



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

Date Amended:	05/27/05	Bill No:	SB 801
Tax:	Sales and Use Tax	Author:	Simitian
Related Bills:			

BILL SUMMARY

This bill would make it voluntary, for a retailer that has only one retail location in this state with an estimated measure of tax of not less than \$1,400 and not more than \$4,000 per month to file a sales and use tax return on a calendar year basis and to make quarterly prepayments, upon approval by the Board, as specified.

Summary of Amendments

Since the previous analysis, this bill was amended to reduce the estimated monthly measure of tax from \$16,999 to \$4,000, and to incorporate Board suggested amendments. These amendments are: (1) requires a retailer to submit a written request to the Board to file on a calendar year basis and to make quarterly prepayments; (2) authorizes the Board to approve the retailer's request in writing; (3) provides that, if the Board deems it necessary, may require any retailer filing annual returns pursuant to this section, to file returns on a quarterly basis; and (4) makes nonsubstantive, technical amendments.

ANALYSIS

Current Law

In general, under existing law, sales and use taxes are due and payable to the state on a quarterly basis, no later than the last day of the month following the end of the quarter. For example, applicable tax on sales made between January 1 through March 31 must be remitted to the Board on or before April 30.

Under existing law, taxpayers may be required, upon notification by the Board, to file returns on a monthly, calendar year, or fiscal year basis. The Board has established guidelines for placing taxpayers on a monthly, calendar year, or a fiscal year basis. If a taxpayer has a prior history of late payments and other collection problems, and the taxpayers estimated sales and use tax is between \$301 to \$1,200 per month, a taxpayer may be placed on a monthly basis. If a taxpayer's estimated sales and use tax is between \$0 to \$100 per month, a taxpayer may be placed on an annual reporting basis.

If a taxpayer's estimated measure of tax liability averages \$17,000 or more per month, the taxpayer is required to report his or her tax liability on a quarterly basis, with two prepayments required within each quarter. For the first, third, and fourth calendar quarters, the first prepayment is due on or before the 24th day of the month following the

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first month of the quarter. The second prepayment is due on or before the 24th day of the month following the second month of the quarter.

For those required to make prepayments, they must pay not less than 90 percent of the their combined state and local sales and use tax liability for that month. For example, in the first quarter, 90 percent of January's tax liability is due by February 24, and 90 percent of February's tax liability is due by March 24. There is no prepayment for the last month of the quarter, because the tax liability for March, plus the remaining 10 percent tax liability for January and February, is due by April 30.

Alternatively, a taxpayer may elect to estimate their quarterly prepayment. If the taxpayer or their predecessor was engaged in the same business during all of the corresponding quarterly periods of the preceding year, they can make prepayments of one-third of the amount subject to tax for that same quarter in the previous year multiplied by the current tax rate.

Different requirements apply to the second calendar quarter in order to accelerate the collection of tax revenue before the start of the new fiscal year on July 1. For the second quarter, the first prepayment is due on or May 24, like other prepayment months. However, the second prepayment, due on or before June 24, is for the period of May 1 through June 15 and must be one of the following amounts: (1) an amount equal to 135 percent of the tax liability for May; (2) equal to 90 percent of the tax liability for May plus 90 percent of the tax liability for the first 15 days of June; or (3) not less than one-half of the measure of tax liability reported for the corresponding quarterly period of the preceding year multiplied by the tax rate in effect when prepayment is made, provided the taxpayer or their predecessor was in business during all of the quarter.

Proposed Law

This bill amends Sections 6476 and 6701 of, and adds Sections 6452.2 and 6471.1 to, the Sales and Use Tax Law to require a retailer, as specified, to file a sales and use tax return on a calendar year basis and to make quarterly prepayments. The provisions of this bill would apply to a retailer that meets all of the following conditions:

- 1) Retailer submits a written request to the Board to file returns pursuant to Section 6452.2 and to make prepayments pursuant to Section 6471.1;
- 2) Board approves the retailer's request and issues a written notification to that retailer;
- 3) Retailer's estimated measure of tax averages not less than \$1,400 and not more than \$4,000 per month;
- 4) Retailer has only one business location in this state that is engaged in making retail sales of tangible personal property;
- 5) Retailer was engaged in the same business during the entire preceding calendar year, or the retailer was a successor to a business that was in operation during the entire preceding calendar year.

