AMENDED IN ASSEMBLY AUGUST 18, 2015

AMENDED IN SENATE JUNE 2, 2015

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~~ *allow* the customer ~~the right~~ to file a

claim for refund to receive the amount that would be refunded to the ~~person,~~ *person that paid the tax* provided specified conditions are met, including that the amount be $1,000 or more. This bill would ~~authorize~~ *require* 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

1 the board, the ~~person that paid the tax may make an irrevocable~~
2 ~~election to assign to the~~ customer *shall have* the right to file a claim
3 for refund and receive the amount refunded if all of the following
4 conditions are met:
5   (A)  The entire amount represents excess tax reimbursement that
6 is required to be paid by the single person that paid the tax to a
7 single customer under Section 6901.5.
8   (B)  The amount to be refunded is one thousand dollars ($1,000)
9 or more.
10   ~~(C)  The irrevocable election to assign to the customer the right~~
11 ~~to file a claim for refund and receive the amount refunded is~~
12 ~~evidenced by a statement, signed by the person and the customer,~~
13 ~~that authorizes that customer to file a claim for refund and receive~~
14 ~~the amount refunded.~~
15   ~~(D)  The signed statement is submitted to the board in~~
16 ~~conjunction with the claim for refund.~~
17   (2)  The person that paid the tax and collected the excess tax
18 reimbursement shall make the records to verify the refund available
19 for inspection by the board, and no refund shall be payable until
20 the board verifies by audit or other means that the amounts are
21 properly due for refund.
22   (3)  The excess amount collected or paid shall be credited by the
23 board on any amounts then due and payable from the person that
24 paid the tax or amounts for which a notice of determination has
25 been issued to the person that paid the tax, and amounts due and
26 payable from the customer from which the excess tax
27 reimbursement was collected. The balance shall be refunded to
28 the customer that paid the excess tax reimbursement. An amount
29 subject to refund that is credited to the person that paid the tax and
30 not refunded to the customer that paid the excess tax reimbursement
31 shall be paid by the person that paid the tax directly to the
32 customer. In the event the person does not make that payment, the
33 credit that was on the amount due from the person shall be
34 reversed.
35   (c)  Any overpayment of the use tax by a purchaser to a retailer
36 who is required to collect the tax and who gives the purchaser a
37 receipt therefor pursuant to Article 1 (commencing with Section
38 6201) of Chapter 3 shall be credited or refunded by the state to the
39 purchaser.

1    (d)  Any proposed determination by the board pursuant to this
2 section with respect to an amount in excess of fifty thousand dollars
3 ($50,000) shall be available as a public record for at least 10 days
4 prior to the effective date of that determination.
5    (e)  As used in this section, the following definitions shall apply:
6    (1)  "Person that paid the tax" means a single "person" as defined
7 in Section 6005.
8    (2)  "Customer" means a single "person" as defined by Section
9 6005.

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