



**STATE BOARD OF EQUALIZATION**

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**STATE BOARD OF EQUALIZATION  
Notice of Stakeholders' Meeting**

**Honorable Jerome Horton, Chairman  
Honorable Michelle Steel, Vice Chair**

<b>Date</b>	<b>Time</b>	<b>Location</b>
<b>October 18, 2011</b>	<b>1:30 pm – 4:00 pm</b>	<b>450 N Street, Room 122, Sacramento</b>

State Board of Equalization (BOE) Sales and Use Tax Department invites you to attend a stakeholders meeting to discuss legislative proposals the Board may consider for next year's legislative session. These proposals have not yet been approved by the Board Members. The proposals may be presented for consideration at a future Board of Equalization Legislative Committee meeting. However, before the proposals are presented at the Legislative Committee meeting, we would like to provide stakeholders an opportunity to discuss the issues and present any suggested changes or comments.

If you would like to participate by teleconference, call (877) 581-9247 and use participant pass code 314904.

**Contact**

Mr. Brad Miller at [brad.miller@boe.ca.gov](mailto:brad.miller@boe.ca.gov) or at (916) 319-9924.

If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to email your comments to Mr. Miller prior to October 14, 2011. Whether or not you are able to attend the stakeholders meeting, you may submit written comments by October 28, 2011.

If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting.

The meeting location is accessible to people with disabilities. Please contact Mr. Miller if you require special assistance.

This notice is available on the BOE website at <http://www.boe.ca.gov/info/calendar.htm> and <http://www.boe.ca.gov>.

Jeffrey L. McGuire, Deputy Director  
Sales and Use Tax Department

Margaret S. Shedd  
Legislative and Research Division Chief

**Amend Sections 5027 and 22255 of the Business and Profession Code to require CPA's and tax preparers that complete income and/or sales tax returns to complete a specified number of hours of their required continuing education in the Sales and Use Tax Law.**

**Source: Sales and Use Tax Department**

**Existing Law**

Under specified provisions of the Business and Professions Code, the California Board of Accountancy (CBA) is charged with regulating the accounting profession for the public interest by establishing and maintaining entry standards of qualification and conduct within the accounting profession, primarily through its authority to license. Under these provisions, the CBA, among other things, certifies, licenses, and renews licenses of individual CPAs and PAs, sets continuing education requirements, and monitors compliance with those requirements. Such licensees are required to comply with continuing education requirements adopted by the CBA as a prerequisite to the renewal of their licenses.

The California Tax Education Council (CTEC) is the organization that registers "tax preparers," the second largest segment of tax preparation professionals serving California. Anyone who, for a fee, assists with or prepares a state or federal income tax return, excluding CPAs, attorneys and enrolled agents or their employees, must be registered with CTEC.

The CTEC is charged with providing a list of approved curriculum providers, approving providers of tax education, and verifying and registering tax preparers who must obtain a bond.

Under the law, neither the CBA or the CTEC require that the continuing education requirements of CPAs, PAs, or tax preparers include training in the area of the Sales and Use Tax Law.

Under the existing Use Tax 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. The use tax is the same rate as the sales tax and is required to be remitted to the Board on or before the last day of the month following the quarterly period in which the purchase was made, or to the FTB via the income tax return. A use tax liability is most commonly a result of a California consumer or business making a purchase of an item for its own use from an out-of-state retailer that is not registered with the Board to collect the use tax.

**This Proposal**

This proposal would amend the Business and Professions Code to do the following:

- Amend Section 5027 to require a licensee who renews his or her CPA or PA license after January 1, 2013 to complete a minimum of four hours of the required continuing education training in the Sales and Use Tax Law, as specified.

- Amend Section 22255 to require a tax preparer to demonstrate that he or she has, among other things, completed at least four hours of instruction in the Sales and Use Tax Law by an approved curriculum provider, as specified, and, with regard to continuing education, require a tax preparer to complete two hours in education in the Sales and Use Tax Law annually.