This bill would also do the following:

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- Provide that the quarterly prepayments be in an amount equal to the gross receipts for the corresponding calendar quarter in the previous year, multiplied by the state and local tax rate in effect during the calendar quarter for which the prepayment is made or would be in an amount equal to the state and local tax liability for the quarterly period for which the prepayment is due.
- Provide that the specified retailer would continue to file returns as required by these sections until otherwise notified by the Board.
- Authorize the Board, if it deems necessary for efficient administration, by written notice, require any retailer filing a return pursuant to Section 6452.2, to file quarterly returns pursuant to Section 6452.
- Prohibit any person required to make prepayments pursuant to Article 1.5 (Section 6480) or to any other person for which the Board determines that the remittance of prepayments pursuant to Section 6471.1 would not be in the best interests of the state.
- Impose a 6 percent penalty for failure to file a timely prepayment.
- Authorize the Board, if it deems necessary to ensure compliance with this part, to require the specified retailer to post security.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author. According to the author's staff, at a contest titled "There Oughta Be a Law," several constituents stated that it would be much easier and save time to file an annual tax return and make quarterly prepayments. The constituents stated that the sales and use tax return is complicated and time-consuming to fill out. It would be much easier if they could file a return once a year, but make quarterly prepayments and pay the taxes due.
2. **Summary of amendments.** The **May 27, 2005 amendments** would do the following: (1) provides that a retailer, as specified, must have an average monthly measure of tax of *not more than \$4,000*; (2) requires a retailer to submit a written request to the Board to file on a calendar year basis and to make quarterly prepayments; (3) authorizes the Board to approve the retailer's request in writing; (4) provides that, if the Board deems it necessary, may require any retailer filing returns pursuant to Section 6452.2 and making prepayments pursuant to Section 6471.1, to file quarterly returns pursuant to Section 6452; and (5) makes nonsubstantive, technical amendments. The **April 20, 2005 amendments** addressed concerns raised in the previous Board staff analysis. These technical amendments are: (1) extend the prepayment penalty application to the retailers described in this bill; (2) provide that the prepayments would be based on amounts reported from the same quarter in the prior calendar year or would be based on *amounts for the current quarterly period for which the prepayment is due*; (3) authorize the Board to require the retailers described in this bill to post security if the Board deems it necessary, as specified; and (4) provide that a retailer described in this bill would continue to file returns as required until otherwise notified by the Board. The **March 29, 2005 amendments** require a retailer who has only one location in this state that has an

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estimated monthly measure of tax of not less than \$1,400 and not more than \$16,999, to file a sales and use tax return on a calendar year basis and to make quarterly prepayments. Under the introduced version of the bill, these provisions were voluntary.

- 3. Difficult to determine the number of eligible retailers who would request to file on this new reporting basis.** This bill authorizes a retailer that meets the following conditions to file returns on a calendar year basis and to make quarterly prepayments. Those conditions are: (1) retailer submits a written request to the Board; (2) Board approves retailer's request in writing; (3) retailer's estimated measure of tax would not be less than \$1,400 and not more than \$4,000; (4) retailer has only one location in this state; and (5) retailer must have been engaged in business during the entire preceding calendar year, or a successor to a business that was in operation during the entire preceding calendar year.

Using data for the calendar year 2003, Board staff prepared a preliminary estimate of 59,041 retailers that might be eligible to report on this new reporting basis. The 59,041 eligible retailers do not take into account the retailers payment history. The main criterion for approval to file on this new reporting basis would be whether the retailer has filed and paid their sales and use tax returns on time.

