



Date Amended:	<b>10/07/10</b>	Bill No:	<b><a href="#">SB 858</a></b>
Tax:	<b>Sales and Use Special Taxes Timber Tax</b>	Author:	<b>Budget and Fiscal Review Committee</b>
Related Bills:	<b>AB 1618 AB 2676</b>		

## **BILL SUMMARY**

In part, this budget trailer bill would:

- Reinstatement of the provisions that provide for the separate line on the Franchise Tax Board (FTB) income tax returns for use tax reporting that expired on December 31, 2009, and
- Authorize the Board of Equalization (BOE) to impose and collect a collection cost recovery fee on any person that fails to pay amounts due and owing.

## **ANALYSIS**

### **USE TAX LINE**

*Revenue and Taxation Code Sections 6452.1, 6453, 6487.3, and 18510*

### **CURRENT LAW**

Under existing law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code, a use tax is imposed 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.

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 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).

### **PROPOSED LAW**

This bill would repeal and add Sections 6452.1, 6487.3, and 18510 of, and amend 6453 of, the Revenue and Taxation Code to reinstate the provisions that provide for the separate line on the FTB income tax returns for use tax reporting that expired on December 31, 2009.

The bill would become effective immediately, and would apply to taxable purchases made during the calendar year 2010 for which use tax was not paid to the BOE.

## 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, 2007, Eng and AB 469, 2009, Eng) were vetoed by the Governor, and the second attempt (AB 1957, 2008, Eng) failed passage in the Senate Revenue and Taxation Committee.

## COMMENTS

1. **Purpose.** The use tax line on the state income tax returns provides a simple means to both educate taxpayers and tax preparers as well as enable purchasers to voluntarily report their use tax obligations.

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, in 2008, \$9 million was reported, and in 2009, \$10 million was reported. Surprisingly, individuals report a much greater proportion of the tax than businesses (in 2009, for example, businesses only reported \$1.7 million of the total \$10 million), yet businesses contribute a greater share of the use tax gap.

Prior to the inclusion of the use tax line on the income tax returns, individuals had to read far into the Form 540 instruction booklet for information regarding the use tax. In 2002, for example, use tax instructions were on page 60 in a 68-page book. 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 provided for use tax reporting, individuals had little reason to look to the instruction booklet for use tax information.

2. **Related legislation.** AB 1618 (Committee on Budget) is an identical budget trailer bill. This year's AB 2676 (Ma) was sponsored by the BOE and also contained these provisions (and other provisions also sponsored by the BOE). However, the Governor recently vetoed that measure, stating that the most significant provisions of AB 2676 have already been addressed by the Budget Conference Committee. Thus, the Governor vetoed the bill, stating that AB 2676 is unnecessary.

**COLLECTION COST RECOVERY FEE**

*Revenue and Taxation Code Sections 6833, 9035, 11534, 30354.7, 32390, 38577, 40168, 41127.8, 43449, 45610, 46466, 50138.8, 55211, and 60495*

**CURRENT LAW**

Existing Chapter 4.3 (commencing with Section 16580) of Part 2 of Division 4 of Title 2 of the Government Code (GC), known as the Accounts Receivable Management (ARM) Act, provides that a participant, including the BOE, may have certain requirements, or be able to utilize certain methods, related to collections. Specifically, GC Section 16583.1 allows a state agency to impose a reasonable fee, not to exceed the actual costs, to recover the agency's collection costs on a past due account.

Existing law authorizes the BOE to use various collection actions to collect delinquent accounts receivables, including, but not limited to: bank levies, liens, wage garnishments, till-tap and keeper warrants, permit revocations, alcoholic beverage license suspensions, seizure and sale of assets, offsets, and court actions. The BOE's use of these tools is consistent with its established collection policies and procedures as provided in the Compliance Policy and Procedures Manual, Chapter 7, [Collections](#).

The State's procedures for collection of delinquent accounts are detailed in the State Administrative Manual (SAM) Section 8776 et seq.

Penalty relief provisions that are included in the various tax, fee, and surcharge laws in the Revenue and Taxation Code permit the BOE to provide penalty relief in those cases where the BOE finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

**PROPOSED LAW**

This bill adds Sections 6833 (Sales and Use Tax Law), 9035 (Use Fuel Tax Law), 11534 (Private Railroad Car Tax), 30354.7 (Cigarette and Tobacco Products Tax Law), 32390 (Alcoholic Beverage Tax Law), 38577 (Timber Yield Tax), 40168 (Energy Resources Surcharge Law), 41127.8 (Emergency Telephone Users Surcharge Law), 43449 (Hazardous Substances Tax Law), 45610 (Integrated Waste Management Fee Law), 46466 (Oil Spill Response, Prevention, and Administration Fees Law), 50138.8 (Underground Storage Tank Maintenance Fee Law), 55211 (Fee Collection Procedures Law), and 60495 (Diesel Fuel Tax Law), to the Revenue and Taxation Code to authorize the BOE to impose and collect a collection cost recovery fee on any person that fails to pay amounts due and owing. The collection fee shall be in an amount equal to the BOE's costs for collection, as reasonably determined by the BOE.