### **Background**

The collection of use tax relies heavily on the voluntary compliance of purchasers of tangible personal property. However, due to the general misconception that purchases from outside this state are "tax free" and that audit resources are insufficient to pursue all purchasers, the voluntary compliance rate has been very low. Untaxed purchases from out-of-state retailers is the largest area of non-compliance the Board's audit staff encounters.

The Board is the state agency responsible for administering the provisions of the use tax. However, in an effort to increase voluntary compliance by purchasers not registered with the Board, legislation enacted in 2003, SB 1009, (Alpert, Ch. 718) required the FTB to add a line to the state's income tax forms allowing taxpayers to self report their use tax liabilities to the FTB. Recent legislation (SB 86, Ch. 14) has further simplified use tax reporting by allowing certain purchasers to use a "look-up table" for calculating the use tax liability to report on the income tax return filed with FTB.

This proposal addresses continuing education requirements for CPAs and registered tax preparers only and would not apply to enrolled agents or attorneys. There are approximately 54,000 licensed CPAs and 24,000 registered tax preparers in this state. However, there are less than 1,000 enrolled agents in California. Therefore, the continuing education requirements contained in this proposal would apply to a very large percentage of professionals who prepare and file tax returns.

*Section 5027 of the Business and Professions Code is amended to read as follows:*

5027. The board shall by regulation prescribe, amend, or repeal rules including, but not limited to, all of the following:

- (a) A definition of basic requirements for continuing education.
- (b) A licensee who plans, directs, or approves any financial or compliance audit report on any governmental agency shall complete a minimum of 24 hours of qualifying continuing education in the area of governmental accounting and auditing or related subjects during the two-year license renewal period.
- (c) A licensee who provides audit, review, other attestation services, or issues compiled financial statement reports shall, during the two-year license renewal period, complete a minimum of 24 hours of qualifying continuing education in the area of accounting and auditing related to reporting on financial statements.
- (d) A licensee with a valid permit to practice public accountancy shall, within a six-year period, complete a continuing education course on the provisions of this chapter and the rules of professional conduct.

(e) A licensee who renews his or her license after January 1, 2013, shall complete a minimum of four hours of required continuing education training in the Sales and Use Tax Law, as set forth in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(f) ~~(e)~~ A licensee on inactive status shall complete the continuing education course required by subdivision (d) prior to reentering public practice.

(g) ~~(f)~~ A delineation of qualifying programs for maintaining competency.

(h) ~~(g)~~ A system of control and compliance reporting.

In exercising its power under this section for the interests of consumer protection, the board shall establish standards which will assure reasonable currency of knowledge as a basis for a high standard of practice by licensees. The standards shall be established in a manner to assure that a variety of alternatives are available to licensees to comply with the continuing education requirements for renewal of licenses and taking cognizance of specialized areas of practice.

*Section 22255 of the Business and Professions Code is amended to read as follows:*

22255. (a) The council shall issue a "certificate of completion" to the tax preparer when the tax preparer demonstrates that he or she has (1) completed not less than 60 hours of instruction in basic personal income tax law, theory, and practice by an approved curriculum provider within the previous 18 months; and (2) completed not less than four hours of instruction in the Sales and Use Tax Law, as set forth in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, by an approved curriculum provider within the previous 18 months, and (3) provides evidence of compliance with the bonding requirement of Section 22250, including the name of the surety company, the bond number, and the bond expiration date. Of the required 60 hours, 45 hours shall be concerned with federal tax curriculum and 15 hours shall be concerned with state tax curriculum.

(b) A tax preparer shall complete on an annual basis not less than 22 ~~20~~ hours of continuing education, including 12 hours in federal taxation, four hours in California taxation, two hours in the Sales and Use Tax Law, as set forth in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, and ~~an additional~~ four hours in either federal or California taxation from an approved curriculum provider. The council shall issue annually a "statement of compliance" when the tax preparer demonstrates that he or she has (1) completed the required 20 hours of continuing education, and (2) provides evidence of compliance with the bonding requirement of Section 22250, including the name of the surety company, the bond number, and the bond expiration date.

