

Amend Revenue and Taxation Code Sections 6452.1, 6453, 6487.3, and 18510 to eliminate the sunset date of December 31, 2009, in order to continue to require the Franchise Tax Board to provide a line for payment of use tax on the state income tax returns.

Source: Sales and Use Tax Department

Existing Law

Under existing law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is required to be remitted to the Board of Equalization (BOE) on or before the last day of the month following the quarterly period in which the purchase was made (except as noted below). Generally, a use tax liability occurs when a California consumer or business purchases tangible items for their own use from an out-of-state retailer that is not registered with the BOE to collect the California use tax. However, the largest area of noncompliance in the BOE's sales and use tax program is the reporting of use tax.

In an effort to increase the public's awareness of the use tax and to encourage voluntary compliance in reporting the use tax, legislation enacted in 2003 (SB 1009, Ch. 718), required the Franchise Tax Board (FTB) to revise the personal income tax and corporation tax returns to add a separate line for use tax reporting and accompanying instructions in the booklet. This legislation allowed consumers and businesses that are not required to be registered with the BOE to report use tax on their state income tax returns for purchases made on or after January 1, 2003, and through December 31, 2009, as an alternative to reporting the tax to the BOE (businesses and certain consumers already registered with the BOE, however, may not use this alternative).

During the 2009 Legislative Session, another measure was signed into law to increase compliance with California's use tax laws. AB 18 (Ch. 16, Fourth Extraordinary Session) requires businesses that are not already registered with the BOE that receive more than \$100,000 annually in gross receipts from their business operations to register with the BOE and file annual use tax returns by April 15. The first returns under this new law will be due April 15, 2010.

This Proposal

This proposal would eliminate the December 31, 2009 sunset date in order to require FTB to continue to provide a line and instructions for payment of use tax on the state income tax return and accompanying booklet. This proposal also would make a nonsubstantive technical change to Sections 6452.1 and 6453 to correct a referencing error, and to make it clear that when a person reports his or her use tax liability on the income tax return filed with the FTB, only the use tax itself needs to be reported, not the purchase price of the property for which the use tax is being reported.

Use tax reported under these provisions has increased each year since this section was enacted. In 2004, use tax of \$2.8 million was reported, in 2005, \$4.6 million, in 2006

and 2007, approximately \$5.5 million was collected, and for 2008, \$9 million was reported. Surprisingly, individuals report a much greater proportion of the tax than businesses (in 2008, for example, individuals reported \$8 million of the total \$9 million), yet businesses contribute a greater share of the use tax gap.

Prior to the line being added on the income tax returns, individuals had to read far into the Form 540 instruction booklet (in 2002, use tax instructions were on page 60 in a 68-page book) to learn anything about the use tax and how to comply with it. Typically, individuals consult the 540 instruction booklet only if they have a question about a particular line on the return. Because there was no line for use tax, individuals had little reason to look to the instruction booklet for use tax information.

The use tax line on the state income tax return serves two primary purposes: it provides a convenient way for consumers and smaller businesses to comply with the use tax law (by eliminating the need to file a separate return with the BOE for the use tax), and it increases the visibility of the tax for those that may not otherwise be aware of their use tax responsibilities. If this section becomes inoperative, use tax which might otherwise have been reported on the state income tax return may never be collected, resulting in losses to both state and local governments.

Background

During the past three Legislative Sessions, the BOE has sponsored legislation to not only eliminate the sunset date of these provisions, but to also *require* consumers who have failed to report use tax to the BOE on their taxable purchases for the preceding year to report the use tax on the income tax returns for the taxable year in which the liability for the qualified use tax was incurred. However, none of these attempts was successful. The first and third attempts (AB 969, Eng and AB 469, Eng) were vetoed by the Governor, and the second attempt (AB 1957, Eng) failed passage in the Senate Revenue and Taxation Committee. Rather than jeopardizing the use tax reporting option with the state income tax return with the *requirement* that the tax be reported on the income tax returns if a person failed to report the tax to the BOE (as all three failed measures proposed), this proposal is limited to simply removing the program's sunset date.

