

**Add Section 6225.1 to the Revenue and Taxation Code to allow the Board to register certain persons that incur a use tax liability on a regular basis, who are not otherwise required to be registered.**

**Source: Sales and Use Tax Department**

**Existing Law**

During the 2009 Fourth Extraordinary Session, AB 18 (Chapter 16) added Section 6225 to the California Use Tax Law to require businesses that have annual gross receipts of \$100,000 or more and that are not already registered with the Board, to register with the Board and file an annual return to report their use tax liabilities on their taxable purchases (a use tax liability is primarily a result of a California purchaser making a purchase of tangible personal property for his or her 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 require those individuals and remaining businesses who regularly incur a use tax liability (at least \$1,000 in liability each year consecutively over a three-year period) to register with the Board and file an annual use tax return.

Unlike Section 6225, which requires use tax registration of businesses on the basis that the business receives \$100,000 or more in gross receipts annually (and is not otherwise required to be registered with the Board), this proposal would require registration when those smaller businesses, as well as individuals, regularly incur a substantial amount of use tax liability.

Currently, these unregistered purchasers have the alternative to voluntarily report their use tax liability directly to the Board or voluntarily on their state income tax return filed with the Franchise Tax Board. However, the compliance rate is low. By requiring these purchasers to register with the Board, we anticipate enhanced compliance with California's Use Tax Law. Once the Board registers these purchasers, they will be identified within the Board's registration system, and will automatically be sent annual returns, and applicable notices and publications to assist them in correctly reporting the tax on their out-of-state purchases.

**Background**

Use tax is the complement to the state's sales tax and was enacted in 1935 to ensure California merchants are not operating at a competitive disadvantage to their out-of-state competitors with low sales tax rates or no sales tax. Today, with the convenience of Internet shopping, and the states' inability to require a use tax collection requirement on many out-of-state retailers, the competitive disadvantage many California retailers experience is exacerbated.

ABx4 18 was enacted in an effort to minimize this competitive disadvantage and to increase the collection of use taxes owed by the larger California businesses that do not make sales of tangible personal property, but that may be incurring a use tax liability (such as real estate firms, law and accounting firms, and medical and dental

offices). Use tax is the largest area of noncompliance under the Board's sales and use tax program, and businesses that are not already registered with the Board share the largest portion of the use tax gap.

The provisions of ABx4 18 that incorporate the \$100,000 annual gross receipt requirement were added at the request of Board staff. Staff was concerned that, without this limitation, the Board would incur significant administrative expenses related to registering approximately 1.3 million additional businesses and processing returns for many businesses that may have little or no use tax liability. By limiting the bill to mandatory registration only for those businesses that have at least \$100,000 in annual gross receipts, staff estimated that the number of businesses that would require registration would be reduced to about 200,000, which would capture the majority of the use tax gap of businesses.

Beginning July 1, 2008 (before enactment of ABx4 18), the Board's began a program to enforce the use tax law by identifying businesses in the service industry that have a high potential for making purchases subject to use tax. Once identified, letters along with use tax returns were sent to those businesses informing them of the use tax requirements and instructing them to report their purchases subject to use tax over the last three-year period.

Through this program, staff has identified nearly 4,300 California businesses that have incurred substantial amounts of use tax. Most of these businesses will be required to register pursuant to the provisions of ABx4 18. However, staff has estimated that about 165 of those accounts will not be required to register under ABx4 18, as they do not meet the minimum \$100,000 annual gross receipts requirement. However, staff determined that these 165 accounts are likely to regularly incur use tax of at least \$1,000 each year over a three-year period.

This proposal is therefore intended to capture a portion of the use tax gap that is not already captured under the provisions of ABx4 18, by requiring the registration of qualifying purchasers that regularly incur a substantial amount of use tax liability.

*Section 6225.1 is added to the Revenue and Taxation Code to read:*

(a) Notwithstanding Section 6225, every person who regularly incurs a use tax liability by purchasing tangible personal property for the storage, use, or other consumption in this State shall register with the board on a form prescribed by the board and shall set forth the name and location of the person, and other information as the board may require.

(b), Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a person who regularly incurs a use tax liability, except that a return showing the total sales price of the tangible personal property purchased by the person who regularly incurs use tax, which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the use tax or which was not paid to a retailer the person who regularly incurred the use tax reasonably believed was required to collect

the tax, shall be filed, together with a remittance of the amount of tax due, with the board on or before April 15 for the previous calendar year.

(c) "Regularly" means the person incurs at least one thousand (\$1,000) or more in use tax liability each calendar year consecutively for a period of three or more years.

(d) This section shall not apply to a person that meets any of the following conditions:

(1) The person is required to hold a seller's permit pursuant to this part.

(2) The person is required to be registered pursuant to Section 6226.

(3) The person is a holder of a use tax direct payment permit as described in Section 7051.3.

(4) The person is not otherwise registered with the board to report use tax.

(e) This section shall not apply to the purchase of a vehicle, vessel, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.