(c) An individual who possesses a minimum of two recent years experience in the preparation of personal income tax returns may petition the council to review the experience and determine if it is the equivalent of the required qualifying education. The council may provide that individual with a "certificate of completion" if it is determined that the experience is the equivalent of the required hours. Tax preparation performed in situations that violate this chapter, by an individual who is neither registered nor exempted, may not be used toward the qualifying experience needed for registration as a tax preparer.

**Add Section 22175 to the Public Contract Code to require local governments to contract for the purchase of tangible personal property with vendors or contractors that have a valid seller's permit or certificate of registration – use tax.**

**Source: Sales and Use Tax Department**

### **Existing Law**

The California Public Contract Code provides definitions and requirements for state and local governments in procuring goods and services. Public Contract Code section 10295.1 provides that any state department or agency must verify that a vendor has a valid seller's permit or is registered to collect California use tax when contracting for the purchase of tangible personal property. This section also provides that if a state department or agency makes a written finding that the contract is necessary to meet a compelling state need, the state department or agency may purchase tangible personal property from a vendor that does not have a seller's permit or is registered to collect the California use tax.

### **This Proposal**

This proposal would require a local government that is purchasing tangible personal property from a vendor to verify the vendor has a valid California seller's permit or is registered to collect the California use tax. Similar to the provisions applying to purchases of tangible personal property by a state agency, a local government would be permitted to purchase from a vendor that is not registered to collect California sales or use tax in the event the local government finds the purchase is necessary to meet a compelling local government interest. For the purposes of this proposal, the term local government would be limited to a city, county, or city and county.

### **Background**

Under Revenue and Taxation Code section 6203, "retailers engaged in business" in California are required to register with the state and collect the California use tax. To encourage out of state vendors to voluntarily register to collect the California use tax, the Legislature added section 10295.1 to the Public Contract Code in 2003 (SB 1009, Ch. 718, Alpert). This statute requires state agencies to verify the vendor has a valid seller's permit or is registered to collect the California use tax. If the vendor lacks a valid seller's permit or certificate of registration, the state agency is precluded from purchasing tangible personal property from the vendor unless the state agency makes a finding that the purchase is necessary to meet a compelling state need or the purchases are otherwise non-qualifying purchases as noted by statute.

SB 1009 was a use tax compliance measure intended to prevent a state agency or department from contracting for the purchase of tangible personal property with any vendor or contractor that does not have a valid seller's permit or has not registered with the Board of Equalization (BOE). It was intended to send a signal that the state of California does not wish to do business with entities that do not collect sales and use tax on behalf of the state. By restricting a state agency from purchasing goods from out of state unregistered vendors, it compelled these vendors to register with the BOE and begin collecting the use tax. The California State Association of Counties (among others) supported this measure for reasons that it increases use tax payment compliance.

By requiring the state, as a purchaser, to verify that vendors are permitized or registered to collect the California use tax, out of state vendors wishing to contract with the state for the sale of tangible personal property are essentially required to register to collect the California use tax. This requirement has resulted in vendors that otherwise were not required to register to collect the California use tax to voluntarily register.

Assuming cities and counties purchase tangible personal property from out of state vendors that are not currently registered to collect California use tax, extending the same provisions applicable to the state as a purchaser to cities and counties should result in more out of state vendors voluntarily registering to collect the California use tax.

Presumably, cities and counties already self-assess and pay the use tax due on their purchases of tangible personal property from unregistered out of state vendors. Thus, the revenue gain anticipated from this proposal is not the result of additional use tax collected from cities and counties, but instead is the result of sales made by out of state vendors to other California consumers. Out of state vendors who register with the BOE to collect the use tax would be required to collect the use tax on all sales of tangible personal property to California consumers. Many of these consumers most likely would not have reported and paid the use tax due to the state.

This proposal will improve use tax collection and provide needed revenue for both the state and local governments.

*Section 22175 of the Public Contract Code is added to read as follows:*

22175. (a) A local government shall not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller's permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code.

(b) Beginning on and after January 1, 2013, each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract to do business with a local government shall submit to that local government a copy, as applicable, of that retailer's seller's permit or certificate of registration, and a copy of each of the retailer's applicable affiliate's seller's permit or certificate of registration, as described in subdivision (a). This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars (\$2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars (\$7,500) per year for each company from which a local government is purchasing goods by credit card. It shall be the responsibility of each local government to monitor the use of this exemption and adhere to these restrictions on these purchases.