In addition, the provisions of this bill would not apply to retailers who pay prepayments on their purchases of motor vehicle fuel. These retailers are required to file a quarterly return, including the filing of a Schedule G (see Comment 5). There are approximately 2,000 retailers subject to these prepayments and required to file on a quarterly basis.

The following table provides an estimate of the total number of potential eligible retailers, including the amount of taxable measure, state tax, and Bradley-Burns 1 percent local tax:

*Estimated eligible retailers	Total taxable measure	Total state tax (6.25 percent)	Local tax (1 percent)
59,041	\$1,804,849,287	\$142,944,064	\$18,048,493

*Estimated total number of eligible retailers includes approximately 2,000 accounts that would not be allowed to report on this new reporting basis (i.e., retailers subject to prepayment of sales tax on motor vehicle fuel).

The 57,041 (59,041 – 2,000) potential eligible retailers does not take into account those retailers that the Board would not approve due to a poor payment history. Also, the provisions of this bill allow the Board to exclude other retailers where the Board determines it is in the best interests of the state to exclude these retailers from filing on an annual basis. Also, this bill is voluntary. Some retailers would choose to continue reporting on a quarterly basis. Based on these reasons, it is

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difficult to determine the number of retailers that would actually change to this new reporting basis.

- 4. A number of eligible retailers' use the Board's easy "EZ" Sales and Use Tax Short Form return.** Many of the eligible retailers in this bill already use an "EZ" return (see attachment) to report their sales and use taxes. The Board designed this return for the purpose of finding an easier way for retailers to report their sales taxes. The return is only one page and contains separate lines for reporting the following information: total sales, purchases subject to use tax, a total of five of the most common exemptions, and the total amount of sales and use tax. A tax rate is printed on the return that is applicable for the retailer's business location.

In order to file an EZ return, a retailer must have either a single location or multiple locations that share the same master seller's permit number and are in the same local jurisdiction. There are no local or district tax schedules to be filed with an EZ return.

Because the EZ return is fairly simple to complete, some of retailers that might be eligible to file on this new annual reporting basis, may choose to keep reporting on a quarterly basis using the EZ return. It should be noted that if a retailer did elect to file on this new annual basis, the retailer might have to file the long form - Sales and Use Tax Return.

- 5. Certain retailers would not be allowed to file returns on this new annual reporting basis.** This bill would exclude retailers (e.g., service station operators) required to make prepayments of sales tax on their purchases of motor vehicle fuel. These retailers claim a credit for the precollected sales tax paid to their suppliers on their sales and use tax return. The sales and use tax return includes a Schedule G. To ensure that tax credits have been properly claimed, the Board routinely compares the amounts claimed by retailers on their Schedule G returns to the sales reported on the "SG" returns filed by their suppliers and wholesalers. By excluding this group from filing on an annual basis, the Board can continue to do a quarterly reconciliation of the precollected sales tax on fuel.

This bill also provides that the Board, if it deems necessary, can exclude other type of retailers from filing on an annual basis. Construction contractors, vending machine operators, and auctioneers who conduct business activities in multiple jurisdictions are required to allocate the local tax among the counties on Schedule B of the sales and use tax return. The Board might consider it in the best interests of the state to exclude these retailers from filing on an annual basis. This way the local taxes would continue to be allocated to the jurisdictions on a quarterly, rather than an annual basis.

- 6. If eligible retailer approved to report on new annual basis, Board has authority to change retailer back to quarterly basis.** This bill would authorize the Board, if it deems it necessary for efficient tax administration, by written notice, to change a retailer from an annual to a quarterly reporting basis. In other words, if a retailer was approved to file returns on an annual basis and make quarterly prepayments, but the retailer was not filing and paying his or her prepayments on time, the Board could, in writing, require the retailer to file returns on a quarterly basis.

