act for the closely held corporation or closely held limited liability company in complying with any provision of this part, and who derives a direct financial benefit from the failure to pay the fee liability.

(g) A suspended corporation or limited liability company shall remain liable for the unpaid fees, interest, and penalties incurred during the period in which its corporate or limited liability company powers, rights, and privileges were suspended without regard to any personal liability determined under subdivisions (d), (e), and (f). Payments made pursuant to subdivisions (d), (e), and (f) shall be applied to the liability of the corporation or limited liability company.

(h) For purposes of subdivisions (a), (b), and (c), "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(i) Except as provided in subdivision (j), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 3 (commencing with Section 46151) and Chapter 4 (commencing with Section 46401).

(j) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or of the suspension of the closely held corporation or closely held limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned or in which the closely held corporation or closely held limited liability company was suspended, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, or if the Secretary of State or the Franchise Tax Board notifies a closely held corporation or closely held limited liability company that it is suspended, such filing or notice shall not constitute actual knowledge by the board under this section.

(k) Notwithstanding subdivision (j), when the board mails acknowledgment to a closely held corporation or closely held limited liability company that the closely held corporation or closely held limited liability company has been suspended and the acknowledgment is mailed within three years of the date on which the board obtained actual knowledge as described in subdivision (j) of the suspension of the closely held corporation or closely held limited liability company, a notice of deficiency determination under this section shall be mailed, at the latest, within three years after the last day of the calendar month following the quarterly period following the revival of that closely held corporation or closely held limited liability company.

SEC. 12. Section 55210 is added to the Revenue and Taxation Code, to read:

55210. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control *or supervision of, or who is charged with the responsibility for the filing of returns or the payment of fees under Sections 42464, 42464.4, 42885, 42886, and 42886.1 of the Public Resources Code, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part pertaining to the fees imposed pursuant to Sections 42464, 42464.4, 42885, 42886, and 42886.1 of the Public Resources Code, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid fees and interest and penalties on those fees, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any fees due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Sections 42464, 42464.4, 42885, 42886, and 42886.1 of the Public Resources Code.*

(b) The officer, member, manager, partner, or other person shall be liable only for fees that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those fees.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had included the fee in the selling price of, or added the fee to the selling price of, covered electronic devices, pursuant to Section 42464 of the Public Resources Code, or new tires, pursuant to Section 42885 of the Public Resources Code, sold to consumers in the conduct of its business.

(d) (1) Upon suspension of a closely held corporation or closely held limited liability company, a corporate officer, shareholder, or member with control over operations or management of the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any fees due from the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are

suspended shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable under the circumstances set forth below for any unpaid fee liability of that suspended corporation or limited liability company incurred during the period of that suspension. The corporate officer, shareholder, member, or responsible person shall be liable for the unpaid fees, and interest and penalties on those fees not paid, regardless of the basis for the suspension of the corporation's or limited liability company's powers, rights, and privileges.

(2) Notwithstanding paragraph (1), if the closely held corporation or closely held limited liability company can establish that it has taken all actions necessary to qualify for revival within 60 days from the date the suspension was imposed, no corporate officer, shareholder, member, or responsible person shall be held to be personally liable for any unpaid fees, interest, or penalty incurred by the corporation or limited liability company during that period of suspension.

(e) Personal liability under subdivision (d) applies only when the board establishes that, during the period of suspension, the closely held corporation or closely held limited liability company sold covered electronic devices, pursuant to Section 42464 of the Public Resources Code, or new tires, pursuant to Section 42885 of the Public Resources Code, in the conduct of its business and collected the fee imposed with respect to the covered electronic devices or new tires (whether separately itemized or included in the selling price) and failed to remit such fee when due.

(f) For purposes of subdivisions (d) and (e), all of the following definitions shall apply:

(1) "Closely held corporation" means a corporation in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business or have delegated or assigned the management to the corporate officers.

(2) "Closely held limited liability company" means a limited liability company in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority members manage the business or have delegated or assigned the management to the company officers.

