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March 9, 2015

Honorable Mark Leno, Chair
Joint Legislative Budget Committee
1020 N Street, Room 553
Sacramento, CA 95814

Attention: Ms. Peggy Collins

Re: Supplemental Report Requirement from the 2014-15 Budget Package (Item 0860-001-0001)
Future Funding of the Cigarette and Tobacco Products Licensing Program

Dear Chair:

The Supplemental Report of the 2014-15 Budget Package (Item 0860-001-0001) requires the Board of Equalization (BOE) to convene a stakeholder meeting to discuss potential approaches for future funding of the Cigarette and Tobacco Products Licensing Program. Additionally, the BOE is to submit a report to the Joint Legislative Budget Committee and to the fiscal subcommittees of the Legislature by April 1, 2015, describing at least three alternative approaches for future funding of the Cigarette and Tobacco Products Licensing Program. At least one of these alternatives shall provide for increasing the share of costs covered by licensing fees and another shall include increasing the share of costs covered by the General Fund.

The stakeholder meeting was held on November 13, 2014. Attached is the BOE's report describing the two alternatives requested and the proposals submitted by the participants of the stakeholders meeting. If you have any questions, please contact my office at (916) 324-0218.

Sincerely,

Cynthia Bridges
Executive Director

CB:ms
Attachments

cc: Mr. Daniel Alvarez, Secretary of the Senate
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California State
BOARD OF EQUALIZATION

Supplemental Report
2014-15 Budget Package (Item 0860-001-0001)

FUTURE FUNDING OF THE CIGARETTE AND TOBACCO PRODUCTS LICENSING PROGRAM

MARCH 9, 2015

Supplemental Report 2014-15 Budget Item 0860-001-0001
Future Funding of the Cigarette and Tobacco Products Licensing Program

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PURPOSE

The Supplemental Report of the 2014-15 Budget Package, Item 0860-001-0001, required the State Board of Equalization (BOE) to convene a stakeholder meeting to discuss potential approaches for future funding of the Cigarette and Tobacco Products Licensing Program. The BOE conducted the stakeholder meeting on November 13, 2014. Additionally, the BOE was required to submit a report to the Joint Legislative Budget Committee and the fiscal subcommittees of the Legislature by April 1, 2015, describing at least three alternative approaches for future funding of the Cigarette and Tobacco Products Licensing Program. The Supplemental Report specified that at least one of these alternatives shall provide for increasing the share of costs covered by licensing fees and another shall include increasing the share of costs covered by the General Fund. To the extent possible, this report analyzes the administrative feasibility, general costs, and revenue of the ideas set forth in the November 13 stakeholders meeting.

BACKGROUND

The BOE's Cigarette and Tobacco Products Tax Program is comprised of three revenue streams: cigarette taxes, tobacco products taxes; and cigarette and tobacco products licensing fees and fines. In 1959, tax was first imposed on the distribution of cigarettes at $0.03 per package of 20 cigarettes. Proposition 99 was enacted by the voters imposing taxes on the distribution of tobacco products, including cigars, chewing tobacco, pipe tobacco, and snuff as of January 1, 1989. In 2004, the Cigarette and Tobacco Products Licensing Act, AB 71 (Statutes 2003, Chapter 890) was signed into law, requiring all sellers of cigarettes and tobacco products in California to hold licenses. All licensees are required to renew their licenses annually, while only wholesalers and distributors must pay a fee with the renewal application. The statewide licensure program was established to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products in California.

Another legislative mandate, SB 1701 (Statutes 2002, Chapter 881), required the BOE to develop a high-tech, counterfeit-resistant, encrypted cigarette tax stamp that can be read by a special electronic scanner. A marked increase in the incidence of counterfeit stamps prompted the proposal to switch to a technology-based stamp, as counterfeit technology had advanced, making it difficult to detect fraudulent stamps. These encrypted tax stamps, the first of their kind in the nation, were deployed in 2005.

Since 1959, when excise taxes were first imposed on cigarettes, incremental changes in the tax rate have been enacted. The last rate change added $0.50 per package, increasing the tax to $0.87 per package of 20 cigarettes, and became effective on January 1, 1999 as a result of the enactment of Proposition 10. The cigarette tax rate has remained unchanged since that time.

Tobacco Products Tax, which is imposed as a percentage of the distributor's wholesale cost, is prescribed in statute to be set at an amount that is equivalent to the taxes imposed on cigarettes.

Additionally, the tax rate imposed on tobacco products must be determined each year to ensure that taxes imposed are maintained at an equivalent rate to those imposed on cigarettes.

The objective of the Cigarette and Tobacco Products Tax and Licensing Programs is to ensure compliance with the cigarette and tobacco products tax law and requirements prescribed in the Licensing Act. The BOE is committed to maximizing voluntary compliance through taxpayer education and outreach, but also pursues compliance through enforcement to combat illegal activities and deter tax evasion.

CIGARETTE AND TOBACCO PRODUCTS PROGRAM OVERVIEW

Cigarette and Tobacco Products Tax Program

The Cigarette and Tobacco Products Tax Program generates revenue for the Cigarette Tax Fund, Cigarette and Tobacco Products Surtax Fund, the Breast Cancer Fund, the General Fund, and the California Children and Families First Trust Fund. The program's objective is to ensure all cigarette and tobacco products manufacturers, distributors, wholesalers and transporters are properly registered, and that tax revenues are collected equitably and effectively by ensuring timely reporting and payment of tax liabilities, detecting and correcting errors in reporting, and promptly collecting amounts determined to be due and economically recoverable.

Cigarette and Tobacco Products Licensing Program

The Cigarette and Tobacco Products Licensing Program generates revenue for the Cigarette and Tobacco Products Compliance Fund. The funds are used to implement enforce, and administer the provisions of the Cigarette and Tobacco Product Licensing Act (including additional licensing provisions which were adopted pursuant to AB 1749, Statutes 2006, and Chapter 501). The Licensing Act imposes licensing and recordkeeping requirements on all retailers, wholesalers, distributors, manufacturers, and importers of cigarettes and tobacco products to help reduce untaxed distributions and illegal sales of cigarettes and tobacco products. Enforcement provisions of the Licensing Act include authority to conduct site inspections, seize any untaxed cigarettes or tobacco products, and to issue civil and criminal fines and penalties for violations.

