



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	<b>02/22/05</b>	Bill No:	<b>AB 1692</b>
Tax:	<b>Sales and Use Tax</b>	Author:	<b>J. Horton</b>
Related Bills:			

### BILL SUMMARY

This bill would allow a retailer, as an offset against his or her sales and use tax liability, a sales and use tax remittance fee of 2% of the sales and use tax remitted as reimbursement for the retailer's costs in complying with the sales and use tax laws.

### ANALYSIS

#### Current Law

Existing law imposes a sales tax on retailers for the privilege of selling tangible personal property at retail. In general, every person, firm, partnership, corporation, etc., engaging in the business of selling tangible personal property that is subject to the tax when sold at retail is required to apply to the Board for a seller's permit.

Under the law, holders of seller's permits are required to file returns with the Board reporting their gross receipts and the amount of tax due. Depending on the amount of tax that is estimated to be due, return periods will generally consist of either calendar quarters, calendar months, calendar years, or fiscal years. Current law provides that the taxes and returns are due to the Board on or before the last day of the month following each reporting period.

Current law provides no "carrots" for a retailer's timely filing of returns and remitting taxes due. The law only provides "sticks" for a retailer's failure to do so. Under the law, any person who fails to pay any tax to the state within the required time period is liable for a penalty of 10 percent of the tax due, plus interest. Also, any person who fails to file a return within the required time period is liable for a 10 percent penalty of the amount of taxes due. These penalties are limited to a maximum of 10 percent, so if a person fails to timely remit the taxes due and also fails to file the required return, the taxpayer is assessed only one 10 percent penalty.

The law does provide for relief of these penalties, if the Board finds that a person's failure to timely file the return or pay the amount due is due to reasonable cause and circumstances beyond the person's control.

#### Proposed Law

This bill would add Section 6458 to the Revenue and Taxation Code to provide that there shall be allowed a sales and use tax remittance fee of 2 percent of the state sales and use taxes collected and remitted by retailers, to be offset against a retailer's tax liability as reimbursement for the retailer's expenses incurred in the collection, remittance, and reporting of the sales and use taxes.

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*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 Board's formal position.*

This bill provides that the remittance fee shall only be allowed to a retailer that timely files a return, together with a remittance of the total amount due in accordance with the law. However, the bill further provides that if a retailer fails to do so, and that retailer's failure is due to reasonable cause, the fee shall be allowed.

The bill would specify that the remittance fee shall be allowed for reporting periods beginning on and after January 1, 2006.

### **Background**

Of the 46 states and the District of Columbia that impose a sales and use tax, 28 of these provide taxpayers with a credit or discount. Currently, California is one of 18 states that does not provide any reimbursement to compensate taxpayers for collecting and remitting sales and use taxes in a timely manner.

Two previous measures were considered by the Legislature to provide a remittance fee to *new* retailers. AB 2802 (J. Horton, 2003-04), as amended May 5, 2004, would have provided new retailers with a one percent credit for the first 12 months of operations, up to a maximum discount of \$550. The measure was held in the Assembly Appropriations Committee. A similar measure, Assembly Bill 1936 (J. Horton, 2001-02), introduced during the 2002 Legislative Session, contained similar provisions. These provisions were removed from the bill when the bill was amended on May 23, 2002.

### **COMMENTS**

1. **Sponsor and purpose.** This bill is sponsored by Board Members Claude Parrish and Bill Leonard. The purpose of this bill is to encourage compliance by providing an economic incentive for businesses to timely file the sales and use tax return and remit the proper amount of tax due.
2. **Offset allowed against state rate only.** The proposed offset would be calculated based on 2 percent of the state tax rate. The state tax rate is currently 5.25 percent.
3. **Benefits for the state.** Providing an offset for taxpayers can have many benefits for the state. The financial incentive would partially offset the cost for taxpayers to file their tax returns, creating a sense of goodwill between the Board and taxpayers. For certain types of sales a remittance fee may provide a sufficient incentive to improve taxpayer compliance, resulting in additional reporting of taxable sales. One state we contacted, the South Carolina Department of Revenue, mentioned that they believe their vendor discount program encourages the timely filing and payment of the sales tax and it also promotes voluntary compliance. Unfortunately, South Carolina staff told us that they did not have statistical data to support this conclusion.
4. **Technical amendment.** On page 2, line 8, "62001.5" should be replaced with "6201.5."

### **COST ESTIMATE**

Administrative costs would be incurred in notifying retailers, making necessary program changes for the fee, revising returns, and processing an expected increase in errors on returns in calculating the remittance fee. A detailed cost estimate is pending.

### **REVENUE ESTIMATE**

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### Background, Methodology, and Assumptions

In fiscal year 2003-04 state tax revenues were \$24,064.8 million. With the "Triple Flip" now in effect, the state rate increased from 5.0 percent in fiscal year 2003-04 to 5.25 percent in 2004-05. This is a 5 percent increase in the state rate ( $.0525 / .05 = .05$ ). Therefore, at a state rate of 5.25 percent, FY 2003-04 revenues would have been \$25,268.0 million (5 percent higher than actual revenues).

According to the January 2005 *Governor's Budget*, Finance expects taxable sales to increase 5.7 percent in 2005, and another 5.6 percent in 2006. Applying these growth rates implies state revenues of \$26,708.3 million in FY 2004-05 and \$28,204.0 million in FY 2005-06. For purposes of revenue estimation, we assume no further growth and that half-year impacts are 50 percent of complete year impacts.

For certain types of sales a vendor discount may provide a sufficient incentive to improve taxpayer compliance, resulting in additional reporting of taxable sales. However, the revenues from compliance improvement are impossible to accurately estimate. Two unknown figures would need to be estimated: (1) noncompliance revenues from current taxpayer practices that potentially could become reported under the proposal, and (2) the percentages of such noncompliance revenues that taxpayers would be likely to pay under the proposal.

### Revenue Summary

The total ongoing annual cost of the proposal would be approximately \$564.1 million in reduced revenues ( $\$28,204.0 \text{ million} \times 0.02 = \$564.1 \text{ million}$ ). Since the law takes effect January 1, 2006, the cost would be half of this amount, or \$282.0 million, in fiscal year 2005-06.

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