

**ASSEMBLY COMMITTEE
ON
REVENUE & TAXATION**

California State Legislature

**Revenue and Taxation
Legislative Summary**

2007

Honorable Charles Calderon, Chair

Honorable Chuck DeVore, Vice-Chair

October 2007

**ASSEMBLY COMMITTEE
ON
REVENUE & TAXATION**

***2007
LEGISLATIVE SUMMARY***

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2007

LEGISLATIVE SUMMARY

The following is a list of bills adopted by the Legislature during the first year of the 2007-2008 Legislative Session that changed state law in the area of revenue and taxation. The measures are listed in bill number order, with 2007 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 bills listed in this report.

This publication is intended to be a useful summary of the Legislature's work in the area of revenue and taxation during 2007 and a helpful reference document for anyone who needs 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.

Copies of analyses of bills heard by the Assembly Revenue and Taxation Committee can be obtained by accessing the Official California Legislative Information internet web page maintained by the Legislative Counsel at 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.

**ASSEMBLY COMMITTEE
ON
REVENUE AND TAXATION**

2007 LEGISLATIVE SUMMARY

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AB 28 (Huffman), Chapter 486. PERSONAL INCOME TAXES: CONTRIBUTIONS: CALIFORNIA BREAST CANCER RESEARCH FUND. Extends the sunset date for the California Breast Cancer Research Fund from January 1, 2008 to January 1, 2013.

AB 62 (Nava), Chapter 224. DISASTER RELIEF. Adds the wildfires that occurred in Ventura County in 2006, in El Dorado County in June 2007, and in Santa Barbara and Ventura Counties in 2007, to the list of disasters eligible for full state reimbursement of local property tax losses, beneficial homeowners' property tax exemption treatment, and favorable "carryforward" treatment of excess disaster losses.

AB 198 (Committee on Budget), Chapter 381. INCOME TAXES: LIMITED LIABILITY COMPANIES: APPORTIONMENT. Revises the statutory scheme for determining the limited liability company (LLC) fee. Specifically, this bill replaces the phrase "total income from all sources reportable to this state" with the phrase "total income from all sources derived from or attributable to this state" for purposes of calculating the LLC fee due for a taxable year. This bill provides that "total income from all sources derived from or attributable to this state" shall be determined using the rules for assigning sales for purposes of calculating the sales factor used in allocating income to California. Finally, this bill creates a refund mechanism to be used by taxpayers should the LLC fee be finally adjudged to be unconstitutional because it is discriminatory or unfairly apportioned. Any such refund will be limited to the amount needed to remedy the discrimination or unfair apportionment.

AB 297 (Maze), Chapter 225. PROPERTY TAXES: EXEMPTION: NEWLY PLANTED TREES. Grants a limited four-year exemption from property taxes for fruit- and nut-bearing trees and grapevines damaged during the January 2007 freeze. Provides that the trees or grapevines will not be subject to property tax for four years if they require pruning to the trunk or bud union to establish a new replacement shoot.

AB 373 (Wolk), Chapter 670. LOCAL GOVERNMENT: COMMUNITY FACILITIES IMPROVEMENT. Enacts numerous substantive and technical changes to the statutes governing School Facilities Improvement Districts and the Mello-Roos Community Facilities Act (Mello-Roos). Among other things, this bill expands the services that may be financed with Mello-Roos special taxes to include maintenance and lighting of streets and roads, and acquisition, improvement, rehabilitation or maintenance of property for action needed to clean up any hazardous substance released or at risk of being released into the environment.

AB 402 (Ma), Chapter 450. PROPERTY TAXES: CHANGE IN OWNERSHIP. Extends the change of ownership exclusion to transfers between certain foster parents and foster children, and enacts reporting requirements for transfers of interests in residential cooperative housing. Defines "children" to include a foster child of a state-licensed foster parent if a legal barrier precluded the child from being adopted by the foster parent before the child aged-out of the foster care system. Requires owners of cooperative housing units for which the right to use property was transferred without the use of recorded deeds to file information on any transfer of an interest in response to a request from the county assessor.

