

AMENDED IN ASSEMBLY APRIL 25, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 969

Introduced by Assembly Member Eng

February 22, 2007

An act to amend Sections 6452.1, 6487.3, and 18510 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 969, as amended, Eng. Qualified use tax payment.

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. Existing law requires retailers, as specified, to register with, and to obtain a seller's permit from, the State Board of Equalization, and requires that board to issue forms for the computation and payment of sales and use taxes collected or owed by those retailers. For taxable years beginning on January 1, 2003, and ending on December 31, 2009, existing law authorizes a person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax form. Existing law requires the Franchise Tax Board to include space on income tax returns to allow a person to report and remit qualified use taxes to the Franchise Tax Board, and requires the Franchise Tax Board to remit the qualified use taxes collected to the State Board of Equalization.

This bill would recast the provisions relating to use tax reporting on an income tax return to instead require every person subject to qualified use tax, as defined, to report and remit that tax on an acceptable tax

return, as specified. This bill would require the Franchise Tax Board to revise the income tax form to enable a person to report and remit qualified use tax. This bill would also make conforming changes to related provisions.

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 6452.1 of the Revenue and Taxation
2 Code is amended to read:

3 6452.1. (a) Notwithstanding Section 6451, every person that
4 purchases tangible personal property, the storage, use, or other
5 consumption of which is subject to qualified use tax, as defined
6 in subdivision (d), that is otherwise required to report and remit
7 that tax pursuant to this part and fails to do so, shall report and
8 remit qualified use tax on an acceptable tax return.

9 (b) (1) In the case of a married individual filing a separate
10 California personal income tax return, an election may be made
11 to report either one-half of the qualified use tax or the entire
12 qualified use tax on his or her separate California personal income
13 tax return.

14 (2) If an individual elects to report one-half of the qualified use
15 tax, that election will not be binding with respect to the remaining
16 one-half of the qualified use tax owed by that individual and that
17 individual’s spouse.

18 (c) An acceptable tax return that contains use tax shall be
19 considered a tax return for purposes of this part.

20 (d) For purposes of this section:

21 (1) “Acceptable tax return” means a timely filed original return
22 that is filed pursuant to Article 1 (commencing with Section
23 18501), Article 2 (commencing with Section 18601), Section
24 18633, Section 18633.5 of Chapter 2 (commencing with Section
25 18501) of Part 10.2, or Article 3 (commencing with Section 23771)
26 of Chapter 4 of Part 11.

27 (2) (A) Except as provided in subparagraph (B), “qualified use
28 tax” means the use tax imposed under this part, Section 35 of
29 Article XIII of the California Constitution, the Bradley-Burns
30 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
31 with Section 7200)), or the Transactions and Use Tax Law (Part

1 1.6 (commencing with Section 7251)) that has not been paid to a
2 retailer holding a seller’s permit or certificate of registration-use
3 tax.

4 (B) “Qualified use tax” does not include:

5 (i) Use tax that applies to a mobilehome or a commercial coach
6 that is required to be registered annually pursuant to the Health
7 and Safety Code or use tax that applies to a vehicle subject to
8 identification under Division 16.5 (commencing with Section
9 38000) of the Vehicle Code, or to a vehicle that qualifies under
10 the permanent trailer identification plate program pursuant to
11 subdivision (a) of Section 5014.1 of the Vehicle Code.

12 (ii) Use tax imposed on a vehicle, vessel, or aircraft.

13 (iii) Use tax imposed on a lessee of tangible personal property.

14 (iv) Use tax imposed on purchases of cigarettes, tobacco
15 products, or cigarettes and tobacco products for which the
16 purchaser is registered with the board as a cigarette consumer, a
17 tobacco products consumer, or a cigarette and tobacco products
18 consumer.

19 (e) A person that is required to report qualified use tax on an
20 acceptable tax return shall report and remit the qualified use tax
21 ~~due on purchases on tangible personal property made during the~~
22 ~~preceding taxable year in which the liability for the qualified use~~
23 ~~tax was incurred.~~ *due on all taxable purchases of tangible personal*
24 *property made during the taxable year for which the acceptable*
25 *tax return is required to be filed.*

26 (f) (1) The penalties and interest imposed under this part, the
27 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5
28 (commencing with Section 7200)), or the Transactions and Use
29 Tax Law (Part 1.6 (commencing with Section 7251)) shall apply
30 to use tax reported as qualified use tax on an acceptable return.

31 (2) Any claims for refunds or credits of any use tax reported as
32 qualified use tax on an acceptable tax return shall be made in
33 accordance with Chapter 7 (commencing with Section 6901) of
34 this part.

35 (3) Qualified use tax shall be considered to be timely reported
36 and remitted for purposes of this part, the Bradley-Burns Uniform
37 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
38 7200)), and the Transactions and Use Tax Law (Part 1.6
39 (commencing with Section 7251)), if the qualified use tax is timely

1 reported on and remitted with an acceptable tax return in
2 accordance with the provisions of this section.