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7. **Board must approve retailer's request.** In approving a retailer's request the Board would mainly look at whether the retailer has filed and paid his or her sales and use tax returns on time. A retailer with a history of delinquencies or accounts receivable more than likely would not be approved.
8. **Technical amendment.** Section 6471.1 provides that the *retailer's estimated measure of liability* must be an average of not less than \$1,400 and not more than \$4,000 per month. Section 6471 provides that any person whose *estimated measure of tax liability* averages \$17,000 or more per month is required to file prepayments, as specified. For consistency, Board staff recommends that the language in Section 6471.1 (i.e., insertion of the word "tax") match the language in Section 6471.
9. **Prepayment forms are easier to process than sales and use tax returns.** On a prepayment form, there are only two lines of information that need completing. On a sales and use tax return, there are over 25 lines of information that must be filled out, in addition to completing any supplemental schedules for the allocation of local and district taxes. Consequently, it takes a lot less time to key in a prepayment form than it does to key in a sales and use tax return and any local and district tax schedules.
10. **Allocations of local and district tax.** As previously stated, the prepayment form has only two lines of information: the total amount of tax (state, local, and district) and penalty (6% penalty applies if tax prepayment or prepayment form is filed after the due date). Because the amount of tax reported on the prepayment form is a combined amount, the Board will not know the actual allocation of local and district taxes until the taxpayer files their sales and use tax return. For quarterly and prepayment filers, the Board does not allocate the local and district taxes until it receives the taxpayer's quarterly sales and use tax return. The Board's computer system is designed to allocate from the sales and use tax return, and, in order to allocate the revenues to the individual jurisdictions, must have both the taxable measure amount, as well as the amount of county, local, and district tax.

Additionally, the provisions of this bill apply to retailers with one retail location in California. As such, many of these retailers are not required to file a Schedule C – *Detailed Allocation By Suboutlet of Uniform Local Sales and Use Tax*. However, if the retailer is a "special seller," such as a vending machine operator or a construction contractor, the retailer could be required to file a Schedule B – *Detailed Allocation By County of Combined State and Uniform Local Sales and Use Tax*. Additionally, the retailer could possibly be engaged in business in various special taxing districts and required to collect the district tax for those areas. For example, retailers using their own delivery vehicles to deliver merchandise into a district, must collect the applicable district tax for that special tax district. The Board allocates the district tax based on the retailer's Schedule A – *Computation Schedule For District Tax*. The Schedule A provides a breakdown of the district tax to the various special district tax areas.

As previously stated, the Board will not know the actual allocation of local and district taxes until the taxpayer files their sales and use tax return along with their district tax schedule. Consequently, the local and district taxes will be distributed to the local jurisdictions on a calendar year basis, rather than a quarterly basis.

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Board staff is currently preparing a report that would provide a number of eligible accounts using 2004 calendar year data and would also show the local tax dollar impact to the individual jurisdictions.

COST ESTIMATE

Some costs would be incurred in notifying affected retailers, evaluating and approving written requests, registering new accounts, revising forms and publications, programming, and answering inquiries from the public. A detailed cost estimate is pending.

REVENUE ESTIMATE

This bill would not impact state's revenues. However, to the extent that the retailer's tax liability for the corresponding quarterly period for the previous year is more or less than the current year quarterly period, there may be an increase or decrease in the amount of tax reported on the prepayment form. For example, if a taxpayer's tax liability for the second quarter 2005 is \$250, but the taxpayer's tax liability for the second quarter 2006 is \$350, the amount reported for the quarterly prepayment would be \$100 less than the actual tax amount for the current year quarter (\$350 - \$250). This \$100 timing difference would be reported and paid at the time the taxpayer files their sales and use tax return at the end of the calendar year.

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INSTRUCTIONS - STATE, LOCAL, AND DISTRICT SALES AND USE TAX RETURN (BOE-401-EZ)

E-Filing. If you are a single-outlet retailer and file a BOE-401-EZ return, you may be eligible to make your payment and file your return on line. For more information, go to www.boe.ca.gov and click on "Electronic Services."