AB 538 (Emmerson), Chapter 317. SALES AND USE TAXES: EXEMPTIONS: CHILDREN'S CLOTHING. Expands the current sales and use tax exemption applicable to the sale of new children's clothing to nonprofit organizations for subsequent free distribution to children. Applies the exemption to all children's clothing, and not just clothing for elementary school children. Eliminates the requirement that qualifying nonprofit organizations be engaged in the relief of poverty and distress. Applies the exemption to nonprofit organizations with exempt status under either Revenue and Taxation Code Section 23701d or Section 23701f. (Section 23701d grants a state income tax exemption to nonprofit organizations operated for religious, charitable, scientific, literary or educational purposes. Section 23701f organizations are also nonprofit, but are permitted to lobby for legislation and endorse political parties and candidates.)

AB 650 (Lieu), Chapter 606. PERSONAL INCOME TAXES: EARNED INCOME TAX CREDIT: NOTIFICATION. Requires employers to notify employees that they may qualify for the federal earned income tax credit. Employers must provide this notification within one week before or after furnishing an annual wage summary (e.g. Form W-2 or Form 1099).

AB 765 (Evans), Chapter 613. HORSE RACING. Provides that fairs and racing associations conducting racing at a fair may, with California Horse Racing Board approval, deduct an additional 1% from the handle to be used for maintenance and improvements at a fair's racetrack inclosure [*sic*]. In addition, this bill extends authorization for horse racing's Advance Deposit Wagering law indefinitely.

AB 897 (Houston), Chapter 238. TAXATION: ADMINISTRATION OF TAX-EXEMPT ORGANIZATIONS. Eliminates the requirement that specified tax-exempt organizations under federal law must also apply for tax exemption in California, and instead, provides that an organization, as defined, shall be exempt from state taxes, as provided, upon its submission, on or after January 1, 2008, to the Franchise Tax Board of a copy of the notification issued by the Internal Revenue Service approving the organization's tax-exempt status under Internal Revenue Code Section 501(c)(3), as specified. Permits the Franchise Tax Board to revoke the California tax-exempt status of an organization that was not organized or operated in accordance with California or federal laws for tax-exempt organizations.

AB 1020 (Sharon Runner), Chapter 277. RECORDATION: CHANGE OF OWNERSHIP. Provides that the recordation of a certificate of sale for property sold with redemption rights does not constitute a change of ownership, and clarifies rules for county recorders to accept digital or digitized documents for recording purposes.

AB 1042 (Spitzer), Chapter 195. PROPERTY TAXES: APPLICATIONS FOR CHANGED ASSESSMENT: ELECTRONIC FILING. Permits the clerk of a county board of equalization to accept an electronically-filed application for change in assessment with an electronic signature if it meets all requirements for the application. The electronic signature must be authenticated in accordance with procedures approved by the county board of supervisors.

AB 1360 (Anderson), Chapter 281. TAXATION: FRANCHISE TAX BOARD ADMINISTRATION: NOTICE OF PROPOSED DEFICIENCY. Requires the Franchise Tax Board to affix a postmark to any Notice of Proposed Deficiency Assessment or any final deficiency notice mailed to a taxpayer after January 1, 2008.

AB 1745 (Committee on Revenue & Taxation), Chapter 340.

PROPERTY TAXATION: ADMINISTRATION. Contains various technical provisions to improve the administration of the property tax law by county tax collectors and treasurers. Among other things, this bill authorizes local agencies to invest in the registered treasury notes or bonds of any state of the United States, revises the definition of "negotiable paper" to permit internet banking transactions, and permits an alternate site for the payment of property taxes be located outside of the county. In addition, this bill revises the requirements for a published notice of tax sale to include a disclosure of the amount necessary to redeem the property as of the date specified in the publication.

AB 1747 (Committee on Revenue & Taxation), Chapter 341.

