

Add Revenue and Taxation Code Section 6070.5 to the Sales and Use Tax Law to provide that the Board of Equalization (BOE) may refuse to issue a seller's permit to any person who has an outstanding liability with the BOE and has not entered into an installment payment agreement.

Source: Honorable Betty T. Yee

Existing Law

Revenue and Taxation Code Section 6005 defines a "person" to include any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

Section 6066 provides that every person desiring to engage in business as a seller within this state shall apply for a seller's permit with the BOE. There is no fee for obtaining a seller's permit and the permit is valid indefinitely as long as the applicant maintains a business as a seller and is in good standing with the BOE.

Section 6070 provides that whenever any person fails to comply with any provision of the Sales and Use Tax Law, the BOE shall provide 10 days written notice to the taxpayer of the time and place of a hearing to be held in which the taxpayer must show why the permit should not be revoked. The BOE shall not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of the Sales and Use Tax Law.

Section 6069 provides that a seller whose permit has been previously suspended or revoked shall pay a reinstatement fee of \$100 to the BOE for the renewal or reissuance of a permit.

Section 6701 provides the BOE with the authority to require, whenever it deems necessary to insure compliance with the Sales and Use Tax Law, that a person file a security deposit with the BOE. This is used primarily in cases where the taxpayer has a history of noncompliance. The maximum amount of security the BOE may require is \$50,000, and must be released by the BOE after a three-year period in which the person has filed all returns and paid all tax to the state.

This Proposal

This proposal would provide that the BOE may refuse to issue a seller's permit to any person who has an outstanding liability with BOE and has not entered into an installment payment agreement. This proposal would also provide that the BOE may refuse to issue a seller's permit to any business entity if an individual person having control of the entity has an outstanding liability and has not entered into an installment payment agreement.

To ensure fair treatment of taxpayers, any person that is denied a seller's permit due to an outstanding liability will be granted a hearing regarding the manner.

Such a hearing will be consistent with a hearing in a revocation proceeding, which is typically handled at the tax administrator level. The person would be required to file a written request for reconsideration within 30-days of the written notice of denial.

Background. If a taxpayer were to fail to comply with any provisions of the Sales and Use Tax Law, such as failure to remit payment of taxes, and the BOE took action to revoke the seller's permit of the taxpayer, Section 6070 would provide that the BOE shall not reinstate the permit until the BOE is satisfied the taxpayer will comply with the law. Therefore, if the BOE revokes a seller's permit, the person may not obtain a new permit until the BOE is satisfied the person will comply with the Sales and Use Tax Law.

However, if the taxpayer voluntarily closes the permit prior to the permit being revoked by the BOE and the taxpayer has an outstanding liability with the BOE, current law would not allow the BOE the discretion to withhold issuing a seller's permit upon the taxpayer submitting an application for a new permit. This allows a taxpayer who has failed to properly remit taxes to close out the permit with a large liability, and at a later date, request a new permit from the BOE. In this situation, since the prior permit was not revoked by the BOE, the BOE lacks authority to refuse issuance of the permit. The only recourse for the BOE is to require the posting of a security deposit.

Another situation BOE staff has identified is when the BOE revokes a seller's permit due to noncompliance and the person applies for a new permit under a different type of entity. For example, if the original permit was held by a sole proprietor and that permit was revoked by the BOE, current law does not allow the BOE to refuse issuance of a seller's permit if the sole proprietor creates a corporation and applies for a permit under the corporation.

These issues generally arise in connection with a final liability. Therefore, this proposal would pertain to a person with a final liability only. Any person with a non-final liability would still be able to obtain a new seller's permit while continuing to exercise the rights and remedies available to all taxpayers with non-final liabilities.

This proposal would allow the BOE the discretion to withhold issuing a permit to a person under the most common scenarios involving taxpayer non-compliance the BOE encounters.

Section 6070.5 is added to the Revenue and Taxation Code to read as follows:

6070.5. (a) The board may refuse to issue a permit to any person submitting an application for a permit as required in section 6066 if the person desiring to engage in or conduct business as a seller within this state has an outstanding final liability with the board for any amount due under this part.

(b) In addition to the provisions of subdivision (a), the board may also refuse to issue a permit if the person desiring to engage in or conduct business as a seller within this state is not a natural person or individual and any person controlling the person desiring to engage in or conduct

business as a seller within this state has an outstanding final liability with the board as provided in subdivision (a). For the purposes of this section, "controlling" has the same meaning as defined in Business and Professions Code section 22971.

(c) For purposes of this section, a liability will be deemed to be not outstanding if the person has entered into an installment payment agreement pursuant to section 6832 for any liability and is in full compliance with the terms of the installment payment agreement.

(d) If the person submitting an application for a seller's permit has entered into an installment payment agreement as provided in subdivision (c) and fails to comply with the terms of the installment payment agreement, the board may seek revocation of the seller's permit obtained by the person pursuant to this section.

(e)(1) Whenever any person desiring to engage in or conduct business as a seller within this state is denied a permit pursuant to this section, the board shall give to the person written notice of the denial. The notice required herein may be served personally, by mail, or by other means deemed appropriate by the board. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the person at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Delivery of notice by other means deemed appropriate by the board may include, but is not limited to, electronic transmission. Personal service or delivery by other means deemed appropriate by the board to a corporation may be made by delivery of a notice to any person listed on the application as an officer.

(2) Any person who is denied a seller's permit pursuant to this section may request reconsideration of the board's denial of the permit. This request must be submitted in writing within 30 days of the date of the notice of denial. Timely submission of a written request for reconsideration will afford the person a hearing consistent with a hearing as provided by section 6070. If a request for reconsideration is not filed within the 30-day period, the denial becomes final at the end of the 30-day period.