



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date:	03/12/12	Bill No:	<a href="#">Assembly Bill 2688</a>
Tax Program:	<b>Sales and Use Special Taxes &amp; Fees</b>	Author:	<b>Committee on Revenue and Taxation</b>
Sponsor:	<b>BOE</b>	Code Sections:	<b>See below</b>
Related Bills:		Effective Date:	<b>01/01/13</b>

## BILL SUMMARY

This bill, among other things, contains **Board of Equalization (BOE)-sponsored provisions** for the sales and use tax and special taxes and fees programs, to do all the following:

- Amend Revenue and Taxation Code Sections 6055 and 6203.5 to remove 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;
- Amend Section 6355 to change the date by which the BOE is required to calculate the bulk sales threshold for coins and bullion;
- Amend Sections 7261 and 7262 to change the transactions and use tax rate to 0.125 percent, or a multiple thereof (formerly 0.25 percent or a multiple thereof) to make it consistent with specified sections recently amended in the Revenue and Taxation Code; and
- Amend Sections 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1 to allow a taxpayer or feepayer (together, taxpayer) to file a claim for reimbursement of bank charges and third-party check charge fees incurred by the taxpayer as the direct result of an erroneous processing action or erroneous collection action by the BOE under the various special taxes and fees programs the BOE administers, and, in addition, amend these sections and Section 7096 to waive for reasonable cause the requirement that a taxpayer file a claim for reimbursement within 90 days.

## ANALYSIS

### **Bad Debt Election Form Requirement Repeal** *Revenue and Taxation Code Sections 6055 and 6203.5*

#### CURRENT LAW

Under existing law, Sections 6055 and 6203.5 of the Sales and Use Tax Law allows 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

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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 delete the requirement that the election form 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.

#### COMMENT

The purpose of this revision is to address an unintended consequence that has resulted in situations where the lenders have failed to file properly completed election forms when claiming the deduction or refund. In such cases, the claim for deduction or refund is not considered valid. Currently, staff allows the claimant to prepare and file a proper election form *after* the claim for deduction or refund is filed, but will not consider the claim valid until such time as the election form is filed (see Regulation 1642 (i)(5)(F), which interprets and explains these provisions). Consequently, if an election form is not filed by the lender within the general limitations period for which a claim for refund or credit may be accepted as timely under the law, the BOE is barred from accepting the claim for deduction or refund for those periods that fall outside the statute of limitations for filing refund claims pursuant to Section 6902 (even if the claim itself was filed within the limitations period). Consequently, staff has disallowed otherwise valid claims for deductions or refunds by lenders for periods beyond the limitations period.

This bill would delete the requirement that the election form be prepared and retained *prior* to claiming a deduction or refund. Therefore, the date of filing of a proper election will have no affect on the date of filing of the claim for a deduction or refund. Even where the lender files a proper election form outside the limitations period, the timeliness of the claim will still be determined by the date of filing of the claim itself.

<p style="text-align: center;"><b>Coins and Bullion: Calculation Date for Bulk Sales Threshold</b> <i>Revenue and Taxation Code Sections 6355</i></p>
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#### CURRENT LAW

Revenue and Taxation Code Section 6355 provides a sales and use tax exemption for monetized bullion, nonmonetized gold or silver bullion, and numismatic coins when the sale is “in bulk” and is substantially equivalent to a transaction in securities or commodities through a national securities or commodities exchange. Section 6355 provides that the initial bulk threshold amount is \$1,000. Since 1993, the statute has also required the BOE to adjust the \$1,000 bulk threshold amount on an annual basis. This adjustment requires the BOE to multiply the current bulk threshold amount by the inflation factor adjustment on or before September 1 of each year. When the result of this calculation is \$500 greater than the existing threshold, the threshold is adjusted and rounded to the nearest \$500 increment. For example, if the bulk sale threshold amount is currently \$1,500, and multiplying this amount by the inflation factor adjustment results in a new threshold of \$1,700, the bulk sale threshold does not become operative since it does not exceed the \$500 increment (it must equal or exceed \$2,000 to become

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operative). The next year, the \$1,700 threshold must be multiplied by the inflation factor adjustment to determine the new threshold. (Currently, based on the cumulative inflation factor adjustment, the operative bulk sale exemption threshold is \$1,500, and has been so since January 1, 2009.)

