California State Board of Equalization,
Legislative and Research Division

LEGISLATIVE BULLETIN

State Capitol Building (from the East) c.1945
Photo courtesy of California State Archives

SALES TAX LEGISLATION 2008

SALES TAX LEGISLATION
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Assembly Bill 1452 (Committee on Budget) Chapter 763

Vehicles, Vessels, and Aircraft

Urgency measure, effective September 30, 2008. Amends Section 6248 of the Revenue and Taxation Code.

BILL SUMMARY

This bill, among other things, provides that it shall be rebuttably presumed that, except as specified, a vehicle, vessel, or aircraft purchased outside this state and brought into California within 12 months from the date of purchase is purchased for use in California and is subject to California use tax.

Sponsor: Assembly Committee on Budget

LAW PRIOR TO AMENDMENT

Under existing law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code, a use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is required to be remitted to the Board, or in the case of a vehicle or undocumented vessel, to the Department of Motor Vehicles.

Existing law provides that if a vehicle, vessel, or aircraft is purchased outside California and is first functionally used outside California but enters the state within the first 90 days of purchase (commonly referred to the "90-day test"), the vehicle, vessel, or aircraft is presumed to have been purchased for use in California unless it is used or stored outside the state 50 percent or more of the time during the six-month period immediately following the first entry into California.

Under the law, the California sales tax generally does not apply to a transaction when a California retailer sells an item and ships it directly to the purchaser at an out-of-state location for use outside California. The sale is regarded under the law as a sale in interstate commerce. In general, the sale is not taxable if the retailer:

- Ships the product directly to the purchaser, in another state or in a foreign country, using the retailer's own delivery vehicle or another means of transport that the retailer owns; or
- Ships the product to another state or to a foreign country by delivering it to a common carrier, contract carrier, customs broker, export packer, or forwarding agent.

Under current law and Board regulations, a vehicle, vessel, or aircraft purchased by a California resident is presumed to have been purchased for use in California and is subject to the California use tax. Also, a vehicle, vessel, or aircraft purchased by a nonresident is presumed to have been purchased for use in California if it enters this state within the first 90 days of ownership. These transactions are subject to the tax unless all of the following occur:

- The purchaser takes title to and possession of the vehicle, vessel, or aircraft while it is out of state; and
- The purchaser makes the first functional use of it outside the state; and

The purchaser uses it out of state for more than 90 days before the vehicle, vessel, or aircraft first enters California.

BACKGROUND

During the 2003-04 Legislative Session, a budget trailer bill, SB 1100 (Stats. 2004, Ch. 226), amended Section 6248 of the Sales and Use Tax Law to essentially change the "90-day test" to a "12-month test." The amendments were prompted by a perceived tax loophole with respect to the law at that time. Under these provisions, there were instances in which, for example, California purchasers of yachts from California yacht retailers were arranging delivery of the yachts outside the territorial waters of California, leaving them in Mexico for the 90-day period, and bringing them into California and escaping the California sales or use tax. The 12-month provisions incorporated into Section 6248 were intended to reduce the frequency of these sorts of arrangements.

SB 1100 addressed this issue by providing that, for the period October 2, 2004, through and including June 30, 2006, it would be rebuttably presumed that a vehicle, vessel, or aircraft bought outside this state and brought into this state during the first 12 months of the date of purchase, was acquired for storage, use, or other consumption in this state and would be subject to use tax if any of the following occurred:

(a) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code.

(b) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(c) In the case of a vessel or aircraft, the vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(d) The vehicle, vessel, or aircraft was used or stored in this state more than one-half of the time during the first 12 months of ownership.

This statute further provided that this presumption could be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. In addition, the law specified that these provisions would not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the Board.

And, finally, Section 6248 specified that an aircraft or vessel would not be deemed to be purchased for use in this state if that aircraft or vessel was brought into this state for the purpose of repair, retrofit, or modification of the aircraft or vessel, provided that no more than 25 hours of airtime or sailing time were logged for that purpose, as specified.

This provision was extended for an additional year with another budget trailer bill (AB 1809, Ch. 49, Stats. 2006). This provision sunset on July 1, 2007, and the former “90-day test” provisions were reinstated beginning on that date.

AMENDMENT

This bill, among other things, amends Section 6248 of the Sales and Use Tax Law to provide that the 12-month rebuttable presumption shall apply to purchases of vehicles, vessels and aircraft.

The provisions are effective September 30, 2008.

COMMENTS

1. **Purpose**. This bill implements various revenue provisions of the 2008-09 Budget Agreement.

