

**Add Section 6487.06 to the Sales and Use Tax Law to allow unregistered in-state purchasers, as defined, to voluntarily report to the Board, under certain stated conditions, untaxed purchases which are subject to the use tax. The period of time for which a deficiency determination may be mailed for such reported use tax is limited to three years.**

**Source: Honorable John Chiang**

Under current law, an out-of-state retailer engaged in business in California must register with the Board and collect the use tax from the purchaser and give a receipt therefor as prescribed by the Board. For those retailers who fail to register and file returns as required, the period of time for which a deficiency determination may be mailed for failure to file returns is eight years.

Revenue and Taxation Code Section 6487.05 provides that an unregistered out-of-state retailer who is engaged in business in this state and is not registered to collect the use tax may, under stated conditions, voluntarily register with the Board to collect use tax from his or her California customers and the time for which a deficiency determination may be mailed for uncollected use tax for past periods will be limited to three years.

A qualifying retailer must meet all of the following conditions:

1. The retailer is located outside this state and has not previously registered with the Board.
2. The retailer is engaged in business in California.
3. The retailer voluntarily registers with the Board.
4. The retailer has not been previously contacted by the Board or its agents.
5. The retailer's failure to file a return or pay the tax was due to reasonable cause.

A California purchaser of tangible personal property purchased from an out-of-state retailer is liable for the use tax, and this liability is not extinguished until the tax has been paid to this state except if a receipt from a retailer engaged in business in this state or from a retailer authorized to collect the use tax is given to the purchaser. While some out-of-state businesses collect California use tax, many do not. If the seller does not collect the California use tax and the purchaser holds a California seller's permit, such purchases may be reported on the Sales and Use Tax Return. However, if the purchaser is not required to hold a seller's permit, he or she must take the initiative to report the use tax since no return will automatically be mailed.

This proposal would add provisions for a qualified in-state purchaser who is not required to hold a seller's permit (e.g., food processor, service industry, consumer, etc.) the means to voluntarily report his or her use tax liability with a three-year limitation for which a notice of determination for use tax unreported in past periods may be mailed. However, this proposal would not apply to purchases of vehicles, vessels and aircraft. The 8-year statute of limitations for issuing determinations for vehicle, vessel and aircraft purchases would remain.

*Section 6487.06 is added to the Revenue and Taxation Code to read:*

6487.06. (a) Notwithstanding Section 6487, the period during which a deficiency determination may be mailed to a qualifying purchaser is limited to three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined. For purposes of this section, a "qualifying purchaser" is a person who purchases from an out-of-state retailer tangible personal property for storage, use, or other consumption in this state and who meets all of the following conditions:

- (1) The purchaser is located inside this state, and has not previously registered with the Board or filed an Individual Use Tax Return.
- (2) The purchaser is not engaged in business in this state as a retailer as defined in Section 6015.
- (3) The purchaser voluntarily files use tax returns and remits the use tax to the Board for past periods subject to the limitation above.
- (4) The purchaser has not been previously contacted by the Board or its agents regarding the provision of Section 6202.
- (5) As determined by the Board, the purchaser's failure to file a return or failure to report or pay the tax or amount due required by law was due to reasonable cause and was not a result of negligence or intentional disregard of the law, or because of fraud or an intent to evade the provisions of this part.

(b) If the Board or its designee finds that the purchaser's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the purchaser's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the purchaser shall be relieved of the penalties imposed pursuant to this part. Any purchaser seeking relief of penalty shall file a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) This section shall not apply to purchases of vehicles, vessels and aircraft defined in Article 1 of Chapter 3.5 (commencing with Section 6271).