

AMENDED IN SENATE JULY 15, 2009

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 469**

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

February 24, 2009

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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 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

1 18501) of Part 10.2, or Article 3 (commencing with Section 23771)  
2 of Chapter 4 of Part 11.

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

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

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

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

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

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

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

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

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

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

1 tobacco products consumer, or a cigarette and tobacco products  
2 consumer.

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

13 (2) *Any other person required to file a return pursuant to Article*  
14 *1 (commencing with Section 18501) or Article 2 (commencing with*  
15 *Section 18601) of Chapter 2, Section 18633 or Section 18633.5 of*  
16 *Article 4, of Chapter 2 of Part 10.2, or Article 3 (commencing with*  
17 *Section 23771) of Chapter 4 of Part 11, that is not required to*  
18 *report qualified use tax on an acceptable tax return pursuant to*  
19 *this section shall designate a “0” on the space provided on the*  
20 *return for use tax.*

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

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

30 (3) Qualified use tax shall be considered to be timely reported  
31 and remitted for purposes of this part, the Bradley-Burns Uniform  
32 Local Sales and Use Tax Law (Part 1.5 (commencing with Section  
33 7200)), and the Transactions and Use Tax Law (Part 1.6  
34 (commencing with Section 7251)), if the qualified use tax is timely  
35 reported on and remitted with an acceptable tax return in  
36 accordance with the provisions of this section.

37 (g) Notwithstanding a person’s payment of qualified use tax on  
38 an acceptable tax return, the State Board of Equalization is not  
39 precluded from making any determinations for understatements  
40 of qualified use tax against that person in accordance with Part 5

1 (commencing with Section 6451). However, with respect to one  
2 or more single nonbusiness purchases of individual items of  
3 tangible personal property with a sales price of less than one  
4 thousand dollars (\$1,000), the board shall be precluded from  
5 making any such determination against any person that uses the  
6 use tax table for purposes of satisfying his or her use tax liability  
7 when the person uses that table in accordance with the  
8 accompanying instructions.

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

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

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

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

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

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

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

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

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

6 6487.3. (a) (1) For persons that are required to report qualified  
7 use tax in accordance with Section 6452.1, except in the case of  
8 fraud, intent to avoid this part or authorized rules and regulations  
9 issued by the board, or the gross understatement of qualified use  
10 taxes, every notice of a deficiency determination with respect to  
11 the qualified use tax shall be mailed within three years after the  
12 last day for which an acceptable tax return is due or filed,  
13 whichever occurs later.

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

19 (3) For purposes of this subdivision, a “gross understatement  
20 of qualified use tax” is a deficiency that is in excess of 25 percent  
21 of the amount of qualified use tax reported on a person’s acceptable  
22 tax return. In the case of married individuals filing separate  
23 California personal income tax returns, the total amount of qualified  
24 use tax that is reported will be considered in determining whether  
25 there is a gross understatement of qualified use tax.

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

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

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

37 18510. (a) (1) The Franchise Tax Board shall revise the returns  
38 required to be filed pursuant to this article, Article 2 (commencing  
39 with Section 18601), Section 18633, Section 18633.5, and Article  
40 3 (commencing with Section 23771) of Chapter 4 of Part 11 and

1 the accompanying instructions for filing those returns in a form  
2 and manner approved by the State Board of Equalization, to enable  
3 a person to report and pay qualified use tax in accordance with the  
4 provisions of Section 6452.1.

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

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

10 (B) Submit comments to the Franchise Tax Board regarding  
11 changes to the returns and instructions that shall be incorporated  
12 before the State Board of Equalization approves the form and  
13 manner of the returns and instructions.

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

18 (1) Taxes imposed under Part 10 (commencing with Section  
19 17001) or Part 11 (commencing with Section 23001), including  
20 penalties and interest, if any, imposed under this part.

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

23 (c) The Franchise Tax Board shall transfer the qualified use tax  
24 received pursuant to Section 6452.1, and any information the State  
25 Board of Equalization deems necessary for its administration of  
26 the use tax, to the State Board of Equalization within 60 days from  
27 the date the use tax is received or the acceptable tax return is  
28 processed, whichever is later.

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