

AMENDED IN SENATE JULY 10, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1412

**Introduced by Committee on Revenue and Taxation (Bocanegra
(Chair), Gordon, Mullin, Pan, V. Manuel Pérez, and Ting)**

March 19, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1412, as amended, Committee on Revenue and Taxation. 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 to make an irrevocable election to assign to the customer the right to receive the amount that would be

refunded to the person, provided specified conditions are met, and would authorize the board to make that payment to the customer, *as provided*.

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 customer as provided in subdivision
14 (b), if a determination by the board is made in any of the following
15 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) A person may make an ~~irrevocable~~ election to assign to the
24 customer the right to receive the amount refunded if all of the
25 following conditions are met:

26 (1) The entire amount represents excess tax reimbursement that
27 is required to be paid by the person to a single customer under
28 Section 6901.5.

29 (2) The amount to be refunded is fifty thousand dollars (\$50,000)
30 or greater.

31 (3) *The election is irrevocable.*

32 (4) *Contingency fees are not charged or paid in connection with*
33 *the election, assignment, or claim for refund.*

1 ~~(3)~~

2 (5) (A) The irrevocable election to assign to the customer the
3 amount refunded is evidenced by a statement signed by the person
4 and the customer authorizing the named customer to receive the
5 amount refunded.

6 ~~(4)~~

7 (B) The signed statement *described in subparagraph (A)* is
8 submitted to the board in conjunction with the person's claim for
9 refund.

10 (C) *The signed statement described in subparagraph (A) shall*
11 *be made on a form prescribed by the board, which shall include*
12 *a statement that a contingency fee charged or paid in connection*
13 *with the election, assignment, or claim for refund is contrary to*
14 *public policy and any contingency fee charged or paid shall render*
15 *the assignment null and void.*

16 (c) Any overpayment of the use tax by a purchaser to a retailer
17 who is required to collect the tax and who gives the purchaser a
18 receipt therefor pursuant to Article 1 (commencing with Section
19 6201) of Chapter 3 shall be credited or refunded by the state to the
20 purchaser.

21 (d) Any proposed determination by the board pursuant to this
22 section with respect to an amount in excess of fifty thousand dollars
23 (\$50,000) shall be available as a public record for at least 10 days
24 prior to the effective date of that determination.

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