

11-2004

# Revenue and Taxation Legislative Summary 2004

Assembly Committee on Revenue and Taxation

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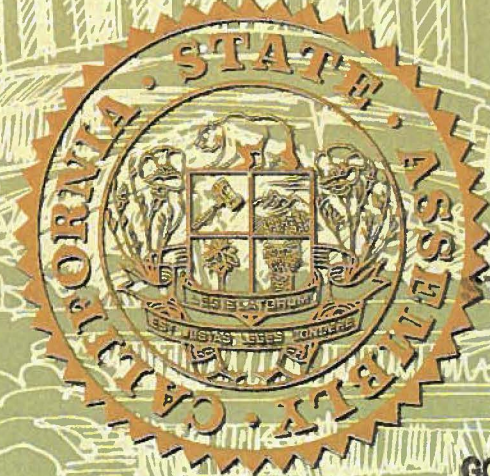
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**Assembly Committee on  
Revenue and Taxation**

**California State Legislature**

**Revenue and Taxation  
Legislative Summary  
2004**



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**Honorable Mark Wyland, Vice-Chair**

**November 2004**

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# **ASSEMBLY COMMITTEE ON REVENUE & TAXATION**

## ***2004 LEGISLATIVE SUMMARY***

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# Assembly California Legislature

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## Assembly Committee on Revenue and Taxation RUDY BERMÚDEZ, CHAIR

# 2004

## LEGISLATIVE SUMMARY

The following is a list of bills adopted by the Legislature during the first year of the 2003-2004 Legislative Session which changed state law in the area of revenue and taxation. The measures are listed in bill number order, with 2004 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 California State Assembly's web page at [www.assembly.ca.gov](http://www.assembly.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 2004 and a helpful reference document for any who need to know about state and local taxation law and policy. Copies of this summary may be obtained under "Publications" on the committee's web page at [www.assembly.ca.gov](http://www.assembly.ca.gov).

# **ASSEMBLY COMMITTEE ON REVENUE AND TAXATION**

## **2004 LEGISLATIVE SUMMARY**

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### **COMMITTEE ON REVENUE AND TAXATION**

#### **2004 LEGISLATIVE SUMMARY**

**AB 214 (Shirley Horton), Chapter 410.** TAXPAYER CONTRIBUTIONS: NATIONAL WORLD WAR II (WWII) VETERANS MEMORIAL. Appropriates moneys in the National WWII Veterans Memorial Trust Fund to the State Controller for allocation to the American Battle Monuments Commission for the construction and maintenance of the WWII Memorial in Washington, D.C.

**AB 263 (Oropeza), Chapter 868.** CORPORATION TAXES: DEDUCTION: INSURANCE COMPANY DIVIDENDS. Repeals and reenacts a statute regarding a deduction for dividends received from insurance subsidiaries that was held unconstitutional. Allows a corporation to deduct from income a portion of the dividends received from an insurance subsidiary, regardless whether the insurance company conducted business in California. This bill limits availability of an existing tax incentive for overcapitalization of insurance subsidiaries.

**AB 658 (Nakano), Chapter 562.** TAXPAYER CONTRIBUTIONS: CALIFORNIA PROSTATE CANCER RESEARCH FUND. Authorizes the addition of the California Prostate Cancer Research Fund income tax checkoff to the personal income tax form upon the removal of another income tax checkoff from the form.

**AB 1073 (Dutton), Chapter 261.** PERSONAL INCOME TAX: EXEMPTION: MILITARY DEATH GRATUITY. Conforms to federal law by fully excluding the federal military death gratuity from state income taxation. Provides this full income exclusion for deaths occurring on or after September 11, 2001, in conformity with federal law.

**AB 1260 (Matthews), Chapter 163.** PERSONAL INCOME AND CORPORATION TAXES: ADMINISTRATION: VIOLATIONS: REFUNDS. Allows misdemeanor and felony charges to be filed and allows fines to be imposed for wrongfully or fraudulently obtaining any form of state-issued income tax refund, whether through direct deposit, check, or other means.