Proposal I: Institute a Recurring Fee at the Retail Level to Increase the Share of Costs Covered by the Licensing Fees

Source: Supplemental Report

Currently: Business and Professions Code section 22973 requires a new applicant for a retail license to sell cigarettes and tobacco products to pay a one-time fee of $100 upon submitting the application. Annual license renewals are required, but no renewal fees are owed.

Proposal: Increase Cigarette and Tobacco Product License fees.

- **Suggestion A:** A flat annual fee of approximately $750, applied to all retailers for their initial application and for license renewals.
- **Suggestion B:** A flat annual fee of $248 applied to all retailers for their application and for license renewals.
- **Suggestion C:** A fee amount on a sliding scale based on the applicant's annual gross receipts from the prior income tax year – (upon receipt of a more fully developed proposal that includes draft statutory language, the BOE would have the additional detail necessary to provide a revenue estimate).
- **Suggestion D:** Increased license fees on retailers located in "youth sensitive zones" (within a certain distance from schools, daycare centers, parks, etc.) – BOE cannot provide a revenue estimate without the specific or proposed statutory language that further defines the criteria for youth sensitive zones and the intended amounts to be charged for the licensing fees.
- **Suggestion E:** An increased license fee for pharmacies, and stores with pharmacies, that also sell retail cigarettes and tobacco products.

Fiscal Impact:

- **Suggestion A:** An application and renewal fee of $750 would generate approximately $27,750,000 annually based on the current 37,000 licensed retailers.
- **Suggestion B:** Assuming the same population of 37,000 licensed retailers, a fee of $248 would generate approximately $9,176,000 annually. The Licensing Program had costs of approximately $9.6 million in FY 13-14.
- **Suggestions C-E:** Insufficient information to determine a revenue estimate.
  Imposing an annual license renewal fee and adopting either of these fee amounts, or another fee amount within that range, would create the necessary sustainable revenue to support or fully fund the Licensing Program. A fee in the amount of $750 would generate a funding surplus, in addition to creating a revenue stream to support the Licensing Program.

Comments:

- For all suggestions above the BOE has no general implementation concerns, but would need legislative language to provide further analysis.

Proposal II: Pay for the Cigarette and Tobacco Products Licensing Program with funds from the General Fund

Source: Supplemental Report

Currently: In Fiscal Year 2013-14 (FY 13/14) the Licensing Program cost approximately $9.6 million. The revenue generated by the program totaled approximately $1.8 million. The remaining unfunded costs of the program are allocated among the Cigarette and Tobacco Products Tax Program's revenue recipients. The General Fund's allocated portion of the unfunded cost of the Licensing Program for FY 13/14 was $925,000.00[1]. During that same period, the General Fund received revenues of approximately $86.4 million from the Cigarette and Tobacco Products Tax Program.

The General Fund received approximately 10.3 percent of the total revenues from the Cigarette and Tobacco Products Tax Program, and pays a proportionate share of the costs of that program as well as the unfunded costs of the Licensing Program.

Proposal: Increase the General Fund's share of costs to fund the Cigarette and Tobacco Products Licensing Program.

Fiscal Impact: Assuming the General Fund bears the entire unfunded annual costs of the Licensing Program, the impact to the General Fund would be $7.8 - 8 million annually, an approximate increase of 750 percent.

Background: Enacted in 2003, the Cigarette and Tobacco Products Licensing Act was implemented as a result of rampant tax evasion relating to illicit activities and sales of cigarettes and tobacco products that had permeated the industry. Requiring each seller throughout the distribution chain to obtain and maintain a license to sell cigarettes and tobacco products; deploying inspectors in the field to conduct site inspections; seizing contraband product; and issuing citations to violators have played integral roles in the state's ability to retain program revenues, protect legitimate business owners, and demonstrate the due diligence required to administer a tax program of this type and size.

Comments:

1. Budget augmentation would be required to encumber additional funding from the General Fund, and the General Fund would bear a disproportionate share of costs as compared to other fund recipients.
2. The BOE has no general implementation concerns, but would need legislative language to provide further analysis.

[1] As provided by BOE Budget staff.

Proposal III: Increase the Taxes Assessed on Cigarettes and Tobacco Products by an unspecified amount

Source: Stakeholder

Currently: Existing law imposes an 87-cent per package of 20 (43 ½ mills per cigarette) cigarette tax. The statutes require tax payment through the use of stamps or meter impressions that a distributor affixes on each cigarette package prior to the distribution.

A tax is also imposed upon the distribution of tobacco products, based on the wholesale cost of these products at a tax rate that is equivalent to the combined rate of tax imposed on cigarettes. The BOE annually determines the tobacco products tax rate based on the March 1 cigarette wholesale cost. The FY 14/15 tobacco products tax rate is 28.95%. Distributors pay the tobacco products tax through the use of a tax return that reports the wholesale cost of the tobacco products distributed and calculates the tax due.

Proposal: Increase the tax on cigarettes and tobacco products by an unspecified amount.

Fiscal Impact: Unknown revenue impact without a specified rate. Additional investigative, audit and compliance staffing resources may be warranted, which would result in an increase of BOE costs.

Background: The cigarette and tobacco taxes in California have evolved over several decades, mainly as a result of various legislative efforts. The following is a brief summary of the current taxes imposed on cigarette and tobacco products sold in California:

On July 1, 1959, the initial tax imposed on cigarettes was $0.03 per package of 20; in August 1967, the tax was increased to $0.07 per pack and the tax was increased again on October 1, 1967 to $0.10 per pack. Proposition 99, approved by voters in November 1988 and effective January 1, 1989, imposed a surtax of $0.25 per package of cigarettes, and also created an equivalent tax on other tobacco products. Tax proceeds from that initiative provide funding for health education, disease research, hospital care, fire prevention, and environmental conservation. The total tax imposed on cigarettes as of January 1, 1989 was $0.35 per pack.

Assembly Bill 478 (Ch. 660, 1993) and Assembly Bill 2055 (Ch. 661, 1993), effective January 1, 1994, added an excise tax of $0.02 per package of cigarettes for breast cancer research and early detection services. With the addition of these measures, the total tax imposed on cigarettes as of January 1, 1994 was $0.37 per pack.