The inflation factor adjustment is based on a comparison of the California Consumer Price Index (CCPI) as published by the Department of Industrial Relations for June of each year. Once the calculation is made by BOE staff, the issue is placed on the BOE's consent agenda for the August BOE meeting to officially adopt the new threshold. However, the CCPI for June is generally not available until late August of each year. Since items placed on the BOE Meeting agenda are subject to public notice, and require management review prior to placing on the agenda, this calculation must be done by staff by the end of July. Since the CCPI is generally not available, staff has had to track down "preliminary numbers" for the purposes of performing the calculation. Often, it is difficult to obtain the preliminary numbers in a timely manner in order to have this item on the August agenda.

#### **PROPOSED LAW**

This bill would amend Section 6355 to change the date from September 1 to October 1 of each year by which the BOE must determine the bulk sale threshold.

#### **COMMENT**

Changing the date from September 1 to October 1 will allow staff sufficient time to obtain the June CCPI, prepare the necessary calculation, and place the item on the BOE meeting agenda. An October 1 date will still provide for adequate lead time in amending Regulation 1599 and notifying the public in the event the calculation results in a new operative threshold.

**Transaction and Use Tax: Rate Consistency**  
*Revenue and Taxation Code Sections 7261 and 7262*

#### **CURRENT LAW**

Assembly Bill 686 (Chapter 176, Huffman, Stats. 2011), amended Sections 7285, 7285.5, 7285.9 and 7285.91 of the Revenue and Taxation Code to change the rate at which a city or county may levy, increase, or extend a transactions and use tax to a rate of 0.125 percent, or a multiple thereof (formerly 0.25 percent or a multiple thereof).

Under existing law, Section 7285 authorizes a county to impose a transactions and use tax (also known as a district tax) for general purposes at a rate of 0.125 percent, or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. Section 7285.5 authorizes a county to impose a district tax for special purposes at a rate of 0.125 percent, or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

With respect to cities, Section 7285.9 authorizes a city to impose a district tax for general purposes at a rate of 0.125 percent or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all members of the governing body and a majority vote of the qualified voters of the city. Section 7285.91 authorizes a city to impose a district tax for special purposes at a rate of 0.125 percent or a multiple

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thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all members of the governing body and a two-thirds vote of the qualified voters of the county.

Under existing law, Section 7261 provides that a transactions (sales) tax is imposed on retailers for the privilege of selling tangible personal property in a district. Section 7262 provides that a district use tax is imposed upon the storage, use, or other consumption of tangible personal property stored, used, or consumed in a district. The transactions (sales) and use taxes imposed pursuant to these statutes are imposed at a rate of 0.25 percent or a multiple thereof on the gross receipts from the sales within the district of tangible personal property sold at retail or of the sales price of tangible personal property whose use, storage, or consumption within the district is subject to tax. In order to make Sections 7261 and 7262 consistent with the newly amended Sections 7285, 7285.5, 7285.9, and 7285.91, the relevant sections should be amended to change the 0.25 percent rate to a rate of 0.125 percent, or a multiple thereof.

#### **PROPOSED LAW**

This bill would change the rate in Sections 7261 and 7262 to make those sections consistent with the rate contained in Sections 7285, 7285.5, 7285.9, and 7285.91 of the Revenue and Taxation Code.

#### **Claim for Bank Charge Reimbursement**

*Revenue and Taxation Code Sections 7096, 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1*

#### **CURRENT LAW**

Under current law, the BOE is authorized, as part of its administrative duties with respect to the collection of taxes, to seize property of a delinquent taxpayer. Existing law authorizes the BOE to issue a levy or notice to withhold to specified financial institutions to withhold and remit credits or personal property of a delinquent taxpayer to satisfy the delinquent tax obligations of that taxpayer.