**AB 1338 (Chavez), Chapter 528.** PERSONAL INCOME AND CORPORATION TAXES: REAL ESTATE WITHHOLDING REQUIREMENTS. Revises administration and application of tax withholding on real estate transactions. Specifically, subjects corporations without a permanent place of business in California to the same withholding requirements and rules to which other persons are subject. Shifts the responsibility for

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**AB 1416 (Bermúdez), Chapter 412. CONFIDENTIALITY: TAXPAYER COMMUNICATIONS.** Conforms to federal law by extending the sunset date on the tax practitioner-client confidentiality privilege from January 1, 2005 to January 1, 2009. This privilege extends to the provision of "tax advice" related to matters before the Franchise Tax Board, Board of Equalization, and Employment Development Department.

Confidentiality is limited to the extent to which the communications would be privileged if they occurred between a client and an attorney.

**AB 1510 (Kehoe), Chapter 772. DISASTER RELIEF.** Adds the Southern California wildfires that occurred during October and November 2003 and the San Simeon earthquake that occurred during December 2003 to the list of disasters eligible for full state reimbursement of local agency costs under the Disaster Assistance Act and for full state reimbursement of local property tax losses. Provides favorable net operating loss treatment for losses resulting from the two aforementioned disasters, as well as the Middle River levee break that occurred in San Joaquin County in June 2004. This bill is one of three companion measures intended to help victims of the Southern California wildfires, the San Simeon earthquake, and the Middle River levee break.

**AB 1740 (Committee on Revenue and Taxation), Chapter 13. INCOME TAXES: NONRESIDENTS.** Contains three independent provisions dealing with the computation of California tax for part-year residents and nonresidents of California. Creates a rebuttable presumption that a late-filing penalty is not applicable to a return provided that the Internal Revenue Service abated the federal failure to file penalty because the failure to timely file was due to reasonable cause and not willful neglect.

**AB 1799 (Mullin), Chapter 370. TAXPAYER CONTRIBUTIONS: ALZHEIMER'S DISEASE.** Extends the sunset date on the California Alzheimer's Disease and Related Disorders Research Fund income tax checkoff from January 1, 2005 to January 1, 2010, provided the fund receives at least a specified, minimum level of contributions annually. This minimum amount equaled \$250,000 in 2000 and has been indexed annually for inflation since that time.

**AB 1886 (Pavley), Chapter 829. PROPERTY TAX: POSTPONEMENT.** Modifies procedures for the State Controller to pay a claim for postponement of property tax under the Senior Citizens and Disabled Citizens Property Tax Postponement Law (Program). Permits the State Controller to make payments directly to a lender, mortgage company, escrow company or county tax collector for the property taxes due for the qualified claimant. Defines "property taxes" for purposes of the Program to include any property tax that becomes delinquent after the claimant either was 62 years old or became disabled.

**AB 1916 (Maddox), Chapter 936. OCCUPANCY TAX: EXEMPTIONS AND DELINQUENCIES.** Provides for the issuance of transient occupancy tax (TOT) exemption forms and TOT clearance certificates and establishes a three-year statute of limitations on TOTs.

**AB 2030 (Cogdill), Chapter 634. CIGARETTE AND TOBACCO PRODUCTS TAX LAW: HEARINGS.** Requires the Board of Equalization to conduct at least two hearings per year during which industry representatives and individual taxpayers may present proposals for changes to the Cigarette and Tobacco Products Tax Law that would further advance voluntary compliance and improve the relationship between taxpayers and the government.

**AB 2144 (Ridley-Thomas), Chapter 944. PROPERTY TAXATION: TAX-DEFAULTED PROPERTY: REDEMPTION PERIOD.** Requires the county tax collector to bring tax-defaulted nonresidential commercial property to sale after it has been tax-defaulted for three years. Allows the county to elect out of the provisions accelerating the public sale (currently required if the property has been tax-defaulted for five years). Incorporates the provisions of SB 1596 (Ducheny) if both bills are signed and AB 2144 is chaptered last.

**AB 2165 (Houston), Chapter 778. DISASTER RELIEF.** Adds the Middle River levee break that occurred in June 2004 to the list of disasters eligible for full state reimbursement of local agency costs under the Disaster Assistance Act. This bill is one of three companion measures intended to help victims of the Southern California wildfires that occurred during late 2003, the San Simeon earthquake that occurred during December 2003, and the Middle River levee break.

