

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 29, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 43

Introduced by Assembly Member Bocanegra

December 14, 2012

~~An act to amend Section 17052.25 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to amend Section 6901 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 43, as amended, Bocanegra. ~~Income taxes: credits: adoption costs. Sales and use taxes: claim for refund: customer refunds.~~

Under the Sales and Use Tax Law, any amount collected or paid in excess of what is due under that law is required to be credited by the State Board of Equalization against any other amounts due and payable from the person from whom the excess amount was collected or by whom it was paid, and the balance refunded to the person, as provided. Under existing law, when an amount represented by a person to a customer as constituting reimbursement for taxes due under the Sales and Use Tax Law is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount paid is required to be returned by the person to the customer upon notification by the board or by the customer that this excess has been ascertained.

This bill would authorize a person to make an irrevocable election to assign to the customer the right to receive the amount that would be refunded to the person, provided specified conditions are met, including that the amount be \$50,000 or greater, and would authorize the board to make that payment to the customer.

~~The Personal Income Tax Law authorizes various credits against the taxes imposed by that law, including a credit in an amount equal to 50% of specified adoption costs, not to exceed \$2,500 per minor child.~~

~~This bill would increase the maximum amount of the above credit to \$3,000, commencing January 1, 2014.~~

~~This bill would take effect immediately as a tax levy.~~

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 6901 of the Revenue and Taxation Code
2 is amended to read:

3 6901. (a) If the board determines that any amount, penalty,
4 or interest has been paid more than once or has been erroneously
5 or illegally collected or computed, the board shall set forth that
6 fact in the records of the board and shall certify the amount
7 collected in excess of the amount legally due and the person from
8 whom it was collected or by whom paid. The excess amount
9 collected or paid shall be credited by the board on any amounts
10 then due and payable from the person from whom the excess
11 amount was collected or by whom it was paid under this part, and
12 the balance shall be refunded to the person, or his or her successors,
13 administrators, or executors, *or customer as provided in subdivision*
14 *(b)*, if a determination by the board is made in any of the following
15 cases:

16 (a)

17 (1) Any amount of tax, interest, or penalty was not required to
18 be paid.

19 (b)

20 (2) Any amount of prepayment of sales tax, interest, or penalty
21 paid pursuant to Article 1.5 (commencing with Section 6480) of
22 Chapter 5 was not required to be paid.

23 (e)

1 (3) Any amount that is approved as a settlement pursuant to
2 Section 7093.5.

3 (b) A person may make an irrevocable election to assign to the
4 customer the right to receive the amount refunded if all of the
5 following conditions are met:

6 (1) The entire amount represents excess tax reimbursement that
7 is required to be paid by the person to a single customer under
8 Section 6901.5.

9 (2) The amount to be refunded is fifty thousand dollars (\$50,000)
10 or greater.

11 (3) The irrevocable election to assign to the customer the amount
12 refunded is evidenced by a statement signed by the person and the
13 customer authorizing the named customer to receive the amount
14 refunded.

15 (4) The signed statement is submitted to the board in conjunction
16 with the person’s claim for refund.

17 ~~Any~~

18 (c) Any overpayment of the use tax by a purchaser to a retailer
19 who is required to collect the tax and who gives the purchaser a
20 receipt therefor pursuant to Article 1 (commencing with Section
21 6201) of Chapter 3 shall be credited or refunded by the state to the
22 purchaser. ~~Any proposed determination by the board pursuant to
23 this section with respect to an amount in excess of fifty thousand
24 dollars (\$50,000) shall be available as a public record for at least
25 10 days prior to the effective date of that determination.~~

26 (d) ~~Any proposed determination by the board pursuant to this
27 section with respect to an amount in excess of fifty thousand dollars
28 (\$50,000) shall be available as a public record for at least 10 days
29 prior to the effective date of that determination.~~

30 ~~SECTION 1. Section 17052.25 of the Revenue and Taxation
31 Code is amended to read:~~

32 ~~17052.25.— (a) For each taxable year beginning on or after
33 January 1, 1994, there shall be allowed as a credit against the “net
34 tax,” as defined in Section 17039, an amount equal to 50 percent
35 of the costs paid or incurred by a taxpayer for the adoption of any
36 minor child who is a citizen or legal resident of the United States
37 and was in the custody of a public agency of either this state or a
38 political subdivision of this state.~~

1 (1) ~~For each taxable year beginning on or after January 1, 1994,~~
2 ~~and before January 1, 2014, the credit shall not exceed two~~
3 ~~thousand five hundred dollars (\$2,500) per minor child.~~

4 (2) ~~For each taxable year beginning on or after January 1, 2014,~~
5 ~~the credit shall not exceed three thousand dollars (\$3,000) per~~
6 ~~minor child.~~

7 (b) ~~“Costs” eligible for the credit pursuant to subdivision (a)~~
8 ~~shall include the following:~~

9 (1) ~~Fees for required services of either the Department of Social~~
10 ~~Services or a licensed adoption agency.~~

11 (2) ~~Travel and related expenses for the adoptive family that are~~
12 ~~directly related to the adoption process.~~

13 (3) ~~Medical fees and expenses that are not reimbursed by~~
14 ~~insurance and are directly related to the adoption process.~~

15 (e) ~~The credit authorized by this section shall be claimed for~~
16 ~~the taxable year in which the decree or order of adoption is entered~~
17 ~~pursuant to Section 8612 of the Family Code. However, the~~
18 ~~allowable credit claimed may include any costs of that adoption~~
19 ~~paid or incurred in any prior taxable year.~~

20 (d) ~~In the case where the credit allowed by this section exceeds~~
21 ~~the “net tax,” the excess may be carried over to reduce the “net~~
22 ~~tax” in the following year, and succeeding years if necessary, until~~
23 ~~the total credit of two thousand five hundred dollars (\$2,500), or~~
24 ~~commencing January 1, 2014, three thousand dollars (\$3,000), per~~
25 ~~minor child is exhausted.~~

26 (e) ~~Any deduction otherwise allowed under this part for any~~
27 ~~amount paid or incurred by the taxpayer upon which the credit is~~
28 ~~based shall be reduced by the amount of the credit allowed under~~
29 ~~this section.~~

30 ~~SEC. 2.—This act provides for a tax levy within the meaning of~~
31 ~~Article IV of the Constitution and shall go into immediate effect.~~