Section 6452.1 of the Revenue and Taxation Code is amended to read:

6452.1. (a) Notwithstanding Section 6451, every person that purchases tangible personal property, the storage, use, or other consumption of which is subject to qualified use tax, as defined in subdivision ~~(b)~~ (d), that is otherwise required to report and remit that tax pursuant to this part, may elect to report and remit qualified use tax on an acceptable tax return.

(b) (1) A person that reports qualified use tax on an acceptable tax return is deemed to have made the election authorized by this section.

(2) (A) In the case of a married individual filing a separate California personal income tax return, an election may be made to report either one-half of the qualified use tax or the entire qualified use tax on his or her separate California personal income tax return.

(B) If an individual elects to report one-half of the qualified use tax, that election will not be binding with respect to the remaining one-half of the qualified use tax owed by that individual and that individual's spouse.

(c) An election to report qualified use tax on an acceptable tax return shall be irrevocable. An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

(d) For purposes of this section:

(1) "Acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(2) (A) Except as provided in subparagraph (B), "qualified use tax" means the use tax imposed under this part, Section 35 of Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(B) "Qualified use tax" does not include:

(i) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax that applies to a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or to a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on a vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lessee of tangible personal property.

(e) If a person elects to report qualified use tax on an acceptable tax return, that person shall comply with all of the following:

(1) The qualified use tax shall be reported on and remitted with an acceptable tax return.

(2) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.

(2) Any claims for refunds or credits of any use tax reported as qualified use tax on an acceptable tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), if the qualified use tax is timely reported on and remitted with an acceptable tax return in accordance with the provisions of this section.

(g) Notwithstanding a person's election to remit and to report qualified use tax on an acceptable tax return, the State Board of Equalization is not precluded

from making any determinations for understatements of qualified use tax against that person in accordance with Part 5 (commencing with Section 6451).

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18041).

(2) Qualified use tax reported on the acceptable tax return in accordance with this section.

(i) (1) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of this division.

(2) This section applies to purchases of tangible personal property made on or after January 1, 2003, ~~in taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, and as of that date becomes inoperative, unless a later enacted statute extends the operation of this section.~~

~~(3) Notwithstanding this section becoming inoperative as described in paragraph (2), any provisions in this section or Section 18510 relating to collection activities attributable to qualified use taxes reported prior to the inoperative date of this section shall continue in the same manner as if this section were still operative.~~

Section 6453 of the Revenue and Taxation Code is amended to read:

6453. For purposes of the sales tax, the return shall show the gross receipts of the seller during the preceding reporting period and, in the case of a person who is liable for the sales tax and is not a seller, the gross receipts of such person for the period in which the liability was incurred. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him or her, the storage, use, or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, except as provided in Section 6452.1, the return shall show the total sales price of the property purchased by him or her, the storage, use, or consumption of which became subject to the use tax during the preceding reporting period.

The return shall also show the amount of the taxes for the period covered by the return and any other information which the board deems necessary for the proper administration of this part.

Section 6487.3 of the Revenue and Taxation Code is amended to read:

6487.3. (a) (1) For persons that elect to report qualified use tax in accordance with Section 6452.1, except in the case of fraud, intent to avoid this part or authorized rules and regulations issued by the board, or the gross understatement of qualified use taxes, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within three years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(2) In the case of a gross understatement of qualified use tax, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within six years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(3) For purposes of this subdivision a "gross understatement of qualified used tax" is a deficiency that is in excess of 25 percent of the amount of qualified use tax reported on a person's acceptable tax return. In the case of married individuals filing separate California personal income tax returns, the total amount of qualified use tax reported will be considered in determining whether there is a gross understatement of qualified use tax.

(4) For purposes of this section "acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(b) This section applies to reporting of purchases of tangible personal property made on or after January 1, 2003, ~~in taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, and as of that latter date becomes inoperative, unless a later enacted statute extends the operation of this section.~~

Section 18510 of the Revenue and Taxation Code is amended to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11 in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns that shall be incorporated before the State Board of Equalization approves the form and manner of the returns.

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under this part.

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, and any information the State Board of Equalization deems necessary for its administration of the use tax, to the State Board of

Equalization within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

(d) This section shall be operative for returns filed for taxable years on and after January 1, 2003, ~~and ending on or before December 31, 2009, and as of that date becomes inoperative, unless a later enacted statute extends the operation of this section.~~