

# 2005

## LEGISLATIVE SUMMARY

The following is a list of bills adopted by the Legislature during the first year of the 2005-2006 Legislative Session that changed state law in the area of revenue and taxation. The measures are listed in bill number order, with 2005 chapter numbers provided, and the provisions of each bill briefly summarized. The list also includes bills adopted by the Legislature and vetoed by the Governor.

The Assembly Revenue and Taxation Committee heard the majority of the bills listed in this report.

Copies of analyses of bills heard by the Assembly Revenue and Taxation Committee can be obtained by accessing the Official California Legislative Information on the internet web page maintained by the Legislative Counsel at [www.leginfo.ca.gov](http://www.leginfo.ca.gov), by contacting the Committee office at (916) 319-2098, or by writing to the Assembly Revenue and Taxation Committee, Legislative Office Building, 1020 N Street - Room 162, Sacramento, CA 95814.

This publication is intended to be a useful summary of the Legislature's work in the area of revenue and taxation during 2005 and a helpful reference document for any who need to know about state and local taxation law and policy. An electronic copy of this summary is available under "Publications" on the committee's web page at [www.assembly.ca.gov](http://www.assembly.ca.gov).

# ASSEMBLY

## COMMITTEE ON REVENUE AND TAXATION

### 2005 LEGISLATIVE SUMMARY

**AB 18 (La Malfa), Chapter 624.** DISASTER RELIEF: SHASTA COUNTY. Includes the Shasta County wildfires that began on August 11, 2004, as disasters eligible for state reimbursement of local property tax losses, beneficial homeowners' exemption treatment, and favorable net operating loss carryforward treatment.

**AB 115 (Klehs), Chapter 691.** FEDERAL TAX CONFORMITY. Conforms California personal income and corporation tax laws to federal income tax laws as set forth in the Internal Revenue Code as of January 1, 2005, with limited exceptions.

Important areas of conformity include: 1) Enhanced deduction for interest on student loans for taxable years beginning on or after January 1, 2006; 2) Expanded income exclusion for qualified foster care payments; 3) Uniform definition of "child"; 4) Enhanced tax benefits related to costs to retrofit refineries to produce ultra-low sulfur diesel fuel; and 5) Numerous provisions of the American Jobs Creation Act of 2004.

Noteworthy exceptions to conformity include Health Savings Accounts, deduction for repatriated dividends invested in the United States, and various depreciation methods. This bill expands the definition of earned income for members of the Armed Services for purposes of the Child and Dependent Care credit. Other provisions of this bill allow corporations to deduct up to \$25,000 additional expenses for purchases of business assets. (TAX LEVY)

**AB 139 (Committee on Budget), Chapter 74.** BUDGET TRAILER BILL: STATE GOVERNMENT OPERATIONS. Tax related provisions include: The Franchise Tax Board (FTB) reporting requirement for check-cashing businesses that cash checks for any individual exceeding \$10,000 annually; FTB continuation of the Ready-Return pilot project for 2005 tax returns; reduction of the threshold for mandatory electronic filing of sales and use tax by businesses from \$20,000 to \$10,000 of monthly tax liability; limited application of penalties for failure to provide information required by FTB in cases of repeated violations; FTB requirement to preclude tax practitioners that have been suspended from practice before the Internal Revenue Service from practice before FTB; and suspension of the State-County Property Tax Administration Grant Program for the 2006-07 fiscal year.

**AB 164 (Nava), Chapter 623.** DISASTER RELIEF: SOUTHERN CALIFORNIA. Adds the severe storms, flooding, debris flows, and mudslides that occurred in the

Counties of Kern, Los Angeles, Santa Barbara and Ventura in December 2004, January 2005, February 2005, and March 2005, to the list of disasters eligible for full state reimbursement of local property tax losses, beneficial homeowners' exemption treatment, full state reimbursement of local agency costs under the Disaster Assistance Act, and favorable net operating loss carryforward treatment. This bill is a companion measure to SB 457 (Kehoe), Chapter 622, Statutes of 2005, which provides similar relief to losses from disasters occurring in the Counties of Orange, Riverside, San Bernardino, and San Diego.