Under Revenue and Taxation Code Section 7096 of the Sales and Use Tax Law, a taxpayer may file a claim with the BOE for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges that may be reimbursed are those actually paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Claims are required to be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action.

Identical provisions are also contained in the other BOE-administered special tax and fee laws, except that they don't expressly provide that a taxpayer may claim reimbursement for bank and third-party check charge fees due to an "erroneous processing action or erroneous collection action" by the BOE.

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**PROPOSED LAW**

This bill would amend Revenue and Taxation Code Sections 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1 to conform the claim for reimbursement of bank charges provisions in the other tax and fee programs administered by the BOE with the provision in the Sales and Use Tax Law by expressly providing that, in addition to reimbursement of bank or third-party check charge fees incurred by a taxpayer as the direct result of an erroneous levy or notice to withhold, a taxpayer may claim reimbursement for bank and third-party check charge fees due to an erroneous processing action or erroneous collection action by the BOE. The other tax and fee laws to which these provisions would be extended include: Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

The bill would also amend Section 7096 and the above-specified sections of the special tax and fee laws to provide the BOE the authority to approve, for reasonable cause, a claim for reimbursement of bank charges or third-party check charge fees filed later than 90 days from the date of the erroneous BOE levy or action.

**COMMENTS**

Occasionally, an erroneous BOE action has resulted in the imposition of bank or third-party check charge fees and the particular erroneous BOE action was not technically a result of a BOE levy or notice to withhold. Occasionally, due to a BOE error, a taxpayer's account has been double-debited when an electronically-transferred payment made in connection with an installment payment agreement was erroneously applied by the BOE to another taxpayer's account. Due to the double payment, the taxpayer's account had insufficient funds, which resulted in bank fees for overdrafts. While the BOE is able to reverse the erroneous debit, the special tax and fee laws contain no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third-party check charge fees incurred by the taxpayer due to the error.

It is only fair and equitable to reimburse taxpayers for bank and third-party check charge fees when those charges are a direct result of a BOE error and are not due to any fault of the taxpayer. This proposed change is consistent with the Sales and Use Tax Law and the intent of the original legislation that authorized the BOE to reimburse taxpayers for such charges stemming from BOE errors. Also, these proposed amendments are consistent with provisions in Revenue and Taxation Code Section 21018 administered by the Franchise Tax Board (FTB). The FTB sponsored AB 1767 (Ch. 349, Stats. 2005) to specifically allow taxpayers to claim reimbursement for bank charges incurred by taxpayers through similar types of FTB processing and collection errors.

Furthermore, taxpayers are sometimes prevented from filing a claim within 90 days from the date of the erroneous BOE action. In one example where the BOE filed a levy in error, the taxpayer did not receive the BOE's Notice of Levy because it was sent to an incorrect address. The taxpayer's financial institution delayed complying with the levy for nearly three months and notified the taxpayer of the levy at that time. Since that was the taxpayer's first notification of the levy, which resulted in early withdrawal fees and bank processing fees, the taxpayer was unable to meet the 90-day deadline for filing a claim with the BOE for reimbursement of bank charges. The BOE did not then have the

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statutory authority to grant the claim, even though all other conditions were met. These amendments are also consistent with provisions in Revenue and Taxation Code Section 21018 that allow the FTB to extend the period for filing a claim.

### **COST ESTIMATE**

The provisions of the bill involve tasks and costs which are absorbable.

### **REVENUE ESTIMATE**

Except for the Bad Debt Election Form Requirement Repeal provisions, this measure would have a negligible impact on state and local revenues, which would be due to some additional taxpayer claims for reimbursement of bank charges and third-party check charge fees and for some claims being allowed beyond the 90-day filing date for reasonable cause (RTC Section 7096, 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1).

**Bad Debt Election Form Requirement Repeal.** While enactment of this proposed change in law would allow additional refunds or deductions that are not currently allowable, it would not result in a revenue loss per se. These are amounts that would otherwise be subject to refund or eligible for a deduction that the claimant failed to obtain the election form claim.

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