(c) A local government is exempted from the provisions of subdivision (a) if the governing body of the local government, or a person delegated authority by the governing body of the local government, makes a written finding that the contract is necessary to meet a compelling local government interest.

(d) For the purposes of this section:

(1) "Affiliate of the vendor or contractor" means any person or entity that is controlled by, or is under common control of, a vendor or contractor through stock ownership or any other affiliation.

(2) "Compelling local government interest" includes, but is not necessarily limited to, the following:

(A) Ensuring the provision of essential services.

(B) Ensuring the public health, safety, and welfare.

(C) Responding to an emergency, as defined in Section 1102.

(3) "Local government" means a city, county, or city and county, including chartered cities and chartered counties.

**Add Section 7093.8 to the Revenue and Taxation Code to provide for a penalty and interest reprieve program for high risk collection accounts.**

**Source: Sales and Use Tax Department**

**Existing Law**

Under existing law, when a sales or use tax liability is not paid when due, interest is imposed on the unpaid tax and one or more penalties may be added to the liability. Generally, a penalty of ten percent is imposed for failure to pay the tax timely, but the law contains other provisions for additional penalties for other reasons for noncompliance. Under the law, interest continues to accrue on any unpaid portion of the tax until the tax is paid in full. Interest is computed on a simple basis, and only accrues on the unpaid tax liability. Interest does not accrue on any unpaid penalty amounts.

If a payment is not timely received, the Board generally negotiates with the taxpayer for payments, and if the liability remains unpaid, the Board ultimately searches for any assets of the taxpayer, and takes collection actions to use the assets to satisfy the tax liability. Collection actions may include manually searching records for assets, seizing bank accounts, or seizing and selling vehicles, vessels, or stocks. In the event of a financial hardship, existing law allows installment payment arrangements, or collection may be deferred until the financial situation of the taxpayer improves. However, if taxpayers can obtain loans or can use credit lines to pay their tax liabilities, they are expected to do so.

If a debt remains unpaid for a number of years, and a lien has been filed and assets cannot be located, the Board may write off the debt pursuant to provisions in the Government Code (discharge from accountability). When a debt is written off, however, the debt is still due and owing and any liens recorded are still valid, but routine billing and collection actions are discontinued unless assets are subsequently located. There is no statute of limitations on the Board's collection of a tax debt (except liens last for ten years, and can only be renewed twice for an additional 20 years), and interest and applicable penalties continue to accrue. The debt also remains on the taxpayer's credit record, impeding his or her ability to obtain credit.

Under existing law, under specified circumstances, the Board may reduce a delinquent tax liability, commonly called an "offer in compromise." In general, an offer in compromise is a process whereby the taxpayer offers to pay an amount that he or she believes to be the maximum amount that can be paid within a reasonable period of time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount.

**This Proposal**

This proposal would add Section 7093.8 to the Sales and Use Tax Law to authorize an eligible taxpayer's liability with respect to any unpaid taxes, to be satisfied by the payment of an amount equal to the tax liability, excluding penalties and interest. The bill would specify that this authority would be limited to an unpaid tax liability that has been determined by the Board to be a "high-risk" collection account.

## **Background**

As part of the 2002-03 California budget, the Legislature passed Assembly Bill 2065 (Stats. 2002, Ch. 488) that added Revenue and Taxation Code section 7093.8 which authorized the BOE, under certain circumstances, to cancel penalties and interest if the tax liability was paid in full. This eight month program (October 2002 through June 2003) was limited to unpaid tax liabilities that BOE determined to be a high-risk collection account. In general, these accounts were written-off, or about to be written-off. BOE identified accounts and sent letters and applications advising taxpayers that they were either eligible for the program or that they might be eligible and encouraged them to apply for relief. Other taxpayers were made aware of the program by the BOE website or from collectors working cases.

Received applications were reviewed and if the application was approved, the tax liability had to be paid in full by June 30, 2004. This was not an amnesty program as the BOE had to determine that it was in the best interest of the State to include the liability in the program.