FRANCHISE TAX BOARD: ADMINISTRATION. Among other things, this bill defines "last known address" as the address that appears on the taxpayer's last tax return filed with the Franchise Tax Board, unless the taxpayer provides clear and concise written notification of a different address. This bill changes the date for the Franchise Tax Board to submit its annual report to the Legislature to December 1 of each year. This bill excludes one-party checks, payroll checks, and government checks, from those checks subject to existing Franchise Tax Board reporting requirements.

AB 1748 (Committee on Revenue & Taxation), Chapter 342. TAX ADMINISTRATION. Implements numerous technical, non-controversial amendments intended to improve administration of tax programs administered by the Board of Equalization. Specifically, this bill grants taxpayers appeal rights for the imposition of a negligence penalty for failure to make a prepayment of tax due under the Sales and Use Tax Law or the Motor Vehicle Fuel Tax Law. This bill increases the use tax exemption for foreign purchases hand-carried into California within a 30-day period from \$400 to \$800. This bill enacts or amends innocent spouse relief provisions for various tax programs administered by the Board of Equalization and the Franchise Tax Board. Finally, this bill revises effective dates of the surcharge rate period under the Emergency Telephone Users Surcharge Law.

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SB 38 (Battin), Chapter 222. DISASTER RELIEF. Adds the wildfires that occurred in Riverside County in 2006, to the list of disasters eligible for full state reimbursement of local property tax losses, beneficial homeowners' property tax exemption treatment, and favorable "carryforward" treatment of excess disaster losses.

SB 41 (Battin), Chapter 1. CALIFORNIA FALLEN FIREFIGHTERS ASSISTANCE TAX CLARIFICATION ACT OF 2006. Enacts the California Fallen Firefighters Assistance Tax Clarification Act of 2006. Specifically, it provides that payments made by an exempt organization (Central County United Way in Hemet) on or after October 26, 2006, and before July 1, 2007, to any family member of a firefighter who died as a result of the October 2006 Esperanza Incident fire in Southern California will be treated as payments made in furtherance of the charitable purpose of that organization.

SB 87 (Committee on Budget and Fiscal Review), Chapter 180. TAXATION: FRACTIONALLY OWNED AIRCRAFT: TEACHER RETENTION CREDIT. Repeals the income tax credit for credentialed teachers and amends the method for assessing property taxes on fractionally-owned aircraft. Provides an assessment formula based on the number of landings in and departures from a county in proportion to the number of landings and departures worldwide. Requires assessment of a fleet of fractionally-owned aircraft to the manager in control of the fleet. Authorizes the Aircraft Advisory Subcommittee of the California Assessors' Association to designate a lead county assessor's office for a fleet of fractionally-owned aircraft and allows an assessor's office to accept or deny such designation.

SB 105 (Migden), Chapter 426. TAXATION: REGISTERED DOMESTIC PARTNERS. Resolves issues related to the new California Registered Domestic Partner personal income tax filing requirements. Specifically, this bill provides that the Registered Domestic Partner or former Registered Domestic Partner of a taxpayer shall be treated as the spouse or former spouse of that taxpayer for purposes of applying the provisions of the Personal Income Tax Law, the Katz-Harris Taxpayers' Bill of Rights Act, and the Corporation Tax Law. This bill provides that a Registered Domestic Partner shall not be treated as the spouse of a taxpayer when such treatment would result in:

- 1) The classification of a business entity under state tax law that

differs from the classification of that business entity for federal income tax purposes;

- 2) The disqualification for federal income tax purposes of a plan that otherwise qualifies under Internal Revenue Code Section 401(a) (e.g. qualified pension plan); or
- 3) The creation of a "tax-favored account" that would not be qualified as a tax-favored account for federal income tax purposes.

This bill provides that, in the case of Registered Domestic Partners and former Registered Domestic Partners, adjusted gross income, for purposes of computing limitations based on adjusted gross income, shall mean the adjusted gross income on a federal tax return computed as if the Registered Domestic Partner or former Registered Domestic Partner were treated as a spouse or former spouse, respectively, for federal income tax purposes, and used the same filing status that was used on the state return for the same taxable year.