Proposition 10, approved by voters in November 1998 and effective January 1, 1999, imposed an additional surtax of $0.50 per package of cigarettes, bringing the total tax to $0.87 which remains in effect today. Additionally, the measure imposed an additional excise tax on the distribution of tobacco products equivalent to the additional cigarette tax and imposed an equivalent compensating floor stock tax. The revenues from the additional tax are deposited into the California Children and Families First Trust Fund, and are used to fund early childhood development programs and offset any revenue losses to certain Proposition 99 programs as a result of the additional tax imposed by Proposition 10.

Cigarette distributors receive a discount that is .85 percent of the denominated value of the stamp pursuant to Revenue and Taxation Code 30166. For example, a distributor receives a discount of $221.85 when purchasing a roll of 30,000 cigarette tax stamps.

Comments: An increase of the tax imposed on cigarettes would impact many different areas including:

- An increase in tax on cigarettes would potentially decrease the amount of cigarettes consumed in California but could also increase the potential for tax evasion through fraud and the black market. This proposal does not provide sufficient detail to enable us to determine how to allocate any new revenues generated among the current funds (General Fund, Breast Cancer Fund, Prop 99 and Prop 10 recipients) or determine how program costs should be apportioned or funds expended.
- A tax increase generally requires the imposition of a "Floor Stock Tax" to account for all of the distributed cigarettes in retail stock, undistributed cigarettes held by distributors, tax-paid packages held by wholesalers and tax-paid packages that are held in transit or storage that will need to have the additional tax paid. A new cigarette tax rate requires a change in the tax stamps that will be affixed to packages of cigarettes as of the effective date of the tax increase, creating floor stock tax returns, notifying licensees of the new rates and providing instructions for inventorying their stock and paying the additional taxes due, as well as providing updated written materials, and ensuring compliance by following up on delinquent floor stock returns and payments.
- The tax rate for "Other Tobacco Products" (OTP) may also require adjustment if the cigarette tax rate is increased. If a proposal to raise the tax on cigarettes does not also include a change to the tax on OTP, the increase of tax on cigarettes will not impact the rate on OTP until the next rate adjustment occurs as prescribed in statute. The rate of tax imposed on cigarettes and the wholesale cost of cigarettes as of March 1 each year are integral components of the OTP rate calculation that becomes effective as of July 1, for the next fiscal year. An increase in the OTP tax rate would likely result in both a decrease in consumption and an increase in the incidence of tax evasion.
- Currently, Revenue and Taxation Code section 30166, allows distributors to receive a discount of 0.85 percent on their purchases of cigarette stamps since the statute mandates stamp application. At the current tax rate of $0.87 per stamp the discount totals $221.85 per roll of 30,000 stamps purchased. If the tax rate is increased and no adjustment is made to the amount of discount provided, the distributors will inadvertently receive a greater monetary discount impacting the anticipated revenues that the fund recipients receive. When a more detailed proposal is drafted, it should address the calculation of this discount in association with any increase in the tax rate (See also Proposal VI).

Proposal IV: Reduce Spending and Cap Administrative Costs on the Cigarette and Tobacco Products Licensing Program

Source: Stakeholder

Currently: The Governor's FY 14/15 Budget for the Licensing Program has 83.7 PYs and authorized expenditures of $9,844,000. BOE staff is responsible for administering all aspects of the program including: registration, license renewals, telephone advisory services, collection, inspections and investigations, processing citations, and holding appeals hearings.

Proposal: The various suggestions received for decreasing BOE costs specific to the funds authorized to address licensing-related workloads include:

- Eliminating the Licensing Program entirely.
- Reducing the BOE's authorized Licensing Program budget so it does not exceed current Licensing Program revenues.
- Reducing the BOE's authorized Licensing Program budget to FY 05/06 levels.
- Capping BOE's Licensing Program budget to 1% of the amount deposited annually into the Proposition 10 account. The capping of the Licensing Program budget, would only apply to Proposition 10 funds and expenditures.

Fiscal Impact: Lack of field enforcement or a reduction in compliance staff will impact program revenues and accelerate the expected year-to-year decline in legitimate consumption from an average 3%[2] to a rate of double digit decline within a few years' time.

Background: The Cigarette and Tobacco Product Licensing Act (Act) was mandated by Assembly Bill (AB) 71 (Statutes 2003, Chapter 890) and AB 1749 (Statutes 2006, Chapter 501). The Act imposes statewide licensing requirements on all retailers, wholesalers, distributors, manufacturers and importers of cigarettes and tobacco products within the State of California. Eliminating the program would require legislation to repeal AB 71. The Act mandated licensing as a requirement for all sellers of cigarettes and tobacco products, and prescribed invoice and record-keeping requirements, among other things. It also set forth fines and penalties for various violations, and site inspection authority for BOE to perform these functions in the field. Eliminating or downsizing the Licensing Program will encourage tax evasion, resulting in decreased revenues for the funds. Additionally, it may jeopardize California's Master Settlement Agreement (MSA) payments; if it is determined that California is not diligently enforcing its cigarette and tobacco product statutes.

[2] BOE Cigarette and Tobacco Products Tax Evasion Estimate, Table 3. http://www.boe.ca.gov/legdiv/miscreports.htm

Comments:

- Without licensing sellers of cigarettes and tobacco products across the distribution chain, the BOE, CA Dept. of Public Health (CDPH) and other local jurisdictions including law enforcement, would not be able to readily identify which businesses sell these products. BOE's license database is relied upon for Stop Tobacco Access to Kids Enforcement (STAKE), for focused health department mailings, and for local licensing and enforcement.
- The cigarette and tobacco products license is necessary to ensure compliance; violations result in fines, suspensions, and license revocations which keep flagrant violators from competing with legitimate business operators.
- Field enforcement is also a critical element of compliance and also serves as a deterrent to those who may violate the Act. The field inspectors ensure businesses are properly reporting cigarette and tobacco sales, as well as reconciling information from the encrypted stamps with information provided by distributors. Field enforcement also is a key element to help maintain MSA compliance by monitoring and identifying unauthorized products or products on which tax was not correctly paid. These findings can generate leads for various law enforcement agencies. Without fieldwork, it is likely that voluntary compliance would decrease, while black market activities would increase, both resulting in less revenue for the funds (Prop. 10, Prop. 99, Breast Cancer and General Fund).
- While cigarette and tobacco product sales and tax revenues have decreased, contributing to decreased availability of funding to the program's fund recipients, the number of licensees has remained fairly static due to a consistent turnover rate. With the amount of licensees unchanged, the BOE needs to maintain a staff to adequately administer and enforce the provisions in the Act. A decreased ability to perform the functions necessary to properly administer the mandates required such as registration, licensing, conducting site inspections, processing citations, hearing appeals, issuing fines and penalties to violators and other activities associated with the Act, could result in MSA arbitration and loss of revenues.
- Requires a statutory change to repeal or amend the Act's provisions in the Business and Professions Code.