### Program results:

Notices sent:	24,000
Applications received:	1,641
Applications approved:	964
Total received as a result of the program:	\$7.3 million
Total penalty & interest adjusted off:	\$10.8 million
Personnel:	6.5 PY s

The 2004 BOE legislative suggestions included a proposal to reinstitute the reprieve as an ongoing program, but the proposal was not adopted by the Board Members. Staff notes, however, that in 2004 the Legislature approved a tax amnesty program that allowed taxpayers to apply and receive relief of penalty for sales and use tax liabilities prior to January 1, 2003.

*Section 7093.8 of the Revenue and Taxation Code is added to read as follows:*

7093.8. (a) (1) An eligible taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount. The authority granted by this section is limited to an unpaid tax liability that has been determined by the State Board of Equalization to be a high-risk collection account.

(2) The liability of an eligible taxpayer for any unpaid penalties and interest included in the computation of the unpaid tax liability shall be extinguished only upon receipt by the State Board of Equalization of all payments equal to the eligible amount on or before the final due date for payment established by the State Board of Equalization.

(b) For purposes of this section, the following definitions apply:

(1) "Eligible taxpayer" means any person that receives notification from the State Board of Equalization that the taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount.

(2) "Eligible amount" means an amount equal to any unpaid tax liability, excluding penalties and interest, owed by the eligible taxpayer that is paid in one or more installments, as determined by the State Board of Equalization, on or before the final due date established by the State Board of Equalization.

(3) “High-risk collection account” means any unpaid tax liability of a taxpayer where satisfaction of that liability under this section would be in the best interest of the state and shall include any unpaid tax liability for which the State Board of Equalization has made either of the following determinations:

(A) Under the State Board of Equalization’s collection modeling policies, practices, and procedures, efforts to collect the unpaid tax liability would not be economical.

(B) The unpaid tax liability would not be paid in full within a reasonable period of time.

(4) “Unpaid tax liability” means any final liability under Part 1 (commencing with Section 6001), including tax, penalties, and interest, that are owed by a person and, as of January 1, 2013, are unpaid.

(5) “Final due date” means the first business day following sixty (60) days after notification of an eligible taxpayer by the State Board of Equalization that the liability may be satisfied by payment of an eligible amount.

(c) No refund or credit shall be granted with respect to any penalty or interest paid or collected with respect to an unpaid tax liability prior to January 1, 2013.

(d) The determinations made by the State Board of Equalization pursuant to this section shall be final and conclusive and shall not be subject to review by any other officer, employee, or agent of the state, or by any court.

(e) Nothing in Section 7056, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used in connection with any determinations made by the State Board of Equalization for purposes of this section, or the data used or to be used for determining those standards if the State Board of Equalization determines that the disclosure will seriously impair assessment, collection, or enforcement under this part.

(f) Nothing in this section shall authorize the State Board of Equalization to compromise any final tax liability.

(g) This section shall be operative with respect to unpaid tax liabilities of high-risk collection accounts that are the subject of notifications made to eligible taxpayers on or after January 1, 2013.

(h) Whenever a “high-risk collection account” is forgiven of any penalties and interest pursuant to this section, the public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of related penalties and interest relieved.

(3) A summary of the reason why the relief is in the best interest of the state.

**Amend Section 6452.1 of the Revenue and Taxation Code to require taxpayers that do not hold a permit or license with the BOE to report use tax on their income tax return.**

**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 generally required to be remitted to the Board on or before the last day of the month following the quarterly period in which the purchase was made. Generally, a use tax liability occurs when a California consumer or business purchases tangible items for its own use from an out-of-state retailer that is not registered with the Board to collect the California use tax. Generally, when a person is late in payment of his or her use tax obligations, the Board imposes a 10 percent penalty, plus interest, currently at the rate of 8 percent per year.

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 corporations tax returns to add a separate line for use tax reporting. While the use tax law was enacted in 1935, this was the first time a line to report use tax appeared on the state's income tax returns. This legislation allowed consumers to *elect to* report use tax on their income tax returns for purchases made on or after January 1, 2003 as an alternative to reporting the tax to the Board (certain consumers and retailers already registered with the Board, however, may not use this alternative).