SB 114 (Flores), Chapter 223. DISASTER RELIEF. Adds the severe freezing conditions that commenced January 11, 2007, in the Counties of El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, and Yuba to the list of disasters eligible for state reimbursement of local property tax losses, beneficial homeowners' property tax exemption treatment, and favorable treatment of excess disaster losses.

SB 264 (Alquist), Chapter 264. TRANSACTIONS AND USE TAXES: SANTA CLARA VALLEY TRANSPORTATION AUTHORITY. Authorizes the Santa Clara Valley Transportation Authority, with a two-thirds vote of the county electorate, to impose a transactions and use tax at a rate of 0.125%, for transit facilities and services.

SB 295 (Cogdill), Chapter 295. CIGARETTES AND TOBACCO PRODUCTS. Amends the definition of "untaxed tobacco product" contained in the Cigarette and Tobacco Products Tax Law to correct a legislative oversight. Specifically, this bill defines the term "untaxed tobacco product" to include any tobacco product that was distributed in a manner that resulted in a tax liability, but that was returned to the distributor

after the tax was paid and for which the distributor has claimed a deduction under the provisions of the Cigarette and Tobacco Products Surtax (Proposition 99) or the provisions of the California Children and Families First Trust Fund Account (Proposition 10).

SB 559 (Kehoe), Chapter 555. PROPERTY TAXES: CHANGE IN OWNERSHIP: EXCLUSION. Excludes transfers of real property between registered domestic partners occurring on or after January 1, 2000, from change of ownership reassessments. Requires impacted property owners to apply for a reversal of reassessments with the appropriate county no later than June 30, 2009. Denies refunds for prior assessment years but causes the subsequent tax computations to reflect a reduced assessed value.

SB 599 (Negrete McLeod), Chapter 558. CALIFORNIA MEXICAN AMERICAN VETERANS' MEMORIAL BEAUTIFICATION AND ENHANCEMENT COMMITTEE. Establishes a seven-member California Mexican American Veterans' Memorial Beautification and Enhancement Committee under the jurisdiction of the California Department of Veterans Affairs to oversee the enhancement of an existing memorial on state grounds. This bill repeals the statutory authority for the current California Mexican American Veterans' Memorial Beautification and Enhancement Commission (Commission) and repeals the now defunct tax return check-off previously designed to fund the Commission.

SB 644 (Correa), Chapter 189. COURT RECORDS: SOCIAL SECURITY NUMBERS. Removes the authorization for county assessors to record the assessee's full social security number on liens on unsecured property for delinquent taxes but instead authorizes use of the last four digits of the social security number. Replaces the requirement that an abstract of judgment contain the social security number and driver's license number of the judgment debtor with the requirement to use only the last four digits of that debtor's social security number.

SB 788 (Cogdill), Chapter 306. CORPORATION TAX LAW: WATER'S-EDGE: ADMINISTRATION. Allows the Franchise Tax Board discretion to conduct a detailed examination of the tax return filed by a water's-edge taxpayer. Specifically, this bill eliminates the requirement for Franchise Tax Board to conduct an audit of a taxpayer, regardless of the potential net revenue benefit to California, when an examination reveals potential noncompliance by the taxpayer.

SB 898 (Simitian), Chapter 665. PERSONAL INCOME TAXES: CONTRIBUTIONS. Extends the sunset dates for two voluntary contribution funds contained on the personal income tax return. Specifically, this bill extends the sunset date for the State Children's Trust Fund for the Prevention of Child Abuse from January 1, 2008, to January 1, 2013, and the Rare and Endangered Species Preservation Program from January 1, 2008, to January 1, 2013.