2. **The Legislative Analyst’s Office reported a decline in exemptions for purchases of yachts and recreational vehicles when the 12-month test was in law.** When the law contained the “12-month test,” it became more difficult for California residents to demonstrate that a vehicle, vessel, or aircraft was purchased for use outside of California and to successfully avoid both California taxes and other states’ taxes. Consideration of residency and registration as factors in determining the applicability of the use tax to out-of-state purchases (rather than simply a test of time and location) closed what many perceived to be a loophole. According to an April 2006 report by the Legislative Analyst’s Office, the change to the 12-month test resulted in a sharp decline in exemptions for purchases of yachts, as well as recreational vehicles, for use out of state and an increase in sales and use tax revenues.

Assembly Bill 1895 (Silva) Chapter 24

Corporate Officer Liability

Effective January 1, 2009. Amends Section 6829 of the Revenue and Taxation Code.

BILL SUMMARY

This Board-sponsored bill incorporates a specific statute of limitations for issuing a deficiency determination against corporate officers and other responsible persons.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Under existing law, Section 6829 of the Sales and Use Tax Law provides that upon termination, dissolution, or abandonment of a business entity (i.e., corporation, partnership, limited liability partnership, or limited liability company), any officer, member, manager, partner, or other person who is under a duty to act for the entity in complying with any sales or use tax requirements (including the supervision or control over a person with such duty), shall be personally liable for any unpaid sales or use taxes, as specified, and interest and penalties if that person willfully fails to pay or to cause to be paid any taxes due from that entity. A person liable under Section 6829 (the "responsible person") becomes liable as of the date the entity terminates, dissolves, or becomes abandoned.

To collect the amount due from the responsible person, existing law specifies that a determination may be issued in accordance with the general laws applicable to the collection of sales and use tax. Accordingly, in the absence of fraud, the limitations period for issuing a notice of determination under Section 6829 is three years if the responsible person filed his or her own return for the period during which the entity terminated and eight years if the responsible person did not file such a return. That is, since Section 6829 liability is the liability of the responsible person, it is the responsible person's filing of a sales and use tax return (or not) that is relevant, not the filing of returns by the entity. Since the responsible person generally does not file a return in his or her own name, the applicable limitations period for issuing determinations under Section 6829 is typically eight years from the last day of the month following the reporting period in which the entity terminated, dissolved, or became abandoned.

AMENDMENT

This bill amends Section 6829 of the Sales and Use Tax Law to make clarifying changes and to incorporate a specific limitations period with respect to issuing a deficiency determination against corporate officers and other responsible persons.

Specifically, the bill requires that such a determination be mailed within the earlier of:

- three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, of the termination, dissolution, or abandonment of the entity;

- three years after the last day of the calendar month following the quarterly period in which the Board obtains written communication by the business or its representative of the termination, dissolution, or abandonment of the entity, or
- eight years after the last day of the calendar month following the quarterly period in which the entity was terminated, dissolved, or abandoned.

The bill specifies that if the business or representative of the business files a notice of termination, dissolution, or abandonment of the entity with a state or local agency other than the Board, this filing shall not constitute actual knowledge by the Board under this section.

COMMENTS

1. **Purpose**. The purpose of this measure is to incorporate a limitations period applicable to issuing determinations against corporate officers and other responsible persons that is more appropriate than the general limitations period currently applicable.
2. **A separate limitations period for this statute makes sense.** Having a limitations period based on when a corporate officer or other responsible person filed a tax return for most cases of liability under Section 6829 does not appear to be intended, but rather is the result of using the general Sales and Use Tax Law limitations period. The general limitations period is designed for the usual direct liability of the actual taxpayer, who is required to file returns for specific periods known to both the taxpayer and the Board. A limitations period should be adopted that is specifically designed for liability under Section 6829, and should be based on the date the Board becomes aware that the triggering event for such liability has occurred: the termination of the entity.

Assembly Bill 2047 (Horton) Chapter 222

Offers in Compromise

Effective January 1, 2009. Among its provisions, amends, repeals, and adds Sections 7093.6 of the Revenue and Taxation Code.

BILL SUMMARY

This Board-sponsored bill allows the Board, until January 1, 2013, to compromise certain final tax, fee or surcharge (tax) liabilities of (1) businesses that are not discontinued or transferred if the final tax liability arises from transactions in which the taxpayer did not receive sales tax reimbursement or use tax, (2) persons liable as successors, and (3) consumers who incurred a use tax liability.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Under the existing Sales and Use Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Emergency Telephone Users Surcharge Act, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law, the Board is allowed to compromise a final tax liability if certain requirements are met.

Under these laws, one of the requirements to compromise a final tax liability is that an offer can only be considered with respect to liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest in or association with the transferred business or a controlling interest in or association with a similar type of business as the transferred or discontinued business. Therefore, under existing law, unless the business is discontinued or transferred, the Board may not accept an offer to compromise a tax debt from taxpayers.

