

Introduced by Committee on Governance and Finance (Senators Wolk (Chair), Beall, DeSaulnier, Emerson, Hernandez, Knight, and Liu)

March 20, 2013

An act to amend Section 25299.43 of the Health and Safety Code, and to amend Sections 55001 and 55332.5 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 824, as introduced, Committee on Governance and Finance. State Board of Equalization: administration.

Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, which is repealed on January 1, 2016, every owner of an underground storage tank is required to pay a storage fee for each gallon of petroleum placed in the tank. Existing law requires this fee to be paid to the State Board of Equalization, as specified which administers the collection and administration of those fees under the Underground Storage Tank Maintenance Fee Law.

This bill would correct an incorrect cross-reference in the provision requiring the fee to be paid to the State Board of Equalization.

Existing law establishes the Fee Collection Procedures Law, which provides for the administration and collection of various fee programs by the State Board of Equalization.

This bill would correct an inaccurate reference in the provision that establishes that law.

The Sales and Use Tax Law and other laws administered by the State Board of Equalization, including the Fee Collection Procedures Law, allow the board to accept an offer in compromise on a final liability imposed under or in accordance with those laws.

This bill would make a technical, clarifying change to the offer-in-compromise provision of the Fee Collection Procedures Law.

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

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

1 SECTION 1. Section 25299.43 of the Health and Safety Code
2 is amended to read:

3 25299.43. (a) To implement the changes to this chapter made
4 by Chapter 1191 of the Statutes of 1994, and consistent with
5 Section 25299.40, effective January 1, 1995, every owner subject
6 to Section 25299.41 shall pay a storage fee of one mill (\$0.001)
7 for each gallon of petroleum placed in an underground storage
8 tank that the person owns, in addition to the fee required by Section
9 25299.41.

10 (b) On and after January 1, 1996, the storage fee imposed under
11 subdivision (a) shall be increased by two mills (\$0.002) for each
12 gallon of petroleum placed in an underground storage tank.

13 (c) On and after January 1, 1997, the storage fee increased under
14 subdivision (b) shall be increased by an additional three mills
15 (\$0.003) for each gallon of petroleum placed in an underground
16 storage tank.

17 (d) On and after January 1, 2005, the storage fee increased under
18 subdivision (c) shall be increased by an additional one mill (\$0.001)
19 for each gallon of petroleum placed in an underground storage
20 tank.

21 (e) On and after January 1, 2006, the storage fee increased under
22 subdivision (d) shall be increased by an additional one mill
23 (\$0.001) for each gallon of petroleum placed in an underground
24 storage tank.

25 (f) On and after January 1, 2010, the storage fee increased under
26 subdivision (e) shall be increased by an additional six mills
27 (\$0.006) for each gallon of petroleum placed in an underground
28 storage tank. The increase provided for in this subdivision shall
29 be effective until January 1, 2014, at which time, the fee shall
30 revert back to the fee pursuant to subdivision (e).

31 (g) The fee imposed under this section shall be paid to the State
32 Board of Equalization under Part 26 (commencing with Section
33 50101) of Division 2 of the Revenue and Taxation Code in the

1 same manner as, and consistent with, the fees imposed under
2 Section ~~24299.41~~ 25299.41.

3 (h) The State Board of Equalization shall amend the regulations
4 adopted under Section 25299.41 to carry out this section.

5 SEC. 2. Section 55001 of the Revenue and Taxation Code is
6 amended to read:

7 55001. This ~~chapter~~ *part* shall be known and may be cited as
8 the Fee Collection Procedures Law.

9 SEC. 3. Section 55332.5 of the Revenue and Taxation Code,
10 as amended by Section 16 of Chapter 285 of the Statutes of 2012,
11 is amended to read:

12 55332.5. (a) (1) The executive director and chief counsel of
13 the board, or their delegates, may compromise any final fee liability
14 where the reduction of fees is seven thousand five hundred dollars
15 (\$7,500) or less.

16 (2) Except as provided in paragraph (3), the board, upon
17 recommendation by its executive director and chief counsel, jointly,
18 may compromise a final fee liability involving a reduction in fees
19 in excess of seven thousand five hundred dollars (\$7,500). A
20 recommendation for approval of an offer in compromise that is
21 not either approved or disapproved within 45 days of the
22 submission of the recommendation shall be deemed approved.

23 (3) The board, itself, may by resolution delegate to the executive
24 director and the chief counsel, jointly, the authority to compromise
25 a final fee liability in which the reduction of fees is in excess of
26 seven thousand five hundred dollars (\$7,500), but less than ten
27 thousand dollars (\$10,000).

28 (b) For purposes of this section, “a final fee liability” means
29 any final fee liability arising under Part 30 (commencing with
30 Section 55001), or related interest, additions to fees, penalties, or
31 other amounts assessed under this part.