**AB 2328 (Wyland), Chapter 782. CORPORATION TAX: FEDERAL CONFORMITY.** Provides a special rule for built-in gains tax (BIGs tax) upon certain conversions of C corporations into S corporations and conforms to a federal tax provision limiting use of a specific method of accounting. Specifically, provides that the effective date of the S corporation election for purposes of the California BIGs tax was the same date as the federal S corporation election for California C corporations forced to convert to S corporation status effective January 1, 2003. Conforms to federal law that limits the non-accrual experience method of accounting to amounts received for the performance of qualified services and services provided by certain small businesses. Identifies qualified services as those in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting. Defines small businesses as those with average annual gross receipts of not more than \$5 million for the three-year period prior to the taxable year.

**AB 2398 (Maze), Chapter 423. TARGETED TAX AREAS: EXPANSION.** Places the responsibility for administering California's Targeted Tax Area (TTA) program with the Department of Housing and Community Development (HCD). Allows TTA to expand by up to 15% subject to approval by HCD. Requests the Tulare County Economic

Development Corporation to report to the Legislature on or before January 1, 2008, regarding the impact of TTA expansion.

**AB 2480 (Campbell), Chapter 267.** PERSONAL INCOME TAX AND CORPORATION TAX: ADMINISTRATION: E-FILING. Delays, until January 1, 2005, the operative date of the \$50 penalty imposed on income tax preparers who fail to electronically file individual income tax returns.

**AB 2722 (Laird), Chapter 715.** NATURAL HERITAGE PRESERVATION TAX CREDIT ACT OF 2000: BOND FUNDS. Allows existing bond funds approved through Propositions 40 and 50 to be used to reimburse the general fund for tax credits issued under the Natural Heritage Preservation (NHP) Tax Credit Act. Establishes processes through which property qualifies for participation, utilization of NHP credits is identified, and bond funds are transferred.

**AB 2846 (Salinas), Chapter 786.** PROPERTY TAXATION: ASSESSMENT: TAX CREDITS. Prohibits the assessor, when using the income approach of appraising property value, from considering as income the value of the low income housing tax credits authorized under both federal and California law.

**AB 2857 (Laird), Chapter 768.** PROPERTY TAXATION: ASSESSMENT REDUCTION APPLICATIONS. Clarifies the procedure for imposing property tax when a taxpayer challenges the base year value and the opinion of value is not decided within two years. Provides that the taxpayer's opinion of value will be placed on the assessment roll until the county board makes the final determination if the application requested a reduction of base year value. Provides that the taxpayer's opinion of value is placed on the assessment roll for the tax year or years covered by the application.

**AB 3071 (Committee on Revenue and Taxation), Chapter 353.** SALES AND USE TAX: INCOME TAX: S CORPORATIONS: ADMINISTRATION. Enacts technical proposals intended to improve administration of the taxes administered by the Board of Equalization and Franchise Tax Board. Conforms to federal law that excludes that the last-in, first-out recapture tax for purposes of calculating the estimated tax an S corporation must pay during a taxable year.

**AB 3073 (Committee on Revenue and Taxation), Chapter 354.** PROPERTY TAX: QUALIFIED CONTAMINATED PROPERTY: LIMITED LIABILITY COMPANIES: INCOME TAX: CLAIM OF RIGHT. Makes minor technical changes regarding the transfer of base year values of contaminated property, conforms to federal rules regarding the claim of right doctrine, and allows limited liability companies to include not-for-profit entities, to claim a property tax welfare exemption, and to participate in the voluntary disclosure program administered by the Franchise Tax Board.

