

ASSEMBLY BILL

No. 89

Introduced by Assembly Member Torlakson

January 5, 2009

An act to add Article 2.5 (commencing with Section 30130.5) to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 89, as introduced, Torlakson. Taxation: cigarettes and other tobacco products.

The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) and the California Families and Children Act of 1998 (Proposition 10). A provision of that law imposes a tax upon the distribution of tobacco products at a tax rate which is equivalent to the combined rate of all taxes imposed on cigarettes, which is deposited in specified accounts.

This bill would, commencing on or after the first day of the first calendar quarter commencing more than 90 days on or after the effective date of the bill, impose an additional excise tax on the distribution of cigarettes at the rate of \$0.105 for each cigarette distributed, and would require a dealer or wholesaler to file a return with the State Board of Equalization showing the number of cigarettes in his or her possession or under his or her control on that date, as specified. The revenues collected from the additional tax would be deposited in the Tobacco Excise Tax Account, which would be created by the bill, and would be allocated, upon appropriation by the Legislature, for certain education-

health-, and child-related purposes. Because the bill would impose an additional tax on cigarettes under the Cigarette and Tobacco Products Tax Law, it would increase the tax upon the distribution of tobacco products under that law.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Because this bill would impose new requirements under the Cigarette and Tobacco Products Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Article 2.5 (commencing with Section 30130.5)
2 is added to Chapter 2 of Part 13 of Division 2 of the Revenue and
3 Taxation Code, to read:

4
5 Article 2.5. Cigarette and Tobacco Products Excise Tax

6
7 30130.5. (a) In addition to any other tax imposed under this
8 part, an excise tax is hereby imposed upon every distributor of
9 cigarettes at the rate of one hundred five mills (\$0.105) for each
10 cigarette distributed on and after the first day of the first calendar
11 quarter commencing more than 90 days after the effective date of
12 this section.

13 (b) (1) Every dealer and wholesaler, for the privilege of holding
14 or storing cigarettes for sale, use, or consumption, shall pay a floor
15 stock tax for each cigarette in his or her possession or under his
16 or her control in this state at 12:01 a.m. on the first day of the first
17 calendar quarter commencing more than 90 days after the effective

1 date of this section at the rate of one hundred five mills (\$0.105)
2 for each cigarette.

3 (2) Every dealer and wholesaler shall file a return with the State
4 Board of Equalization on or before the first day of the first calendar
5 quarter commencing more than 180 days after the effective date
6 of this section on a form prescribed by the board, showing the
7 number of cigarettes in his or her possession or under his or her
8 control at 12:01 a.m. on the first day of the first calendar quarter
9 commencing more than 90 days after the effective date of this
10 section. The amount of tax shall be computed and shown on the
11 return.

12 (c) (1) Every licensed cigarette distributor, for the privilege of
13 distributing cigarettes and for holding or storing cigarettes for sale,
14 use, or consumption, shall pay a cigarette indicia adjustment tax
15 for each California cigarette tax stamp that is affixed to any
16 package of cigarettes and for each unaffixed California cigarette
17 tax stamp in his or her possession or under his or her control at
18 12:01 a.m. on the first day of the first calendar quarter commencing
19 more than 90 days after the effective date of this section at the
20 following rates:

21 (A) Two dollars and six hundred twenty-five mills (\$2.625) for
22 each stamp bearing the designation "25."

23 (B) Two dollars and ten cents (\$2.10) for each stamp bearing
24 the designation "20."

25 (C) One dollar and five cents (\$1.05) for each stamp bearing
26 the designation "10."

27 (2) Every licensed cigarette distributor shall file a return with
28 the board on or before the first day of the first calendar quarter
29 commencing 180 days after the effective date of this section on a
30 form prescribed by the board, showing the number of stamps
31 described in subparagraphs (A), (B), and (C), of paragraph (1).
32 The amount of tax shall be computed and shown on the return.

33 (d) The taxes imposed under this section shall be administered
34 and collected in accordance with this part.

35 (e) All revenues, less refunds, derived from a tax imposed
36 pursuant to this section shall be transferred to the Tobacco Excise
37 Tax Account, which is hereby created in the General Fund and
38 shall, upon appropriation by the Legislature, be allocated for each
39 fiscal year exclusively to fund the following:

40 (1) Education

- 1 (2) Children’s health care.
- 2 (3) Tobacco cessation services.
- 3 (4) Lung cancer research.
- 4 (5) General health care.

5 SEC. 2. It is the intent of the Legislature that revenues derived
6 from the taxes imposed pursuant to Section 30130.5 of the Revenue
7 and Taxation Code shall be deemed General Fund revenues or
8 General Fund proceeds of taxes within the meaning of Section 8
9 of Article XVI of the California Constitution.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

19 SEC. 4. This act provides for a tax levy within the meaning of
20 Article IV of the California Constitution and shall go into
21 immediate effect.