

AMENDED IN SENATE JUNE 12, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2271

Introduced by Assembly Member Perea

February 24, 2012

~~An act to amend Sections 6055 and 6203.5 of the Revenue and Taxation Code, relating to taxation~~ *An act to add Section 19846.5 to the Government Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2271, as amended, Perea. ~~Sales and Use Taxes: worthless accounts.~~ *Franchise Tax Board: seasonal clerks.*

Under existing law, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, as specified. Existing law also provides that, unless otherwise provided for by a collective bargaining agreement, if an employment contract or policy provides for paid vacations, and an employee is terminated, the employer must pay the employee for the employee's unused vested vacation time, as specified.

This bill would provide that, notwithstanding any other law, if the Franchise Tax Board determines there is a lack of work for a seasonal clerk employed by the board, the board may (1) pay the clerk a lump-sum payment for accumulated vacation or annual leave credit, (2) by mutual agreement between the board and the clerk, schedule the clerk for vacation or annual leave, (3) allow the clerk to retain his or her vacation or annual leave credit, or (4) effect any combination of the above.

~~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.~~

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 19846.5 is added to the Government Code,
2 to read:

3 19846.5. Notwithstanding any other law, including Section
4 201 of the Labor Code, if the Franchise Tax Board determines
5 that there is a lack of work for a seasonal clerk employed by the
6 board, the board may, without permanent separation of the clerk,
7 do any of the following:

8 (a) Pay the clerk in a lump-sum payment for accumulated
9 vacation or annual leave credit.

10 (b) By mutual agreement between the board and the clerk,
11 schedule the clerk for vacation or annual leave.

12 (c) Allow the clerk to retain his or her vacation or annual leave
13 credit.

14 (d) Effect a combination of any or all of the actions described
15 in subdivisions (a) to (c), inclusive.

16 SECTION 1. ~~Section 6055 of the Revenue and Taxation Code~~
17 ~~is amended to read:~~

18 6055. (a) ~~A retailer is relieved from liability for sales tax that~~
19 ~~became due and payable, insofar as the measure of the tax is~~
20 ~~represented by accounts that have been found to be worthless and~~
21 ~~charged off for income tax purposes by the retailer or, if the retailer~~
22 ~~is not required to file income tax returns, charged off in accordance~~
23 ~~with generally accepted accounting principles. A retailer that has~~
24 ~~previously paid the tax may, under rules and regulations prescribed~~
25 ~~by the board, take as a deduction the amount found worthless and~~
26 ~~charged off by the retailer. If these accounts are thereafter in whole~~

1 or in part collected by the retailer, the amount collected shall be
2 included in the first return filed after the collection and the tax
3 shall be paid with the return. For purposes of this subdivision, the
4 term “retailer” shall include any entity affiliated with the retailer
5 under Section 1504 of Title 26 of the United States Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 ~~SEC. 2. Section 6203.5 of the Revenue and Taxation Code is~~
13 ~~amended to read:~~

14 ~~6203.5. (a) A retailer is relieved from liability to collect use~~
15 ~~tax that became due and payable, insofar as the measure of the tax~~
16 ~~is represented by accounts that have been found to be worthless~~
17 ~~and charged off for income tax purposes by the retailer or, if the~~
18 ~~retailer is not required to file income tax returns, charged off in~~
19 ~~accordance with generally accepted accounting principles. A~~
20 ~~retailer that has previously paid the amount of the tax may, under~~
21 ~~rules and regulations prescribed by the board, take as a deduction~~
22 ~~the amount found worthless and charged off by the retailer. If these~~
23 ~~accounts are thereafter in whole or in part collected by the retailer,~~
24 ~~the amount collected shall be included in the first return filed after~~
25 ~~the collection and the amount of the tax shall be paid with the~~
26 ~~return. For purposes of this subdivision, the term “retailer” shall~~
27 ~~include any entity affiliated with the retailer under Section 1504~~
28 ~~of Title 26 of the United States Code.~~

29 ~~(b) (1) In the case of accounts held by a lender, a retailer or a~~
30 ~~lender that makes a proper election under paragraph (4) shall be~~
31 ~~entitled to a deduction or refund of the tax that the retailer has~~
32 ~~previously reported and paid if all of the following conditions are~~
33 ~~met:~~

34 ~~(A) A deduction was not previously claimed or allowed on any~~
35 ~~portion of the accounts.~~

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

38 ~~(C) The contract between the retailer and the lender contains~~
39 ~~an irrevocable relinquishment of all rights to the account from the~~
40 ~~retailer to the lender.~~

- 1 ~~(D) The retailer remitted the tax on or after January 1, 2000.~~
- 2 ~~(E) The party electing to claim the deduction or refund under~~
- 3 ~~paragraph (4) files a claim in a manner prescribed by the board.~~
- 4 ~~(2) If the retailer or the lender thereafter collects in whole or in~~
- 5 ~~part any accounts, one of the following shall apply:~~
- 6 ~~(A) If the retailer is entitled to the deduction or refund under~~
- 7 ~~the election specified in paragraph (4), the retailer shall include~~
- 8 ~~the amount collected in its first return filed after the collection and~~
- 9 ~~pay tax on that amount with the return.~~
- 10 ~~(B) If the lender is entitled to the deduction or refund under the~~
- 11 ~~election specified in paragraph (4), the lender shall pay the tax to~~
- 12 ~~the board in accordance with Section 6451.~~
- 13 ~~(3) For purposes of this subdivision, the term “lender” means~~
- 14 ~~any of the following:~~
- 15 ~~(A) A person that holds a retail account that the person~~
- 16 ~~purchased directly from a retailer that reported the tax.~~
- 17 ~~(B) A person that holds a retail account pursuant to that person’s~~
- 18 ~~contract directly with the retailer that reported the tax.~~
- 19 ~~(C) A person that is either an affiliated entity, under Section~~
- 20 ~~1504 of Title 26 of the United States Code, of a person described~~
- 21 ~~in subparagraph (A) or (B), or an assignee of a person described~~
- 22 ~~in subparagraph (A) or (B).~~
- 23 ~~(4) (A) For purposes of this section, a “proper election” shall~~
- 24 ~~be established if the retailer that reported the tax and the lender~~
- 25 ~~prepare and retain an election form, signed by both parties,~~
- 26 ~~designating which party is entitled to claim the deduction or refund.~~
- 27 ~~This election may not be amended or revoked unless a new~~
- 28 ~~election, signed by both parties, is prepared and retained by the~~
- 29 ~~retailer and the lender.~~
- 30 ~~(B) A deduction or refund under this section shall not be~~
- 31 ~~disallowed solely on the ground that a proper election was not~~
- 32 ~~established prior to claiming the deduction or refund if a proper~~
- 33 ~~election was established after claiming the deduction or refund.~~