

State of California

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Legislative Change No.

03-28

Bill Number: SB 1009

Author: Alpert

Chapter Number: 03-718

Laws Affecting Franchise Tax Board: Public Contract Code Section 10295.1. Revenue and Taxation Code Sections 6452.1 and 18510.

Date Filed with the Secretary of the State: October 9, 2003

SUBJECT: Use Tax/FTB Revise Forms/State Agencies Contracting With Contractors or Vendors

Senate Bill 1009 (Alpert), as enacted on October 8, 2003, made the following changes to California law:

Section 10295.1 of the Public Contract Code is added.

This act prohibits state agencies from contracting with certain vendors who do not possess either a California seller's permit or a certificate of registration issued by the Board of Equalization (BOE).

Section 6452.1 of the Revenue and Taxation Code is added.

This act allows persons, as defined under current sales and use tax law, to elect to report and remit qualified use tax on an "acceptable tax return," which would allow individuals, partnerships, limited liability companies, corporations, and exempt organizations to make the election. The election could be made if the person purchases tangible personal property where the storage, use, or other consumption subjects the purchase to the qualified use tax that otherwise is required to be reported and paid under current use tax law. The election under this act does not apply to those taxpayers that are required to have a seller's permit or be registered with BOE.

A taxpayer who reports qualified use tax on their return is deemed to have made the election in accordance with this act. An election to report qualified use tax on the return is irrevocable. The election to report use tax on a tax return makes that tax return a use tax return for purposes of the sales and use tax laws administered by BOE. A married individual who files a separate income tax return is allowed to elect to report on their personal income tax return either the entire qualified use tax amount or one-half of the qualified use tax owed by the individual and that individual's spouse. If an individual elects to report one-half of the qualified use tax, the election is not binding on the remaining one-half of the qualified use tax owed by that individual and the individual's spouse.

This act defines the following terms:

- "Qualified use tax" is defined by reference to the current state and local sales, use, and transaction tax laws and includes tax that has not been paid to a retailer holding a seller's permit or certificate of registration. Qualified use tax does not include use tax on specific items such as vehicles and aircraft.

Bureau Director

Jana Howard for Brian Putler

Date

10/31/03

- “Acceptable tax return” as an original timely filed return under the personal income tax laws (PITL), corporation tax laws (CTL), and the provisions of the administration of franchise and income tax laws (AFITL) relating to returns of partnerships and limited liability companies.

A person that elects to report qualified use tax on an acceptable tax return is required to report and remit the qualified use tax with a timely filed return. The qualified use tax is required to be reported on the return for the taxable year in which the qualified use tax was incurred.

Taxpayers are able to report and remit qualified use tax for purchases made during calendar years beginning on or after January 1, 2003, in taxable years beginning on or after January 1, 2003. This allows taxpayers to report and remit the qualified use tax on the 2003 returns filed beginning January 1, 2004.

Penalties and interest apply and are to be administered by BOE as provided under current sales and use tax laws. Any claims for refund or credits of qualified use tax are the responsibility of BOE according to current use tax laws. Qualified use tax would be considered timely reported for purposes of the sales and use tax laws if the tax is timely reported and remitted on an acceptable tax return. Regardless of whether a person elects to report and remit qualified use tax on an acceptable tax return, BOE can make determinations for understatements of qualified use tax according to current use tax laws.

This act specifies that any payments or credits shown on the acceptable tax return combined with any other credit on the taxpayer’s account are to be applied first to any income or franchise tax liability, including penalties and interest, and then to the use tax reported on the return.

Regardless of the fact that the provision of the bill outlining the reporting of qualified use tax would be inoperative as of December 31, 2009, the other provisions of the bill relating to collection activities attributable to qualified use tax that is reported prior to the repeal date shall continue in the same manner as if the provision described above were still in effect.

Section 18510 of the Revenue and Taxation Code is added.

This act requires the Franchise Tax Board (FTB) to revise the tax returns required to be filed pursuant to the PITL, AFITL, and CTL to allow a person to report and remit qualified use tax with the return. The revisions are required to be done in a form and manner approved by BOE, which reviews FTB’s tax form revisions and within 10 days either 1) notifies FTB of approval of the forms, or 2) submits comments to FTB regarding changes that should be included to obtain approval.

This act specifies that any payments or credits shown on the acceptable tax return combined with any other credit on the taxpayer’s account shall be applied first to any income or franchise tax liability, including penalties and interest, and then to the use tax reported on the return.

FTB is required to transfer the qualified use tax and any information BOE deems necessary for its administration of the use tax to BOE within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

This act is effective January 1, 2004. However, this act states that it is operative for purchases of tangible personal property made on and after January 1, 2003, in taxable years beginning on or after January 1, 2003, and ending on or before December 31, 2009.

This act will not require any reports by the department to the Legislature.