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AB-1901 Taxation: cigarettes: unaffixed stamps. (2015-2016)

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Assembly Bill No. 1901

CHAPTER 662

An act to amend Section 30473.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 26, 2016. Filed with Secretary of State September 26, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1901, Quirk. Taxation: cigarettes: unaffixed stamps.

The Cigarette and Tobacco Products Tax Law imposes a tax on distributors of cigarettes at the rate of \$0.87 per package of 20 cigarettes. That law requires that tax be paid through the use of stamps or meter impressions, and requires that these stamps or meter impressions be affixed to each package of cigarettes distributed. That law also imposes a fine of up to \$50,000, as specified, or imprisonment not to exceed one year in county jail, or both, for possessing, selling, or buying false or fraudulent cigarette tax stamps or meter impressions, and requires the destruction by the State Board of Equalization of any stamps seized. Existing law requires any fines assessed to be deposited in the Cigarette and Tobacco Products Compliance Fund, amounts in which are available for specified expenditure upon appropriation by the Legislature.

This bill would extend those penalties for possessing, selling, or buying unaffixed cigarette tax stamps, and would require any fines assessed to be deposited in the Cigarette and Tobacco Products Compliance Fund. This bill would require the board to destroy any unaffixed cigarette tax stamps.

By expanding the scope of existing crimes, this bill imposes 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Existing law does not allow the State Board of Equalization to seize and destroy used cigarette tax stamps aggregated for reuse purposes nor does it provide criminal sanctions or penalties related to a person's possession, sale, or purchase of used cigarette tax stamps.

(b) Unlike postage stamps or trading cards that are collectibles with value, used cigarette tax stamp collections have value for purposes solely related to tax evasion. Board staff has identified some significant tax evasion incidents. During enforcement

operations at retail shops, board staff found unaffixed and used stamps in storage units that were prepared for affixation to cigarette packs. One of these cases uncovered a collection of unaffixed and used stamps with a cumulative value of over \$178,000.

(c) Criminalizing the possession, sale, or purchase of unaffixed, used cigarette stamps aggregated for reuse purposes and authorizing the board to seize and destroy those stamps will combat tax evasion before it occurs and assist in making the marketplace fair and equitable for those distributors who legitimately pay their cigarette excise taxes.

SEC. 2. Section 30473.5 of the Revenue and Taxation Code is amended to read:

30473.5. (a) Any person who possesses, sells, or offers to sell, or buys or offers to buy, any false, fraudulent, or unaffixed stamps or meter impressions provided for or authorized under this part in a quantity of less than 2,000 is guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars (\$5,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment.

(b) Any person who possesses, sells, or offers to sell, or buys or offers to buy, any false, fraudulent, or unaffixed stamps or meter impressions provided for or authorized under this part in a quantity of 2,000 or greater, is guilty of a misdemeanor, punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. The court shall order any fines assessed be deposited in the Cigarette and Tobacco Products Compliance Fund.

(c) For purposes of this section, "unaffixed stamps" means stamps for which the tax has previously been paid by a licensed distributor and previously affixed to a package. "Unaffixed stamps" do not include any unused and unapplied rolls of stamps or loose stamps acquired from the board or its authorized agent and in the possession of a licensed distributor.

(d) The board shall destroy any stamps seized under this section.

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