

ASSEMBLY BILL

No. 469

Introduced by Assembly Member Eng

February 24, 2009

An act to amend Sections 6452.1, 6453, 6487.3, and 18510 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 469, as introduced, Eng. Sales and use taxes: 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 purchased from a retailer for storage, use, or other consumption in this state. Existing law requires retailers, as specified, to register with 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 revise 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 ~~(b)~~ (d), that is otherwise required to report and remit
 7 that tax pursuant to this part *and fails to do so, may elect to shall*
 8 report and remit qualified use tax on an acceptable tax return.

9 ~~(b) (1) A person that reports qualified use tax on an acceptable~~
 10 ~~tax return is deemed to have made the election authorized by this~~
 11 ~~section.~~

12 ~~(2) (A) In~~

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

18 ~~(B)~~

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

23 ~~(c) An election to report qualified use tax on an acceptable tax~~
 24 ~~return shall be irrevocable. An acceptable tax return that contains~~
 25 use tax shall be considered a tax return for purposes of this part.

26 (d) For purposes of this section:

27 (1) “Acceptable tax return” means a timely filed original return
 28 that is filed pursuant to Article 1 (commencing with Section
 29 18501), Article 2 (commencing with Section 18601), Section
 30 18633, Section 18633.5 of Chapter 2 (commencing with Section
 31 18501) of Part 10.2, or Article 3 (commencing with Section 23771)
 32 of Chapter 4 of Part 11.

1 (2) (A) Except as provided in subparagraph (B), “qualified use
2 tax” means ~~the use~~ *either of the following:*

3 (i) *The use tax imposed under this part, Section 35 of Article*
4 *XIII of the California Constitution, the Bradley-Burns Uniform*
5 *Local Sales and Use Tax Law (Part 1.5 (commencing with Section*
6 *7200)), or the Transactions and Use Tax Law (Part 1.6*
7 *(commencing with Section 7251)) that has not been paid to a*
8 *retailer holding a seller’s permit or certificate of registration-use*
9 *tax.*

10 (ii) *For individual nonbusiness purchases of less than one*
11 *thousand dollars (\$1,000), the estimated amount of use tax due*
12 *based on the person’s California taxable income as reflected in*
13 *the use tax table shown in the accompanying instructions of the*
14 *acceptable tax return. For individual nonbusiness purchases of*
15 *one thousand dollars (\$1,000) or more, “qualified use tax” means*
16 *the amount of use tax due in accordance with clause (i).*

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

18 (i) Use tax that applies to a mobilehome or a commercial coach
19 that is required to be registered annually pursuant to the Health
20 and Safety Code or use tax that applies to a vehicle subject to
21 identification under Division 16.5 (commencing with Section
22 38000) of the Vehicle Code, or to a vehicle that qualifies under
23 the permanent trailer identification plate program pursuant to
24 subdivision (a) of Section 5014.1 of the Vehicle Code.

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

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

27 ~~(e) If a person elects to report qualified use tax on an acceptable~~
28 ~~tax return, that person shall comply with all of the following:~~

29 ~~(1) The qualified use tax shall be reported on and remitted with~~
30 ~~an acceptable tax return.~~

31 ~~(2) The qualified use tax shall be reported on and remitted with~~
32 ~~an acceptable tax return that is required to be filed for the taxable~~
33 ~~year in which the liability for the qualified use tax was incurred.~~

34 (iv) *Use tax imposed on a purchase of cigarettes, tobacco*
35 *products, or cigarettes and tobacco products for which the*
36 *purchaser is registered with the board as a cigarette consumer, a*
37 *tobacco products consumer, or a cigarette and tobacco products*
38 *consumer.*

39 (e) *A person that is required to report qualified use tax on an*
40 *acceptable tax return shall report and remit the qualified use tax*

1 *by either reporting the amount due based on all taxable purchases*
2 *of tangible personal property made during the taxable year for*
3 *which the taxable return is required to be filed or, with respect to*
4 *individual nonbusiness purchases of less than one thousand dollars*
5 *(\$1,000), by using the use tax table shown in the accompanying*
6 *instructions of the acceptable tax return.*

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

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

16 (3) Qualified use tax shall be considered to be timely reported
17 and remitted for purposes of this part, the Bradley-Burns Uniform
18 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
19 7200)), and the Transactions and Use Tax Law (Part 1.6
20 (commencing with Section 7251)), if the qualified use tax is timely
21 reported on and remitted with an acceptable tax return in
22 accordance with the provisions of this section.

23 (g) ~~Notwithstanding a person's election to remit and to report~~
24 *payment of qualified use tax on an acceptable tax return, the State*
25 *Board of Equalization is not precluded from making any*
26 *determinations for understatements of qualified use tax against*
27 *that person in accordance with Part 5 (commencing with Section*
28 *6451). However, with respect to individual nonbusiness purchases*
29 *of less than one thousand dollars (\$1,000), the board shall be*
30 *precluded from making any such determination against any person*
31 *that uses the use tax table for purposes of satisfying his or her use*
32 *tax liability when the person uses that table in accordance with*
33 *the accompanying instructions.*

34 (h) 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 ~~elects~~ *is required* to report qualified use tax on an
37 acceptable tax return 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

1 penalties and interest, if any, imposed under Part 10.2 (commencing
2 with Section 18041).

