

AMENDED IN ASSEMBLY MAY 5, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2802

Introduced by Assembly Member Jerome Horton

February 20, 2004

An act to add ~~Section 6458 to~~ *and repeal Section 6458 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2802, as amended, Jerome Horton. Sales and use tax: discount.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property.

This bill would *for the period beginning on and after January 1, 2005, and before January 1, 2010*, require the board to grant to a qualified person that conducts a new trade or business in this state, as defined, a sales and use tax offset, in an amount equal to 1%, not to exceed \$550, of a qualified person's total sales and use tax liability computed during a specified 12-month period.

This bill would require the board, on or before January 1, 2009, to submit a report to the Legislature, as specified, on the impact of the sales and use tax offset.

This bill would take effect immediately as a tax levy.

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 6458 is added to the Revenue and
2 Taxation Code, to read:

3 6458. (a) ~~The~~ *For calendar years beginning on and after*
4 *January 1, 2005, and before January 1, 2010, the board shall grant*
5 *to a qualified person a sales and use tax offset, as defined in*
6 *subdivision (b) and in the manner prescribed by subdivision (c),*
7 *against that person's tax liability under Sections 6051, 6051.3,*
8 *6051.5, 6201, 6201.3, and 6201.5 during the first 12 months of that*
9 *person's trade or business operations.*

10 (b) For purposes of this section:

11 (1) "Qualified person" means a person that meets all of the
12 following conditions:

13 (A) The person is engaged in a new trade or business activity
14 in this state that commences operations at any time following the
15 operative date of this section. In determining whether a trade or
16 business activity qualifies as a new trade or business activity, the
17 following rules apply:

18 (i) In any case in which a person purchases, or otherwise
19 acquires, all or any portion of the assets of an existing trade or
20 business, irrespective of the form of entity, that is doing business
21 in this state within the meaning of Section 23101, the trade or
22 business conducted thereafter by that person, or any related
23 person, will not be treated as a new trade or business activity.

24 (ii) In any case in which a person, or any related person, is
25 engaged in one or more trade or business activities in this state, or
26 has been engaged in one or more trade or business activities in this
27 state within the preceding 36 months and thereafter commences an
28 additional trade or business activity in this state, the additional
29 trade or business activity may not be treated as a new trade or
30 business activity.

31 (iii) In any case in which a person, including any related person,
32 is engaged in trade or business activities wholly outside of this
33 state and that person first commences doing business in this state,
34 within the meaning of Section 23101, on or after January 1, 2004,
35 other than by purchase or other acquisition of an existing trade or
36 business as described in clause (i), the trade or business activity
37 shall be treated as a new trade or business activity.



1 (iv) In any case in which the legal form under which a trade or
2 business activity is being conducted is changed, the change in form
3 shall be disregarded and the determination of whether the trade or
4 business activity is a new trade or business activity shall be
5 determined in accordance with this section.

6 (v) For purposes of this paragraph, “acquires” includes any
7 gift, inheritance, transfer incident to divorce, or any other transfer,
8 whether or not for consideration.

9 (vi) For purposes of this paragraph, “related person” means
10 any person related to the person that conducts the trade or business
11 activity as described by Section 267 or Section 318 of the Internal
12 Revenue Code.

13 (B) The person timely files, pursuant to Sections 6451, 6452,
14 6453, 6454, and 6455, all necessary returns, with the proper
15 remittance for all return periods required for the first 12 months of
16 that person’s new trade or business operations in this state.

17 (2) “Sales and use tax offset” means an amount that is equal to
18 1 percent of the qualified person’s total tax liability computed
19 pursuant to Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and
20 6201.5 for all returns required to be filed for the first 12 months
21 of the qualified person’s new trade or business operations in this
22 state. The total sales and use tax offset allowable for each qualified
23 person may not exceed five hundred fifty dollars (\$550).

24 (c) (1) Except as provided in paragraph (3), the sales and use
25 tax offset authorized by this section may only be claimed by a
26 taxpayer on the first return filed following the completion of the
27 qualified person’s first 12 months of new trade or business
28 operations in this state.

29 (2) The sales and use tax offset authorized by this section may
30 not exceed the total tax liability computed pursuant to Sections
31 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 for the return in
32 which the offset amount is claimed.

33 (3) In the event the sales and use tax offset authorized by this
34 section exceeds the amount allowed pursuant to paragraph (2), the
35 taxpayer may claim the excess of the sales and use tax offset
36 amount on the next return, and if necessary on any subsequent
37 returns, to the extent that the amount of the sales and use tax offset
38 claimed do not exceed the total tax liability computed pursuant to
39 Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5, until the



1 total amount of the sales and use tax offset amount authorized by
2 this section has been claimed by the taxpayer.
3 *(d) The State Board of Equalization shall, on or before January*
4 *1, 2009, submit a report to the Legislature on the impact of the*
5 *offset authorized by this section that includes, but is not limited to,*
6 *the following information:*
7 *(1) The number of taxpayers that claim the offset.*
8 *(2) The size and type of business of each taxpayer that claims*
9 *the offset.*
10 *(3) The total amount of offsets claimed in each calendar year.*
11 *(4) Recommendations regarding the extension of the offset*
12 *beyond the 2009 calendar year, and recommendations, if any, for*
13 *the modification of the administration of the offset.*
14 *(e) This section shall remain in effect only until January 1,*
15 *2010, and as of that date is repealed.*
16 SEC. 2. This act provides for a tax levy within the meaning of
17 Article IV of the Constitution and shall go into immediate effect.

