

**Assembly Bill No. 469**

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Passed the Assembly September 2, 2009

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*Chief Clerk of the Assembly*

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Passed the Senate August 31, 2009

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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, 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 or after January 1, 2003, and ending on or before 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.

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

SECTION 1. Section 6452.1 of the Revenue and Taxation Code is amended to read:

6452.1. (a) Notwithstanding Section 6451, every person that purchases tangible personal property, the storage, use, or other

consumption of which is subject to qualified use tax, as defined in subdivision (d), that is otherwise required to report and remit that tax pursuant to this part and fails to do so, shall report and remit qualified use tax on an acceptable tax return.

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

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

(c) An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

(d) For purposes of this section:

(1) "Acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

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

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

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

(II) The estimated amount of use tax due based on the person's California adjusted gross income as reflected in the use tax table shown in the accompanying instructions of the acceptable tax return.

(ii) For one or more single nonbusiness purchases of individual items of tangible personal property with a sales price of one

thousand dollars (\$1,000) or more, or for any tangible personal property purchased for use in a trade or business, the amount of use tax imposed under this part, Section 35 of Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(B) "Qualified use tax" does not include:

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

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

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

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

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

(2) Any other person required to file a return pursuant to Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2, Section 18633 or Section 18633.5 of Article 4, of Chapter 2 of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11, that is not required to report qualified use tax on an acceptable tax return

pursuant to this section shall designate a “0” on the space provided on the return for use tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

















Approved \_\_\_\_\_, 2009

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*Governor*