**ACR 222 (Haynes), Chapter 85.** SMALL BUSINESS MONTH. Proclaims the month of May 2004 as Small Business Month. Acknowledges the contributions, efficiencies and innovations by small businesses that create new markets for the state, the nation, and

the world. Cites numerous facts about small businesses, including the number of businesses and the percentage they represent of all employers, and the role of small businesses in the economic recovery of the nation. Calls upon Small Business Month as a time to celebrate the successes and to thank small business owners for their contributions, as well as reflect upon future challenges facing small businesses

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**SB 451 (Ducheny), Chapter 853. TAXATION OF POSSESSORY INTERESTS.**

Exempts certain military family housing provided under the Military Housing Privatization Initiative (MHPI) from taxation as possessory interests. Provides that no independent possession or use of land or improvements exists with military housing constructed, renovated or remodeled under the legal authority for MHPI. Requires the reduction in property tax, or a reasonable estimate thereof, on leased property used for military housing under MHPI to inure solely to the benefit of the residents of the military housing. States that this bill is declaratory of existing law.

**SB 615 (Cedillo), Chapter 388. INCOME TAXES: SERVICEMEMBERS.** Conforms California law to the federal Servicemembers Civil Relief Act of 2003 (Public Law 108-189). Conformity accomplishes the following:

- 1) Provides that California may not use the military compensation of a servicemember who is not domiciled in California to increase the California tax liability imposed on other income of that servicemember or that servicemember's spouse.
- 2) Provides that a servicemember who is not domiciled in California does not become a resident of California by reason of being present in California solely to comply with military orders.
- 3) Provides that the military compensation of a servicemember who is not domiciled in California does not represent "income for services performed within this state" or "income from sources within this state", and ensures that the military compensation is not included in "gross income", "entire taxable income", or "alternative minimum taxable income".
- 4) Provides that military compensation received by Native American servicemembers whose legal residence or domicile is a federal Indian reservation shall not be subject to California income taxation.
- 5) Suspends the running of the statute of limitations for state taxes during the period of a servicemember's military service.

**SB 764 (Morrow), Chapter 544. PROPERTY TAX: VETERANS' EXEMPTIONS.**

Adjusts the homeowners' exemption for disabled veterans by a specific inflation factor.

Changes the existing homeowners' exemption for disabled veterans annually, commencing January 1, 2006, by a specific inflation factor. The inflation factor is the annual percentage change, measured from February to February of the two previous assessment years, in the California Consumer Price Index for all items.

**SB 1147 (Hollingsworth), Chapter 792. DISASTER RELIEF.** Allows dwellings damaged or destroyed by fire or earthquake during October, November, or December 2003, or by flood during June 2004 to receive the homeowner's property tax exemption. This bill is one of three companion measures intended to help victims of the Southern California wildfires that occurred during late 2003, the San Simeon earthquake that occurred during December 2003, and the Middle River levee break that occurred during June 2004.

**SB 1162 (Machado), Chapter 546. TAXPAYER CONTRIBUTIONS: MILITARY FAMILY RELIEF FUND.** Authorizes the addition of the California Military Family Relief Fund income tax checkoff to the personal income tax form upon the removal of another income tax checkoff from the form.

**SB 1172 (Ackerman), Chapter 62. PERSONAL INCOME TAX: GROSS INCOME: NONRESIDENT OR PART-YEAR RESIDENT.** Amends state law to explicitly provide that California may not tax the California-source income of certain nonresident individuals, including members of the military and those whose jobs involve interstate transportation and commerce (e.g., commercial airline employees, railroad employees, and truck/bus drivers).

**SB 1534 (Johnson), Chapter 844. INCOME TAX FORMS.** Doubles the income cap thresholds applied to Form 540 2EZ and allows persons with dividend income to file using the 2EZ Form. These changes have the effect of increasing the number of people eligible to file their taxes using that form. Requires the Legislative Analyst to report to the Legislature regarding the impact of the revised form.

**SB 1596 (Ducheny), Chapter 923. TAXATION: DELINQUENT TAXES: PUBLIC AUCTION.** Allows local government and certain nonprofit organizations to request an acceleration of the public sale of tax-defaulted property. The request may be made provided that the property has been tax-defaulted for at least three years and the public benefit could be served by providing housing or services directly related to low-income persons. Requires a deed restriction to be placed on real property acquired by nonprofit organizations. Applies to residential property provided that the owner does not occupy the real property as his or her personal place of residence. Incorporates the provisions of AB 2144 (Ridley-Thomas) if both of the bills are signed and SB 1596 is chaptered last.

