

## Franchise Tax Board

## ANALYSIS OF ORIGINAL BILL

Author: Assembly Revenue & Taxation Committee Analyst: Janet Jennings Bill Number: AB 1717  
Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: March 16, 2017  
: Bruce Langston Attorney Sponsor: \_\_\_\_\_

**SUBJECT:** FTB Income Tax Forms for Use Tax Reporting and Payment "Acceptable Tax Return" Means Original Return

### SUMMARY

This bill would modify the definition of acceptable tax return to mean an original return.

### RECOMMENDATION – NO POSITION

### REASON FOR THE BILL

The reason for the bill is to clarify that use tax can be reported on an original return regardless of the date the original return is filed.

### EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2018, and operative for returns required to be filed after that date.

### STATE LAW

The Board of Equalization (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 use tax rate is the same as the sales tax rate, and varies depending on the county and city within California where the taxpayer resides.

Taxpayers may report and pay 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 their use tax liability by using the use tax table shown in the instructions for their 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.

For a person who reports use tax, the amount of payments or credits reported on an income tax return are applied first to the use tax liability reported on the tax return, and then to the income taxes, penalties, or interest thereon.

## **THIS BILL**

This bill would define an acceptable tax return to mean an original return, clarifying that use tax can be reported on an original return regardless of the date the original return is filed.

## **IMPLEMENTATION CONSIDERATIONS**

Implementing this bill would not significantly impact the department's programs and operations.

## **TECHNICAL CONSIDERATIONS**

To correctly identify the affected returns, the bill should be amended to: delete the word "and" on page 2, line 27, and on line 28 after 18601) insert ", 18633 or 18633.5 of Article 4 (commencing with 18631)." On page 2, line 29, after "Part 10.2," delete "Section 18633 or 18633.5."

## **LEGISLATIVE HISTORY**

AB 1593 (Assembly Revenue and Taxation Committee, 2017/2018) would require a number to be entered on the use tax line of personal income tax returns. AB 1593 is currently in the Assembly Revenue and Taxation Committee.

AB 2758 (Assembly Revenue and Taxation Committee, Chapter 541, Statutes of 2014) modified the priority of payments to replace income tax with use tax as the first liability to be paid.

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.

## **OTHER STATES' INFORMATION**

Because this bill only defines an acceptable tax return, a review of other states' tax information would not be relevant.

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

This bill would not impact the state's income tax revenue.

## **SUPPORT/OPPOSITION**

Support: None on file.

Opposition: None on file.

## **ARGUMENTS**

Proponents: Some would argue the change in the definition of an acceptable tax return is consistent with legislative intent.

Opponents: Some would argue the change in the definition of an acceptable tax return is not consistent with legislative intent.

## **LEGISLATIVE STAFF CONTACT**

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