**AB 190 (Negrete McLeod), Chapter 160.** TAXPAYER CONTRIBUTIONS: SEXUAL VIOLENCE VICTIM SERVICES FUND. Authorizes the addition of the California Sexual Violence Victim Services Fund income tax checkoff to the personal income tax form upon the removal of another income tax checkoff from the form.

**AB 357 (Shirley Horton), Chapter 143.** TAXPAYER CONTRIBUTIONS: VETERANS QUALITY OF LIFE FUND. Authorizes the addition of the Veterans Quality of Life Fund income tax checkoff to the personal income tax form upon the removal of another income tax checkoff from the form.

**AB 451 (Yee), Chapter 391.** LOCAL SALES AND USE TAX: JET FUEL: PLACE OF SALE. Effective January 1, 2008, modifies how the Bradley-Burns Uniform local sales and use tax on jet fuel be allocated, by providing that the point of sale of jet fuel is the place at which the fuel is delivered to the aircraft, regardless of whether the retailer has one or more places of business within the state, or whether the negotiations for the sale are conducted in this state, except as specified. The changes enacted by this bill have the effect of shutting down existing and potential future attempts to circumvent the local sales tax allocation rules enacted through passage of AB 66 (Baca), Chapter 1027, Statutes of 1998.

**AB 459 (Oropeza), Chapter 392.** PROPERTY TAX: DISCLOSURE OF SUPPLEMENTAL TAX: REAL PROPERTY TRANSFERS. Requires a seller of residential real property to provide a prospective purchaser with notice regarding supplemental property tax assessments, and that the supplemental property tax bills will not be mailed to the lender for payment through the lender's impound account, even if an impound account is created with the lender.

**AB 483 (Nunez), Chapter 161.** TAXPAYER CONTRIBUTIONS: CALIFORNIA PEACE OFFICER MEMORIAL FOUNDATION AND CALIFORNIA FIREFIGHTER'S MEMORIAL FUND. Reauthorizes the inclusion of the California Firefighter's Memorial Fund and the California Peace Officer Memorial Foundation income tax checkoffs on the personal income tax form.

**AB 671 (Klehs), Chapter 308.** USE TAXES: COLLECTION. Extends by two years the sunset date for a voluntary use tax reporting program that reduces the statute of limitations on use tax liabilities from eight years to three years for those individuals and businesses that voluntarily come forward and remit their use tax liabilities. Requires the

Franchise Tax Board to revise information accompanying income tax returns to include information that informs taxpayers of their obligation to report and pay use tax.

**AB 780 (Chu), Chapter 188. FRANCHISE TAX BOARD: PUBLIC MEETINGS.** Aligns the Franchise Tax Board (FTB) procedural requirements for distribution of written materials at FTB public meetings with those applicable to the Board of Equalization public meetings. Limits distribution requirements to documents prepared by FTB staff.

**AB 819 (Ridley-Thomas), Chapter 697. TAXPAYER CONTRIBUTIONS: CALIFORNIA COLORECTAL CANCER PREVENTION FUND.** Authorizes the addition of the California Colorectal Cancer Prevention Fund income tax checkoff to the personal income tax form upon the removal of another income tax checkoff from the form.

**AB 892 (Cogdill), Chapter 512. CIGARETTE AND TOBACCO PRODUCTS TAX.** Requires a statement on invoices for cigarette and tobacco products that all taxes due are included on the invoice. Enhances collection and enforcement powers of the State for violations of cigarette and tobacco products tax laws.

