

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Assembly Revenue and Taxation Committee

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Bill Number: AB 2758

Related Bills: See Legislative History

Telephone: 845-3495

Introduced Date: March 24, 2014 and
Amended Date: April 10, 2014

Attorney: Bruce Langston

Sponsor: _____

SUBJECT: Change Use Tax to First Priority for Taxes Paid on FTB Returns

SUMMARY

This bill would modify the priority of payments to replace income tax with use tax as the first liability to be paid.

RECOMMENDATION

No position.

Summary of Amendments

The bill as introduced March 24, 2014, would modify the existing payment priority for use tax liability collected by the Franchise Tax Board (FTB).

The April 10, 2014, amendments made substantive technical changes.

This is the department's first analysis of the bill.

REASON FOR THE BILL

The bill would reduce the need to generate a collection account by the Board of Equalization (BOE) for these taxpayers and allow them to receive a single Return Information Notice from the FTB. In some cases, a collection account would be generated by the BOE in addition to an FTB collection account. This creates account delays in billing notices to taxpayers, causes confusion, and may subject the taxpayer to penalties.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2015, and specifically apply to purchases of tangible personal property made on or after January 1, 2014, in taxable years beginning on or after January 1, 2014.

Board Position:

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Executive Officer

Date

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04/28/14

ANALYSIS

STATE LAW

The BOE is responsible for collecting sales and use tax. California use tax is imposed on any person who purchases tangible personal property for use, consumption, or storage in this state where the purchase is not subject to California sales tax. Generally, use tax is owed when the purchase is made outside of California, and the property is used in California. A typical purchase subject to California use tax is a purchase shipped from an out-of-state retailer to a California consumer. The state use tax rate is the same as the sales tax rate that varies depending on the county and city within California in which the taxpayer resides.

Taxpayers may report and pay state use tax directly to the BOE or report and pay use tax on their California income tax return.

Individual taxpayers that have made one or more single non-business purchases of individual items of tangible personal property, each with a sales price of less than \$1,000, can report the use tax liability by using a use tax table shown in the instructions for the individual tax return or they can report the actual use tax due. In addition, utilization of the use tax table precludes the BOE from making any determinations for understatements of use tax against any person with qualified purchases who utilizes the use tax table in accordance with the accompanying instructions.

The amount of payments or credits reported on an income tax return of a person who reports use tax, is first applied to satisfy any FTB outstanding taxes, penalties, or interest for the current and prior years. Any remaining payments or credits are applied towards the use tax reported on the return and transferred, along with any necessary information, to the BOE.

THIS BILL

This bill would remove the provision that requires the payments or credits, on an income tax return of a person who reports use tax, to first apply to satisfy any FTB outstanding taxes, penalties, or interest for the current and prior years. Instead the FTB would first apply the amount of payments or credits available on the tax return to the use tax liability reported on the tax return, and then to the FTB outstanding taxes, penalties, or interest.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require changes to existing tax forms and instructions and information systems.

LEGISLATIVE HISTORY

SB 86 (Committee on Budget and Fiscal Review, Chapter 14, Statutes of 2011) among other things, allows a person that meets the requirements to report the use tax liability by using a use tax table shown in the instructions for the individual tax return or by reporting the actual use tax due. In addition, this law precludes the BOE from making any determinations for understatements of use tax against any person with qualified purchases who utilizes the use tax table in accordance with the accompanying instructions.

SB 858 (Committee of Budget and Fiscal Review, Chapter 721, Statutes of 2010) among other things, reauthorized and made permanent the option for taxpayers to report use tax on their personal income or corporation tax returns.

AB 469 (Eng, Vetoed 2009) would have replaced the option for a taxpayer to report use tax on the state income tax return with a requirement to report use tax. This bill was vetoed October 11, 2009, by Governor Schwarzenegger, stating that AB 469 exposes individual taxpayers to additional record keeping and confusion about a tax that few Californians understand and even fewer track for tax purposes.

AB 2676 (Ma, Vetoed, 2010) would have made permanent the law allowing taxpayers the option to file and pay use tax on their income tax returns in addition to expanding the BOE's collection authority. This bill was vetoed September 29, 2010, by Governor Schwarzenegger, stating that the significant provisions of AB 2676 have already been addressed by the Budget Conference Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, New York, Illinois, Massachusetts, Michigan, and Minnesota*. These states were selected due to their population and similarities to California's economy, business entity types, and tax laws.

Florida uses a separate sales and use tax return.

New York, applies credits to use tax before income tax.

Minnesota uses a separate sales and use tax return

No information was located for *Illinois, Massachusetts, and Michigan*.

FISCAL IMPACT

This bill would impact the department's information systems and tax forms. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2758* As Amended April 10, 2014 Assumed Enactment After June 30, 2014		
2014-15	2015-16	2016-17
- \$60,000*	- \$40,000*	- \$30,000*

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

*This analysis reflects the loss to the General Fund from the FTB tax debts not collected. It does not include revenue gains to the various state and local funds administered by the Board of Equalization.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some would argue that the FTB is better able to notify taxpayers of a deficiency thereby reducing penalties and interest paid by taxpayers.

Opponents: Some would argue that the FTB already notifies taxpayers of their BOE deficiency, and it is up to the taxpayer to timely comply with payment of taxes due the BOE.

LEGISLATIVE STAFF CONTACT

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