32 (c) Offers in compromise shall be considered only for liabilities
33 that were generated from a business that has been discontinued or
34 transferred, where the feepayer making the offer no longer has a
35 controlling interest or association with the transferred business or
36 has a controlling interest or association with a similar type of
37 business as the transferred or discontinued business.

38 (d) Offers in compromise shall not be considered where the
39 feepayer has been convicted of felony tax evasion under this part
40 during the liability period.

1 (e) For amounts to be compromised under this section, the
2 following conditions shall exist:
3 (1) The feepayer shall establish that:
4 (A) The amount offered in payment is the most that can be
5 expected to be paid or collected from the feepayer’s present assets
6 or income.
7 (B) The feepayer does not have reasonable prospects of
8 acquiring increased income or assets that would enable the feepayer
9 to satisfy a greater amount of the liability than the amount offered,
10 within a reasonable period of time.
11 (2) The board shall have determined that acceptance of the
12 compromise is in the best interest of the state.
13 (f) A determination by the board that it would not be in the best
14 interest of the state to accept an offer in compromise in satisfaction
15 of a final fee liability shall not be subject to administrative appeal
16 or judicial review.
17 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
18 require a minimum offer of the unpaid fee and fraud or evasion
19 penalty.
20 (2) The minimum offer may be waived if it can be shown that
21 the feepayer making the offer was not the person responsible for
22 perpetrating the fraud or evasion. This authorization to waive only
23 applies to partnership accounts where the intent to commit fraud
24 or evasion can be clearly attributed to a partner of the feepayer.
25 (h) When an offer in compromise is either accepted or rejected,
26 or the terms and conditions of a compromise agreement are
27 fulfilled, the board shall notify the feepayer in writing. In the event
28 an offer is rejected, the amount posted will either be applied to the
29 liability or refunded, at the discretion of the feepayer.
30 (i) When more than one feepayer is liable for the debt, such as
31 with spouses or partnerships or other business combinations,
32 including, but not limited to, feepayers who are liable through dual
33 determination or successor’s liability, the acceptance of an offer
34 in compromise from one liable feepayer shall reduce the amount
35 of the liability of the other feepayers by the amount of the accepted
36 offer.
37 (j) Whenever a compromise of fees or penalties or total fees
38 and penalties in excess of five hundred dollars (\$500) is approved,
39 there shall be placed on file for at least one year in the office of
40 the executive director of the board a public record with respect to

1 that compromise. The public record shall include all of the
2 following information:

- 3 (1) The name of the feepayer.
- 4 (2) The amount of unpaid fees and related penalties, additions
5 to fees, interest, or other amounts involved.
- 6 (3) The amount offered.
- 7 (4) A summary of the reason why the compromise is in the best
8 interest of the state.

9 The public record shall not include any information that relates
10 to any trade secrets, patent, process, style of work, apparatus,
11 business secret, or organizational structure, that if disclosed, would
12 adversely affect the feepayer or violate the confidentiality
13 provisions of Section 55381. A list shall not be prepared and
14 releases shall not be distributed by the board in connection with
15 these statements.

16 (k) A compromise made under this section may be rescinded,
17 all compromised liabilities may be reestablished, without regard
18 to any statute of limitations that otherwise may be applicable, and
19 no portion of the amount offered in compromise refunded, if either
20 of the following occurs:

21 (1) The board determines that a person did any of the following
22 acts regarding the making of the offer:

23 (A) Concealed from the board property belonging to the estate
24 of a feepayer or other person liable for the fee.

25 (B) Received, withheld, destroyed, mutilated, or falsified a book,
26 document, or record, or made any false statement, relating to the
27 estate or financial condition of the feepayer or other person liable
28 for the fee.

29 (2) The feepayer fails to comply with any of the terms and
30 conditions relative to the offer.

31 (l) A person who, in connection with an offer or compromise
32 under this section, or offer of that compromise to enter into that
33 agreement, willfully does either of the following shall be guilty of
34 a felony and, upon conviction, shall be fined not more than fifty
35 thousand dollars (\$50,000) or imprisoned pursuant to subdivision
36 (h) of Section 1170 of the Penal Code, or both, together with the
37 costs of investigation and prosecution:

38 (1) Conceals from an officer or employee of this state property
39 belonging to the estate of a feepayer or other person liable in
40 respect of the fee.

1 (2) Receives, withholds, destroys, mutilates, or falsifies a book,
2 document, or record, or makes a false statement, relating to the
3 estate *or financial condition of the feepayer or other person liable*
4 *in respect of the fee.*

5 (m) For purposes of this section, “person” means the feepayer,
6 a member of the feepayer’s family, a corporation, agent, fiduciary,
7 or representative of, or another individual or entity acting on behalf
8 of, the feepayer, or another corporation or entity owned or
9 controlled by the feepayer, directly or indirectly, or that owns or
10 controls the feepayer, directly or indirectly.

11 (n) This section shall become operative on January 1, 2018.