(3) "Control over operations or management" means the power to manage or affect day-to-day operations of the business. For the

purposes of subdivisions (d) and (e), it is rebuttably presumed that a corporate or company officer has control over operations and management of the closely held corporation or closely held limited liability company, respectively.

(4) (i) "Period of suspension" means that period of time, beginning on the date the suspension is imposed, during which a closely held corporation or closely held limited liability company was suspended for any reason.

(ii) Notwithstanding clause (i), "period of suspension" does not mean a period of time of 60 consecutive days or less, beginning on the day the suspension was imposed, during which a closely held corporation or closely held limited liability company was suspended, but only if the corporation or limited liability company has taken all actions necessary to qualify for revival on or before the 60th day.

(5) "Responsible person" means any officer, shareholder, or member who is charged with the responsibility for the filing of returns or the payment of fees or who has a duty to act for the closely held corporation or closely held limited liability company in complying with any provision of this part, and who derives a direct financial benefit from the failure to pay the fee liability.

(g) A suspended corporation or limited liability company shall remain liable for the unpaid fees, interest, and penalties incurred during the period in which its corporate or limited liability company powers, rights, and privileges were suspended without regard to any personal liability determined under subdivisions (d), (e), and (f). Payments made pursuant to subdivisions (d), (e), and (f) shall be applied to the liability of the corporation or limited liability company.

(h) For purposes of subdivisions (a), (b), and (c), "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(i) Except as provided in subdivision (j), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Sections 42464.2 and 42464.4 or 42886 and 42886.1 of the Public Resources Code and Chapter 3 (commencing with Section 55040) and Chapter 4 (commencing with Section 55121) of this part, as they pertain to the fees imposed pursuant to Sections 42464 or 42885 of the Public Resources Code.

(j) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or of the suspension of the closely held corporation or closely held limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, business was terminated, dissolved, or abandoned or in which the closely held corporation or closely held limited liability company was suspended, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, or if the Secretary of State or the Franchise Tax Board notifies a closely held corporation or closely held limited liability company that it is suspended, such filing or notice shall not constitute actual knowledge by the board under this section.

(k) Notwithstanding subdivision (j), when the board mails acknowledgment to a closely held corporation or closely held limited liability company that the closely held corporation or closely held limited liability company has been suspended and the acknowledgment is mailed within three years of the date on which the board obtained actual knowledge as described in subdivision (j) of the suspension of the closely held corporation or closely held limited liability company, a notice of deficiency determination under this section shall be mailed, at the latest, within three years after the last day of the calendar month following the quarterly period following the revival of that closely held corporation or closely held limited liability company.

SEC. 13. Section 60494 is added to the Revenue and Taxation Code, to read:

60494. (a) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control *or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax due under this part, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to this part.*

(b) The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had included the tax in the selling price of, or added the tax to the selling price of, diesel fuel sold in the conduct of its business.

(d) (1) Upon suspension of a closely held corporation or closely held limited liability company, a corporate officer, shareholder, or member with control over operations or management of the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended or any responsible person who fails to pay or to cause to be paid any taxes due from the closely held corporation or closely held limited liability company during a time in which the corporation's or limited liability company's powers, rights, and privileges are suspended shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable under the circumstances set forth below for any unpaid tax liability of that suspended corporation or limited liability company incurred during the period of that suspension. The corporate officer, shareholder, member, or responsible person shall be liable for the unpaid tax, and interest

and penalties on those taxes not paid, regardless of the basis for the suspension of the corporation's or limited liability company's powers, rights, and privileges.

(2) Notwithstanding paragraph (1), if the closely held corporation or closely held limited liability company can establish that it has taken all actions necessary to qualify for revival within 60 days from the date the suspension was imposed, no corporate officer, shareholder, member, or responsible person shall be held to be personally liable for any unpaid tax, interest, or penalty incurred by the corporation or limited liability company during that period of suspension.

