



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

DRAFT

Date:	04/10/14	Bill No:	Assembly Bill 2758
Tax:	Use	Author:	Committee on Assembly Revenue and Taxation
Sponsor:	Author	Code Sections:	RTC 6452.1 and 18510
Related Bills:		Effective Date:	01/01/15

BILL SUMMARY

This bill specifies that an amount equal to the qualified use tax a person reported on an acceptable tax return filed with the Franchise Tax Board (FTB) shall be applied to that person’s use tax liability.

ANALYSIS

CURRENT LAW

Existing California law¹ 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 at the same rate as the sales tax. Purchasers are liable for the use tax. They must pay the tax to the state unless they have a receipt proving that they paid the tax to a retailer registered to collect the California use tax. Retailers engaged in business in California and/or registered to collect the California use tax must collect the use tax from the purchaser at the time of purchase and remit the tax to the state.

When a California consumer or business purchases tangible items for their own use from an out-of-state retailer that is not registered with the Board of Equalization (BOE) to collect the California use tax, the purchaser must remit the use tax to the BOE. As an alternative to reporting the use tax directly to the BOE, existing law allows purchasers that aren’t otherwise required to register with the BOE to report their use tax liability on their state personal income tax returns or their state corporation franchise or income tax returns filed with the FTB.

Under these provisions, the law² requires the FTB to apply use tax payments remitted with the FTB-filed return in a certain order. Specifically, FTB must apply the use tax payments first to any Personal Income Tax Corporations Tax due, including any applicable penalties and interest, and then to the person’s reported use tax liability.

PROPOSED LAW

This bill specifies that an amount equal to the qualified use tax a person reported on an acceptable tax return filed with the FTB shall be applied to that person’s use tax liability.

The bill becomes effective on January 1, 2015, and applies to returns filed for taxable years beginning on or after January 1, 2014.

¹ Chapter 3 of Part 1 of Division 2 of the Revenue and Taxation Code (RTC), commencing with Section 6201.

² RTC Sections 6452.1 (h) and 18510 (b).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

COMMENTS

1. **Sponsor and purpose.** The Assembly Revenue and Taxation Committee sponsors this bill to ensure that conscientious taxpayers, who self-report a use tax liability on their income tax return, are not faced with a late payment penalty because their use tax payments were applied to other tax liabilities.
2. **Bill would reduce taxpayer confusion and create efficiencies.** The provision that specifies that use tax payments included with the FTB returns shall be applied first to FTB taxes, interest, and penalty was included in the original legislation that allowed for reporting of use tax on the FTB returns.³ However, this payment order has resulted in considerable confusion in situations where a taxpayer fails to remit the proper amount when filing his or her return with the FTB.

On occasion, taxpayers make underreporting errors while preparing their income tax returns, or they file late and incur penalty and interest charges. This results in an FTB-related return payment shortage. When a shortage occurs, the law requires FTB to apply the amount paid with the return (even the amount the taxpayer designated as use tax) first to amounts owed to the FTB. When this occurs, the FTB notifies the BOE so that the BOE can send a tax shortage notice to the taxpayer, explain the issue, and request payment of the use tax and penalty. In these situations, the taxpayer usually also receives a billing from FTB, as generally, there is further outstanding liability due the FTB arising from the return filed. As a result, the taxpayer often ends up with two shortage notices - one from each tax agency. Taxpayers are frequently frustrated as to why they receive a BOE tax shortage notice for the use tax, with an added penalty for late payment, when they believed the use tax was already timely paid to the FTB.

Since the use tax liability is generally much lower than the income tax liability, requiring the payment allocation to the use tax liability first makes more sense. It minimizes the BOE's workload associated with the necessary additional correspondence and billing for the use tax and penalty, and also eliminates the confusion this law generates for taxpayers.

COST ESTIMATE

Some cost savings would be realized due the efficiencies described in comment 2. An estimate of this savings is pending.

REVENUE ESTIMATE

The measures' revenue effect is pending. Some increase in use tax revenue may be realized when the use tax is allocated to the taxpayer's use tax liability, rather than income tax liability (depending on the nonpayment rate of the BOE's subsequent billings). However, the delinquency charges currently assessed on the use tax amounts currently applied to the FTB liabilities would no longer apply, since the use tax would be deemed timely paid. Therefore, any use tax gains may be offset by the amounts attributable to delinquency charges.

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³ SB 1009, Chapter 718, Statutes of 2003.