

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2271

Introduced by Assembly Member ~~Williams Perea~~

February 24, 2012

An act to amend ~~Section 23032~~ *Sections 6055 and 6203.5* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2271, as amended, ~~Williams Perea. Corporation Tax Law. Sales and Use Taxes: worthless accounts.~~

Existing sales and use tax laws authorize a deduction or refund of tax in the case of worthless and written-off accounts held by a retailer or lender under specified circumstances, which include preparing and retaining a proper election before claiming the deduction or refund.

This bill would instead authorize a proper election to be established when the retailer and lender prepare and retain an election form, as provided. This would provide that a deduction or refund claimed shall not be disallowed solely on the ground that a proper election was not established prior to claiming a refund or deduction, as specified.

~~The Corporation Tax Law defines fiscal year to mean an accounting period of twelve months or less ending on the last day of any month other than December.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

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 6055 of the Revenue and Taxation Code*
2 *is amended to read:*

3 6055. (a) A retailer is relieved from liability for sales tax that
4 became due and payable, insofar as the measure of the tax is
5 represented by accounts that have been found to be worthless and
6 charged off for income tax purposes by the retailer or, if the retailer
7 is not required to file income tax returns, charged off in accordance
8 with generally accepted accounting principles. A retailer that has
9 previously paid the tax may, under rules and regulations prescribed
10 by the board, take as a deduction the amount found worthless and
11 charged off by the retailer. If these accounts are thereafter in whole
12 or in part collected by the retailer, the amount collected shall be
13 included in the first return filed after the collection and the tax
14 shall be paid with the return. For purposes of this subdivision, the
15 term “retailer” shall include any entity affiliated with the retailer
16 under Section 1504 of Title 26 of the United States Code.

17 (b) (1) In the case of accounts held by a lender, a retailer or a
18 lender ~~who~~ *that* makes a proper election under paragraph (4) shall
19 be entitled to a deduction or refund of the tax that the retailer has
20 previously reported and paid if all of the following conditions are
21 met:

22 (A) A deduction was not previously claimed or allowed on any
23 portion of the accounts.

24 (B) The accounts have been found worthless and written off by
25 the lender in accordance with the requirements of subdivision (a).

26 (C) The contract between the retailer and the lender contains
27 an irrevocable relinquishment of all rights to the account from the
28 retailer to the lender.

29 (D) The retailer remitted the tax on or after January 1, 2000.

30 (E) The party electing to claim the deduction or refund under
31 paragraph (4) files a claim in a manner prescribed by the board.

32 (2) If the retailer or the lender thereafter collects in whole or in
33 part any accounts, one of the following shall apply:

34 (A) If the retailer is entitled to the deduction or refund under
35 the election specified in paragraph (4), the retailer shall include
36 the amount collected in its first return filed after the collection and
37 pay tax on that amount with the return.

1 (B) If the lender is entitled to the deduction or refund under the
2 election specified in paragraph (4), the lender shall pay the tax to
3 the board in accordance with Section 6451.

4 (3) For purposes of this subdivision, the term “lender” means
5 any of the following:

6 (A) ~~Any~~A person ~~who~~ that holds a retail account ~~which~~ that
7 ~~the~~ person purchased directly from a retailer ~~who~~ that reported the
8 tax.

9 (B) ~~Any~~A person ~~who~~ that holds a retail account pursuant to
10 that person’s contract directly with the retailer ~~who~~ that reported
11 the tax.

12 (C) ~~Any~~A person ~~who~~ that is either an affiliated entity, under
13 Section 1504 of Title 26 of the United States Code, of a person
14 described in subparagraph (A) or (B), or an assignee of a person
15 described in subparagraph (A) or (B).

16 (4) (A) ~~Prior to claiming any deduction or refund under this~~
17 ~~subdivision,~~ *For purposes of this section, a “proper election”*
18 *shall be established if the retailer* ~~who~~ that reported the tax and
19 the lender ~~shall~~ prepare and retain an election *form*, signed by both
20 parties, designating which party is entitled to claim the deduction
21 or refund. This election may not be amended or revoked unless a
22 new election, signed by both parties, is prepared and retained by
23 the retailer and the lender.