Proposal V: Allow Cigarette and Tobacco Retailer Licenses to be Issued in Perpetuity

Source: Stakeholder

Currently: Approximately 37,000 cigarette and tobacco products retail licenses are active in California. Of these, approximately 99% are estimated to be in "good standing."

To sell cigarettes and tobacco products in California, the business owner must obtain a seller's permit and apply for a cigarette and tobacco products retail license. A one-time fee of $100 must be remitted at the time of application for a cigarette and tobacco products retail license. Once the license is issued, the licensee must submit an annual application for renewal to keep the license active, with no additional fees required. The BOE implemented an online renewal process in early 2014 that can be used by all cigarette and tobacco products program licensees, replacing the more costly paper process. Automating the renewal process has reduced the staff time working on accounts in good standing.

Proposal: Allow cigarette and tobacco retailer licenses to be issued in perpetuity, as long as the retailer is in good standing with the BOE and does not have a history of revocations, delinquent returns or late payments on their related sales tax account.

Fiscal Impact: Issuing licenses in perpetuity could produce additional cost savings and further reduce workloads. However, because the annual license renewal process is now automated, the savings may be marginal. The BOE is still required to perform background checks to ensure entities are in good standing.

Background: Although the majority of annual renewals could be processed systematically, approximately 5% of the licensees attempting to renew require additional staff review, assistance with renewal system navigation or manual processing. Additionally, the Licensing Program has a consistent turnover rate (new business startups or change of ownership) of more than 5,000 new applications for licenses per year. This workload is expected to be on-going at this level. Since retailer licenses are valid for a 12-month period upon issuance, BOE staff processes renewals and conducts renewal-related activities on a year-round basis. The annual renewal requirement provides BOE with a mechanism to identify businesses that have changed ownership or discontinued. Closing out licenses is an important process, as it ensures compliance and deters black market activities. Following up with a licensee that has failed to renew a license often reveals that the business had changed hands and the new owner is not aware of the licensing requirements. The new owner may be provided with program materials and/or instruction regarding the licensing process, and the former business account and license is terminated in the BOE's records.

Comments:

- The existing streamlined renewal system has helped BOE to realize efficiencies in other areas of the licensing program. Licensing program staff can now more promptly perform account maintenance, public advisory services, process citations, and prepare materials for first-level appeal hearings. The establishment of an online renewal system met with overwhelming approval from program licensees.

Proposal VI: Re-evaluate the Cigarette Stamp Discount in Order to Increase Revenue

Source: Stakeholder

Currently: California Revenue and Taxation Code (RTC) Section 30166 (Amended by Stats. 167, Ch. 963.) requires: "Stamps and meter register settings shall be sold at their denominated values less 0.85 percent to licensed distributors. Payment for stamps or meter register settings shall be made at the time of purchase, provided that a licensed distributor, subject to the conditions and provisions of this article, may be permitted to defer payments therefor."

The distributors receive the discount as a result of the state requirement to stamp all cigarettes. However, the discount decreases tax revenue available to the various cigarette funds. Each of the recipient funds is foregoing an allocated share of the uncollected tax revenues as a result of the discount distributors receive.

Proposal: Cap the cigarette tax stamp discount.

Fiscal Impact: Capping the distributor discount would reduce foregone revenue to the Cigarette and Tobacco Products Tax Fund recipients when a cigarette tax increase is implemented. Absorbable administrative costs would be incurred for programming changes to the cigarette tax stamp ordering system.

Background: Cigarette distributors receive a discount that is 0.85 percent of the denominated value of the stamp. For example, the tax imposed on a package of 20 cigarettes is $0.87. When a tax stamp is affixed to the package it represents the tax payment made by the distributor to the state. Licensed distributors purchase tax stamps from the state on rolls of 1,200 or 30,000 at a time. At the tax rate of $0.87 per stamp the value of a roll of 1,200 stamps is $1,044.00; however, after applying the $8.87 discount, the actual purchase price is $1035.13; for a roll of 30,000 which has a value of $26,100.00. The distributor receives a discount of $221.85 purchasing the roll for $25,878.15. For FY 12/13, the distributor's discount totaled $6,705,000.

Comments:

- Capping the discount rate would increase revenue to the cigarette funds. As currently provided in statute, if the cigarette tax rate is increased, and no adjustment is made to the amount of discount provided in RTC 30166, the distributors will inadvertently receive a greater monetary discount.
- A legislative or ballot-initiated tax increase will increase the face value of the tax stamps. For example, a $1.00 per pack increase in the cigarette tax would raise the denominated value of each stamp to $1.87. Applying the 0.85 percent discount, the total discount for a roll of 30,000 tax stamps increase from $221.85 to $476.85. This represents an increase of more than 100 percent. If RTC section 30166 remains unchanged, allowing a discount of .85 percent on the *denominated value of the tax stamp,* the increased value of the distributor discounts represent foregone revenue to the cigarette funds on a dollar for dollar basis.

Proposal VII: Increase Penalties and Fines to Mitigate the Shortfall of the Licensing Program

Source: Stakeholder

Currently: In FY 13/14, the fines issued for violations of the Licensing Act generated revenue in the amount of $11,500 associated with ten account billings. FY 13/14 represents a typical level of activity related to fine issuance for this program. The Licensing Program cost slightly more than $9.6 million in FY 13/14.

Proposal: Increase fines for Licensing Act violations to offset the funding shortfall in the Licensing Program.

Fiscal Impact: To cover the $8 million shortfall, at the same number of citations, the dollar amount attributed to each type of fine would need to increase dramatically.

