

**Add Section 6487.06 to the Revenue and Taxation Code to reduce the period of time for which a determination may be mailed from eight years to three years when unregistered in-state purchasers, as defined, voluntarily report to the Board purchases subject to use tax.**

**Source: Sales and Use Tax Department**

**Existing Law**

Under the existing Use Tax 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, except if 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, or to the Franchise Tax Board via the income tax return. A use tax liability is primarily a result of a California consumer or business making a purchase of an item for their own use from an out-of-state retailer that is not registered with the Board to collect the use tax.

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 (Revenue and Taxation Code Section 6487.06). 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.<sup>1</sup> 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, sunsetted on December 31, 2007.

**This Proposal**

This proposal would reinstate Section 6487.06 in the Revenue and Taxation Code and extend this voluntarily disclosure program for qualifying purchasers indefinitely.

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<sup>1</sup> Purchases of vehicles, vessels and aircraft, however, are excluded from the shortened "look-back" provisions.

This statute has proven to be successful since its inception as follows:

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

*Section 6487.06 is added to the Revenue and Taxation Code to read:*

6487.06. (a) Notwithstanding Section 6487, the period during which a deficiency determination may be mailed to a qualifying purchaser is 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.

(b) For purposes of this section, a "qualifying purchaser" is 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 State Board of Equalization.

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

(C) Reported an amount on their Individual 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 State Board of Equalization regarding failure to report the use tax imposed by Section 6202.

(4) The State Board of Equalization 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 imposed by Section 6202 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.

(c) If the State Board of Equalization 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 by this part. Any purchaser seeking relief from penalties imposed by this part shall file a statement, signed under penalty of perjury, setting forth the facts that form the basis for the claim for relief.

(d) This section shall not apply to purchases of vehicles, vessels, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.