24 (B) *A deduction or refund under this section shall not be*
25 *disallowed solely on the ground that a proper election was not*
26 *established prior to claiming the deduction or refund if a proper*
27 *election was established after claiming the deduction or refund.*

28 *SEC. 2. Section 6203.5 of the Revenue and Taxation Code is*
29 *amended to read:*

30 6203.5. (a) A retailer is relieved from liability to collect use
31 tax that became due and payable, insofar as the measure of the tax
32 is represented by accounts that have been found to be worthless
33 and charged off for income tax purposes by the retailer or, if the
34 retailer is not required to file income tax returns, charged off in
35 accordance with generally accepted accounting principles. A
36 retailer that has previously paid the amount of the tax may, under
37 rules and regulations prescribed by the board, take as a deduction
38 the amount found worthless and charged off by the retailer. If these
39 accounts are thereafter in whole or in part collected by the retailer,
40 the amount collected shall be included in the first return filed after

1 the collection and the amount of the tax shall be paid with the
 2 return. For purposes of this subdivision, the term “retailer” shall
 3 include any entity affiliated with the retailer under Section 1504
 4 of Title 26 of the United States Code.

5 (b) (1) In the case of accounts held by a lender, a retailer or a
 6 lender ~~who~~ that makes a proper election under paragraph (4) shall
 7 be entitled to a deduction or refund of the tax that the retailer has
 8 previously reported and paid if all of the following conditions are
 9 met:

10 (A) A deduction was not previously claimed or allowed on any
 11 portion of the accounts.

12 (B) The accounts have been found worthless and written off by
 13 the lender in accordance with the requirements of subdivision (a).

14 (C) The contract between the retailer and the lender contains
 15 an irrevocable relinquishment of all rights to the account from the
 16 retailer to the lender.

17 (D) The retailer remitted the tax on or after January 1, 2000.

18 (E) The party electing to claim the deduction or refund under
 19 paragraph (4) files a claim in a manner prescribed by the board.

20 (2) If the retailer or the lender thereafter collects in whole or in
 21 part any accounts, one of the following shall apply:

22 (A) If the retailer is entitled to the deduction or refund under
 23 the election specified in paragraph (4), the retailer shall include
 24 the amount collected in its first return filed after the collection and
 25 pay tax on that amount with the return.

26 (B) If the lender is entitled to the deduction or refund under the
 27 election specified in paragraph (4), the lender shall pay the tax to
 28 the board in accordance with Section 6451.

29 (3) For purposes of this subdivision, the term “lender” means
 30 any of the following:

31 (A) ~~Any~~ A person ~~who~~ that holds a retail account ~~which~~ that
 32 ~~the~~ person purchased directly from a retailer ~~who~~ that reported the
 33 tax.

34 (B) ~~Any~~ A person ~~who~~ that holds a retail account pursuant to
 35 that person’s contract directly with the retailer ~~who~~ that reported
 36 the tax.

37 (C) ~~Any~~ A person ~~who~~ that is either an affiliated entity, under
 38 Section 1504 of Title 26 of the United States Code, of a person
 39 described in subparagraph (A) or (B), or an assignee of a person
 40 described in subparagraph (A) or (B).

1 (4) ~~Prior to claiming any deduction or refund under this~~
2 ~~subdivision,~~ (A) *For purposes of this section, a “proper election”*
3 *shall be established if the retailer who that reported the tax and*
4 *the lender shall prepare and retain an election form, signed by both*
5 *parties, designating which party is entitled to claim the deduction*
6 *or refund. This election may not be amended or revoked unless a*
7 *new election, signed by both parties, is prepared and retained by*
8 *the retailer and the lender.*

9 (B) *A deduction or refund under this section shall not be*
10 *disallowed solely on the ground that a proper election was not*
11 *established prior to claiming the deduction or refund if a proper*
12 *election was established after claiming the deduction or refund.*

13 ~~SECTION 1. Section 23032 of the Revenue and Taxation Code~~
14 ~~is amended to read:~~

15 ~~23032. “Fiscal year” means an accounting period of 12 months~~
16 ~~or less ending on the last day of a month other than December.~~