

Assembly Bill No. 2758

CHAPTER 541

An act to amend Sections 6452.1 and 18510 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 25, 2014. Filed with
Secretary of State September 25, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2758, Committee on Revenue and Taxation. Sales and use taxes: administration: qualified use tax: acceptable tax return.

The Sales and Use Tax Law generally provides, for a transaction not subject to sales tax, that every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer for storage, use, or other consumption in this state is liable for use tax, and must pay the use tax to the State Board of Equalization, unless that person has paid the use tax to a retailer registered to collect the tax. Existing law authorizes a person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax return. Under existing law, any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return is applied first to taxes imposed under the Personal Income Tax Law or the Corporation Tax Law, including penalties and interest, and then to qualified use tax.

This bill would instead require, of payments and credits shown on the return, together with any other credits associated with that person's tax year, of a person that reports qualified use tax on an acceptable tax return, an amount equal to the qualified use tax liability reported on that acceptable tax return be applied to that liability, as provided, for purchases of tangible personal property made in a taxable year beginning on or after January 1, 2015.

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, may elect to report and remit qualified use tax on an acceptable tax return.

(b) (1) A person that reports qualified use tax on an acceptable tax return is deemed to have made the election authorized by this section.

(2) (A) 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.

(B) 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 election to report qualified use tax on an acceptable tax return shall be irrevocable. 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 either of the following:

(i) For 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), either of the following:

(I) The use tax imposed under this part, Article XIII of the California Constitution, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with 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 as calculated by the board. The board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to the Franchise Tax Board such amounts in the form of a use tax table as part of the accompanying instructions of the acceptable tax return.

(ii) For one or more single nonbusiness purchases of individual items of tangible personal property each 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, 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 imposed on the storage, use, or other consumption of a mobilehome or a commercial coach that is required to be registered annually

pursuant to the Health and Safety Code or use tax imposed on the storage, use, or other consumption of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or 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 the storage, use, or other consumption of a vehicle, vessel, or aircraft.

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

(iv) Use tax imposed on the storage, use, or other consumption 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) If a person elects to report qualified use tax on an acceptable tax return, that person 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) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with 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, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and in accordance with 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 board is not precluded from making any determinations for understatements of qualified use tax against that person in accordance with this chapter. However, with respect to 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), the board shall be precluded from making any such determination against any person who 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) (1) Of payments and credits shown on the return, together with any other credits associated with that person's tax year, of a person that reports qualified use tax on an acceptable tax return, an amount equal to the qualified use tax liability reported on that acceptable tax return in accordance with this section shall be applied to that liability.

(2) This subdivision shall apply to purchases of tangible personal property made on or after January 1, 2015, in taxable years beginning on or after January 1, 2015.

(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) Except as otherwise provided, 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.

(3) The amendments made by Chapter 14 of the Statutes of 2011 shall apply to purchases of tangible personal property made on or after January 1, 2011, in taxable years beginning on or after January 1, 2011.

SEC. 2. 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 allow 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) (1) Of payments and credits shown on the return, together with any other credits associated with that person's tax year, of a person that reports qualified use tax on an acceptable tax return, an amount equal to the qualified use tax liability reported on that acceptable tax return in accordance with Section 6452.1 shall be applied to that liability.

(2) This subdivision shall apply to returns filed for taxable years beginning on or after January 1, 2015.

(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) Except as otherwise provided, this section shall be operative for returns filed for taxable years beginning on and after January 1, 2010.

(e) The amendments made by Chapter 14 of the Statutes of 2011 shall apply to returns filed for taxable years beginning on and after January 1, 2011.