Background: The Licensing Act of 2003 added statutory provisions to the Business and Professions Code imposing penalties and fines for violations of the Act. Penalties include the issuance of a warning letter, license suspension for periods 0-5 days, 10 days, 20 or 30 days and under certain conditions revocation of a license may be mandated. Fines range in monetary value from $500 to a maximum of $5,000 for general violations such as failure to display a license and failure to retain purchase invoices on the premises. Violations involving the seizure of untaxed products, sales by unlicensed persons, and certain subsequent offenses, allow for the imposition of fines ranging from $2,000 to $50,000, or more.

The Board adopted various regulations (Regulation 4603. *Penalties for Licensed or Unlicensed Retailers*; Regulation 4604. *Penalties for Licensed or Unlicensed Wholesalers*; Regulation 4607. *Determination of Fine*, among others) to provide the framework for staff to uniformly administer the various fines and penalties allowed by statute. Payments of fines issued pursuant to the Licensing Act are deposited into the Cigarette and Tobacco Products Compliance Fund.

Comments:

- Substantial increases to the Licensing Act's fine structure poses the risk of unintended consequences. Fines that are not commensurate with the infraction do not produce the expected results and become difficult to administer. Instead of utilizing these provisions to prompt compliance with the laws, some licensees may be forced out of business because of an inability to pay. BOE would incur the additional workload of having to pursue uncollectable debts until receivables can be written off.
- Having such high fines could put otherwise compliant licensees out of business, thereby impacting future revenues.

Proposal VIII: Tax Electronic Cigarettes (e-cigarettes), Dissolvable Tobacco and Other Recently Developed Products by Expanding the Definition of "Tobacco Products"

Source: Stakeholder

Currently: California defines "Tobacco Products" for purposes of imposing an excise tax, in Revenue and Taxation Code (RTC) 30121, section (b)[3] as: *"Tobacco products" includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent tobacco, but does not include cigarettes."*

Proposition 99 included a provision, in section 30130, that any changes or amendments to the statutory provisions included in the proposition could only be made by a vote of four-fifths of the membership of both houses of the Legislature. Accordingly, the definition has remained unchanged since adopted by voters in 1988. Most new products on the market contain tobacco and tobacco derivatives; however, many do not contain at least 50 percent tobacco for tax to be imposed under the statute. These new products include but are not limited to: electronic cigarettes (e-cigarettes), dissolvable tobacco, and products derived from tobacco such as liquid nicotine.

Proposal: Expand the definition of a "tobacco product" to include all products containing any amount of tobacco and products that contain tobacco by-products or derivatives such as liquid nicotine utilized in e-cigarettes.

Fiscal Impact: Taxation of e-cigarettes likely will result in an influx of new licensees which will result in both a significant increase in revenue and administrative costs. More information is needed to determine the exact amounts of revenue and administrative costs.

Background: Nationwide, e-cigarette use is currently regulated by local jurisdictions including the following major metropolitan cities: Los Angeles, Boston, Chicago, New York and over 100 additional municipalities. Many states including Delaware, Hawaii, Indiana, Kentucky, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont and Washington have introduced bills to impose an excise tax on e-cigarettes. E-cigarettes are currently subject to an excise tax in Minnesota and North Carolina. According to the National Conference of State Legislatures (www.ncsl.org), 41 states and one territory currently prohibit sales of electronic cigarettes or vaping/alternative tobacco products to minors. Other states have similar legislation pending.

E-cigarettes debuted in the US in 2003 and remain unregulated by the U.S. Food and Drug Administration (FDA) or any other federal agency. Their popularity has grown steadily. E-Cigarette products are widely available, and store fronts dedicated exclusively to e-cigarettes and related accessories are operating successfully in most communities nationwide. Some early attempts to market e-cigarettes presented the products as smoking cessation devices; however, their popularity took off only after they began to be marketed as a smoking alternative. The health and safety impacts of all of these products are currently unknown, and are being studied

[3] RTC Section 30121 was added to the statute as a result of the passage of Proposition 99 in 1988.

by many groups, including the FDA, while attempts to draft regulatory language have been slow to develop. At this time, the FDA has not officially classified these products as either a tobacco product or as a smoking cessation product.

The number of retailers who currently carry these types of products is currently unknown; but the products are widely available. Typically, cigarette retailers also offer a product line of e-cigarettes to their customers so the majority of sellers are likely to be registered as a licensee with BOE.

Comments:

If these products are identified as tobacco products, several associated issues will need to be addressed, among others:

- Whether to require a unique license specific to selling e-cigs/products.
- The type of license fee to be imposed.
- Whether to establish a separate fund to deposit license fees and fines.
- Whether to impose an excise tax on liquid nicotine, at what rate, and at what point in the distribution chain.
- Determining how taxed product vs. non-taxed product will be identified or marked.

Proposal IX: Increase Collection Efforts Related to Tax Due on Out-of-State Cigars Shipped into California by Unregistered Distributors

Source: Stakeholder

Currently: The federal Prevent All Cigarette Trafficking (PACT) Act, 15, U.S.C. § 375, et seq. became effective June 30, 2010. The PACT Act amended provisions of the Jenkins Act (15 U.S.C. §§ 375 - 378) regarding the shipment and packaging of certain tobacco products, compliance with state tax and licensing requirements, and the filing of certain reports with the state tobacco tax administrator.

The Jenkins Act, as amended, requires every person including cigarette manufacturers, wholesalers, distributors, and delivery sellers, who sell, transfer, or ship for profit cigarettes, roll-your-own (RYO) tobacco, and smokeless tobacco in interstate commerce to:

1. Register with the United States Attorney General and the state tobacco tax administrator of each state into which shipments are made, and
2. File monthly reports with the state tobacco tax administrator, no later than the 10th of each month.

Fiscal Impact: The additional revenue generated by including cigars in the PACT Act is currently unknown. Absorbable workload for BOE.

Proposal: Increase efforts to collect California excise tax from unregistered cigar distributors.

The PACT Act excludes cigars, and as a result, out-of-state cigar sellers are not required to provide records of cigars shipped into California. Without a federal mandate to compel reporting, it is impossible to identify the California consumers who purchase these products from out-of-state sellers and owe the applicable excise and use taxes. The PACT Act is a federal law; contemplating changes to the PACT Act is out of the scope of this effort.

Background: The BOE currently notifies California consumers of tax amounts due and collects the tax when PACT Act reports disclose that sales have been made to California consumers.

Comments:

- Amendments to the PACT Act, a federal statute, would be required.