**AB 911 (Chu), Chapter 398. TAX ADMINISTRATION: TAX AMNESTY PROGRAM.** Addresses unintended consequences from the tax amnesty program recently administered by the Franchise Tax Board (FTB) for unpaid tax liabilities. Allows FTB to discharge a taxpayer's liability that is deemed uncollectible and extinguish the liability in limited circumstances. Deletes the prohibition against a taxpayer filing a claim for refund for sales and use tax payments made under the amnesty program. Creates a 20-year limitations period for collection of tax liabilities. Eliminates the continued compliance requirement for participation in the amnesty program. Allows offsets to underpayments of tax for the years covered in the amnesty program by overpayments from other taxable years. Makes amendments and minor clarifications to statutes enacted as part of the amnesty program.

**AB 964 (Jerome Horton), Chapter 699. PROPERTY TAXATION: CERTIFICATED AIRCRAFT ASSESSMENT.** Allows a commercial air carrier to file a single, consolidated property statement for all certificated aircraft that has acquired a situs in California. Creates formulae to determine the preallocated fair market values for each make, model, and series of mainline jets, production freighters, converted freighters, and regional aircraft with a tax situs within California. The single property statement is filed with the designated "lead" county, and the approved values are then transmitted to all other counties within which the airline has acquired a tax nexus. Establishes that mandatory audits would be conducted by audit teams comprising assessor's staff from one to three counties.

**AB 1027 (Jerome Horton), Chapter 428. CRIMINAL INVESTIGATION: CONTRACTOR'S BOARD.** Provides for inter-agency cooperation to identify contractors who fail to obtain adequate workers compensation insurance, and to identify licensed and unlicensed contractors who commit tax evasion. Requires the Franchise Tax

Board to notify the Registrar of Contractors of the Contractor's State License Board, the Director of the Department of Employment Development, the Economic and Employment Coalition, and the Joint Enforcement Strike Force on the Underground Economy, upon the arraignment of, or the filing of criminal charges against, any licensed contractor or any unlicensed contractor.

**AB 1099 (Leno), Chapter 193. PROPERTY TAXATION: EXCLUSION FROM NEW CONSTRUCTION: ACTIVE SOLAR ENERGY SYSTEMS.** Extends the sunset date for the exclusion of an active solar energy system from the definition of new construction for property tax purposes through fiscal years 2008-09, repeals the exclusion as of January 1, 2010, and requires no appropriation to reimburse local governments for any loss of property tax revenues. (TAX LEVY)

**AB 1424 (Saldana), Chapter 231. INSURANCE TAXATION: SURPLUS LINE BROKERS: DELINQUENT TAX LIABILITIES.** Clarifies existing law that surplus line brokers are subject to the same tax collection and lien provisions as other insurers operating in California. Provides that the tax is a lien upon all property and franchises of a surplus line broker with the effect of a judgment against the surplus line broker. Precludes any court, county clerk or the Secretary of State from entering a judgment or filing a discharge by which a surplus line broker's business is reduced or its assets transferred to a new owner until all taxes, interest, penalties and costs are paid and discharged.

**AB 1765 (Committee on Revenue & Taxation), Chapter 519. TAX ADMINISTRATION: BOARD OF EQUALIZATION.** Enacts several technical proposals intended to improve tax administration by the Board of Equalization. Amends the Sales and Use Tax Law and various special tax and fee laws to eliminate the requirement that persons voluntarily electing to remit amounts due by electronic funds transfers must do so for a minimum of one year. Amends various sections of the Revenue and Taxation Code to properly reference the International Fuel Tax Agreement. Amends the Cigarette and Tobacco Products Tax Law to allow for relief of penalty, consistent with other relief of penalty statutes. Amends the Diesel Fuel Tax Law to eliminate the licensing and reporting requirements for government entities that use only tax-paid diesel fuel on the highway and have no tax liability, in order to ease their reporting requirements. Amends the Diesel Fuel Tax Law to allow the state to designate an inspection site for diesel fuel, consistent with current practice. Repeals obsolete sections of the Revenue and Taxation Code pertaining to Timber Tax rates for years 1979 through 1981.

