

Add Revenue and Taxation Code Section 6460 to the Sales and Use Tax Law to allow retailers to report sales tax liability on a cash basis.

Source: Honorable Fiona Ma

Existing Law. Under existing law,¹ sales tax is imposed upon all retailers for the privilege of selling tangible personal property at retail. Existing law² provides that a retailer may add sales tax reimbursement to the sales price of the property sold to a purchaser under the sale agreement's terms.

Under the law,³ a sale occurs when the seller completes his or her performance with respect to the goods' physical delivery.

For purposes of the sales tax, the law⁴ requires that a return show the seller's gross receipts during the preceding reporting period. The law⁵ defines "gross receipts" to mean the total sale or lease amount or rental price of a retailer's retail sales, valued in money, whether received in money or otherwise. This provision also specifies that the total sale or lease amount or rental price includes, among other things, all receipts, cash, credits and property of any kind. Accordingly, for purposes of reporting sales tax to the Board of Equalization (BOE), existing law requires sales tax payment on an accrual basis, not a cash basis, and is required to be reported and paid with the return for the period in which the sale occurs. The payment's timing related to a sale is neither relevant to the timing of a taxpayer's sales tax liability, nor the timing of the taxpayer's invoice (except when the invoice's timing or payment affects when title to the goods passes to the buyer).

However, if the retailer ultimately does not receive payment, and charges off the bad debt for income tax purposes, the retailer is allowed to claim a bad debt deduction on his or her return to recoup the taxes previously paid to the state.

Proposed Law. This proposal would allow retailers to elect to report their tax on a cash-reporting basis.

Some non-point-of-sale retailers have cash flow problems because they do not have walk-in customers who pay cash at the time of purchase. Instead, they may wait for 30-45 days or longer to obtain payment for the goods and sales tax reimbursement from their customers. During that time, they may have to remit sales tax to the BOE, due to the return and prepayment due dates. Some operate with slim profit margins, with little working capital to make advance sales tax payments prior to receiving payment for the sale. This proposal would give retailers the option to either continue reporting their tax liability on an accrual basis, or remit their tax based on when they receive sales tax reimbursement from their customers.

¹ Revenue and Taxation Code (RTC) Section 6051.

² Civil Code Section 1656.1.

³ Uniform Commercial Code Section 2401.

⁴ RTC Section 6453.

⁵ RTC Section 6012.

When a retailer exercises his or her option to report on a cash-reporting basis, the retailer will no longer be required to claim a bad debt deduction to recoup any tax previously remitted to the state on worthless accounts.

A revenue impact estimate is pending.

Section 6460 of the Revenue and Taxation Code is added, to read:

6460. (a) For purposes of remitting tax within the dates specified under Section 6451 or Section 6471, a retailer may elect to report the tax on a cash-reporting basis.

(b) For purposes of this section, "cash-reporting basis" means a method of accounting by which the sale is deemed to have occurred as of the date any payments are received, in whole or in part, with respect to sales of tangible personal property.