

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2152

Introduced by Assembly Member Duvall

February 20, 2008

An act to amend Section ~~21004~~ 6701 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2152, as amended, Duvall. ~~Tax: Taxpayers' Rights Advocate. State Board of Equalization: security.~~

The Sales and Use Tax Law authorizes the State Board of Equalization to require taxpayers to post security up to a maximum of \$50,000 whenever the board deems it necessary to ensure the payment of taxes due. Existing law also requires the board to released the security after a 3-year period in which the taxpayer has filed all returns and paid all tax to the state.

This bill would require the State Board of Equalization to, in the event the security deposit is not refunded to the taxpayer after a 3-year period in which the taxpayer has filed all returns and paid all tax to the state, pay interest to the taxpayer on the amount of the security deposit at a specified rate. This bill would also allow a taxpayer to bring a legal action against the board if the board fails to refund the security deposit within 3 months of the security deposit's release date, as provided.

~~Existing law establishes the position of the Taxpayers' Rights Advocate and requires that the advocate or his or her designee, among other duties, coordinate resolution of taxpayer complaints and problems and give highest priority to reviewing and taking prompt and appropriate action, as provided, including staying action, as specified. Existing law~~

~~specifies that any penalties or interest, that otherwise would accrue are not affected by the granting of a stay.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

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

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

1 SECTION 1. Section 6701 of the Revenue and Taxation Code
2 is amended to read:

3 6701. (a) The board, whenever it deems it necessary to ensure
4 compliance with this part, may require any person subject thereto,
5 to place with it any security that the board may determine. Any
6 security in the form of cash, government bonds, or insured deposits
7 in banks or savings and loan institutions shall be held by the board
8 in trust to be used solely in the manner provided by this section
9 and Section 6815. The amount of the security shall be fixed by the
10 board but, except as noted below, shall not be greater than twice
11 the estimated average liability of persons filing returns for quarterly
12 periods or three times the estimated average liability of persons
13 required to file returns for monthly periods, determined in the
14 manner that the board deems proper, or fifty thousand dollars
15 (\$50,000), whichever amount is the lesser. In case of a person who,
16 pursuant to Section 6070 of this part, has been given notice of
17 hearing to show cause why his or her permit or permits should not
18 be revoked, or a person whose permit or permits has been revoked
19 or suspended, the amount of the security shall not be greater than
20 three times the average liability of persons filing returns for
21 quarterly periods or five times the average liability of persons
22 required to file returns for monthly periods, or fifty thousand
23 dollars (\$50,000), whichever amount is the lesser. The limitations
24 herein provided apply regardless of the type of security placed
25 with the board. The amount of the security may be increased or
26 decreased by the board subject to the limitations herein provided.
27 Security held by the board shall be released after a three-year
28 period in which the person has filed all returns and paid all tax to
29 the state or any amount of tax required to be collected and paid to
30 the state within the time required. The board may sell the security
31 at public auction if it becomes necessary to do so in order to

1 recover any tax or any amount required to be collected, interest,
2 or penalty due. Notice of the sale may be served upon the person
3 who placed the security personally or by mail; if by mail, service
4 shall be made in the manner prescribed for service of a notice of
5 a deficiency determination and shall be addressed to the person at
6 his or her address as it appears in the records of the board. Upon
7 any sale any surplus above the amounts due shall be returned to
8 the person who placed the security.

9 *(b) (1) If the board does not release the security to the taxpayer*
10 *after the three-year period in which the taxpayer has filed all*
11 *returns and paid all tax to the state or any amount of tax required*
12 *to be collected and paid to the state within the time required, the*
13 *board shall also pay interest to the taxpayer upon the amount of*
14 *the security at the same rate established for underpayments of tax*
15 *to the state under paragraph (1) of subdivision (a) of Section*
16 *6591.5.*

17 *(2) Notwithstanding any other provision of law, if the board*
18 *does not release the security to the taxpayer within three months*
19 *of the date upon which the security was eligible for release, a*
20 *taxpayer may bring a suit or proceeding in any court for the*
21 *recovery of a security deposit alleged to have been erroneously*
22 *withheld by the board. If the taxpayer is the prevailing party, they*
23 *shall be entitled to the recovery of their reasonable legal fees and*
24 *court costs.*

25 ~~SECTION 1. Section 21004 of the Revenue and Taxation Code~~
26 ~~is amended to read:~~

27 ~~21004. (a) The board shall establish the position of the~~
28 ~~Taxpayers' Rights Advocate. The advocate or his or her designee~~
29 ~~shall be responsible for coordinating resolution of taxpayer~~
30 ~~complaints and problems, including any taxpayer complaints~~
31 ~~regarding unsatisfactory treatment of taxpayers by board~~
32 ~~employees. The advocate shall report directly to the executive~~
33 ~~officer of the board.~~

34 ~~(b) The advocate or his or her designee shall give highest priority~~
35 ~~to reviewing and taking prompt and appropriate action, including~~
36 ~~staying actions where taxpayers have suffered or will suffer~~
37 ~~irreparable loss as the result of board action. Applicable statutes~~
38 ~~of limitation shall be tolled during the pendency of a stay. Any~~

- 1 ~~penalties and interest that would otherwise accrue shall not be~~
- 2 ~~affected by the granting of a stay.~~

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