**AB 1767 (Committee on Revenue & Taxation), Chapter 349. TAX ADMINISTRATION. FRANCHISE TAX BOARD.** Makes minor administrative changes and technical corrections to the laws administered by the Franchise Tax Board (FTB). Provides that when FTB issues a tax levy, called an order to withhold (OTW), upon any person holding a non-cash asset of a delinquent taxpayer, the holder shall liquidate the asset in a commercially reasonable manner within 90 days of the OTW and remit the funds to FTB within five days. Allows any taxpayer subjected to third-party

charges or fees as the direct result of an erroneous levy, processing action or collection action by FTB to file a claim for reimbursement with FTB. Prevents FTB from imposing a penalty for any underpayment to the extent that the underpayment was created or increased as the direct result of an erroneous levy, processing action or collection action by FTB. Corrects an inadvertent drafting error in recently enacted legislation that conformed the California claim of right statutes to existing federal tax provisions. Authorizes FTB to respond to a Department of Justice request and provide address information of a person in violation of sex offender registration requirements.

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**SB 14 (Campbell), Chapter 242.** INCOME TAX: UNDERPAYMENT PENALTY RELIEF. Provides an exception to the estimated tax underpayment penalty that results when a law change retroactively increases a taxpayer's estimated tax payment. Applies to penalties imposed on and after January 1, 2005.

**SB 50 (Campbell), Chapter 5.** INCOME TAXES: CHARITABLE CONTRIBUTION DEDUCTION FOR TSUNAMI RELIEF. Conforms state law to federal law by allowing individual and corporate taxpayers that made contributions in January 2005 to the Indian Ocean tsunami-relief efforts the option of deducting those contributions on their 2004 state tax returns. (TAX LEVY)

**SB 157 (Ackerman), Chapter 211.** TAXATION: INSTALLMENT PAYMENT AGREEMENTS: BUSINESS ENTITY TAXPAYERS. Grants general authority for the Franchise Tax Board (FTB) and business entities to enter into installment agreements to satisfy a tax liability. Provides that any informal payment arrangement made with FTB prior to the effective date of this bill would be treated as an installment agreement for purposes of the tax amnesty program conducted by FTB in February and March 2005.

**SB 203 (Simitian), Chapter 682.** TRANSACTIONS AND USE TAX: COUNTY OF SAN MATEO: PARKS AND RECREATION FUNDING. Authorizes the Board of Supervisors of the County of San Mateo (County) to impose a transactions and use tax for specified park and recreation purposes if approved by two-thirds of the voters in the County and the tax would be in lieu of, and not in addition to, a specified transactions and use tax that the County would otherwise be authorized to impose as a special tax.

**SB 457 (Kehoe), Chapter 622.** DISASTER RELIEF: SOUTHERN CALIFORNIA. Adds the severe rainstorms, floods, mudslides, and other events that occurred the Counties of Orange, Riverside, San Bernardino, and San Diego during December 2004, January 2005, February 2005, March 2005, and June 2005 to the list of disasters eligible for full state reimbursement of local property tax losses, full state reimbursement of local agency costs under the Disaster Assistance Act, and favorable net operating loss

carryforward treatment. This bill is a companion measure to AB 164 (Nava), Chapter 623, Statutes of 2005, which provides similar relief to losses from disasters occurring in the Counties of Kern, Los Angeles, Santa Barbara and Ventura.

**SB 555 (Machado), Chapter 264.** TAXATION: OMNIBUS TECHNICAL CHANGES AND CORRECTIVE PROVISIONS. Makes various technical and minor changes to several Revenue and Taxation Code sections as proposed by the California Assessors Association, the California Association of Clerks and Election Officials, the California Association of County Treasurers & Tax Collectors, the Franchise Tax Board, and the State Controller. The changes are minor and technical in nature and facilitate implementation of the tax laws.