Credit Card Payments. You can use a Discover/Novus, MasterCard or American Express credit card to pay your taxes. Other credit cards cannot be accepted. Credit card payments can be made by calling 800-272-9829 or through our website at www.boe.ca.gov under "Electronic Services." After authorizing your payment, check the box on your return indicating you have paid with a credit card. **Be sure to sign and mail your return.**

Line 1. Total (Gross) Sales. Enter total sales in any manner related to California business.

Line 2. Purchases Subject to Use Tax. Enter the purchase price of merchandise, equipment, or other tangible personal property which you purchased without paying California sales or use tax and which you used for purposes other than resale in the regular course of business. The purchase may have been made without payment of tax because you used a resale or other exemption certificate to make the purchase; you purchased from an out-of-state retailer who did not collect California use tax; or you made a purchase from an unlicensed retailer, such as a person making an occasional sale of a vessel or an aircraft.

Line 3. Total. Enter total of lines 1 and 2.

Line 4. Sales to Other Retailers for Resale. Enter sales to other sellers from whom you have taken valid resale certificates. (See Regulation 1668.)

Line 5. Nontaxable Sales of Food Products. Enter all sales of food products for human consumption. Do not enter sales of alcoholic or carbonated beverages, hot prepared food products, meals or food served by you for consumption at your facilities, and food sold for consumption in a place which is subject to an admission charge. (See Regulations 1602 and 1603. Vending machine operators should refer to Regulation 1574.)

Note: If you are claiming a deduction for sales of food products by the **purchase ratio** method, you must maintain a complete analysis of taxable and nontaxable purchases.

Line 6. Nontaxable Labor. Enter sales included in line 1 that constitute labor charges for installing or applying property or for repairs or reconditioning of tangible personal property to refit it for the use for which it was originally produced. Do not include charges for fabricating or processing personal property for consumers. (See Regulation 1546.)

Line 7. Sales to the United States Government. Enter sales to: (1) the United States or its unincorporated agencies and instrumentalities such as, Treasury, Interior, Agriculture, Defense; (2) any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States; (3) the American Red Cross, its chapters and branches; (4) incorporated federal instrumentalities not wholly owned by the United States, such as, federal reserve banks, federal credit unions, federal land banks, and federal home loan banks. (See Regulation 1614.)

Line 8. Sales in Interstate or Foreign Commerce. Enter sales involving shipments or deliveries from California to points outside this state that are exempt from tax as interstate or foreign commerce. To be exempt, property must be shipped to a point outside this state, pursuant to the contract of sale, and delivered by the retailer to such point by means of: (1) facilities operated by the retailer; (2) delivery by the retailer to a carrier for shipment to a consignee at such a point; or (3) delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. (See Regulation 1620.)

Line 9. Sales Tax. Enter sales tax reimbursement or use tax collected from customers if those taxes were included in the amount shown on line 1. (See Regulation 1700.)

Notes: If you have exempt transactions other than the ones listed that occurred during the reporting period, you should contact your local Board office for a form that can be used to report those deductions. Do not use this form.

Line 10. Total Exempt Transactions. Add lines 4 through 9 and enter the total of exempt transactions on line 10.

Line 11. Taxable Transactions. Subtract the amount on line 10 from line 3 and enter the remainder on line 11.

Line 12. Total Sales and Use Tax. Multiply line 11 by the tax rate printed for your business location. Enter the result on line 12.

Line 13. Penalty. If your tax payment is made, or your tax return is filed, after the due date shown at the top of the return, you must pay a 10% penalty. Multiply line 12 by .10 and enter the result on line 13.

Returns and payments must be postmarked or received by the due date of the return to be considered timely. If the due date falls on a Saturday, Sunday, or state holiday, returns postmarked or received by the next business day will be considered timely. If you will be filing your return late, you may qualify for an extension. To request an extension, you will need to complete form BOE-468, Request for Extension of Time to File. You may request a copy of the form by calling 800-400-7115. You can also download a copy from our website at www.boe.ca.gov under "Forms and Publications."

