

Introduced by Senator BeallFebruary 27, 2015

An act to amend Section 6901 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 640, as introduced, Beall. Sales and use taxes: claim for refund: customer refunds.

Under the Sales and Use Tax Law, any amount collected or paid in excess of what is due under that law is required to be credited by the State Board of Equalization against any other amounts due and payable from the person from whom the excess amount was collected or by whom it was paid, and the balance refunded to the person, as provided. Under existing law, when an amount represented by a person to a customer as constituting reimbursement for taxes due under the Sales and Use Tax Law is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount paid is required to be returned by the person to the customer upon notification by the board or by the customer that this excess has been ascertained.

This bill would authorize a person that has paid the tax to make an irrevocable election to assign to the customer the right to file a claim for refund to receive the amount that would be refunded to the person, provided specified conditions are met, including that the amount be \$50,000 or more. This bill would authorize the board to make a payment to the customer of the balance of any excess amount collected or paid, after any amounts due and payable from the person or customer are credited against that excess amount. This bill would also require an amount subject to refund that is credited to the person that paid the tax

and not refunded to the customer to be paid by that person directly to the customer.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6901 of the Revenue and Taxation Code
2 is amended to read:
3 6901. (a) If the board determines that any amount, penalty,
4 or interest has been paid more than once or has been erroneously
5 or illegally collected or computed, the board shall set forth that
6 fact in the records of the board and shall certify the amount
7 collected in excess of the amount legally due and the person from
8 whom it was collected or by whom paid. The excess amount
9 collected or paid shall be credited by the board on any amounts
10 then due and payable from the person from whom the excess
11 amount was collected or by whom it was paid under this part, and
12 the balance shall be refunded to the person, or his or her successors,
13 administrators, or executors, *or customers, as provided in*
14 *subdivision (b)*, if a determination by the board is made in any of
15 the following cases:
16 ~~(a)~~
17 (1) Any amount of tax, interest, or penalty was not required to
18 be paid.
19 ~~(b)~~
20 (2) Any amount of prepayment of sales tax, interest, or penalty
21 paid pursuant to Article 1.5 (commencing with Section 6480) of
22 Chapter 5 was not required to be paid.
23 ~~(c)~~
24 (3) Any amount that is approved as a settlement pursuant to
25 Section 7093.5.
26 (b) (1) *When an amount represented by a person to a customer*
27 *as constituting reimbursement for taxes due under this part is*
28 *computed upon an amount that is not legally due, that is paid by*
29 *the customer to the person, and that is remitted by the person to*
30 *the board, the person that paid the tax may make an irrevocable*
31 *election to assign to the customer the right to file a claim for refund*
32 *and receive the amount refunded if all of the following conditions*
33 *are met:*

1 (A) *The entire amount represents excess tax reimbursement that*
2 *is required to be paid by the person to a single customer under*
3 *Section 6901.5.*

4 (B) *The amount to be refunded is fifty thousand dollars*
5 *(\$50,000) or more.*

6 (C) *The irrevocable election to assign to the customer the right*
7 *to file a claim for refund and receive the amount refunded is*
8 *evidenced by a statement, signed by the person and the customer,*
9 *that authorizes that customer to file a claim for refund and receive*
10 *the amount refunded.*

11 (D) *The signed statement is submitted to the board in*
12 *conjunction with the claim for refund.*

13 (2) *The person that paid the tax and collected the excess tax*
14 *reimbursement shall make the records to verify the refund available*
15 *for inspection by the board, and no refund shall be payable until*
16 *the board verifies by audit or other means that the amounts are*
17 *properly due for refund.*

18 (3) *The excess amount collected or paid shall be credited by*
19 *the board on any amounts then due and payable from the person*
20 *that paid the tax or amounts for which a notice of determination*
21 *has been issued to the person that paid the tax, and amounts due*
22 *and payable from the customer from which the excess tax*
23 *reimbursement was collected. The balance shall be refunded to*
24 *the customer that paid the excess tax reimbursement. An amount*
25 *subject to refund that is credited to the person that paid the tax*
26 *and not refunded to the customer that paid the excess tax*
27 *reimbursement shall be paid by the person that paid the tax directly*
28 *to the customer. In the event the person does not make that*
29 *payment, the credit that was on the amount due from the person*
30 *shall be reversed.*

31 ~~Any~~

32 (c) *Any overpayment of the use tax by a purchaser to a retailer*
33 *who is required to collect the tax and who gives the purchaser a*
34 *receipt therefor pursuant to Article 1 (commencing with Section*
35 *6201) of Chapter 3 shall be credited or refunded by the state to the*
36 *purchaser.* ~~Any~~

37 (d) *Any proposed determination by the board pursuant to this*
38 *section with respect to an amount in excess of fifty thousand dollars*

- 1 (\$50,000) shall be available as a public record for at least 10 days
- 2 prior to the effective date of that determination.

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