**SB 1689 (Poochigian), Chapter 402. PERSONAL INCOME TAX: SETTLEMENTS: ARMENIAN GENOCIDE.** Excludes Armenian Genocide settlement payments from state income taxation and provides that they may not be used to determine eligibility for state education grants, priorities, and program enrollments, or for state disability insurance benefits.

**SB 1713 (Machado), Chapter 552. INCOME AND CORPORATION TAXES: MILITARY FAMILIES.** Conforms California law to the federal Military Family Tax Relief Act (Public Law 108-121). Conformity accomplishes the following:

- 1) Allows members of the uniformed services or the United States (U. S.) Foreign Service to exclude up to \$250,000 in gain on the sale or exchange of their principal residence (\$500,000 if married filing a joint return), if they must sell their home as a result of being called to official extended duty.
- 2) Excludes the full amount of the federal death gratuity from state income taxation.
- 3) Excludes amounts paid under the Department of Defense Homeowners Assistance Program from state income taxation.
- 4) Adds contingency operations performed outside the U. S. away from an individual's permanent duty station to the list of activities that qualify an individual for a suspension of time periods for performing specific acts required by the Revenue and Taxation Code (most notably filing and paying income taxes).
- 5) Loosens the membership requirements that must be met by a veteran's organization wishing to retain its tax-exempt status by allowing 25% of the organization's members to be comprised of ancestors or lineal descendants of past or present members of the Armed Forces or of cadets.
- 6) Excludes payments made by the federal government under certain dependent care assistance programs from state income taxation.
- 7) Waives the penalty for withdrawing amounts from qualified state tuition programs or Coverdell Education Savings Accounts, when the beneficiary of these accounts attends a U. S. military service academy.
- 8) Adopts federal designations regarding the tax-exempt status of organizations designated as terrorist organizations or supporters of terrorism.
- 9) Authorizes an above-the-line deduction for certain travel expenses incurred by National Guardsmen and Armed Forces reservists that travel away from home and stay overnight to attend National Guard and Reserve meetings.
- 10) Adds astronauts killed while on a space mission to the list of individuals granted special tax treatment upon their deaths.

**SB 1831 (Cedillo), Chapter 407. PROPERTY TAXATION: ADMINISTRATION.** An omnibus measure that revises, clarifies, or corrects numerous provisions of property tax administration. Provides that any person appointed to an assessment appeals board (AAB) by a board of supervisors must meet the eligibility requirements for AAB

membership. Requires documentation of the qualifying experience of AAB members to be filed with the clerk of the board. Expands the list of persons that qualify as AAB members to include a property appraiser certified by the Office of Real Estate Appraisers or a property appraiser certified by the State Board of Equalization. Provides that refunds of duplicate payments of tax will receive interest if the interest amount is \$10 or more. Allows the tax collector to offer a tax-defaulted parcel that is unusable due to size, location, or other conditions to be offered to a holder of record of either a predominant easement or a right-of-way easement. Provides that a postponed tax sale must be renoticed within 90 days of the date originally scheduled for the sale, in conformity with existing provisions for a new sale after a property is not sold. Permits the cancellation of erroneous, duplicative or reduced assessments of tax more than four years after enrollment of the tax bill, thereby allowing a refund of tax payments made, provided that the cancellation action is commenced within 120 days of the payment. Permits senior citizen postponement of property tax for a residential dwelling held in trust, provided that the Controller determines the state's interest is adequately protected. Conforms definitions and removes various references to obsolete provisions.

**SB 1832 (Cedillo), Chapter 194. PROPERTY TAXATION: MAPS: TAX-DEFAULTED PROPERTY SALES.** Amends existing law regarding the conduct of public sales and the approval of actions by county boards of supervisors. Allows use of electronic media, including the Internet. Authorizes acceptance of electronic fund transfers as payment. Adjusts notice requirements to implement the amendments.

