

**Add Revenue and Taxation Code Section 6452.2 to the Sales and Use Tax Law to specify a due date of April 15 for eligible purchasers, as defined, who have incurred use tax liabilities on purchases made during the previous calendar year.**

**Source: Board Member George Runner**

### **Current Law**

Existing law, Article 1 (commencing with Section 6451) of Chapter 5 of the Sales and Use Tax Law, sets forth the general due dates of sales and use tax payments and associated returns. Generally, returns and payments are due quarterly on or before the last day of the month following the quarterly period. Section 6455 of this article, however, permits the BOE to require return and payments for other than quarterly periods (such as monthly or annually), when it deems necessary to ensure payment or to facilitate collection. However, this section is specific that the due dates for returns and payments are at the end of the month following the reporting period.

Existing law, pursuant to Revenue and Taxation Code Section 6591, imposes a 10% penalty on any late payment of sales or use tax, plus monthly interest - currently at a rate of 7% annually (6% annually beginning July 1, 2011).

The law currently has two exceptions from the general due dates described above with respect to use tax liabilities. Section 6225, which was added by ABx4 18 (Ch. 16, Stats. 2009), requires “qualified purchasers” to register with the Board of Equalization (BOE), and report and pay by April 15, the use tax owed for purchases made during the preceding calendar year. A “qualified purchaser” means a person that is not otherwise required to be registered with the BOE, and that receives at least \$100,000 in gross receipts from business operations per calendar year (this includes businesses such as accountants, dental offices, law firms, real estate firms, etc.).

In addition to Section 6225, Section 6452.1 of the Revenue and Taxation Code makes a due date exception for use tax liabilities reported on the Franchise Tax Board (FTB) personal income or corporate tax return. Under this section, purchasers have the choice to report their use tax liabilities directly to the BOE or on their FTB return, and when a purchaser reports his or her use tax on a filed timely FTB return, that payment is considered timely, and the purchaser is not subjected to late charges. Section 6452.1 specifies that persons registered, or required to be registered, with the BOE may not report their use tax liabilities on their FTB returns.

If a purchaser voluntarily reports the use tax to the BOE using a BOE use tax return, the due date specified in the BOE’s instructions indicate a January 31 due date for taxable purchases made during the previous calendar year.

However, in its enforcement of use tax using United States Customs Service declarations completed by California travelers who ship goods from a foreign country or California residents who import goods from a foreign country with a California destination, the due dates for use tax returns and payments are dependent on the date of purchase. Generally, if the purchase from the foreign country is made during the *first* six months of the year, the due date is January 31 of the following year. For purchases made during the *last* six months of the year, the due date is generally July 31 following that calendar year.

For any payments made after the due dates specified above, a late payment penalty and monthly interest as described previously is imposed.

### **This Proposal**

This proposal would designate April 15<sup>th</sup> as the due date for payments of use tax for “eligible purchasers” who have made taxable purchases during the preceding calendar year. An “eligible purchaser” would be defined to mean a person that incurred a use tax liability that is either (1) eligible to report the use tax on his or her FTB return, but did not elect to do so, or (2) a person that is not required to file a return with the FTB, and is not otherwise registered or required to be registered with the BOE to report sales or use tax.

This proposal is intended to provide consistency in the due dates for use tax payments by purchasers that are not registered or not required to be registered with the BOE. Currently, if an individual elects to report his or her use tax liability on the state income tax return, as long as the state income tax return is filed timely (generally April 15 for personal income tax), the use tax payment is considered timely and no penalty or interest apply. However, if, instead, that same individual paid the use tax directly to the BOE on the same day using a BOE use tax return, the payment would be considered late, and the individual would be subjected to the late payment penalty and interest.

April 15<sup>th</sup> is the regular due date for income taxes for individuals, and providing some consistency in the due dates for purchasers incurring a use tax liability provides a commonsense approach in administering a law for which many California purchasers are unaware.

*Section 6452.2 is added to the Revenue and Taxation Code to read:*

6452.2. (a) “Eligible purchaser” means a person that purchases tangible personal property, the storage, use or other consumption of which is subject to qualified use tax, as defined in this section, and that is either of the following:

(1) Eligible to report use tax on an acceptable tax return, but does not elect to do so, or

(2) A person that is not required to file an acceptable tax return pursuant to Part 10 (commencing with Section 17001) or Part 11 (commencing with Section

23001), and that is not a holder of a use tax direct payment permit as described in Section 7051.3 or is not otherwise registered or required to be registered with the board to report sales or use tax.

(b) "Qualified use tax" for purposes of this section, means the amount of use tax imposed under this part, Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax. "Qualified use tax" does not include the use tax described in subparagraph (B) of paragraph (2) of subdivision (d) of Section 6452.1.

(c) "Acceptable tax return" has the same meaning as that term is used in paragraph (1) of subdivision (d) of Section 6452.1.

(d) For reporting periods commencing on or after January 1, 2011, notwithstanding Section 6451 and subdivision (b) of Section 6455, an eligible purchaser's liability for qualified use tax, as defined in this section, is due and payable to the board on or before April 15 following the close of the calendar year in which the liability for use tax was incurred.