SB 920 (Oropeza), Chapter 666 TAXPAYER INFORMATION: DISCLOSURE: UNCLAIMED PROPERTY. Permits the Franchise Tax Board to share specified taxpayer information with the State Controller for his/her use in determining compliance with the Unclaimed Property Law. Specifically, this bill provides that, subject to the limitations imposed by federal and state law, the Franchise Tax Board may provide the Controller, on an annual basis, with the following information from business entity income tax returns or other business entity records for the Controller's use in determining compliance with the Unclaimed Property Law:

- 1) The taxpayer's name;
- 2) The taxpayer's identification number;
- 3) The taxpayer's address; and,
- 4) The taxpayer's principal business activity code.

This bill provides that the information the Franchise Tax Board furnishes to the Controller is subject to Revenue and Taxation Code Section 19542, which makes it a misdemeanor to disclose confidential tax return information.

SB 1043 (Committee on Revenue and Taxation), Chapter 309. THE PERSONAL INCOME TAX LAW AND THE CORPORATIONS TAX LAW: OFFERS OF SETTLEMENT: EVIDENCE. Excludes evidence of settlement negotiations in all administrative civil tax dispute forums in California. Specifically, this bill provides that no evidence of a settlement offer made during settlement negotiations shall be admissible in any adjudicative proceeding or civil action, including an appeal to the Board of Equalization, whether offered as affirmative evidence, impeachment

evidence, or for any other purpose.

SB 1044 (Committee on Revenue and Taxation), Chapter 156. INCOME AND CORPORATION TAXES: TAX WITHHOLDING. Deletes obsolete cross-references to clarify that deductions will be disallowed for payments for personal services if the paying taxpayer fails to report the payments as required by law, and that penalties might be imposed for such a failure to report.

SB 1045 (Committee on Revenue and Taxation), Chapter 449. PROPERTY TAXES. Contains various technical, non-controversial amendments intended to improve administration of the property tax laws. Specifically, this bill revises the definition of principal residence, for purposes of the parent/child exclusion from change in ownership, to be a dwelling that is eligible for a homeowners' exemption or a disabled veterans' exemption as a result of the transferor's ownership and occupation of the dwelling. This bill changes the language required in the transferee's written certification, for purposes of the interfamily transfer exclusion from change in ownership, to not include a transferor's grandparent as a qualified transferee. This bill clarifies the restriction on access to a claim for property tax relief through transfer of base year value by persons over 55 years of age or disabled to include trusts in which the claimant or spouse is a present beneficiary. Finally, this bill requires an organization that files a claim for property tax exemption to file a valid organizational clearance certificate with the county assessor.

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VETOED

AB 8 (Nunez). HEALTH CARE. Comprehensive health reform proposal intended to substantially expand affordable health coverage throughout the state. Expands eligibility for public health insurance programs for children and their parents. Improves access to private insurance through major insurance market reforms and to the individual insurance market by standardizing medical underwriting and enhancing coverage and eligibility for high risk individuals. Contains a number of insurance marketing reforms and imposes cost containment measures such as required preventive services, evidence based care and administrative expenditure caps. Creates the California Cooperative Health Insurance Purchasing Program, a

statewide purchasing pool. Requires employers to elect to spend at least 7.5% of Social Security payroll on health care expenditures, or pay an employer fee equal to the minimum amount for the employees. Requires employees to either accept the employer's health expenditures, or to enroll in coverage through the specified purchasing pool.

Governor's Veto Message:

"While I appreciate the Legislature's efforts to reform our broken health care system and applaud the hard work that has gone into AB 8, I cannot sign this bill. AB 8 would put more pressure on an already broken system.

"AB 8 does not achieve coverage for all, a critical step needed to reduce health care costs for everyone. Comprehensive reform cannot leave Californians vulnerable to loss or denial of coverage when they need it most. Finally, to be sustainable, comprehensive reform cannot place the majority of the financial burden on any one segment of our economy. Unfortunately, AB 8 falls short on all three accounts.

"California needs a financially sustainable health care reform plan that shares responsibility, covers all Californians and keeps our emergency rooms open and operating. I cannot support reform efforts that fall short of these goals and threaten to weaken our already broken system."