The fee may only be imposed if the BOE has mailed a demand notice to that person requiring payment and advising the person that continued failure to pay may result in collection action, including the addition of a collection fee. The fee is operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

Interest will not accrue on the collection fee, but the fee shall be collected in the same manner as the related unpaid tax or fee liability is collected.

The BOE may relieve the taxpayer of the fee if the BOE finds that a person's failure to pay the amount being collected is due to reasonable cause and circumstances beyond the person's control and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. Any person requesting relief from the collection fee must file a statement with the BOE, under penalty of perjury, stating the facts upon which the person bases the request for relief.

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Funds received by the BOE would be deposited into the same tax or fee fund that the revenues derived from those taxes or fees are deposited.

The measure would be effective immediately, but the collection fee would be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

#### IN GENERAL

Fees for collection of past due accounts are imposed by the Franchise Tax Board (FTB) and taxing agencies in other states. The FTB currently imposes a flat rate fee for collecting liabilities greater than \$100. As of July 2009, the fee was \$217 for individuals and \$413 for corporations.

The BOE contacted six other state taxing agencies to obtain information regarding collection fees. In general, the taxing agencies imposed a fee when a liability remained unpaid for 90-100 days. They also imposed the fee retroactively to all unpaid liabilities, and most taxing agencies have been imposing collection fees since 1988; the FTB's collection fee started in 1993.

#### BACKGROUND

Senate Bill SB4x 16 (Chapter 23, Stats. 2009), among other things, added GC Section 16583.1, which authorized state agencies to impose a fee to recover collection costs on past due liabilities.

#### COMMENTS

1. **Purpose.** This budget trailer bill is intended to provide specific authority within BOE's tax laws to collect a cost recovery fee using our normal collection actions.
2. **This bill allows the BOE to collect the fee using our normal collection actions.** Government Code Section 16583.1 allows a state agency to impose a reasonable fee, not to exceed the actual costs, to recover the collection costs on a past due account. However, there are no current provisions that allow the BOE to obtain payment of the fee through involuntary collection actions, such as liens, levies, wage garnishments, and other collection actions.

If enacted, this bill would be effective immediately, but the collection fee would be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011. The actual implementation date, amount of the fee, programming, notices, and other important administrative details would be addressed administratively by the BOE.

3. **The relief of the collection fee is similar to the current relief of penalty provisions.** As mentioned previously, taxpayers may be relieved of a penalty in those cases where the BOE finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. The BOE would administer a request for relief from the collection fee in a manner that is consistent with the current relief of penalty provisions.

**COST ESTIMATE**

The BOE's administrative costs associated with **use tax line** are commensurate with the number of returns filed with FTB (currently the BOE incurs personnel costs for collecting the unpaid use tax reported on the FTB returns, refunding use tax reported in error, answering questions from taxpayers about the use tax, and allocating the local and district taxes included in the tax reported on the FTB returns). However, we anticipate that the additional revenue would substantially exceed the additional costs.

Since the line was incorporated into the FTB returns, the BOE has reimbursed FTB for associated costs, as follows:

2003-04	\$1,007,316
2004-05	237,038
2005-06	239,458
2006-07	198,649*
2007-08	118,859*
2008-09	116,593*
2009-10	156,652*

\*This decrease is attributable to the FTB's cost of printing the tax information booklets that accompany the tax returns it mails. The BOE shares in that cost because the booklets contain information about use tax. The decrease in printing cost is due to the success of FTB's e-file program (printed tax booklets are not mailed for these filers).

Costs associated with the **collection cost recovery fee** are contingent on the BOE adopting and implementing a cost recovery fee. Costs would include programming changes, increased taxpayer collection notices, and additional staff to respond to taxpayer inquiries. The BOE's administrative costs associated with the implementation of a collection cost recovery fee is estimated at \$225,000 for fiscal year (FY) 2010-11, and \$218,000 for FY 2011-12 and ongoing.

**REVENUE ESTIMATE**

**Use Tax Line.** The state and local sales and use tax revenue increase associated with the provisions related to elimination of the sunset date of the use tax line on the state income tax returns is estimated to be at least \$10 million annually.

**Cost Recovery Fee.** This bill does not impose a specific fee, but allows the BOE the ability to establish a reasonable recovery fee and collect that fee using normal collection actions. As such, the revenues associated with the collection cost recovery fee are contingent on the BOE adopting and implementing a cost recovery fee.

Information from an [informal issue paper](#) discussed at the BOE's May 26, 2010, public hearing provided options to assess such a fee on past due liabilities. For the purpose of determining a degree of impact, assuming the BOE assessed a flat-rate fee of \$345 to be applied to liabilities greater than \$250 that remain unpaid for more than 90 days, beginning April 2011, this measure would result in increased revenues of \$4.8 million in FY 2010-11, and approximately \$18 million in FY 2011-12.

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