Proposal X: Require Cigarette and Tobacco Products Licensees to File Electronically

Source: Stakeholder

Currently: Licensed cigarette distributors and manufacturers may, but are not required to file their tax returns and schedules electronically.

Fiscal Impact: Revenues likely will increase due to greater ability to track taxpayer data. BOE will incur initial startup and ongoing costs.

Proposal: Require eFiling for the Licensing Program.

Background: The BOE is a member of the Federation of Tax Administrator's (FTA) Tobacco Tax Section. BOE has been working with the FTA, other states, and members of industry to develop uniform reporting forms for cigarettes and tobacco products. Uniform reporting will ease the burden on taxpayers who report to multiple states. It will also provide the states with information needed to satisfy their reporting requirements, including federal reporting requirements, associated with the PACT Act.

Comments:

- Online returns and schedules would improve efficiency and, with the addition of data capture software, possibly improve audit selection. Retailers currently do not distinguish cigarette and tobacco product transactions from other types of sales for reporting purposes. Establishing reporting schedules for retailers and including them in the electronic filing requirement would potentially improve the ability to track the movement of products throughout the distribution chain, cross reference sellers with buyers, and identify specific product sales, among other efficiencies.
- Establishing standardized reporting forms or schedules to report the sales transactions between all licensees in the cigarette and tobacco products distribution chain could be a powerful tool to lessen the potential for tax evasion and temper illicit activity, especially for unstamped tobacco products transactions. Mandatory e-filing of informational reports (sales transactions, purchase transactions, inventory reports) for all licensees would be necessary.
- Legislation is required to mandate electronic filing.

Proposal XI: Create Efficiencies between State and Local Agencies in order to Reduce the Duplication of Efforts

Source: Stakeholder

Currently: The functions performed by BOE staff to administer the Cigarette and Tobacco Products Tax Law and Licensing Act, such as registering and licensing accounts, processing tax returns, performing audits, collecting accounts receivables, providing advisory services, selling tax stamps, conducting site inspections, etc., represents mandated workload for the staff.

Proposal: Reduce the duplication of tasks that are also being performed in a similar fashion by another state or local agency.

Fiscal Impact: Unknown at this time.

Background: BOE has administered the State's Cigarette Tax program[4] since 1959 when a tax was first imposed on sales of cigarettes. As the statutes have been amended and new laws were added, additional mandates have added new responsibilities to BOE to administer. The Department of Justice (DOJ) and the Department of Public Health (CDPH) also have acquired mandated responsibilities related to regulating cigarette and tobacco products activities. For example, DOJ authorizes the manufacturers and the brands of products that are legal to be sold to California consumers; CDPH is responsible for administering the State's STAKE ACT provisions and provides resources to local agencies and organizations to assist them to reduce the prevalence of smoking and tobacco use, and promotes their efforts to achieve a tobacco-free environment.

Comments:

- Without specific details regarding this proposal, very minimal analysis can be done. Staff is not aware of instances where another agency has been mandated or has opted to perform functions similar to BOE under the Cigarette and Tobacco Products Tax Law or Licensing Act.
- BOE's duties are well-defined and are conducted in a highly efficient manner.
    1. This is currently outside the scope of this effort.
    2. However, if additional information is received which allows BOE to identify duplicative processes or to increase efficiencies in these programs (or others); BOE staff will assess each recommendation for feasibility of implementation.

[4] Tax on tobacco products was added to the statute upon the enactment of Proposition 99 in November 1988.

Cigarette and Tobacco Taxes and Fees Administered by the California State Board of Equalization, Fiscal Year 2013-14

	TAX PROGRAM	YEAR[1] STARTED	WHAT IS TAXED	WHO PAYS: NUMBER OF REGISTRANTS AS OF JUNE 30, 2014	TAX RATE	FY 13–14 REVENUES/ CHANGE FROM FY 12–13	FUND ALLOCATION (HOW FUNDS ARE USED)
Cigarette and Tobacco Programs	Cigarette and Tobacco Products Licensing	2004	The activity of selling cigarettes and tobacco products in California requires licensing of manufacturers, distributors, wholesalers, importers, and retailers of cigarette and tobacco products	Cigarette and tobacco products manufacturers and importers: 123; cigarette and tobacco products distributors: 546; cigarette wholesalers: 375; and cigarette retailers: 37,001	Sellers of cigarettes and tobacco products must be licensed. License fees depend on type(s) of product or activity. For more information, see *www.boe.ca.gov/sptaxprog/tax_rates_stfd.htm#4*	$1.8 million +7.4%	Cigarette and Tobacco Products Compliance Fund for tobacco sales licensing, inspection, and related activities
	Cigarettes	1959	Cigarette distributions	Cigarette manufacturers: 29; Cigarette distributors: 88; Cigarette consumers who buy directly from out-of-state vendors: 67	87¢ per pack	$751.5 million -4.6%	2¢ Breast Cancer Fund 10¢ General Fund 25¢ Special Fund 1—see below 50¢ Special Fund 2—see below
	Tobacco Products	1989	Distribution of tobacco products, including cigars, chewing tobacco, pipe tobacco, and snuff	Tobacco products distributors: 536; Tobacco products manufacturers and importers: 87; Tobacco products wholesalers: 258	29.82% of wholesale cost (effective 7-1-2013)	$66.4 million 4.7%	Special Fund 1: 35% hospital services, 20% health education, 10% physician services, 5% research, 5% public resources, 25% not allocated Special Fund 2: Early childhood development, 20% state, 80% counties

* The Board has oversight of local property tax assessments through its County Assessment Standards Program, values public utilities and specific properties within its State-Assessed Property Program, and is responsible for reviewing Publicly-Owned Property Assessment disputes.
1 Start may have been calendar year or fiscal year. 2 Figure includes IFTA and Interstate Use Fuel User entities. 3 Originally the Motor Vehicle Fuel License Tax, implemented in 1941.