Under existing law, when a final tax liability is not paid when due, the Board bills the taxpayer or feepayer (taxpayer), negotiates for payments, searches for the taxpayer's assets, and takes collection actions to gain access to assets to satisfy the debt. Collection actions may include manually searching records for assets, making telephone calls, or seizing and selling such assets as vehicles, vessels, or stocks. In the event of a hardship, existing law allows installment payment arrangements or deferred collection until the financial situation of the tax debtor improves. However, if taxpayers can obtain loans or can use credit lines to pay their tax debts, they are expected to do so.

If a debt remains unpaid for a number of years and a lien has been filed but assets cannot be located, the Board may write off the debt. When a debt is written off, it is still due and owing and any liens recorded are still valid, but routine billing and collection actions are discontinued unless assets are subsequently located. The debt also remains on the taxpayer's credit record, impeding his or her ability to obtain credit.

AMENDMENT

This bill, for a 4-year period ending on January 1, 2013, amend Sections 7093.6 (Sales and Use Tax Law), 9278 (Use Fuel Tax Law), 30459.15 (Cigarette and Tobacco Products Tax Law), 32471.5 (Alcoholic Beverage Tax Law), 41171.5 (Emergency Telephone Users Surcharge), 46628 (Oil Spill Response, Prevention, and Administration Fees Law), 50156.18 (Underground Storage Tank Maintenance Fee Law), 55332.5 (Fee Collection Procedures Law), and 60637 (Diesel Fuel Tax Law) of the Revenue and Taxation Code to do the following:

1) Allow a qualified final tax liability to be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business.
2) Define "qualified final tax liability" to mean that part of the final tax liability, including interest, additions to tax, penalties, or other amounts assessed, arising from a transaction or transactions in which the Board finds no evidence that the taxpayer collected the tax from the purchaser or other person and which was determined against the person, or a final tax liability against a successor, or that part of a final use tax liability, as specified.
3) Specify that a qualified final tax liability may not be compromised with a taxpayer who previously received a compromise, as specified.
4) Allow the Board to enter into a written installment payment agreement that permits a taxpayer to pay the compromise installments for a period not exceeding one year.
5) Allow the Board to enter into any collateral agreement deemed necessary for the protection of the interests of the state, as specified.
6) Require a taxpayer that has received a compromise to file and pay by the due date all subsequently required returns and/or reports for a five-year period, as specified.

This bill becomes operative on January 1, 2009, and sunsets on January 1, 2013.

IN GENERAL

In general, an offer in compromise is a process whereby the taxpayer offers to pay an amount that he or she believes to be the maximum amount that he or she can pay within a reasonable time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount.

In the offer in compromise process, the Board administers the program consistent with procedures followed by the Franchise Tax Board (FTB) and the Employment Development Department (EDD) with respect to:

- The terms of the offer;
- The process leading up to the acceptance of the offer, including high levels of review; and
- The refunding of rejected offers without interest, at the taxpayer's discretion.

The Board has created an Offers in Compromise Section which is solely responsible for making compromises under the current provisions of law. Compromises are accepted when a tax liability is final and the Offers in Compromise Section finds that the amount the taxpayer proposes to pay represents the maximum amount the Board can expect to collect from that taxpayer in a reasonable period of time – typically five to seven years.

BACKGROUND

The authorization for the Board to accept offers in compromise was added into law by AB 1458 (Stats. 2002, Ch. 152) and applied to final tax liabilities under the Sales and Use Tax Law, the Use Fuel Tax Law, and the Underground Storage Tank Maintenance Fee Law. In 2006, AB 3076 (Stats. 2006, Ch. 364) added similar provisions under the Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

Before these authorizations were added into law, in order to compromise a taxpayer's liability, the Board was required to obtain a stipulated judgment from the court.

COMMENTS

1. **Purpose.** The purpose of the bill is to extend the Board's current offers in compromise program to those open and active businesses that have not received reimbursement from the taxes, fees or surcharges owed and to successors of businesses that may have inherited tax liabilities of their predecessors. In addition, this bill also applies to consumers that have incurred a use tax liability.

   The current offers in compromise program only applies to businesses that have discontinued or transferred their operations. The Board is seeking to allow compromises with those taxpayers who may otherwise have to sell or discontinue their businesses because of their inability to pay in full a final tax liability that arose from transactions in which the taxpayers did not collect tax from the purchasers or other persons. These situations arise because taxpayers mistakenly believe that their transactions are not subject to the tax. Upon audit, the taxpayer first learns that the transactions are subject to tax, but the taxpayer cannot legally or realistically collect the tax from his or her customers. In addition, this bill allows compromises with respect to successor liabilities where the successor is still in business,[1] and from use tax assessed by the Board against a consumer who is not required to hold a seller's permit. The Board has found that these liabilities often come as a surprise to the taxpayer and can financially cripple otherwise law-abiding taxpayers.

[1] Current law holds a purchaser of a business personally liable for the unpaid sales and use tax liability of the seller up to the purchase price of the business, if the purchaser fails to withhold sufficient funds to cover the liability when purchasing the business.