To further simplify reporting of use tax on the income tax return, legislation enacted this year (SB 86, Ch. 14), allows the taxpayer to use a "look-up table" to calculate the use tax liability to report on the income tax return. The table may only be used to report non-business purchases of less than \$1,000. Use of the look-up table to calculate the use tax liability is optional. However, if the taxpayer does use the table, the BOE is precluded from assessing a liability against the taxpayer for additional use tax.

**This Proposal**

This proposal would require every person that is not otherwise required to file a sales or use tax return with the BOE to report qualified use tax on the income tax return filed with FTB. The provisions of this proposal would not apply to any person that is not otherwise required to file an income tax return with the FTB, such as charitable organizations. Due to the fiduciary responsibility a paid tax preparer or CPA has in accurately preparing a tax return, requiring reporting of use tax on the income tax return will also require a paid tax preparer or CPA to inquire with their client regarding if they have a use tax liability.

## **Background**

This proposal is similar to the provisions contained AB 469 from the 2009-10 Legislative Session. AB 469 included both the look up table and required every person not otherwise required to file a sales or use tax return with the BOE to report use tax on the FTB return. AB 469 did pass the legislature, but was vetoed by Governor Schwarzenegger. The look up table provisions have since been adopted by passage of SB 86 (Stats 2011, Ch. 14).

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

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 (d), that is otherwise required to report and remit that tax pursuant to this part, ~~shall 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.~~

~~(1) (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.

~~(2) (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 either of the following:

(i) For one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000), either of the following:

(I) The use tax imposed under this part, Article XIII of the California Constitution, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with 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.

(II) The estimated amount of use tax as calculated by the board. The board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to Franchise Tax Board such amounts in the form of a use tax table as part of the accompanying instructions of the acceptable tax return.

(ii) For one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of one thousand dollars (\$1,000) or more, or for any tangible personal property purchased for use in a trade or business, the amount of use tax imposed under this part, 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 imposed on the storage, use, or other consumption of a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax imposed on the storage, use, or other consumption of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or 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 the storage, use, or other consumption of a vehicle, vessel, or aircraft.

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

(iv) Use tax imposed on the storage, use, or other consumption of cigarettes, tobacco products, or cigarettes and tobacco products for which the purchaser is registered with the board as a cigarette consumer, a tobacco products consumer, or a cigarette and tobacco products consumer.

(e) (1) ~~If a person elects to report qualified use tax on an acceptable tax return, that~~ A person shall report and remit the qualified use tax by reporting the amount due based on all taxable purchases of tangible personal property made during the taxable year for which the acceptable tax return is required to be filed. A person that has made one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000) may satisfy his or her tax liability for those purchases by using the use tax table shown in the accompanying instructions of the 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, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with 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, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and in accordance with 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 payment of qualified use tax on an acceptable tax return, the board is not precluded from making any determinations for understatements of qualified use tax against that person in accordance with this chapter. However, with respect to one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000), the board shall be precluded from making any such determination against any person who uses the use tax table for purposes of satisfying his or her use tax liability when the person uses that table in accordance with the accompanying instructions.

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that is required 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 18401).

(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, 2010, in taxable years beginning on or after January 1, 2010.

(3) The amendments made by the act adding this paragraph shall apply to purchases of tangible personal property made on or after January 1, 2011, in taxable years beginning on or after January 1, 2011.

**Amend Section 7063 of the Revenue and Taxation Code to increase the top 250 tax delinquencies to the top 500 tax delinquencies.**

**Source: Sales and Use Tax Department**

**Existing Law**

Since January 1, 2007, Revenue and Taxation Code Section 7063 and 19195 require the BOE and the FTB, respectively, to make available as a matter of public record a list of the largest 250 tax delinquencies of more than \$100,000 in unpaid tax. Prior to making a tax delinquency a matter of public record, however, the law requires these tax agencies to provide a preliminary written notice by certified mail, return receipt requested, to the person or persons held liable for the tax. The law further specifies that for purposes of compiling the list, the tax delinquency must have been recorded as a notice of state tax lien in any county recorder's office in this state. Also, the law specifies that if a delinquency is currently under litigation, in Chapter 11 bankruptcy, or the taxpayer is complying with an installment payment agreement, the delinquency may not be made public as a qualifying tax delinquency. Section 7063 requires that the BOE update its list quarterly.

