



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	<b>02/20/13</b>	Bill No:	<a href="#"><b>Senate Bill 385</b></a>
Tax Program:	<b>Sales &amp; Use Tax</b>	Author:	<b>Block</b>
Sponsor:	<b>BOE Chairman Horton</b>	Section:	<b>RTC 6812.5</b>
Related Bills:		Effective:	<b>01/01/14</b>

**BILL SUMMARY**

This bill requires escrow agents to notify potential business purchasers of their possible liabilities under the Sales and Use Tax Law when the sale is a “bulk sale.” Additionally, this bill requires business sellers to provide a successor liability disclosure statement to all potential purchasers or their authorized agents.

**ANALYSIS**

**CURRENT LAW**

Existing California law<sup>1</sup> imposes specific requirements on a purchaser of a business with respect to sales and use tax liabilities. Purchasers must withhold sufficient monies from the purchase price to cover any sales and use taxes, interest and penalties due by the seller unless:

- The seller produces a receipt (Certificate of Tax Payment) from the BOE showing that all liabilities have been paid, or
- The seller obtains a certificate from the BOE stating that no amount is due or requests such a certificate but does not receive one within 60 days.

The purchaser’s successor liability is limited to the purchase price of the business. Normally, the escrow process addresses the “Certificate of Tax Payment” or “Tax Clearance” as a condition of the escrow. The escrow process informs both buyer and seller of any outstanding tax liability attributable to the business. Additionally, it allows liabilities to be paid prior to releasing any funds to the seller.

California law<sup>2</sup> defines a “bulk sale” to mean either of the following:

- (i) In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller’s behalf, a sale or series of sales not in the ordinary course of the seller’s business of more than half of the seller’s inventory and equipment, as measured by a value on the date of the bulk-sale agreement.
- (ii) In all other cases, a sale not in the ordinary course of the seller’s business of more than half the seller’s inventory and equipment, as measured by value on the date of the bulk-sale agreement.

<sup>1</sup> Revenue and Taxation Code (RTC) Sections 6811 through 6815 of the Sales and Use Tax Law

<sup>2</sup> Commercial Code Section 6102(3)

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.*

### PROPOSED LAW

For “bulk sales,” this bill requires escrow agents to notify potential purchasers of a business holding a seller’s permit, that:

- The purchaser must withhold a sufficient amount of the purchase price to cover a seller’s tax liability,
- A tax clearance certificate is available from the BOE that identifies amounts owed by the seller of the business, and
- The purchaser may be personally liable for the payment of the seller’s tax liability.

Additionally, this bill requires business sellers to provide a Successor’s Liability Disclosure Statement to all potential purchasers or their authorized agent. The Successor’s Liability Disclosure Statement identifies any outstanding sales and use tax liability of the seller.

### BACKGROUND

The BOE recognized that purchasers are often caught unaware of the liability until after the BOE mails its notice of liability. Accordingly, the BOE sponsored legislation to assist the purchaser. Previous legislative changes:

- Allowed the purchaser to appeal the successor liability;
- Established a statute of limitations concerning liability notices;
- Established the authority to relieve the purchaser from penalties originally imposed upon the business seller and later included in the successor billing; and
- Required the BOE to mail the notice of successor liability within a specified time period.

Successor’s liability is also authorized under the Motor Vehicle Fuel, Use Fuel, Oil Spill Response, Timber Yield, Private Railroad Car, and Diesel Fuel Tax programs.

In 2006, the Property and Special Taxes Department proposed, and the BOE Members voted 3 to 2 to [sponsor legislation](#) to expand the successor’s liability provision to the remaining special taxes and fee programs. However, no author carried the bill.

[SB 1501](#) (2002, Johnson) required the BOE to exhaust all available collection remedies against a seller before pursuing collection from the purchaser. Additionally, the bill relieved the purchaser of any interest and penalty that accrued prior to the BOE exhausting those remedies. The Senate Revenue and Taxation Committee did not hear the bill.

[SB 1502](#) (2002, Johnson) relieved the purchaser of any penalty accrued by the seller prior to being notified by the BOE of the seller’s unpaid sales and use tax obligation. The Assembly Appropriations Committee held the bill.

### COMMENTS

1. **Sponsor and Purpose.** BOE Chairman Jerome Horton is sponsoring this bill to ensure that potential business purchasers are fully informed of any tax liabilities associated with the purchase. Often the purchaser is unaware that he or she is assuming a liability when buying a business. This results in unintended tax collection burdens to the purchaser and the State.

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2. **Failure to act.** If the parties fail to act as required by this bill the purchaser remains accountable for the tax liability.
3. **Suggested amendments.** Escrow agents are not required to provide information to purchasers if the transaction does not meet the definition of a “bulk sale.” Using the term “bulk sale” limits the number of purchasers receiving information from escrow agents.

We suggest the author delete the definition of “bulk sale” in Section 6812.5(c) and amend Section 6812.5 (a) to read:

“For a ~~bulk~~ sale handled through an escrow, the escrow agent shall notify in writing a potential purchaser of a business that is required to hold a permit under this part of the following information:”

Amend subsection (a)(1) to read:

“That if a person who is liable for any amount under this part sells his or her business or stock of goods, the purchaser must withhold a sufficient amount of the purchase price to cover that amount, until the seller produces a receipt from the board showing payment or an amount due.”

4. **Administration.** BOE staff does not anticipate any administrative complications from this measure.

#### **COST ESTIMATE**

The BOE administrative costs would be insignificant.

#### **REVENUE ESTIMATE**

While the revenue impact would be insignificant, fewer purchasers might avoid assuming a seller’s tax liability.

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