The bill was introduced in order to address those unique situations where the Board believes that it would be in the best interest of the state to compromise a tax debt, when the taxpayer does not have the means to pay more than the amount offered now or in the near future. It would provide for a voluntary resolution that is agreeable to both taxpayers as well as the Board.

2. **Amendments.** The **June 16, 2008 amendments** incorporated a 4-year sunset date, so that the provisions of the bill would be repealed on January 1, 2013, unless a later enacted statute that is enacted before that date deletes or extends the sunset date. The **April 9, 2008 amendments** made clarifying, technical changes specifying that *if the Board finds* no evidence that the tax or fee was collected by the taxpayer, and the other conditions for a compromise exist, then the provisions would apply. Also, the amendments clarified that the Board is authorized to enter into a *written* installment payment agreement that permits a taxpayer to pay the compromise in installments.

3. **What if the Board compromises a tax debt and the business becomes profitable?** The bill contains a provision that specifies that taxpayers may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. The bill provides that the collateral agreement may include a provision that allows the Board to reestablish the liability or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period.

4. **What do the other tax agencies do?** Offers in Compromise programs are also available for income tax liabilities due the Internal Revenue Service (IRS) and the FTB, as well as employment tax liabilities due the EDD. Both the IRS and FTB's programs have the ability to compromise liabilities of ongoing businesses, and according to FTB, compromises are frequently made with collateral agreements. Thus, this measure is consistent with those tax agencies' programs. Also, the IRS and EDD allow installment payment option terms for offered amounts where the offered funds cannot be paid in a lump sum. This measure also allows installment payment terms, as long as payment of the offered funds is made within a year.

Assembly Bill 3079 (Committee on Revenue and Taxation) Chapter 306

Information Sharing
Use Tax – Voluntary Reporting
Managed Audit Program

Effective January 1, 2009. Among its provisions, adds Section 64.5 to the Labor Code, amends Section 6487.06 of, and repeals Section 7076.5 of the Revenue and Taxation Code.

BILL SUMMARY

This Board-sponsored bill does the following:

1. Authorizes the Department of Industrial Relations (DIR) to share information it collects as part of its normal investigative and enforcement efforts with the Board. (Labor Code Section 64.5.)
2. Reduces the period of time for which the Board may issue a determination from eight years to three years when unregistered in-state purchasers, as defined, voluntarily report to the Board purchases subject to use tax (Revenue and Taxation Code Section 6487.06.)
3. Deletes the January 1, 2009 sunset date of the Managed Audit Program and thereby extend the program indefinitely (Revenue and Taxation Code Section 7076.5).

Sponsor: Board of Equalization

Information Sharing
Labor Code Section 64.5

LAW PRIOR TO AMENDMENT

Under the Information Practices Act, Section 1798.24 of the Civil Code provides that no agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed to, among others, another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for, as specified. Existing law does not specifically prohibit the DIR from releasing information in its records that would assist the Board in administration of its tax laws.

On the other hand, existing law generally prohibits the Board and any person having an administrative duty or any person who obtains access to information contained in, or derived from, records of the Board to make known in any manner whatever the business affairs, operations, or any other information pertaining to a taxpayer.

However, under existing law, the Governor may by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the Board. The law specifies that any information so obtained pursuant to the order of the Governor may not be made public except to the extent and in the manner that the order may authorize that it be made public.

AMENDMENT

This bill adds Section 64.5 to the Labor Code to provide that when requested by the Board, the DIR may permit any duly authorized representative of that agency to transmit information available in the DIR's records that indicates a retail establishment is operating without a seller's permit, as specified.

BACKGROUND

In 1973, pursuant to a Governor's Order that continues to exist today, Governor Reagan authorized the Board to release information to the DIR pertaining to the Sales and Use Tax and Use Fuel Tax programs. Specifically, the Governor's Order authorized official representatives of the DIR to examine records maintained by the Board with regard to those programs for use in its compliance and enforcement efforts. However, the agreement authorizes the Board to furnish information to the DIR. The agreement does not authorize for reciprocal exchange of information between the Board and DIR, and the DIR is not specifically authorized to provide any information it collects to the Board.

One of the divisions of the DIR, the Division of Labor Standards Enforcement (DLSE), is responsible for, among other things, the investigation and enforcement of labor statutes covering workers' compensation insurance coverage, child labor, cash pay, unlicensed contractors, Industrial Welfare Commission orders, as well as group claims involving minimum wage and overtime claims. The DLSE also handles criminal investigations involving these group claims, and also administers the licensing, registration, and certification of certain industries, including employers, transporters, and supervisors of minors making door-to-door sales and industrial home workers and garment manufacturers.

As part of its investigative and enforcement efforts, the DLSE collects information regarding whether a business entity has a seller's permit. Their applications and renewal forms also contain information about the business entity such as its business name, ownership information, type of business and/or projects, business and mailing addresses, and telephone numbers.