Line 14. Interest. If your payment is made after the due date shown at the top of your return, you will owe one month's interest for each month or fraction of a month that payment is delayed after the due date. The adjusted monthly interest rate is indicated on line 14 of your return. To calculate the interest due, multiply the amount on line 12 by the monthly interest rate shown on line 14, then multiply by the number of months (or fraction of a month) payment is delayed. Enter the amount of line 14.

Line 15. Total Amount Due and Payable. Add lines 12, 13, and 14. Enter the total on line 15.

To Mail Your Return

Make your check or money order payable to the "State Board of Equalization." Always write your account number on your check or money order. Mail your return and payment in the envelope provided, making sure the Board's address shows through the window.

General questions: Call our Information Center at 800-400-7115.

SALES AND USE TAX PREPAYMENT FORM

DUE ON OR BEFORE	
[FOID]	YOUR ACCOUNT NO.

BOARD USE ONLY		
RA-TT	LOC	REG
RA-BTR	AACS	REF
EFF		

BOARD OF EQUALIZATION
PO BOX 942879
SACRAMENTO CA 94279-0001

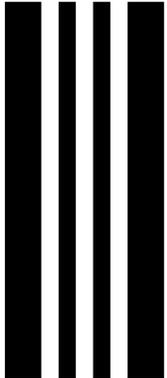
If the above information is incorrect or your business has closed, please phone us at:

WHEN TO FILE - You are required to submit two prepayment forms each quarter. The due date for this form is printed above. To avoid penalty, please complete this form and return it prior to due date shown. The prepayment form should be filed even if you have no tax to report. If you will be filing your return late, you may qualify for an extension. To request an extension, you will need to complete form BOE-468, Request for Extension of Time to File. You may request a copy of the form by calling 1-800-400-7115. You can also download a copy from our website at www.boe.ca.gov under "Forms and Publications."

PENALTIES - Failure to make payment by the due date will subject you to a penalty of 6 percent of the tax due. This penalty should be reported on Line 2 below and paid with this form.

If the failure to make payment by the due date is found to be due to negligence or intentional disregard of the Sales and Use Tax Law or authorized rules and regulations, you will be subject to a penalty of 10 percent instead of 6 percent. If there is any deficiency in the amount of this payment that is found to be due to negligence or intentional disregard of the Sales and Use Tax Law or authorized rules and regulations, you will be subject to a penalty of 10 percent of the deficiency.

CREDIT FOR PAYMENT ON QUARTERLY RETURN - The amount of prepayment (Line 1) should be shown as a credit in the space provided in your quarterly tax return. This credit is limited to the amount of tax prepaid and should NOT include any payment of penalties.



REC NO

PAYMENT OPTIONS (check one box only)

- Option 1. Pay at least 90 percent of state, local, and district tax liability for the month printed above.
- Option 2. Pay an amount equal to one-third (1/3) of the amount subject to the tax in the previous corresponding quarter multiplied by the combined state, local, and district tax rate in effect for the month for which this payment is made.

This payment is based on the corresponding quarter for the previous year. You may use this option only if you or your predecessor were in business during the entire quarter of the previous year.

1. Amount of Prepayment	\$ _____	.00	
(Enter "None" if you have nothing to report)			
2. Add 6% penalty if paid after the due date	\$ _____	.00	
3. Total Payment	\$ _____	.00	

ROUND
CENTS TO
NEAREST
WHOLE
DOLLAR

You can use your Discover/Novus, MasterCard, or American Express credit card to pay your taxes. Call 1-800-272-9829 or visit our website at www.boe.ca.gov under "Electronic Services".

IF YOU PAID BY CREDIT CARD, CHECK HERE []

Make check or money order payable to State Board of Equalization.
Always write your account number on your check or money order.

PM

RE

PRINT/TYPE NAME AND TITLE	SIGNATURE	PHONE NUMBER ()	DATE	
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