(e) Personal liability under subdivision (d) applies only when the board establishes that, during the period of suspension, the closely held corporation or closely held limited liability company sold diesel fuel in the conduct of its business and collected tax on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due.

(f) For purposes of subdivisions (d) and (e), all of the following definitions shall apply:

(1) "Closely held corporation" means a corporation in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business or have delegated or assigned the management to the corporate officers.

(2) "Closely held limited liability company" means a limited liability company in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority members manage the business or have delegated or assigned the management to the company officers.

(3) "Control over operations or management" means the power to manage or affect day-to-day operations of the business. For the purposes of subdivisions (d) and (e), it is rebuttably presumed that a corporate or company officer has control over operations and management of the closely held corporation or closely held limited liability company, respectively.

(4) (i) "Period of suspension" means that period of time, beginning on the date the suspension is imposed, during which a closely held corporation or closely held limited liability company was suspended for any reason.

(ii) Notwithstanding clause (i), "period of suspension" does not mean a period of time of 60 consecutive days or less, beginning on the day the suspension was imposed, during which a closely held corporation or closely held limited liability company was suspended, but only if the corporation or limited liability company has taken all actions necessary to qualify for revival on or before the 60th day.

(5) "Responsible person" means any officer, shareholder, or member who is charged with the responsibility for the filing of returns or the payment of tax or who has a duty to act for the closely held corporation or closely held limited liability company in complying with any provision of this part, and who derives a direct financial benefit from the failure to pay the tax liability.

(g) A suspended corporation or limited liability company shall remain liable for the unpaid tax, interest, and penalties incurred during the period in which its corporate or limited liability company powers, rights, and privileges were suspended without regard to any personal liability determined under subdivisions (d), (e), and (f). Payments made pursuant to subdivisions (d), (e), and (f) shall be applied to the liability of the corporation or limited liability company.

(h) For purposes of subdivisions (a), (b), and (c), "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(i) Except as provided in subdivision (j), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 6 (commencing with Section 60201) and Chapter 7 (commencing with Section 60401).

(j) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or of the suspension of the closely held corporation or closely held limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or

limited liability company business was terminated, dissolved, or abandoned or in which the closely held corporation or closely held limited liability company was suspended, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the board, or if the Secretary of State or the Franchise Tax Board notifies a closely held corporation or closely held limited liability company that it is suspended, such filing or notice shall not constitute actual knowledge by the board under this section.

(k) Notwithstanding subdivision (j), when the board mails acknowledgment to a closely held corporation or closely held limited liability company that the closely held corporation or closely held limited liability company has been suspended and the acknowledgment is mailed within three years of the date on which the board obtained actual knowledge as described in subdivision (j) of the suspension of the closely held corporation or closely held limited liability company, a notice of deficiency determination under this section shall be mailed, at the latest, within three years after the last day of the calendar month following the quarterly period following the revival of that closely held corporation or closely held limited liability company.

SEC. 14. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, effective July 1, 1998, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report the hiring of any employee who works in this state and to whom the employer anticipates paying wages.

(c) (1) This section shall not apply to any department, agency, or instrumentality of the United States.

(2) State agency employers shall not be required to report employees performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting pursuant to this section would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) (1) Employers shall submit a report as described in paragraph (4) within 20 days of hiring any employee whom the employer is required to report pursuant to this section.

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days no more than 16 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has employees to which the employer will transmit the report described in paragraph (4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, and social security number of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars ($24), or four hundred ninety dollars ($490) if the failure is the result of conspiracy between the employer and employee not to supply the required report or to supply a false or incomplete report.

(f) Information collected pursuant to this section may be used for the following purposes:

(1) Administration of this code.

(2) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(3) Administration of employment security and workers' compensation programs.

(4) Providing employer or employee information to the Franchise Tax Board *and the State Board of Equalization* for the purpose of tax *or fee* enforcement.

(5) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(g) For purposes of this section, "employer" includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.

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