COMMENT

Purpose. The purpose of this provision is to authorize the DIR to share information with the Board that it collects in the course of its investigative and enforcement efforts regarding whether retailers are operating without a seller's permit. Access to this information would enhance the Board's compliance and enforcement efforts by increasing the Board's ability to, ensure business entities possess a valid seller's permit, and aiding in the Board's annual audit selection process. A statutory change is being sought so as to confer specific authority for the DIR to release that information to the Board.

Use Tax – Voluntary Reporting
Revenue and Taxation Code Section 6487.06

LAW PRIOR TO AMENDMENT

Under existing law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is required to be remitted to the Board on or before the last day of the month following the quarterly period in which the purchase was made. Generally, a use tax liability occurs when a California consumer or business purchases tangible items for their own use from an out-of-state retailer that is not registered with the Board to collect the California use tax.

Under existing law, Section 6487 of the Sales and Use Tax Law provides that persons who fail to file a return and pay their tax obligations (whether sales tax or use tax) can be held liable for past tax obligations, together with interest and penalties, for up to eight prior years (except in the case of fraud which has no limitation period in which to assess past tax obligations).

AMENDMENT

This bill adds Section 6487.06 to the Sales and Use Tax Law to provide that a deficiency determination mailed to a qualifying purchaser shall be limited to the three-year period beginning after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

The bill defines a ''qualifying purchaser'' as a person that voluntarily files an Individual Use Tax Return for tangible personal property that is purchased from a retailer outside of this state for storage, use, or other consumption in this state, and that meets all of the following conditions:

(1) The purchaser resides or is located within this state and has not previously done any of the following:

(A) Registered with the Board.

(B) Filed an Individual Use Tax Return with the Board.

(C) Reported an amount on their Individual California Income Tax Return.

(2) The purchaser is not engaged in business in this state as a retailer, as defined in Section 6015.

(3) The purchaser has not been contacted by the Board regarding failure to report the use tax imposed by Section 6202.

(4) The Board has made a determination that the purchaser's failure to file an Individual Use Tax Return or to otherwise report, or pay the use tax was due to reasonable cause and was not caused by reason of negligence, intentional disregard of the law, or by an intent to evade the taxes imposed by this part.

The bill provides that if the Board makes a determination that the purchaser's failure to timely report or remit the taxes imposed by this part is due to reasonable cause or due to circumstances beyond the purchaser's control, the purchaser may be relieved of any penalties imposed.

The bill excludes purchases of vehicles, vessels, or aircraft, as specified.

BACKGROUND

In 2003, the Board sponsored Assembly Bill 1741 (Stats. 2003, Ch. 697, effective January 1, 2004), which authorized the Board to administer an in-state voluntary disclosure program for qualifying purchasers (similar to the provisions in this measure). The Board's intent in creating this voluntary disclosure program was to encourage individuals, as well as businesses that are not required to hold a seller's permit or a consumer use tax permit, to voluntarily report their use tax liabilities. In exchange, the number of years of past-due use tax liabilities for which they would be held responsible would be reduced from eight years to three.[2] Also, the program provided for a waiver of any penalties. This shortened "look back period" was patterned after Section 6487.05 which was added to the Revenue and Taxation Code in 1994 to provide for a voluntary disclosure program for unregistered *out-of-state retailers* who have nexus in California.

AB 1741 contained a two-year sunset date, and the Board supported a subsequent measure - AB 671 (Stats. 2005, Ch. 308) - to extend this provision for an additional two years. Section 6487.06, however, sunset on December 31, 2007.

COMMENT

Purpose. This provision is intended to reinstate this voluntary disclosure program for qualifying purchasers indefinitely. Since its inception, this program has proven to be successful in giving taxpayers an incentive to come forward and report their past use tax obligations.

Since its inception, the program has had the following results:

- 1/1/07 through 8/31/07 – 15 taxpayer voluntarily registered and reported $1.6 million.
- 2006 - 29 taxpayer voluntarily registered and reported $3.9 million
- 2005 - 266 taxpayers voluntarily registered and reported $15.2 million (California's amnesty program resulting in the dramatic increase).
- 2004 - 139 taxpayers voluntarily registered and reported $3.7 million

Reinstating this exemption is particularly important now, as the Governor's proposed 2008/09 budget includes funding for the Board to, among other things, concentrate on businesses that purchase goods without paying applicable use taxes. As the Board implements this program and awareness of this effort increases, we anticipate more service enterprises will voluntarily come forward with the incentive of a shortened look back period.

The amendment provides taxpayers with an opportunity to dispute the application of the discretionary negligence penalty through the filing of a petition for redetermination without having to pay the penalty and request a refund.

[2] Purchases of vehicles, vessels and aircraft, however, are excluded from the shortened "look-back" provisions.

