

**ASSEMBLY BILL**

**No. 1895**

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**Introduced by Assembly Member Silva**

February 7, 2008

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An act to amend Section 6829 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1895, as introduced, Silva. Sales and use taxes: administration.

The Sales and Use Tax Law imposes personal liability for unpaid taxes, interest and penalties on an officer or other person who willfully failed to pay these amounts, upon the termination, dissolution, or abandonment of business of the corporation or other business entity, with the sum due to be collected by deficiency determination and collection in the manner provided under this law.

This bill would specify state the time in which a notice of deficiency determination must be mailed pursuant to these provisions, and would make additional technical, nonsubstantive changes.

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

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

1 SECTION 1. Section 6829 of the Revenue and Taxation Code  
2 is amended to read:  
3 6829. (a) ~~Notwithstanding Section 16306, 16307, 17101,~~  
4 ~~17158, 17355, 17450, or 17456 of the Corporations Code, upon~~  
5 *Upon the termination, dissolution, or abandonment of the business*  
6 *of a corporation, partnership, a registered or foreign limited*

1 ~~partnership, limited liability partnership or a domestic or foreign~~  
2 ~~corporate, or limited liability company—business, any officer,~~  
3 member, manager, partner, or other person having control or  
4 supervision of, or who is charged with the responsibility for the  
5 filing of returns or the payment of tax, or who is under a duty to  
6 act for the corporation, partnership, *limited partnership*, limited  
7 liability partnership, or limited liability company in complying  
8 with any requirement of this part, shall, *notwithstanding any*  
9 *provision in the Corporations Code to the contrary*, be personally  
10 liable for any unpaid taxes and interest and penalties on those  
11 taxes, if the officer, member, manager, *partner*, or other person  
12 willfully fails to pay or to cause to be paid any taxes due from the  
13 corporation, partnership, *limited partnership*, limited liability  
14 partnership, or limited liability company pursuant to this part.

15 (b) The officer, member, manager, partner, or other person shall  
16 be liable only for taxes that became due during the period he or  
17 she had the control, supervision, responsibility, or duty to act for  
18 the corporation, partnership, *limited partnership*, limited liability  
19 partnership, or limited liability company described in subdivision  
20 (a), plus interest and penalties on those taxes.

21 (c) Personal liability may be imposed pursuant to this section,  
22 only if the board can establish that the corporation, partnership,  
23 *limited partnership*, limited liability partnership, or limited liability  
24 company had included tax reimbursement in the selling price of,  
25 or added tax reimbursement to the selling price of, tangible  
26 personal property sold in the conduct of its business, or when it  
27 can be established that the corporation, partnership, *limited*  
28 *partnership*, limited liability partnership, or limited liability  
29 company consumed tangible personal property and failed to pay  
30 the tax to the seller or has included use tax on the billing and  
31 collected the use tax or has issued a receipt for the use tax and  
32 failed to report and pay use tax.

33 (d) For purposes of this section “willfully fails to pay or to cause  
34 to be paid” means that the failure was the result of an intentional,  
35 conscious, and voluntary course of action.

36 ~~The~~ *Except as provided in subdivision (f), the* sum due for  
37 the liability under this section may be collected by determination  
38 and collection in the manner provided in Chapter 5 (commencing  
39 with Section 6451) and Chapter 6 (commencing with Section  
40 6701).

1     (f) A notice of deficiency determination under this section shall  
2 be mailed within three years after the last day of the calendar  
3 month following the quarterly period in which the board obtains  
4 actual knowledge, through its audit or compliance activities, or  
5 by written communication by the business or its representative, of  
6 the termination, dissolution, or abandonment of the business of  
7 the corporation, partnership, limited partnership, limited liability  
8 partnership, or limited liability company, or, within eight years  
9 after the last day of the calendar month following the quarterly  
10 period in which the corporation, partnership, limited partnership,  
11 limited liability partnership, or limited liability company business  
12 was terminated, dissolved, or abandoned, whichever period expires  
13 earlier. If a business or its representative files a notice of  
14 termination, dissolution, or abandonment of its business with a  
15 state or local agency other than the board, this filing shall not  
16 constitute actual knowledge by the board under this section.

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