

**Amend Revenue and Taxation Code Section 6901 of the Sales and Use Tax Law to authorize a direct refund of excess sales tax reimbursement to the retailer's customer, in lieu of the retailer, under limited circumstances.**

**Source: Sales and Use Tax Department**

**Existing Law.** Under existing Revenue and Taxation Code (RTC) Section 6901.5, when a retailer represents to a purchaser that an amount constitutes reimbursement for sales or use tax, but the sales tax paid by the purchaser is computed upon an amount that is either not taxable or in excess of an amount that is taxable, the amount paid is excess tax reimbursement.

RTC Section 6901 provides that, if the BOE determines that any amount of sales tax has been paid more than once or has been erroneously or illegally collected or computed, the BOE must make note of it in its records, credit the amount to another BOE liability owed by the retailer that overpaid, and refund the balance.

Section 6901 further provides that any overpayment of use tax by a purchaser to a retailer shall be refunded by the BOE to the purchaser. While the statute allows the BOE to refund excess use tax directly to the purchaser, the BOE may issue a refund for excess sales tax reimbursement only to the retailer (who is liable for and paid the excess sales tax to the BOE) and may not issue the refund to the purchaser. To obtain a refund of sales tax, the retailer must submit a claim for refund to the BOE.

RTC Section 6901.5 provides that a retailer who has collected excess tax reimbursement from a purchaser must return the money to the purchaser who paid it or remit the funds to the state.

The BOE's Sales and Use Tax Regulation 1700, *Reimbursement for Sales Tax*, interprets Section 6901.5. Under Regulation 1700(b)(2), whenever the BOE ascertains that a retailer has collected excess tax reimbursement, the retailer will be afforded an opportunity to refund the excess tax reimbursement to the purchasers from whom it was collected.

Regulation 1700(b)(3) provides that excess tax reimbursement paid to the BOE as sales tax may be refunded to the retailer upon submission of sufficient evidence that the excess tax reimbursement has been or will be returned to the customer. Under Regulation 1700(b)(3)(B), if a retailer has not refunded excess tax reimbursement to the customer, but would rather do so than incur an obligation to the state, the retailer must: (1) inform the purchaser in writing that excess tax reimbursement was collected and that the excess amount will be refunded or credited to the purchaser; and (2) obtain and retain for verification by the BOE an acknowledgement from the purchaser that the purchaser has received notice of the amount of indebtedness of the retailer to the purchaser. The BOE's form BOE-52-L2, *Notice of Pending Refund of Excess Sales Tax Reimbursement*, is available to assist the retailer in obtaining documentation from the customer.

**Proposed Law.** This proposal, under limited circumstances, would allow the BOE to refund excess tax reimbursement directly to the purchaser who paid the sales tax. The BOE's direct refund to a purchaser would only be allowed for refund amounts of \$300,000 or greater.

For the purchaser to obtain a direct refund, the retailer claiming the refund would be required to irrevocably assign his or her right to the refund to the purchaser who paid

excess tax reimbursement. The retailer and the customer both would need to sign the irrevocable assignment and submit it to the BOE with the retailer's claim for refund.

**Background.** Generally, the existing procedure for refunding excess tax reimbursement works as intended, and the retailer refunds the excess sales tax to the purchaser as required. However, BOE staff recently has discovered large dollar amounts of excess tax reimbursement that it refunded to the retailer, but which were not refunded by the retailer to the purchaser. When the BOE becomes aware of the retailer's failure to refund excess tax reimbursement to the purchaser, it issues a determination against the retailer for the deficiency. Nonetheless, if the transactions are beyond the statute of limitations, a determination is no longer available to the BOE as a remedy.

To address this issue, BOE staff revised Form BOE-52-L2, *Notice of Pending Refund of Excess Sales Tax Reimbursement*, to include a power of attorney statement. The limited power of attorney statement authorizes the BOE to disclose to the purchaser information on the status of a retailer's refund claim. Information regarding the status of the refund claim is essential for the purchaser to ensure the retailer refunds the excess tax reimbursement before the statute of limitations expires on a determination. This new procedure applies only to excess tax reimbursement refunds of \$300,000 or more to a single customer. The threshold of \$300,000 is designed to ensure the BOE can manage the number of direct refund inquiries within existing resources.

In addition to the power of attorney procedure, it was suggested that staff pursue a legislative change to allow the BOE to issue a refund of excess tax reimbursement directly to the purchaser under limited circumstances. Issuing a refund directly to the purchaser would shorten the refund process by approximately two to three months. It also would reduce the retailers' workload, as they will not be required to perform tasks related to generating the refund, such as issuing checks, answering telephone calls, and recording transactions.

To make the proposed legislative change consistent with current procedures related to assignment of limited power of attorney and to keep costs within existing resources, it is recommended that the BOE be allowed to issue direct refunds to the customer for refunds of excess tax reimbursement of \$300,000 or greater to a single customer.

*Section 6901 of the Revenue and Taxation Code is amended to read:*

6901. (a) If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, executors, or customer as provided in paragraph (b) of this section, if a determination by the board is made in any of the following cases:

- 1) An amount of tax, interest, or penalty was not required to be paid.

2) Any amount of prepayment of sales tax, interest, or penalty paid pursuant to Article 1.5 (commencing with Section 6480) of Chapter 5 was not required to be paid.

3) Any amount that is approved as a settlement pursuant to Section 7093.5.

(b) A person may make an irrevocable election to assign to the customer the right to receive the amount refunded if all of the following conditions are met:

1) The amount represents excess tax reimbursement that is required to be paid by the person to the customer under section 6901.5.

2) The amount to be refunded is \$300,000 or greater.

3) The irrevocable election to assign the amount refunded to the customer is evidenced by a statement signed by the person and the customer authorizing the named customer to receive the amount refunded.

4) The signed statement is submitted to the Board in conjunction with the person's claim for refund.

(c) Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to Article 1 (commencing with Section 6201) of Chapter 3 shall be credited or refunded by the state to the purchaser.

(d) Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.