Managed Audit Program
Revenue and Taxation Code Section 7076.5

LAW PRIOR TO AMENDMENT

Under existing law until January 1, 2009, the Board is authorized to utilize a Managed Audit Program (MAP) in which taxpayers can perform an audit of their own books and records, with limited guidance from the Board, in order to determine tax deficiencies. As an added incentive to participate in the program, interest on a tax liability disclosed as a result of an approved MAP audit is computed at one-half the normal statutory interest rate for the total unreported tax liability. In return for performing the managed audit, the taxpayer is liable for only one-half of the interest usually imposed under current law (currently, the rate of interest for underpayments of tax in general is 11%, and taxpayers performing managed audits receive a reduced rate of 5.5% on tax deficiencies identified in that audit).

Managed audits are essentially self-audits. The Board is authorized to determine which taxpayer accounts are eligible to participate in a MAP and to enter into MAP participation agreements with eligible taxpayers. If the taxpayer is eligible, the auditor provides the taxpayer with written and oral instructions to enable the taxpayer to perform the audit verification and prepare the working paper schedules necessary to complete a particular portion of the audit. Taxpayers who meet the following criteria are considered candidates for a managed audit:

- Taxpayers whose businesses involve few or no statutory exemptions;
- Taxpayers whose businesses involve a single or small number of clearly defined taxability issues;
- Taxpayers who agree to participate in the MAP; and
- Taxpayers who have the resources to comply with the managed audit instructions provided by the Board.

AMENDMENT

This bill repeals Section 7076.5 of the Revenue and Taxation Code to delete the January 1, 2009 sunset date and thereby extend the MAP indefinitely.

BACKGROUND

The original MAP was added by Board-sponsored SB 1104 (Ch. 686, Stats. 1997, effective January 1, 1998) and contained a sunset provision of January 1, 2001. In 2000, the Board sponsored legislation (AB 2898, Ch. 1052) to extend the sunset date of the MAP by two years, to January 1, 2003. AB 1043 (Ch. 87, Stats. 2003, effective January 1, 2004) reauthorized the Board to utilize the MAP until January 1, 2009.

AB 1043 also required the Board, on or before January 1, 2008, to submit a report to the Legislature regarding the MAP as of June 30, 2007. The analysis of the MAP for a 39-month period (April 1, 2004 through June 30, 2007) showed the following:

Total MAP audits completed	97
Total revenue derived from MAP audits (taxes, penalties, and interest)	$ 13,212,310
Total amount of interest forgiven	$ 1,442,095
Estimated number of audit hours saved	4,695
Estimated additional audit liability from redirecting audit resources (taxes, penalties, and interest)	$ 2,286,465[3]
Net revenue gain	$ 844,370[4]

COMMENT

Purpose. This provision is intended to extend the MAP indefinitely, as the program has proven to be advantageous for both taxpayers and the Board in a number of ways, such as:

- The program provides resolution to questions about the taxability of transactions during the audit process, thus reducing the number of audits requiring resolution through the administrative appeals process.
- The program provides for a more efficient allocation of audit resources to audits and other revenue-generating activities.
- The program reduces litigation related to protested audits.
- A managed audit decreases disruption of a taxpayer's regular business activities since an auditor is likely to spend fewer hours at the taxpayer's place of business.
- The program promotes an ongoing cooperative relationship between the taxpayer and the Board.
- The program provides the taxpayer with a better understanding about the application of sales and use tax to transactions related to his or her business.

[3] $2,286,465 [4,695 (audit hours saved) x $487 (average dollar per audit hour return at the statewide rate)]
[4] $844,370 [$2,286,465 - $1,442,095 (amount of interest forgiven)]

Senate Bill 1685 (Kehoe) Chapter 83

Transactions and Use Tax Law – San Diego County

Effective January 1, 2009. Among its provisions, amends Sections 132304 and 132320 of the Public Utilities Code.

BILL SUMMARY

This bill authorizes the San Diego Regional Transportation Commission, subject to two-thirds approval of the voters of the County of San Diego, to increase their transactions and use tax rate and expand the purposes for which revenues can be used.

Sponsor: San Diego Association of Governments

LAW PRIOR TO AMENDMENT

The Board administers local sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law, which are divisions of the Revenue and Taxation Code. In addition, various provisions under the Public Utilities Code authorize counties to establish transportation authorities and to impose transactions and use taxes for transportation purposes. The provisions under the Public Utilities Code provide that any transactions and use tax ordinance shall conform to provisions under the Transactions and Use Tax Law. The following explains the local sales and use taxes administered by the Board.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code), authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. However, beginning July 1, 2004, and continuing through the "revenue exchange period" (also known as the "Triple Flip"), Section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under Sections 7202 and 7203, and instead provides that the applicable rate is the following: 1) in the case of a county, 1 percent; and 2) in the case of a city, 0.75 percent or less. "Revenue exchange period" means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the Board, pursuant to Section 99006 of the Government Code, that the $15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenue to satisfy the state's bond obligations.

Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may by used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county.

The **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code) authorizes cities and counties to impose transactions and use taxes (hereinafter referred to as district taxes) under specified conditions. **Section 7285** authorizes a county to impose a district tax for general purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. **Section 7285.5** authorizes a county to impose a district tax for special purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code. Senate Bill 142 (Chapter 786, Statutes of 1987, Deddeh) added Division 19 (commencing with Section 180000) of the Public Utilities Code. This division is known as the **Local Transportation Authority and Improvement Act (LTAIA)**. The LTAIA authorizes a county board of supervisors to create an authority within the county or designate a transportation planning agency pursuant to Section 29532 of the Government Code, and to impose a district tax, subject to the applicable voter approval requirement. The revenues from these taxes may be allocated by the authority for the construction, maintenance, improvement, and operation of local streets, roads, and highways, and the construction, improvement, and operation of public transit systems.

Senate Bill 361 (Chapter 1576, Statutes of 1985) added Chapter 2 of Division 12.7 (commencing with Section 132300) to the Public Utilities Code. This chapter is known as the **San Diego County Regional Transportation Commission Act**. Among other things, the San Diego County Regional Transportation Commission (SDRTC) is authorized to impose a district tax up to 1 percent, subject to voter approval, for various transportation purposes. Senate Bill 521 (Chapter 297, Statutes of 2001) authorized the SDRTC to extend or expand, or both, the existing district tax upon approval of the voters. The expanded purposes for the revenues include acquisition, management, maintenance, and monitoring of natural habitat and open space, development and implementation of watershed management, and construction, repair replacement, and maintenance of storm water conveyance systems.

The combined rate of all district taxes imposed within a county cannot exceed 2 percent.

Local entities are required to contract with the Board to perform all functions in the administration of the ordinances imposing the district taxes.

AMENDMENT

This bill amends Sections 132304, 132320, 132322, 132324, 132328, 132330, 132332, and 132334 of, and add Sections 132321 and 132360.6 to, the Public Utilities Code, to authorize the SDRTC to increase the tax rate up to the maximum tax rate authorized under Section 132307, subject to voter approval. This bill also revises and expands the purposes for which the revenues from the tax could be used to include covering the costs of implementation of the regional comprehensive plan, water quality improvement, beach sand nourishment projects, and other various projects and purposes.

This bill provides a definition for “increase” to mean increasing the tax rate or the maximum tax rate authorized in the tax ordinance originally imposing the tax to an amount that does not exceed the maximum tax rate authorized under Section 132307, which provides that the maximum tax rate is 1 percent.

This bill defines “purposes” for which revenue derived from the district tax may be expended, in addition to the other purposes listed in Articles 5, 6, and 6.5, to include funding one or more grants to provide funding mechanisms for purchases of property or long-term management and monitoring of projects authorized by this section.

This bill provides that any increase in the tax rate or the maximum tax rate authorized by the ordinance shall be operative in accordance with Section 132304, which provides that an ordinance shall be operative on the first day of the first calendar quarter commencing more than 110 days after adoption of the ordinance.

This bill provides legislative findings and declarations to specify that any expansion, extension, or increase of the district tax because of the amendments to Section 132320 will apply prospectively to district taxes approved by the voters on or after January 1, 2009.

IN GENERAL

As of April 1, 2008, there are 91 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 91 jurisdictions, 36 are county-imposed taxes and 55 are city-imposed taxes. Of the 36 county-imposed taxes, 24 are imposed for transportation purposes (and 23 of these taxes are imposed under the authority of the Public Utilities Code).

As stated previously, the combined rate of all district taxes imposed in any county shall not exceed 2 percent. Generally, tax rates are imposed at a rate of 0.25 percent or 0.25 percent increments up to the 2 percent limit. Currently, the district tax rates vary from 0.10 percent to 1 percent. The combined state, local, and district tax rates range from 7.375 percent to 8.75 percent.

Some cities and counties have more than one district tax in effect, while others have none. A listing of the district taxes, rates, and effective dates is available on the Board’s website: www.boe.ca.gov/sutax/pdf/districtratelist.pdf. Because the combined rate of all district taxes imposed within a county cannot exceed 2 percent, the current maximum combined state, local, and district tax rate is 9.25 percent.

BACKGROUND

In November 1987, voters in the County of San Diego approved the San Diego Regional Transportation Commission tax known as the TransNet. The tax became operative on April 1, 1988 and is imposed at a rate of 0.50 percent. This tax was due to expire March 31, 2008. In November 2004, voters of San Diego County voted to extend this tax an additional 40 years until March 31, 2048. The purposes for which the revenues shall be used include, but are not limited to, construction, capital acquisition, maintenance, and operation of streets, roads, and highways, including state highways, and the construction, maintenance, and operative of public transit systems, including exclusive public mass transit guideway systems. The tax revenues may also be used for any or all of the following: acquisition, management, and monitoring of natural habitat and open space, development and implementation of watershed management, and construction, repair, replacement of storm water conveyance systems.