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

5 (i) (1) This section does not apply to a person who is otherwise
6 required to hold a seller's permit or to register with the State Board
7 of Equalization pursuant to Part 1 (commencing with Section 6001)
8 of this division.

9 (2) This section applies to purchases of tangible personal
10 property made on or after January 1, ~~2003~~ 2010, in taxable years
11 beginning on or after January 1, ~~2003~~, and on or before December
12 31, ~~2009~~, and as of that date becomes inoperative, unless a later
13 enacted statute extends the operation of this section 2010.

14 ~~(3) Notwithstanding this section becoming inoperative as~~
15 ~~described in paragraph (2), any provisions in this section or Section~~
16 ~~18510 relating to collection activities attributable to qualified use~~
17 ~~taxes reported prior to the inoperative date of this section shall~~
18 ~~continue in the same manner as if this section were still operative.~~

19 SEC. 2. Section 6453 of the Revenue and Taxation Code is
20 amended to read:

21 6453. For purposes of the sales tax, the return shall show the
22 gross receipts of the seller during the preceding reporting period
23 and, in the case of a person who is liable for the sales tax and is
24 not a seller, the gross receipts of such person for the period in
25 which the liability was incurred. For purposes of the use tax, in
26 case of a return filed by a retailer, the return shall show the total
27 sales price of the property sold by him or her, the storage, use, or
28 consumption of which property became subject to the use tax
29 during the preceding reporting period; in case of a return filed by
30 a purchaser, *except as provided in Section 6452.1*, the return shall
31 show the total sales price of the property purchased by him or her,
32 the storage, use, or consumption of which became subject to the
33 use tax during the preceding reporting period.

34 The return shall also show the amount of the taxes for the period
35 covered by the return and any other information which the board
36 deems necessary for the proper administration of this part.

37 SEC. 3. Section 6487.3 of the Revenue and Taxation Code is
38 amended to read:

39 6487.3. (a) (1) For persons that ~~elect~~ *are required* to report
40 qualified use tax in accordance with Section 6452.1, except in the

1 case of fraud, intent to avoid this part or authorized rules and
 2 regulations issued by the board, or the gross understatement of
 3 qualified use taxes, every notice of a deficiency determination with
 4 respect to the qualified use tax shall be mailed within three years
 5 after the last day for which an acceptable tax return is due or filed,
 6 whichever occurs later.

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

12 (3) For purposes of this subdivision, a “gross understatement
 13 of qualified ~~used~~ *use* tax” is a deficiency that is in excess of 25
 14 percent of the amount of qualified use tax reported on a person’s
 15 acceptable tax return. In the case of married individuals filing
 16 separate California personal income tax returns, the total amount
 17 of qualified use tax reported will be considered in determining
 18 whether there is a gross understatement of qualified use tax.

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

25 (b) This section applies to reporting of purchases of tangible
 26 personal property made on or after January 1, ~~2003~~ 2010, in taxable
 27 years beginning on or after January 1, ~~2003~~, and on or before
 28 December 31, 2009, and as of that latter date becomes inoperative,
 29 unless a later enacted statute extends the operation of this section
 30 2010.

31 SEC. 4. Section 18510 of the Revenue and Taxation Code is
 32 amended to read:

33 18510. (a) (1) The Franchise Tax Board shall revise the returns
 34 required to be filed pursuant to this article, Article 2 (commencing
 35 with Section 18601), Section 18633, Section 18633.5, and Article
 36 3 (commencing with Section 23771) of Chapter 4 of Part 11 *and*
 37 *the accompanying instructions for filing those returns* in a form
 38 and manner approved by the State Board of Equalization, to ~~allow~~
 39 *enable* a person to report and pay qualified use tax in accordance
 40 with the provisions of Section 6452.1.

- 1 (2) Within 10 working days of receiving from the Franchise
2 Tax Board the returns *and instructions* described in paragraph (1),
3 the State Board of Equalization shall do either of the following:
4 (A) Approve the form and manner of the returns *and instructions*
5 and notify the Franchise Tax Board of this approval.
6 (B) Submit comments to the Franchise Tax Board regarding
7 changes to the returns *and instructions* that shall be incorporated
8 before the State Board of Equalization approves the form and
9 manner of the returns *and instructions*.
- 10 (b) Any payments and credits shown on the return, together
11 with any other credits associated with that person's account, of a
12 person that ~~elects to report~~ *reports* qualified use tax on an
13 acceptable tax return shall be applied in the following order:
14 (1) Taxes imposed under Part 10 (commencing with Section
15 17001) or Part 11 (commencing with Section 23001), including
16 penalties and interest, if any, imposed under this part.
17 (2) Qualified use tax as reported on the acceptable tax return,
18 in accordance with Section 6452.1.
- 19 (c) The Franchise Tax Board shall transfer the qualified use tax
20 received pursuant to Section 6452.1, and any information the State
21 Board of Equalization deems necessary for its administration of
22 the use tax, to the State Board of Equalization within 60 days from
23 the date the use tax is received or the acceptable tax return is
24 processed, whichever is later.
- 25 (d) This section shall be operative for returns filed for taxable
26 years ~~on and beginning on or after January 1, 2003, and ending~~
27 ~~on or before December 31, 2009, and as of that date becomes~~
28 ~~inoperative, unless a later enacted statute extends the operation of~~
29 ~~this section 2010.~~