Table 30A

Cigarette Tax

CIGARETTE TAXES AND OTHER TOBACCO PRODUCTS SURTAX REVENUE, 1959-60 TO 2013-14

Fiscal year	Cigarette tax				Other tobacco products surtax	
	Revenue a/	Distributors' discounts b/	Gross value of tax indicia c/	Refunds	Revenue	Rate
2013-14	$751,513,000	$6,443,000	$757,956,000	$600,000	$86,424,000	29.82%
2012-13	782,115,000	6,705,000	788,820,000	498,000	82,548,000	30.68%
2011-12	820,322,000	7,032,000	827,355,000	1,017,000	80,424,000	31.73%
2010-11	828,831,000	7,105,000	835,937,000	1,308,000	77,016,000	33.02%
2009-10	838,709,000	7,187,000	845,896,000	1,583,000	84,617,000	41.11%
2008-09	912,724,000	7,819,000	920,543,000	626,000	85,506,000	45.13%
2007-08	955,030,000	8,185,000	963,215,000	727,000	85,929,000	45.13%
2006-07	998,723,000	8,558,000	1,007,281,000	1,330,000	79,946,000	46.76%
2005-06	1,026,497,000	8,795,000	1,035,293,000	1,707,000	67,348,000	46.76%
2004-05	1,024,272,000	8,778,000	1,033,051,000	1,653,000	58,441,000	46.76%
2003-04	1,021,366,000	8,755,000	1,030,121,000	4,721,000	44,166,000	46.76%
2002-03	1,031,772,000	8,845,000	1,040,617,000	13,248,000	40,996,000	48.89%
2001-02	1,067,004,000	9,146,000	1,076,150,000	10,774,000	50,037,000	52.65% d/
2000-01	1,110,692,000	9,503,000	1,120,195,000	8,741,000	52,834,000	54.89%
1999-00	1,166,880,000	9,980,000	1,176,859,000	9,413,000	66,884,000	66.50%
1998-99	841,911,000 e/	7,206,000	849,117,000	6,808,000	42,137,000 f/	61.53% f/
1997-98	612,066,000	5,244,000	617,309,000	5,448,000	39,617,000	29.37%
1996-97	629,579,000	5,394,000	634,973,000	5,060,000	41,590,000	30.38%
1995-96	639,030,000	5,469,000	644,499,000	6,193,000	32,788,000	31.20%
1994-95	656,923,000	5,628,000	662,551,000	11,159,000	28,460,000	31.20%
1993-94	647,993,000 g/	5,553,000	653,546,000	8,353,000	19,773,000	23.03%
1992-93	667,479,000	5,715,000	673,195,000	9,138,000	21,480,000	26.82%
1991-92	711,275,000	6,086,000	717,362,000	7,791,000	22,016,000	29.35%
1990-91	729,612,000	6,242,000	735,854,000	7,904,000	24,064,000	34.17%
1989-90	770,042,000 h/	6,581,000	776,623,000	11,615,000	24,956,000 h/	37.47%
1988-89	499,712,000 h/	4,273,000	503,984,000	4,968,000	9,994,000 h/	41.67%
1987-88	254,869,000	2,180,000	257,049,000	2,970,000		
1986-87	257,337,000	2,202,000	259,539,000	2,661,000		
1985-86	260,960,000	2,231,000	263,190,000	2,834,000		
1984-85	265,070,000	2,267,000	267,337,000	2,390,000		
1983-84	265,265,000	2,267,000	267,532,000	2,756,000		
1982-83	273,748,000	2,336,000	276,084,000	2,060,000		
1981-82	278,667,000	2,383,000	281,050,000	1,843,000		
1980-81	280,087,000	2,395,000	282,482,000	1,567,000		
1979-80	272,119,000	2,327,000	274,446,000	1,645,000		
1978-79	270,658,000	2,315,000	272,973,000	1,408,000		
1977-78	275,042,000	2,352,000	277,394,000	1,239,000		
1976-77	270,502,000	2,315,000	272,817,000	832,000		
1975-76	269,852,000	2,309,000	272,161,000	927,000		
1974-75	264,182,000	2,262,000	266,444,000	745,000		
1973-74	259,738,000	2,222,000	261,960,000	632,000		
1972-73	253,089,000	2,167,000	255,256,000	626,000		
1971-72	248,398,000	2,127,000	250,525,000	677,000		
1970-71	240,372,000	2,058,000	242,430,000	552,000		
1969-70	237,220,000	2,032,000	239,253,000	455,000		
1968-69	238,836,000	2,046,000	240,882,000	492,000		
1967-68	208,125,000 i/	1,862,000	209,987,000	328,000		
1966-67	75,659,000	1,543,000	77,202,000	129,000		
1965-66	74,880,000	1,528,000	76,407,000	88,000		
1964-65	74,487,000	1,520,000	76,007,000	61,000		
1963-64	71,530,000	1,459,000	72,989,000	71,000		
1962-63	70,829,000	1,445,000	72,274,000	79,000		
1961-62	68,203,000	1,390,000	69,593,000	47,000		
1960-61	66,051,000 j/	1,675,000 k/	67,726,000	76,000		
1959-60	61,791,000 l/	767,000 l/	62,558,000	67,000		

Table 30A
Cigarette Tax
CIGARETTE TAXES AND OTHER TOBACCO PRODUCTS SURTAX REVENUE, 1959-60 TO 2013-14

Note: Detail may not compute to total due to rounding.

Footnotes

a. Net of refunds for tax indicia on cigarettes that become unfit for use (See Refunds).

b. A discount of .85 percent of gross value of tax indicia is granted to distributors for affixing the stamps. From July 1, 1960, until August 1, 1967, the discount rate was 2 percent.

c. Includes sales of indicia purchased on credit. Effective July 16, 1961, distributors have been able to purchase tax indicia on credit.

d. From July 1, 2001, through September 9, 2001, the surtax rate on smokeless tobacco ranged from 131 percent for moist snuff to 490 percent for chewing tobacco. Effective September 10, 2001, the surtax rate on smokeless tobacco was lowered to 52.65 percent.

e. Effective January 1, 1999, the overall tax rate on cigarettes was increased from 37 cents to 87 cents per pack under voter-approved Proposition 10. The additional 50-cent-per-pack tax was imposed to raise funds for early childhood development programs. Excludes $87,978,766 in 1998-99 from the floor stocks taxes for both cigarettes and other tobacco products levied on January 1, 1999.

f. From July 1, 1998, through December 31, 1998, the surtax rate was 26.17 percent for other tobacco products. Effective January 1, 1999, the new surtax imposed under Proposition 10 raised the combined surtax rate to 61.53 percent for other tobacco products. The new surtax is equivalent (in terms of the wholesale costs of other tobacco products) to a 50-cent-per-pack tax on cigarettes.