COMMENTS

1. **Purpose.** The purpose of this bill is to increase San Diego County's sales tax rate by 0.50 percent to a maximum rate of 1 percent to pay for critical infrastructure needs identified in the Regional Comprehensive Plan, which includes shoreline preservation, water quality improvements, increased public transit, and habitat acquisition and maintenance of the region's 360,000 acres of habitat preserves.

2. **Amendments.** The **April 22, 2008 amendments** added legislative findings and declarations for the purpose of clarifying that any expansion, extension, or increase of district taxes resulting from amendments to Section 132320 pursuant to this measure shall apply prospectively to district taxes approved by the voters on or after January 1, 2009. The **April 7, 2008 amendments** (1) addressed a technical concern raised in the Board staff analysis and reduced the operative date time frame following the adoption of a district tax ordinance from 120 days to 110 days, and therefore provides that a district tax would be operative on the first day of the first calendar quarter commencing more than 110 days (rather than 120 days) after the adoption of the ordinance; and (2) revised the purposes for which the revenues can be used to include funding grants to provide funding mechanisms for purchases of real property or long-term management and monitoring of projects, as specified.

3. **Current tax rate limitations.** Section 132307 of the Public Utilities Code authorizes the SDRTC to impose a district tax, subject to voter approval, in increments of 0.25 percent and not to exceed a maximum tax rate of 1 percent. Section 132307 also provides that the tax must conform to Part 1.6 of the Transactions and Use Tax Law. Section 7251.1 of Part 1.6 provides that the combined rate of all district taxes imposed in any county cannot exceed 2 percent.

   Currently, San Diego County has four district taxes levied within its borders. There is one countywide tax (SDRTC) and three citywide taxes. The one countywide tax is the 0.50 percent district tax levied by the SDTRC for transportation purposes. The three citywide taxes are as follows: City of El Cajon levies a tax at a rate of 0.50 percent for public safety purposes, City of National City levies a tax at a rate of 1 percent for general purposes, and City of Vista levies a tax at a rate of 0.50 percent for general purposes. District taxes imposed by a city count against the 2 percent countywide rate limitation. The following table illustrates how the 2 percent cap applies:

Current Rate in San Diego County	**Highest city rate (National City)**	**Highest city rate counts against county rate**	**Available rate to San Diego County**
0.50%	1%	0.50% (county) + 1% (National City) = 1.50%	0.50% 1.50% (county and highest city rate) + 0.50% (available rate) = 2% cap

Thus, the provisions under the Public Utilities Code limit the SDTRC from levying a tax at a rate greater than 1 percent. Because SDTRC currently levies a tax at a rate of 0.50 percent, it has a total of 0.50 percent left. In addition, the 2 percent cap limitation under the Transactions and Use Tax Law prohibits SDTRC from increasing the current 0.50 percent tax more than 0.50 percent. Because the City of National City imposes a 1 percent tax and the SDRTC imposes a 0.50 percent tax, San Diego County has only 0.50 remaining.

4. **Legislative findings and declarations.** This bill contains legislative findings and declarations that, among other things, clarify that any extension, expansion, *or* increase in district taxes because of the amendments to Section 132320 shall have prospective application only to district taxes approved by the voters on or after January 1, 2009. What is the effect of this provision? Voters must approve, by a two-thirds vote, to use the current stream of local sales tax revenue to pay for the new purposes created by this bill (i.e., replenishing sand on local beaches). The intent provision also clarifies that the voters must approve any increase in the current tax rate for which those revenues would be used to fund the new purposes.

5. **Related Legislation.** Assembly Bill 1646 (DeSaulnier) would have authorized counties, subject to two-thirds approval of the voters, to impose a transactions and use tax at a rate in 0.25 percent increments and not to exceed a maximum tax rate of 1 percent, for county health purposes. This bill failed passage in the Senate Revenue and Taxation Committee.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Revenue & Taxation Code				
§6248	Amend	AB 1452	Ch. 763	Presumption of purchase for use; motor vehicles, vessels, and aircraft
§6487.06	Add	AB 3079	Ch. 306	Deficiency determination; unregistered California purchasers
§6829	Amend	AB 1895	Ch. 24	Personal liability for corporate officers
§7076.5	Repeal	AB 3079	Ch. 306	Managed Audit Program – Sunset Date
§7093.6	Amend Add Repeal	AB 2047	Ch. 222	Offers in Compromise
Labor Code				
§ 64.5	Add	AB 3079	Ch. 306	Information Sharing: Department of Industrial Relations
Public Utilities Code				
§132304	Amend	SB 1685	Ch. 83	Operative date of ordinance
§132320	Amend	SB 1685	Ch. 83	Purposes for which revenues are spent