

AMENDED IN SENATE APRIL 21, 2015

**SENATE BILL**

**No. 640**

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**Introduced by Senator Beall**  
*(Coauthor: Senator Vidak)*  
*(Coauthor: Assembly Member Low)*

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 640, as amended, 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, or  
 4 interest has been paid more than once or has been erroneously or  
 5 illegally collected or computed, the board shall set forth that fact  
 6 in the records of the board and shall certify the amount collected  
 7 in excess of the amount legally due and the person from whom it  
 8 was collected or by whom paid. The excess amount collected or  
 9 paid shall be credited by the board on any amounts then due and  
 10 payable from the person from whom the excess amount was  
 11 collected or by whom it was paid under this part, and the balance  
 12 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 (1) Any amount of tax, interest, or penalty was not required to  
 17 be paid.  
 18 (2) Any amount of prepayment of sales tax, interest, or penalty  
 19 paid pursuant to Article 1.5 (commencing with Section 6480) of  
 20 Chapter 5 was not required to be paid.  
 21 (3) Any amount that is approved as a settlement pursuant to  
 22 Section 7093.5.  
 23 (b) (1) When an amount represented by a person to a customer  
 24 as constituting reimbursement for taxes due under this part is  
 25 computed upon an amount that is not legally due, that is paid by  
 26 the customer to the person, and that is remitted by the person to  
 27 the board, the person that paid the tax may make an irrevocable  
 28 election to assign to the customer the right to file a claim for refund

1 and receive the amount refunded if all of the following conditions  
2 are met:

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

6 (B) The amount to be refunded is fifty thousand dollars  
7 (\$50,000) or more.

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

13 (D) The signed statement is submitted to the board in  
14 conjunction with the claim for refund.

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

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

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

38 (d) Any proposed determination by the board pursuant to this  
39 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.

3 (e) *As used in this section, the following definitions shall apply:*

4 (1) *“Person that paid the tax” means a single “person” as*  
5 *defined in Section 6005.*

6 (2) *“Customer” means a single “person” as defined by Section*  
7 *6005.*