AB 843 (Eng). PROPERTY TAXES. Amends the current rules for reporting change of ownership of property, changes the maximum penalty that may be imposed for failure to provide change of ownership information for property not eligible for a homeowners' exemption, and adds clear direction for county officials to mail requests for unfiled change of ownership statements. Under this bill, the maximum penalty is increased from \$2,500 to \$10,000 for properties not eligible for the homeowners deduction, if the failure was not willful. There is no penalty cap for a willful failure to file.

Governor's Veto Message:

"This bill would raise the cap on the penalty for non-willful failures to file a Change in Ownership Statement (Statement) with the county assessor. While this measure's provisions are an improvement over AB 926, which I vetoed last year, I am still concerned that the

notification procedures in this measure do not adequately ensure that property owners actually receive requests from county assessors in a timely manner. Slightly different from AB 926, this bill merely provides for an additional 15 days to respond to requests and expands the number of addresses where a request may be sent. Thus, this bill continues to assume that new property owners actually receive such requests from county assessors in a timely manner.

"I encourage the proponents of this bill and property owners to develop procedures to ensure requests are appropriately delivered and received before penalties for failure to respond are levied."

AB 969 (Eng). QUALIFIED USE TAX PAYMENT. Replaces permissive provisions with respect to reporting use tax liability on an acceptable tax return with mandatory provisions. Requires taxpayers to report and pay their use tax liabilities on their income tax forms unless their use tax liability had been separately reported to the state. Eliminates the January 1, 2009, sunset date that required a separate line on the Franchise Tax Board individual income tax return for reporting use tax liabilities.

Governor's Veto Message:

"Although increasing use tax reporting is desirable, I have concerns that the effective date of January 1, 2008 is too soon for taxpayers to compile adequate records of their purchases that are subject to the use tax for calendar year 2007. Further, I would like to see a plan to better educate taxpayers on the use tax, as I suspect that many taxpayers have little knowledge of the tax and may unknowingly fail to pay it."

AB 1617 (DeSaulnier). TOBACCO PRODUCTS. Repeals and replaces existing laws dealing with the interstate transportation of cigarettes. Prohibits transportation of cigarettes to persons in California except when such shipments are made either to any person licensed by the Board of Equalization for tobacco transactions, or to certain other specified entities. Classifies as an unlawful act for common or contract carriers to knowingly transport cigarettes into California to any person other than an approved person. Prohibits the distribution or sale of tobacco products to any person less than 18 years of age through public or private mail delivery services. Imposes fines and penalties for violations. Amends the definition of bidis, a

tobacco product whose sale is limited to business establishments that exclude minors.

Governor's Veto Message:

"This bill would prohibit cigarette sales via the Internet to individual California consumers and only permit shipping of cigarettes via the Internet to certain licensed businesses.

"This bill is intended to help curb smoking by minors and also help the state collect all applicable taxes on tobacco. In vetoing nearly identical legislation last year, I noted that the federal Jenkins Act, which requires the sale of tobacco across state lines to be reported to the Board of Equalization, is already in place to help identify taxable sales of tobacco. Further, existing law reduces youth access to cigarettes over the Internet by requiring Internet sellers and shippers to verify the age of the purchaser. Proponents should address any perceived deficiencies in these laws rather than seeking an outright prohibition that will be difficult to enforce."

AB 1618 (Feuer). CORPORATION TAXES: DEDUCTIONS: INTEREST EXPENSE. Repeals the interest offset provisions of the Corporation Tax Law to reflect the United States Supreme Court's decision in Hunt-Wesson, Inc. v. Franchise Tax Board of California (2000), 528 U.S. 458.

Governor's Veto Message:

"Proponents of this measure claim that it is intended to codify a seven-year old Supreme Court decision relative to how corporations determine their net income for tax purposes. Unfortunately, this bill does not codify the Court's decision, which dealt with facts specific to companies based outside of California. Rather, this bill would impact California-based companies that are not impacted by the Court's decision. As the Franchise Tax Board has correctly implemented the Court's decision for seven years without the need for a legislative change, I cannot support a bill that far exceeds the Court's ruling and disadvantages California businesses.

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