**This Proposal**

This proposal would amend section 7063 of the Revenue and Taxation Code to increase the number of tax delinquencies made public each quarter from 250 to 500.

**Background**

Since the BOE began posting the top 250 largest tax delinquencies in 2007, we have received over \$5 million from 36 taxpayers on the list. The list, updated quarterly, currently includes debtors with over \$400 million in tax liabilities. By increasing the list to the top 500 delinquencies, an additional \$105 million in sales and use tax liabilities would be added to the list, thereby increasing the potential for more taxpayers to come forward and resolve their outstanding tax liabilities. These 500 taxpayers have some of the largest tax debts due the state.

*Section 7063 of the Revenue and Taxation Code is amended to read as follows:*

7063. (a) Notwithstanding any other provision of law, the board shall make available as a matter of public record each quarter a list of the 500 ~~250~~ largest tax delinquencies in excess of one hundred thousand dollars (\$100,000) under this part. For purposes of compiling the list, a tax delinquency means an amount owed to the board which is all of the following:

(1) Based on a determination made under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511) of Chapter 5 deemed final pursuant to Article 5 (commencing with Section 6561) of Chapter 5, or that is "due and payable" under Article 4 (commencing with Section 6536) of Chapter 5, or self-assessed by the taxpayer.

(2) Recorded as a notice of state tax lien pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, in any county recorder's office in this state.

(3) For an amount of tax delinquent for more than 90 days.

(b) For purposes of the list, a tax delinquency does not include any of the following and may not be included on the list:

- (1) A delinquency that is under litigation in a court of law.
- (2) A delinquency for which payment arrangements have been agreed to by both the taxpayer and the board and the taxpayer is in compliance with the arrangement.
- (3) A delinquency for which the taxpayer has filed for bankruptcy protection pursuant to Title 11 of the United States Code.

(c) Each quarterly list shall, with respect to each delinquency, include all the following:

- (1) The name of the person or persons liable for payment of the tax and that person's or persons' last known address.
- (2) The amount of tax delinquency as shown on the notice or notices of state tax lien and any applicable interest or penalties, less any amounts paid.
- (3) The earliest date that a notice of state tax lien was filed.
- (4) The type of tax that is delinquent.

(d) Prior to making a tax delinquency a matter of public record as required by this section, the board shall provide a preliminary written notice to the person or persons liable for the tax by certified mail, return receipt requested. If within 30 days after issuance of the notice, the person or persons do not remit the amount due or make arrangements with the board for payment of the amount due, the tax delinquency shall be included on the list.

(e) The quarterly list described in subdivision (a) shall include the following:

- (1) The telephone number and address of the board office to contact if a person believes placement of his or her name on the list is in error.
- (2) The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.

(f) As promptly as feasible, but no later than 5 business days from the occurrence of any of the following, the board shall remove that taxpayer's name from the list of tax delinquencies:

- (1) Tax delinquencies for which the person liable for the tax has contacted the board and resolution of the delinquency has been arranged.
- (2) Tax delinquencies for which the board has verified that an active bankruptcy proceeding has been initiated.
- (3) Tax delinquencies for which the board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount or amounts.
- (4) Tax delinquencies that the board has determined to be uncollectible.

(g) A person whose delinquency appears on the quarterly list, and who satisfies that delinquency in whole or in part, may request the board to include in its quarterly list any payments that person made to satisfy the delinquency. Upon receipt of that request, the board shall include those payments on the list as promptly as feasible.

(h) Notwithstanding subdivision (a), a person whose delinquency appeared on the quarterly list and whose name has been removed pursuant to paragraph (1) of subdivision (f) shall comply with the terms of the arranged resolution. If a person fails to do so, the board shall add that person's name to the list of delinquencies without providing the prior written notice required by subdivision (d).