



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date:	04/17/12	Bill No:	AB 2270
Tax Program:	Use	Author:	Harkey
Sponsor:	BOE	Code Section:	RTC 6452.2
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

This **Board of Equalization (BOE)-sponsored bill** would specify a due date of April 15 for eligible purchasers, as defined, who have incurred use tax liabilities on purchases made during the previous calendar year.

Summary of Amendments

Since the previous analysis, this bill was amended to make non-substantive technical corrections.

ANALYSIS

CURRENT LAW

Existing law, Article 1 (commencing with Section 6451) of Chapter 5 of the Sales and Use Tax Law, sets forth the general due dates of sales and use tax payments and associated returns. Generally, returns and payments are due quarterly on or before the last day of the month following the quarterly period. Section 6455 of this article, however, permits the BOE to require return and payments for other than quarterly periods (such as monthly or annually), when it deems necessary to ensure payment or to facilitate collection. However, this section is specific that the due dates for returns and payments are at the end of the month following the reporting period.

Existing law, pursuant to Revenue and Taxation Code Section 6591, imposes a 10% penalty on any late payment of sales or use tax, plus monthly interest - currently at a rate of 7% annually.

The law currently has two exceptions from the general due dates described above with respect to use tax liabilities. Section 6225, which was added by ABx4 18 (Ch. 16, Stats. 2009), requires “qualified purchasers” to register with the BOE, and report and pay by April 15, the use tax owed for purchases made during the preceding calendar year. A “qualified purchaser” means a person that is not otherwise required to be registered with the BOE, and that receives at least \$100,000 in gross receipts from business operations per calendar year (this includes businesses such as accountants, dental offices, law firms, real estate firms, etc.).

In addition to Section 6225, Section 6452.1 of the Revenue and Taxation Code makes a due date exception for use tax liabilities reported on the Franchise Tax Board (FTB) personal income or corporate tax return. Under this section, purchasers have the choice to report their use tax liabilities directly to the BOE or on their FTB return, and when a purchaser reports his or her use tax on a timely-filed FTB return, that payment is considered timely, and the purchaser is not subjected to late charges. Section 6452.1

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specifies that persons registered, or required to be registered, with the BOE may not report their use tax liabilities on their FTB returns.

If a purchaser voluntarily reports the use tax to the BOE using a BOE use tax return, the due date specified in the BOE's instructions indicate a January 31 due date for taxable purchases made during the previous calendar year.

For any payments made after the due dates specified above, a late payment penalty and monthly interest as described previously is imposed.

PROPOSED LAW

This bill would add Section 6452.2 to the Sales and Use Tax Law to designate April 15th as the due date for payments of use tax for "eligible purchasers" who have made taxable purchases during the preceding calendar year. An "eligible purchaser" would be defined to mean a person that incurred a use tax liability that is either (1) eligible to report the use tax on his or her FTB return, but did not elect to do so, or (2) a person that is not required to file a return with the FTB, and is not otherwise registered or required to be registered with the BOE to report sales or use tax.

The bill would become effective on January 1, 2013.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the BOE and is intended to provide consistency in the due dates for use tax payments by purchasers that are not registered or not required to be registered with the BOE. Currently, if an individual elects to report his or her use tax liability on the state income tax return, as long as the state income tax return is filed timely (generally April 15 for personal income tax), the use tax payment is considered timely and no penalty or interest apply. However, if, instead, that same individual paid the use tax directly to the BOE on the same day using a BOE use tax return, the payment would be considered late, and the individual would be subjected to the late payment penalty and interest.
2. **The April 17, 2012** amendments make non-substantive, technical changes.
3. **The bill just makes sense.** April 15th is the regular due date for income taxes for individuals, and providing some consistency in the due dates for purchasers incurring a use tax liability provides a commonsense approach in administering a law for which many California purchasers are unaware.

COST ESTIMATE

Some insignificant costs would be incurred in substituting the new due date on various forms and publications. These costs would be absorbable.

REVENUE ESTIMATE

This measure would have a negligible impact on state and local revenues.

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