STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**03/29/12**	Bill No:	**Assembly Bill 2271**
Tax Program:	**Sales and Use**	Author:	**Perea**
Sponsor:	**Author**	Code Sections:	**RTC 6055 & 6203.5**
Related Bills:	**AB 2688 (Committee on Revenue and Taxation)**	Effective Date:	**01/01/13**

BILL SUMMARY

This bill removes the requirement that retailers and lenders file an election form with the BOE *prior* to claiming a bad debt in the case of accounts held by a lender that have been found worthless and written off by the lender.

ANALYSIS

CURRENT LAW

Under existing law, Revenue and Taxation Code Sections 6055 and 6203.5 of the Sales and Use Tax Law allow a retailer to be relieved of the liability for the sale or use tax when the measure of tax is represented by amounts that have been found to be worthless and charged off for income tax purposes. These sections also allow retailers who sell their accounts receivables or lenders who purchase them to claim a refund or claim a deduction on sales and use tax returns for the portion of the accounts receivable which is written off as worthless. In such circumstances, existing law requires the retailer and the lender to prepare and retain an election, signed by both parties, designating which party is entitled to claim the bad debt loss *prior to claiming a deduction or refund*.

PROPOSED LAW

This bill would amend Sections 6055 and 6203.5 to delete the requirement that an election be prepared and retained by the lender and the retailer *prior* to claiming a deduction or refund. Instead, this bill would specify that a proper election for purposes of these provisions shall be established when the retailer who reported the tax and lender prepare and retain the election form, signed by both parties, designating which party is entitled to claim the deduction or refund. The bill also provides that a deduction or refund shall not be disallowed solely on the ground that a proper election was not established prior to claiming the deduction or refund if a proper election was established after claiming the deduction or refund.

BACKGROUND

In 2000, AB 599 (Ch. 600, Lowenthal) enabled retailers who sell their accounts receivables or lenders who purchase them to claim a refund or claim a deduction on sales and use tax returns for the portion of the accounts receivable which is written off as worthless. In such circumstances, the retailer and the lender had to file an election form with the BOE signed by both parties designating which party is entitled to claim the bad debt loss prior to claiming a deduction or refund.

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 BOE's formal position.

During the 2011 Legislative Session, AB 242 (Ch. 727, Committee on Revenue and Taxation) removed the requirement that the election form be filed with the BOE. Instead, the election form must simply be prepared and retained by both the retailer and the lender prior to claiming the deduction or refund.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to address an ambiguity regarding the validity of a claim or deduction where the retailer and lender have failed to prepare and retain properly completed election forms when claiming the deduction or refund.

2. **What is the process to claim deduction or refund?** Prior to January 1, 2012, the effective date of AB 242, the BOE allowed a claimant to file a proper election form *after* the claim for deduction or refund was filed, but would not consider the claim valid until such time as the election form was filed. The date the election form was prepared was not relevant: only the date the form was filed with the BOE.

   Beginning January 1, 2012, the election form must be prepared and retained (rather than filed) by both the retailer and lender prior to claiming any deduction or refund. However, verifying that an election form was prepared and retained by both the retailer and lender prior to a claim is problematic and provides no valuable benefit to the validity of a claim that otherwise meets all of the conditions of a proper election by a retailer or lender.

   Accordingly, this bill would simply delete the unnecessary requirement that the election form be prepared and retained *prior* to claiming a deduction or refund thereby establishing a "proper election" when the signed election form is prepared, regardless of whether that election was established after a deduction or refund is claimed.

3. **Related bills.** Similar provisions are contained in BOE-sponsored AB 2688 (Assembly Revenue and Taxation Committee).

COST ESTIMATE

This measure could result in minor cost savings since BOE staff would no longer have to verify the date that an election form was prepared and retained by both the retailer and lender.

REVENUE ESTIMATE

While enactment of this proposed change in law could allow additional refunds or deductions that are not currently allowable, the impact on state revenues is believed to be negligible.

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