

AMENDED IN SENATE APRIL 20, 2005

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 801**

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**Introduced by Senator Simitian**

February 22, 2005

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An act to ~~add Sections 6452.2 and 6471.1 to amend Sections 6476 and 6701 of, and to add Sections 6452.2 and 6471.1 to, the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 801, as amended, Simitian. Sales and use taxes: prepayments: returns.

The Sales and Use Tax Law, which is administered by the State Board of Equalization, 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. That law generally requires a sales and use tax return, with a remittance of the taxes owed, to be filed with the board on a quarterly basis. That law provides that, under specified circumstances, the board may require any person whose sales and use tax liability exceeds a specified amount to prepay that tax liability.

This bill would require a person that has only one retail location in this state that generates an estimated monthly tax liability of less than \$17,000 to file a sales and use tax return on a yearly basis and to make quarterly prepayments, as specified.

*Existing law provides that a person required to make a prepayment and who fails to do so is subject to a penalty.*

*This bill would extend the penalty application to retailers required to file a sales and use tax return on a yearly basis that are also required to make quarterly prepayments.*

*The Sales and Use Tax Law authorizes the State Board of Equalization to require taxpayers to post security whenever the board deems it necessary to insure payment of taxes due, according to specific formulas.*

*This bill would allow the board to include the estimated liability of persons required to make quarterly prepayments when determining the security amount that is required to be posted.*

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 6452.2 is added to the Revenue and  
2 Taxation Code, to read:

3 6452.2. (a) Notwithstanding Section 6452, a retailer  
4 described in Section 6471.1, shall, no later than one month  
5 following the close of each calendar year, file a return for that  
6 calendar year with the board in the form as prescribed by the  
7 board. Returns shall be authenticated in a form or pursuant to  
8 methods as may be prescribed by the board.

9 (b) For purposes of the sales tax, a return shall be filed by  
10 every retailer that is liable for the sales tax under this part. For  
11 purposes of the use tax, a return shall be filed by every retailer  
12 engaged in business in this state that has not paid the use tax due  
13 to a retailer required to collect the tax.

14 (c) Any retailer who fails or refuses to furnish any return  
15 required to be made, or who fails or refuses to furnish a  
16 supplemental return or other data required by the board, is guilty  
17 of a misdemeanor punishable as provided in Section 7153.

18 SEC. 2. Section 6471.1 is added to the Revenue and Taxation  
19 Code, to read:

20 6471.1. (a) Notwithstanding Section 6451, a retailer  
21 described in subdivision (b) that was engaged in the same  
22 business during the entire preceding calendar year, or a person  
23 who is a successor to a business that was in operation during the  
24 entire preceding calendar year, shall make ~~quarterly prepayments~~  
25 ~~of a prepayment each quarter for~~ the taxes imposed by this part  
26 on or before the last day of the month following *the close of each*  
27 *calendar quarter. The ~~quarterly prepayments~~ prepayments for*  
28 *each quarterly period* shall be in an amount equal to the amount

1 of gross receipts that were subject to the taxes imposed by this  
2 part for that same calendar quarter in the prior calendar year  
3 multiplied by the state and local tax rate in effect during the  
4 calendar quarter for which the prepayment is made *or shall be in*  
5 *an amount equal to the state and local tax liability for the*  
6 *quarterly period for which the prepayment is due.*

7 (b) A retailer shall make quarterly prepayments as required by  
8 subdivision (a) if that retailer meets both of the following  
9 conditions:

10 (1) The retailer's estimated measure of liability under this part  
11 averages not less than one thousand four hundred dollars  
12 (\$1,400) and not more than sixteen thousand nine hundred and  
13 ninety-nine dollars (\$16,999) per month.

14 (2) The retailer has only one business location in this state  
15 that is engaged in making retail sales of tangible personal  
16 property.

17 (c) *A retailer described in subdivision (b) that is required to*  
18 *file returns pursuant to Section 6452.2 shall continue to file as*  
19 *required under these sections until notified otherwise by the*  
20 *board.*

21 *SEC. 3. Section 6476 of the Revenue and Taxation Code is*  
22 *amended to read:*

23 6476. Any person required to make a prepayment pursuant to  
24 Section 6471 *or Section 6471.1* who fails to make a timely  
25 prepayment but makes such prepayment before the last day of the  
26 monthly period following the quarterly period in which the  
27 prepayment became due, shall also pay a penalty of 6 percent of  
28 the amount of prepayment.

29 *SEC. 4. Section 6701 of the Revenue and Taxation Code is*  
30 *amended to read:*

31 6701. The board, whenever it deems it necessary to ensure  
32 compliance with this part, may require any person subject  
33 thereto, to place with it any security that the board may  
34 determine. Any security in the form of cash, government bonds,  
35 or insured deposits in banks or savings and loan institutions shall  
36 be held by the board in trust to be used solely in the manner  
37 provided by this section and Section 6815. The amount of the  
38 security shall be fixed by the board but, except as noted below,  
39 shall not be greater than twice the estimated average liability of  
40 persons filing returns for quarterly periods or three times the

1 estimated average liability of persons required to file returns for  
2 monthly periods *or the estimated liability of persons required to*  
3 *file returns for calendar year periods and make quarterly*  
4 *prepayments*, determined in the manner that the board deems  
5 proper, or fifty thousand dollars (\$50,000), whichever amount is  
6 the lesser. In case of a person who, pursuant to Section 6070 of  
7 this part, has been given notice of hearing to show cause why his  
8 or her permit or permits should not be revoked, or a person  
9 whose permit or permits has been revoked or suspended, the  
10 amount of the security shall not be greater than three times the  
11 average liability of persons filing returns for quarterly periods or  
12 five times the average liability of persons required to file returns  
13 for monthly periods *or twice the estimated liability of persons*  
14 *required to file calendar year returns and make quarterly*  
15 *prepayments*, or fifty thousand dollars (\$50,000), whichever  
16 amount is the lesser. The limitations herein provided apply  
17 regardless of the type of security placed with the board. The  
18 amount of the security may be increased or decreased by the  
19 board subject to the limitations herein provided. Security held by  
20 the board shall be released after a three-year period in which the  
21 person has filed all returns and paid all tax to the state or any  
22 amount of tax required to be collected and paid to the state within  
23 the time required. The board may sell the security at public  
24 auction if it becomes necessary to do so in order to recover any  
25 tax or any amount required to be collected, interest, or penalty  
26 due. Notice of the sale may be served upon the person who  
27 placed the security personally or by mail; if by mail, service shall  
28 be made in the manner prescribed for service of a notice of a  
29 deficiency determination and shall be addressed to the person at  
30 his or her address as it appears in the records of the board. Upon  
31 any sale any surplus above the amounts due shall be returned to  
32 the person who placed the security.

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