**SB 565 (Migden), Chapter 416.** PROPERTY TAXATION: EXCLUSION FROM REAPPRAISAL: DOMESTIC PARTNER TRANSFERS. Excludes the transfer of real estate between registered domestic partners (RDPs) from transfers resulting in the reappraisal of real property. Includes transfers to trusts, at death, in connection with property settlements upon dissolution of registered domestic partnerships (Partnership), of co-ownership interests, and distributions of a legal entity's property to a RDP, or former RDP, in exchange for the interest of the RDP in the legal entity in connection with a property settlement or dissolution of a Partnership. Is effective commencing with transfers on or after the lien date for fiscal year 2006-07 (January 1, 2006). (TAX LEVY)

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**VETOED**

**AB 168 (Ridley-Thomas).** PERIODIC TAX EXPENDITURES REPORTS. Requires the Department of Finance to prepare biennial Tax Expenditure Reports identifying the static and dynamic revenue impact for each of the two most recent fiscal years of selected tax expenditures that result in a revenue loss of at least \$25 million. Requires the Legislative Analyst to make recommendations and report to the Legislature tax expenditures to be modified or repealed.

**Governor's Veto Message:**

"The Department of Finance and the Legislative Analyst's Office currently have broad authority to review and report tax expenditures to the Legislature. This bill's restatement of the existing tax reporting requirement is redundant and unnecessary."

**AB 249 (DeVore).** PERSONAL INCOME TAXES: TAX FORMS. Requires the Legislative Analyst's Office to conduct a study regarding Form 540 2EZ, and to report the results of the study to the Legislature no later than January 1, 2008.

**Governor's Veto Message:**

"This bill is unnecessary and partially duplicates the already required report. I strongly recommend that the Franchise Tax Board work with the authors and their analyst's office, the Legislative Analyst's office, to ensure that the report includes all of the desired information, including information regarding the eligibility expansion to those with capital gains. I believe that such expansion merits review."

**SB 417 (Aghazarian).** ALCOHOLIC BEVERAGES: TAXATION OF FLAORED MALT BEVERAGES. Modifies the definition of "beer" to include an alcoholic beverage that qualifies as mal beverage under federal law.

**Governor's Veto Message:**

"This bill would codify current lay and practice to treat flavored malt beverages as a mal beverage product consistent with federal standards of identity, which 49 of 50 states follow.

"I am taking this action to allow a full discussion of the issues surrounding flavored malt beverages, not to suggest that the State's regulatory administration of flavored malt beverages is flawed. It was amended late in the session and only had one full hearing with short notice. I encourage all interested parties, particularly health professionals, law enforcement and the producers of flavored malt beverages, to use this opportunity for public debate and serious consideration of the policy issues surrounding this beverage."

**AB 853 (Jones).** TAX LIENS: EARNINGS WITHHOLDING ORDERS. Provides that, solely for purposes of earnings withholding orders only, state tax liens continue in effect until the amount due and payable is paid.

**Governor's Veto Message:**

"This bill expands the use of Earnings Withholding Orders for Taxes (EWOTs) by lengthening the time indefinitely that employers would be required to withhold past due tax bills on behalf of the state. Current law requires employers to collect back taxes owed by their employees, but limits the length of time that the Franchise Tax Board may impose this requirement to ten years.

"While I am supportive of the author's intent to increase tax collections, this bill does so at the expense of employers who have done nothing improper. The Franchise Tax Board has the authority to continue liens after the ten-hear time limit and should continue to use that authority to collect overdue taxes."



**AB 1628 (Klehs).** TAXATION: FAILURE TO WITHHOLD PENALTY. Makes withholding agents subject to a uniform penalty. Permits the Franchise Tax Board to assess a penalty for failure to withhold immediately after a failure to withhold occurs. Imposes the penalty solely based on the failure of the agent to withhold rather than on the amount of tax owed by the taxpayer.