**SB 1880 (Committee on Revenue and Taxation), Chapter 200. PROPERTY TAXATION: COUNTY ASSESSORS: EXEMPTIONS: TECHNICAL CODE MAINTENANCE.** Makes minor and technical changes and corrections to the property tax law. Permits a duly elected or appointed assessor that lacks a valid appraiser's certificate issued by the State Board of Equalization (BOE) to exercise the powers and duties of the appraiser if he or she acquires a temporary appraiser's certificate from BOE no later than 30 days after taking office. Allows a person to claim a property tax exemption for pieces of art and aircraft that are made available for public display by providing all required information and answering all questions in an affidavit signed under penalty of perjury. Requires an owner of an aircraft to file a statement with the assessor that provides information necessary to determine the full value of the aircraft. Eliminates or repeals numerous obsolete sections dealing with property taxation.

**SB 1881 (Committee on Revenue and Taxation), Chapter 527. SALES AND USE TAX: PREPAYMENTS: EXTENSIONS: DUE DATES: EXEMPTION CERTIFICATE.** Enacts several technical changes intended to improve administration of the Sales and Use Tax Law and the miscellaneous tax and fee laws administered by the Board of Equalization (BOE). Makes technical changes to prepayment rules for sales tax on fuels, in order to reflect changes in sales tax rates resulting from the so-called "triple flip". Corrects a chaptering-out error caused during 2003 by clarifying the length of the filing and payment extensions that BOE may extend to a taxpayer who is a creditor of the state when the state budget is adopted after the start of the state's fiscal year. Deletes unnecessary, redundant language from and renumbers an existing section number in the

Sales and Use Tax Law. Repeals obsolete section references in the Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Laws. Repeals the requirement that a person subject to the Childhood Lead Poisoning Prevention Fee submit a tax return with his or her payment, reflecting Department of Health Services regulations that now require this fee to be paid when the taxpayer receives a bill rather than requiring self-reporting through a return process. Conforms the Oil Spill Response, Prevention and Administration Fee with other tax and fee laws by allowing BOE to relieve fee payers of the penalty for failure to file a timely information return when that failure is due to reasonable cause. Clarifies that when BOE is authorized to collect a tax or fee that is either assessed by another agency, calculated by BOE and collected for another agency, or is fixed by statute and collected by BOE without the requirement to file a return, it is appropriate for BOE to issue a notice of determination or similar billing document for that purpose.

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### **VETOED**

**AB 382 (Correa).** TAXATION: TAX EXEMPT BONDS: INDIAN TRIBAL GOVERNMENT. Provides a state personal income tax exemption for interest on bonds issued by a federally recognized Indian tribal government located in California, to the extent that the bond interest is tax-exempt for federal purposes at the time the bonds are issued, and provided that additional specified requirements are met.

**AB 1148 (Wyland).** "S" CORPORATION: FEDERAL CONFORMITY. Provides a transitional rule for built-in gains tax (BIGs Tax) for conversions of C corporations into S corporations required as part of a tax conformity bill enacted in 2002. Does not require BIGs Tax to be paid on assets sold prior to, or pursuant to binding contracts or options in effect on, the enactment date of the 2002 legislation. Applies the transitional rule provided that no federal BIGs tax was paid on the transaction. Becomes effective upon enactment only if AB 2328 (Wyland) is not signed into law.

**AB 1297 (Frommer).** INSURANCE: TAX AVOIDANCE. Adds provisions to combat abusive tax shelters by prohibiting insurance companies from writing insurance policies that provide for defense of or coverage for losses related to investments in abusive tax shelters. Discourages investments in abusive tax shelters by subjecting any proceeds received under such an insurance policy to a 75% penalty.

**AB 2466 (Yee).** LOCAL SALES AND USE TAX: JET FUEL: PLACE OF SALE. Allocates local use tax revenue from sales of jet fuel in the same manner as local sales tax revenue from sales of jet fuel and requires the State Auditor to conduct an audit examining the state sales and use tax system by June 1, 2005. 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 2813 (Leno).** PERSONAL INCOME TAXES: EARNED INCOME CREDIT.

Requires employers to notify their employees that the employees may be eligible for the federal earned income tax credit.

**SB 438 (Soto).** DISASTER RELIEF. Adds the Southern California wildfires that occurred during October and November 2003 and the San Simeon earthquake that occurred during December 2003 to the list of disasters eligible for full state reimbursement of local agency costs under the Disaster Assistance Act. Adds these disasters to the list of disasters eligible for special net operating loss carryforward treatment under the Personal Income and Corporation Tax Laws.

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