g. Effective January 1, 1994, the overall tax rate on cigarettes was increased from 35 cents to 37 cents per pack. The additional 2-cent-per-pack tax was imposed to raise funds for breast cancer research and education.

h. Effective January 1, 1989, an additional 25-cent-per-pack surtax was imposed on cigarettes and a new 41.67 percent surtax was imposed on other tobacco products. Excludes $57,927,856 in 1988-89 and $595,000 in 1989-90 from the floor stocks tax levied on January 1, 1989.

i. Effective August 1, 1967, the tax rate was increased from 3 cents to 7 cents per pack. On October 1, 1967, the rate was further increased to 10 cents per pack, with the stipulation that 30 percent of the tax be allocated to cities and counties. Includes $6,515,209 from the 4-cent-per-pack floor stocks tax levied on August 1, 1967; and $4,889,485 from the 3-cent-per-pack floor stocks tax imposed October 1, 1967.

j. Refunds made for distributors' discounts in the 1960-61 fiscal year on purchases made in the 1959-60 fiscal year have been deducted. These refunds amounted to $324,000.

k. Effective July 1, 1960, a discount was allowed at the time tax indicia were purchased.

l. Includes $2,673,048 from the 3-cent-per-pack floor stocks tax imposed July 1, 1959; and also includes the amount of distributors' discounts which were refunded after purchase of indicia. During July and August of 1959, the tax was collected by invoice and no discount was allowed on these collections of $8,123,700, nor on the $2,673,048 tax on floor stocks.

Table 30B

Cigarette Tax

CIGARETTE DISTRIBUTIONS AND PER CAPITA CONSUMPTION, 1959-60 TO 2013-14

	Reported distributions (in packages of 20)			
Fiscal year	Total	Tax paid	Tax exempt	Apparent per capita consumption a/
2013-14	889,000,000	871,000,000	18,000,000	23.2
2012-13	930,000,000	907,000,000	23,000,000	24.5
2011-12	972,000,000	951,000,000	21,000,000	25.8
2010-11	989,000,000	961,000,000	28,000,000	26.4
2009-10	1,002,000,000	972,000,000	30,000,000	26.9
2008-09	1,090,000,000	1,058,000,000	32,000,000	28.5
2007-08	1,131,000,000	1,107,000,000	24,000,000	29.9
2006-07	1,177,000,000	1,158,000,000	20,000,000	31.3
2005-06	1,209,000,000	1,190,000,000	19,000,000	32.5
2004-05	1,224,000,000	1,187,000,000	37,000,000	33.3
2003-04	1,234,000,000	1,184,000,000	50,000,000	34.0
2002-03	1,227,000,000	1,196,000,000	31,000,000	34.5
2001-02	1,271,000,000	1,237,000,000	34,000,000	36.3
2000-01	1,324,000,000	1,288,000,000	37,000,000	38.5
1999-00	1,390,000,000	1,353,000,000	38,000,000	41.2
1998-99	1,568,000,000	1,523,000,000	45,000,000	47.3
1997-98	1,717,000,000	1,668,000,000	48,000,000	52.6
1996-97	1,777,000,000	1,716,000,000	61,000,000	55.2
1995-96	1,811,000,000	1,742,000,000	69,000,000	56.9
1994-95	1,871,000,000	1,791,000,000	80,000,000	59.2
1993-94	1,903,000,000	1,824,000,000	79,000,000	60.6
1992-93	2,010,000,000	1,923,000,000	86,000,000	64.5
1991-92	2,144,000,000	2,050,000,000	94,000,000	69.8
1990-91	2,196,000,000	2,102,000,000	93,000,000	72.8
1989-90	2,311,000,000	2,219,000,000	92,000,000	78.2
1988-89	2,431,000,000	2,353,000,000	78,000,000	84.7
1987-88	2,657,000,000	2,570,000,000	87,000,000	94.9
1986-87	2,690,000,000	2,595,000,000	95,000,000	98.4
1985-86	2,730,000,000	2,632,000,000	98,000,000	102.3
1984-85	2,781,000,000	2,673,000,000	108,000,000	106.7
1983-84	2,792,000,000	2,675,000,000	117,000,000	109.9
1982-83	2,889,000,000	2,761,000,000	128,000,000	115.8
1981-82	2,947,000,000	2,811,000,000	136,000,000	120.4
1980-81	2,966,000,000	2,825,000,000	141,000,000	123.6
1979-80	2,892,000,000	2,744,000,000	148,000,000	122.9
1978-79	2,887,000,000	2,730,000,000	157,000,000	125.1
1977-78	2,940,000,000	2,774,000,000	166,000,000	130.0
1976-77	2,900,000,000	2,728,000,000	172,000,000	130.9
1975-76	2,909,000,000	2,722,000,000	187,000,000	133.7
1974-75	2,857,000,000	2,664,000,000	193,000,000	133.7
1973-74	2,827,000,000	2,620,000,000	207,000,000	134.4
1972-73	2,762,000,000	2,553,000,000	209,000,000	133.2
1971-72	2,720,000,000	2,505,000,000	215,000,000	132.9
1970-71	2,635,000,000	2,424,000,000	211,000,000	130.5
1969-70	2,594,000,000	2,393,000,000	201,000,000	130.2
1968-69	2,616,000,000	2,409,000,000	207,000,000	133.0
1967-68	2,596,000,000	2,383,000,000	213,000,000	134.0
1966-67	2,737,000,000	2,573,000,000	164,000,000	143.8
1965-66	2,706,000,000	2,547,000,000	159,000,000	144.9
1964-65	2,679,000,000	2,534,000,000	145,000,000	146.7
1963-64	2,564,000,000	2,433,000,000	131,000,000	144.3
1962-63	2,545,000,000	2,409,000,000	136,000,000	147.9
1961-62	2,450,000,000	2,320,000,000	130,000,000	147.3
1960-61	2,382,000,000	2,258,000,000	124,000,000	147.8
1959-60	2,190,000,000	2,085,000,000	105,000,000	139.7

Table 30B
Cigarette Tax
CIGARETTE DISTRIBUTIONS AND PER CAPITA CONSUMPTION, 1959-60 TO 2013-14

Note: Detail may not compute to total due to rounding.

Footnotes

a. Based on reported distributions and latest estimate of January 1 population for each fiscal year.