**Governor's Veto Message:**

"This bill imposes additional penalties on real estate escrow agents who fail to withhold taxes on behalf of the state. Current law provides the appropriate balance between those intermediaries who are obligated to withhold taxes and those who actually owe the tax.

"Escrow agents are required to withhold taxes derived in a real estate transaction yet receive no compensation from the state for performing this function. This bill stiffens the penalties for failing to properly withhold and eliminates the 'hold harmless' provision so that, if taxes are paid in the correct tax year, the escrow agent would still face the penalty."

**AB 1630 (Klehs).** TAX ADMINISTRATION: NOTICE OF DEFICIENCY ASSESSMENT. Clarifies existing law regarding notices of deficiency assessment. Clarifies that taxpayers are required to report to the Franchise Tax Board all federal adjustments that occur after the expiration of California's limitations for mailing proposed assessments. Clarifies that if the date of a final federal determination, or the date the taxpayer filed an amended federal tax return with the Commissioner of the Internal Revenue Service, occurs after the period for mailing a notice of proposed deficiency assessment has expired, then a notice of proposed deficiency assessment resulting from the adjustment may be mailed to the taxpayer.

**Governor's Veto Message:**

"This bill changes tax policy retroactively and is specifically intended to address an issue that is pending before the California Supreme Court. It is inappropriate and simply unfair to taxpayers to change tax laws retroactively.

"I am not opposed to the policy outlined in this bill and would be willing to consider a bill which applies the policy prospectively."

**SB 323 (Migden).** SALES TAXES: INCREASED PENALTY FOR FAILURE TO REMIT COLLECTED TAX. Provides that any person who knowingly collected sales tax reimbursement, and who fails to timely remit that sales tax reimbursement to the Board of Equalization, is liable for a penalty of 50% of the amount not timely remitted. Does not apply to unremitted sales tax reimbursement that does not exceed \$1,000 or 5% of the total sales subject to tax during the period. Does not apply to failures to remit due to reasonable cause. Requires a person to certify, under penalty of perjury, the facts upon which he/she bases his/her claim for relief, thus imposing a state-mandated local program by expanding the scope of an existing crime.

**Governor's Veto Message:**

"This bill creates a rigid and overly severe punishment for the failure to remit sales taxes which have been collected. I strongly support tough laws to punish and discourage scofflaws who knowingly evade taxes. However, this measure provides no flexibility for errors made by individuals with no intent to evade taxes or default the state. Moreover, the Board of Equalization does not contend that this bill would result in a specific level of increased compliance."

**SB 610 (Alarcon).** PROPERTY TAX: WELFARE EXEMPTION. Clarifies existing law regarding hospitals entitled to claim the welfare exemption for property tax purposes. Restates the definition of a "for-profit" hospital by stating a hospital organization is deemed to be organized or operated for profit if operating revenues exceed operating expenses by more than 10%. Allows for rebuttal of the "for profit" presumption, should the excess revenues be used to further charitable purposes. States that its provisions do not represent a change of law, and that it is declaratory of existing law.

**Governor's Veto Message:**

"This bill financially penalizes non-profit hospitals which are increasing reserves to invest in important and necessary charitable activities – including purchasing state-of-the-art technology to improve the quality of patient care, complying with costly seismic safety mandates, and expanding facilities to increase access to care for low-income uninsured Californians."

# ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

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ON  
REVENUE & TAXATION**

***2005  
LEGISLATIVE SUMMARY***

**MEMBERS**

Honorable Johan Klehs, *Chair*  
Honorable Mimi Walters, *Vice Chair*  
Honorable Joe Canciamilla  
Honorable Judy Chu  
Honorable Chuck DeVore  
Honorable Dave Jones  
Honorable Sally Lieber

**STAFF**

Kimberly Bott, *Chief Consultant*  
Sabrina Landreth, *Principal Consultant*  
Christine Hiersche, *Committee Secretary*

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