STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	**05/25/05**	Bill No:	**SB 536**
Tax:	**Sales and Use**	Author:	**Bowen**
Related Bills:	**SB 1559 (Bowen, 2004)**		

BILL SUMMARY

This bill would do the following:

1. Specify that a seller may authorize a representative to file an application for a permit for each place of business, as specified.
2. For purposes of an out-of-state retailer reporting use tax, specifies that a retailer may authorize a representative to register with the Board and give, among other things, the name and address of all agents operating in this state and any other information the Board may require.

Summary of Amendments

The May 25, 2005 amendments delete the former provisions that would have *required* agents of sellers and retailers to register with the Board and furnish the Board with specified information. The bill now specifies that sellers and retailers may *authorize* representatives of sellers and retailers to register on their behalf, as specified.

ANALYSIS

Current Law

Under existing law, every person desiring to engage in or conduct business as a seller within this state is required to apply for a seller's permit for each place of business. Also, every out-of-state retailer selling tangible personal property for use in this state is required to register with the Board and, among other things, give the name and address of all agents operating in this state.

The Streamlined Sales Tax Agreement (explained under "In General" below) defines an "agent" in Section 201 as, "A person appointed by a seller to represent the seller before the member states." Section 404 provides that a "A seller may be registered by an agent. Such appointment shall be in writing and submitted to a member state if requested by the member state." These provisions allow, for example, a CPA, attorney or other representative to represent a seller before the member states or register the seller for a permit in the member states.

Proposed Law

This bill would amend Sections 6066 and 6226 of the Sales and Use Tax Law to do the following:

1. Specify that a person desiring to engage in or conduct business as a seller within this state may authorize a representative to file an application for a permit for each place of business, as specified.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

2. For purposes of the use tax, specify that an out-of-state retailer may authorize a representative to register with the Board, and furnish to the Board, among other things, the name and address of all agents operating in this state and any other information the Board may require.

The bill would become operative January 1, 2006.

Background

Last year, a measure similar to the introduced version of this bill was introduced - SB 1559 (Bowen). The measure passed the Assembly Revenue and Taxation Committee; however, the bill died in the Assembly third reading file due to last minute amendments incorporated in the bill unrelated to this issue.

In General

In an effort to simplify various states' sales and use tax systems, 42 states (and the District of Columbia) that levy a sales and use tax have participated in the Streamlined Sales Tax Project (SSTP).

The SSTP adopted the Streamlined Sales and Use Tax Agreement in November 2002, which creates a blueprint for a simplified tax collection system and attempts to remove the burden and cost of tax collection from sellers. The Agreement addresses issues associated with tax collections, definitions of the tax base, uniformity of tax bases, electronic registration of sellers, simplification of tax rates, simplification of returns and remittances, uniform sourcing rules, as well as other issues. Through the enactment of SB 157 (Ch. 702, Bowen), effective January 1, 2004, California is actively participating in the continued development of the Agreement through its Board of Governance, created by SB 157. The Members of the Board of Governance are:

- Honorable John Chiang - Chairman, Board of Equalization
- Honorable Steve Westly - Vice-Chairman, State Controller
- Senator Roy Ashburn
- Senator Debra Bowen
- Assembly Member Rudy Bermudez
- Assembly Member Mark Wyland
- Ms. Anne Sheehan, Department of Finance

The Agreement includes the following:

- Uniform definitions within tax laws. Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the Project's definitions, a certain amount of impact on state revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through common definitions.
- Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or

taxable services at another rate. State and local governments will accept responsibility for notice of rate and boundary changes at restricted times.

- State level tax administration of all state and local sales and use taxes. Businesses will no longer file tax returns with each local government within which it conducts business in a state. Each state will provide a central point of administration for all state and local sales and use taxes and the distribution of the local taxes to the local governments. A state and its local governments will use common tax bases.
- Uniform sourcing rules. The states will have uniform and simple rules for how they will source transactions to state and local governments. The uniform rules will be destination/delivery based and uniform for tangible personal property, digital property, and services.
- Simplified exemption administration for use- and entity-based exemptions. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for paying the tax, interest and penalties for claiming incorrect exemptions. States will have a uniform exemption certificate in paper and electronic form.
- Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.
- State funding of the system. To reduce the financial burdens on sellers, states will assume responsibility for funding some of the technology models. The states are also participating in a joint business – government study of the costs of collection on sellers. The Project proposes that states change their sales and use tax laws to conform with the simplifications as proposed by the Project. Thus, the simplifications would apply to all sellers. Sellers who do not have a physical presence or "nexus" are not required to collect sales and use taxes unless Congress chooses to require collection from all sellers for all types of commerce. Sellers without a physical presence can volunteer to collect under the proposed simplifications. Registration by sellers to voluntarily collect sales and use taxes will not infer that the business must pay business activity taxes, such as the corporate franchise or income tax.

Under the terms of the Streamlined Sales and Use Tax Agreement, participating states are required to amend or modify their sales and use tax laws to achieve the simplifications and uniformity required by the participating states working together.

A certificate of compliance will document each state's compliance with the provisions of the Agreement and cite applicable statutes, rules or regulations, or other authorities supporting such compliance. Public notice and comment will be provided before a state becomes part of the interstate Agreement. A state is in compliance with the Agreement if the effect of the state's laws, rules or regulations, and policies is substantially compliant with each of the requirements of the Agreement. If a state is found to be out of compliance with the Agreement, it will not be accepted into the interstate Agreement or will be sanctioned or expelled by the other participating states. In a voluntary system, sellers who are voluntarily collecting sales taxes for participating states may decide to no longer collect for the expelled state. Also, that state may not have a vote on changes in the Agreement.

The project website is www.streamlinedsalestax.org.

COMMENTS:

1. **Sponsor and purpose.** This measure is sponsored by the author in an effort to incorporate, in part, one provision of the Streamlined Sales and Use Tax Agreement (SSTA) into California's sales and use tax laws. In order to streamline the registration requirements for sellers operating in various states, the SSTA would authorize sellers' agents to register on their behalf. This bill is intended to incorporate those provisions in California's Sales and Use Tax Law.

2. **The May 25, 2005 amendments** incorporate the language suggested in the Board's previous staff analysis to address the concern that, as introduced, the bill could have been interpreted to require all agents to separately register and obtain a permit with the Board. With that interpretation, the Board would have been significantly impacted. These amendments, instead, specify that a seller or out-of-state retailer may authorize a representative to register with the Board and furnish specified information on behalf of that seller or out-of-state retailer.

3. **Is this bill premature?** SB 157, enacted in 2003, requires that the Board of Governance report quarterly to the Assembly and Senate Revenue and Taxation Committees on its progress in negotiating the agreement and to recommend to the committees the state statutes required to be added, amended, or otherwise modified for purposes of substantially complying with the agreement. Perhaps any proposed changes to the Sales and Use Tax Law should be postponed until such time the Board of Governance makes its recommendations.

4. **What impact would enactment of this measure have on California law?** Enactment of this measure would not materially affect California's administration of the Sales and Use Tax Law.

COST ESTIMATE

Enactment of this measure would have an insignificant effect (under $10,000) on the Board's administrative costs.

REVENUE ESTIMATE

This bill would not impact the state's revenues.

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