

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 469

Introduced by Assembly Member Eng
(Coauthor: Assembly Member Evans)
(Coauthor: Senator Wolk)

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 amended, Eng. Sales and use taxes: qualified use tax payment.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of *tangible personal property sold at retail* in this state or, or on 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 (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.

1 (2) (A) Except as provided in subparagraph (B), “qualified use
2 tax” means:

3 (i) For one or more single nonbusiness purchases of individual
4 items of tangible personal property with a sales price of less than
5 one thousand dollars (\$1,000), either of the following:

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

13 (II) The estimated amount of use tax due based on the person’s
14 California taxable income as reflected in the use tax table shown
15 in the accompanying instructions of the acceptable tax return.

16 (ii) For one or more single nonbusiness purchases of individual
17 items of tangible personal property with a sales price of one
18 thousand dollars (\$1,000) or more, or for any tangible personal
19 property purchased for use in a trade or business, the amount of
20 use tax imposed under this part, Section 35 of Article XIII of the
21 California Constitution, the Bradley-Burns Uniform Local Sales
22 and Use Tax Law (Part 1.5 (commencing with Section 7200)), or
23 the Transactions and Use Tax Law (Part 1.6 (commencing with
24 Section 7251)) that has not been paid to a retailer holding a seller’s
25 permit or certificate of registration-use tax.

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

27 (i) Use tax that applies to a mobilehome or a commercial coach
28 that is required to be registered annually pursuant to the Health
29 and Safety Code or use tax that applies to a vehicle subject to
30 identification under Division 16.5 (commencing with Section
31 38000) of the Vehicle Code, or to a vehicle that qualifies under
32 the permanent trailer identification plate program pursuant to
33 subdivision (a) of Section 5014.1 of the Vehicle Code.

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

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

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

1 (e) A person that is required to report qualified use tax on an
2 acceptable tax return shall report and remit the qualified use tax
3 by reporting the amount due based on all taxable purchases of
4 tangible personal property made during the taxable year for which
5 the acceptable tax return is required to be filed. A person that has
6 made one or more single nonbusiness purchases of individual items
7 of tangible personal property each with a sales price of less than
8 one thousand dollars (\$1,000) may satisfy his or her tax liability
9 for those purchases by using the use tax table shown in the
10 accompanying instructions of the acceptable tax return.

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

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

20 (3) Qualified use tax shall be considered to be timely reported
21 and remitted for purposes of this part, the Bradley-Burns Uniform
22 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
23 7200)), and the Transactions and Use Tax Law (Part 1.6
24 (commencing with Section 7251)), if the qualified use tax is timely
25 reported on and remitted with an acceptable tax return in
26 accordance with the provisions of this section.

27 (g) Notwithstanding a person's payment of qualified use tax on
28 an acceptable tax return, the State Board of Equalization is not
29 precluded from making any determinations for understatements
30 of qualified use tax against that person in accordance with Part 5
31 (commencing with Section 6451). However, with respect to one
32 or more single nonbusiness purchases of individual items of
33 tangible personal property with a sales price of less than one
34 thousand dollars (\$1,000), the board shall be precluded from
35 making any such determination against any person that uses the
36 use tax table for purposes of satisfying his or her use tax liability
37 when the person uses that table in accordance with the
38 accompanying instructions.

39 (h) Any payments and credits shown on the return, together
40 with any other credits associated with that person's account, of a

1 person that is required to report qualified use tax on an acceptable
2 tax return shall be applied in the following order:

3 (1) Taxes imposed under Part 10 (commencing with Section
4 17001) or Part 11 (commencing with Section 23001), including
5 penalties and interest, if any, imposed under Part 10.2 (commencing
6 with Section 18041).

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

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

13 (2) This section applies to purchases of tangible personal
14 property made on or after January 1, 2010, in taxable years
15 beginning on or after January 1, 2010.

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

18 6453. For purposes of the sales tax, the return shall show the
19 gross receipts of the seller during the preceding reporting period
20 and, in the case of a person who is liable for the sales tax and is
21 not a seller, the gross receipts of such person for the period in
22 which the liability was incurred. For purposes of the use tax, in
23 case of a return filed by a retailer, the return shall show the total
24 sales price of the property sold by him or her, the storage, use, or
25 consumption of which property became subject to the use tax
26 during the preceding reporting period; in case of a return filed by
27 a purchaser, except as provided in Section 6452.1, the return shall
28 show the total sales price of the property purchased by him or her,
29 the storage, use, or consumption of which became subject to the
30 use tax during the preceding reporting period.

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

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

36 6487.3. (a) (1) For persons that are required to report qualified
37 use tax in accordance with Section 6452.1, except in the case of
38 fraud, intent to avoid this part or authorized rules and regulations
39 issued by the board, or the gross understatement of qualified use
40 taxes, every notice of a deficiency determination with respect to

1 the qualified use tax shall be mailed within three years after the
2 last day for which an acceptable tax return is due or filed,
3 whichever occurs later.

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

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

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

22 (b) This section applies to reporting of purchases of tangible
23 personal property made on or after January 1, 2010, in taxable
24 years beginning on or after January 1, 2010.

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

27 18510. (a) (1) The Franchise Tax Board shall revise the returns
28 required to be filed pursuant to this article, Article 2 (commencing
29 with Section 18601), Section 18633, Section 18633.5, and Article
30 3 (commencing with Section 23771) of Chapter 4 of Part 11 and
31 the accompanying instructions for filing those returns in a form
32 and manner approved by the State Board of Equalization, to enable
33 a person to report and pay qualified use tax in accordance with the
34 provisions of Section 6452.1.

35 (2) Within 10 working days of receiving from the Franchise
36 Tax Board the returns and instructions described in paragraph (1),
37 the State Board of Equalization shall do either of the following:

38 (A) Approve the form and manner of the returns and instructions
39 and notify the Franchise Tax Board of this approval.

1 (B) Submit comments to the Franchise Tax Board regarding
2 changes to the returns and instructions that shall be incorporated
3 before the State Board of Equalization approves the form and
4 manner of the returns and instructions.

5 (b) Any payments and credits shown on the return, together
6 with any other credits associated with that person's account, of a
7 person that reports qualified use tax on an acceptable tax return
8 shall be applied in the following order:

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

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

14 (c) The Franchise Tax Board shall transfer the qualified use tax
15 received pursuant to Section 6452.1, and any information the State
16 Board of Equalization deems necessary for its administration of
17 the use tax, to the State Board of Equalization within 60 days from
18 the date the use tax is received or the acceptable tax return is
19 processed, whichever is later.

20 (d) This section shall be operative for returns filed for taxable
21 years beginning on or after January 1, 2010.