

AMENDED IN ASSEMBLY JUNE 20, 2002

AMENDED IN SENATE MAY 7, 2002

SENATE BILL

No. 1502

Introduced by Senator Johnson

February 19, 2002

An act to amend Section 6814 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1502, as amended, Johnson. Sales and use tax: successor liability.

The Sales and Use Tax Law provides that in the case of the purchase and sale of a business or stock of goods under a contract, the successor or purchaser is required to withhold an amount sufficient to cover the sales and use tax liability of the seller. The failure to do so results in the successor's liability for the obligation, along with interest and penalties, as specified.

This bill would, under specified circumstances, relieve the successor of any penalty on the obligation that has accrued prior to a specified notice.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6814 of the Revenue and Taxation Code
2 is amended to read:

1 6814. (a) The obligation of the successor shall be enforced by
2 serving a notice of successor liability on the person. The notice
3 shall be served in the manner prescribed for service of a notice of
4 a deficiency determination, not later than three years after the date
5 the board is notified of the purchase of the business or stock of
6 goods. The successor may petition for reconsideration in the
7 manner provided in Article 5 (commencing with Section 6561) of
8 Chapter 5 of this part. The notice shall become final and the
9 amount due and payable in the manner provided in that article
10 except that no additional penalty shall apply if not paid when due
11 and payable. The provisions of this chapter with respect to the
12 collection of any amount required to be paid under this part shall
13 apply when the notice becomes final.

14 (b) (1) If the board finds that a successor's failure to withhold
15 a sufficient amount of the purchase price to cover the amount owed
16 by the former owner is due to reasonable cause and circumstances
17 beyond the successor's control, and occurred notwithstanding the
18 exercise of ordinary care and in the absence of willful neglect, the
19 successor may be relieved of any penalty included in the notice of
20 successor liability.

21 (2) Any successor seeking to be relieved of the penalty shall file
22 with the board a statement under penalty of perjury setting forth
23 the facts upon which he or she bases his or her claim for relief.

24 (c) (1) Notwithstanding any other provision of this part to the
25 contrary, the successor is, except as otherwise provided in
26 paragraph (2), relieved of any penalty on the obligation of the
27 seller of the business or stock of goods that has accrued prior to the
28 successor being notified by the board of the seller's unpaid
29 obligation.

30 (2) Paragraph (1) shall not apply to successor liability incurred
31 by persons related to the seller. For purposes of this paragraph,
32 "persons related to the seller" means any person that is, under the
33 provisions of either Section 267 or 318 of the Internal Revenue
34 Code, considered to be related to the seller.

35 (3) *Notwithstanding waiver of any penalty as provided in*
36 *paragraph (1), the board shall use all available remedies, legal*
37 *and administrative, to collect that penalty from the seller of the*
38 *business or stock of goods.*