3 (g) Notwithstanding a person’s payment of qualified use tax on
4 an acceptable tax return, the State Board of Equalization is not
5 precluded from making any determinations for understatements
6 of qualified use tax against that person in accordance with Part 5
7 (commencing with Section 6451).

8 (h) Any payments and credits shown on the return, together
9 with any other credits associated with that person’s account, of a
10 person that is required to report qualified use tax on an acceptable
11 tax return shall be applied in the following order:

12 (1) Taxes imposed under Part 10 (commencing with Section
13 17001) or Part 11 (commencing with Section 23001), including
14 penalties and interest, if any, imposed under Part 10.2 (commencing
15 with Section 18041).

16 (2) Qualified use tax reported on the acceptable tax return in
17 accordance with this section.

18 (i) (1) This section does not apply to a person who is otherwise
19 required to hold a seller’s permit or to register with the State Board
20 of Equalization pursuant to Part 1 (commencing with Section 6001)
21 of this division.

22 (2) This section applies to purchases of tangible personal
23 property made on or after January 1, 2007, in taxable years
24 beginning on or after January 1, 2007.

25 SEC. 2. Section 6487.3 of the Revenue and Taxation Code is
26 amended to read:

27 6487.3. (a) (1) For persons that are required to report qualified
28 use tax in accordance with Section 6452.1, except in the case of
29 fraud, intent to avoid this part or authorized rules and regulations
30 issued by the board, or the gross understatement of qualified use
31 taxes, every notice of a deficiency determination with respect to
32 the qualified use tax shall be mailed within three years after the
33 last day for which an acceptable tax return is due or filed,
34 whichever occurs later.

35 (2) In the case of a gross understatement of qualified use tax,
36 every notice of a deficiency determination with respect to the
37 qualified use tax shall be mailed within six years after the last day
38 for which an acceptable tax return is due or filed, whichever occurs
39 later.

1 (3) For purposes of this subdivision a “gross understatement of
2 qualified used tax” is a deficiency that is in excess of 25 percent
3 of the amount of qualified use tax reported on a person’s acceptable
4 tax return. In the case of married individuals filing separate
5 California personal income tax returns, the total amount of qualified
6 use tax reported will be considered in determining whether there
7 is a gross understatement of qualified use tax.

8 (4) For purposes of this section “acceptable tax return” means
9 a timely filed original return that is filed pursuant to Article 1
10 (commencing with Section 18501), Article 2 (commencing with
11 Section 18601), Section 18633, Section 18633.5 of Chapter 2
12 (commencing with Section 18501) of Part 10.2, or Article 3
13 (commencing with Section 23771) of Chapter 4 of Part 11.

14 (b) This section applies to reporting of purchases of tangible
15 personal property made on or after January 1, 2007, in taxable
16 years beginning on or after January 1, 2007.

17 SEC. 3. Section 18510 of the Revenue and Taxation Code is
18 amended to read:

19 18510. (a) (1) The Franchise Tax Board shall revise the returns
20 required to be filed pursuant to this article, Article 2 (commencing
21 with Section 18601), Section 18633, Section 18633.5, and Article
22 3 (commencing with Section 23771) of Chapter 4 of Part 11 in a
23 form and manner approved by the State Board of Equalization, to
24 enable a person to report and pay qualified use tax in accordance
25 with the provisions of Section 6452.1.

26 (2) Within 10 working days of receiving from the Franchise
27 Tax Board the returns described in paragraph (1), the State Board
28 of Equalization shall do either of the following:

29 (A) Approve the form and manner of the returns and notify the
30 Franchise Tax Board of this approval.

31 (B) Submit comments to the Franchise Tax Board regarding
32 changes to the returns that shall be incorporated before the State
33 Board of Equalization approves the form and manner of the returns.

34 (b) Any payments and credits shown on the return, together
35 with any other credits associated with that person’s account, of a
36 person that reports qualified use tax on an acceptable tax return
37 shall be applied in the following order:

38 (1) Taxes imposed under Part 10 (commencing with Section
39 17001) or Part 11 (commencing with Section 23001), including
40 penalties and interest, if any, imposed under this part.

1 (2) Qualified use tax as reported on the acceptable tax return,
2 in accordance with Section 6452.1.

3 (c) The Franchise Tax Board shall transfer the qualified use tax
4 received pursuant to Section 6452.1, and any information the State
5 Board of Equalization deems necessary for its administration of
6 the use tax, to the State Board of Equalization within 60 days from
7 the date the use tax is received or the acceptable tax return is
8 processed, whichever is later.

9 (d) This section shall be operative for returns filed for taxable
10 years on and after January 1, 2007.