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Michelle Steel: Don't pay a tax you may not owe

California taxing agencies' table for figuring tax on online, mail-order purchases wrongly pegged to taxpayers' income, not how many untaxed purchases they may have made.

By MICHELLE STEEL / Member, state Board of Equalization, representing Orange County

According to the Board of Equalization, 99.5 percent of Californians paid no "use tax" in 2010, despite a concerted effort by the agency and the Legislature to increase compliance.

Even a 2009 law requiring every business owner who makes at least \$100,000 per year to register with the BOE and report use tax proved disappointing when nearly 90 percent of registered use-tax payers reported "0." Of the half-million taxpayers who were required to register over the past two years, 61 percent will be de-registered by the end of February.

But a record of failure has never stopped legislators from trying. The Legislature passed a law in 2011 requiring the BOE and the Franchise Tax Board to create a "Use Tax Lookup Table." Californians will find the table included in the instructions that accompany tax Forms 540, 540A, and 540 2EZ.

Although estimates of unpaid use tax are as high as \$1 billion, the new use-tax table is expected to bring in \$10.6 million annually. And the use-tax table stinks. Under the guise of making use-tax filing easier, the Legislature has turned the use tax into an income tax.

The use tax was created in 1935 as a counterpart to the California sales tax, and it is owed on purchases made out-of-state when a retailer did not collect the sales tax. Use tax is generally due on purchases made through mail-order or Internet retailers. Generally, the use-tax rate is equal to your local sales tax rate.

This 77-year-old tax is practically uncollectible, and with good reason. As Adam Thierer and Veronique de Rugy point out in a 2003 Cato Institute study, the use tax was not created primarily to raise revenue from out-of-state purchases, but as a political fix, "to avoid the uncomfortable business of imposing taxes on a state's own exporters." Today, politicians are exploiting that political fix to fuel their never-ending desire to spend more of your income.

The new use-tax table is a fundamentally dishonest attempt at increasing use-tax collections. The lookup table provides an estimate of use tax, based on California Adjusted Gross Income. The problem is that there is no correlation between

personal income and use-tax liability. Use tax is owed on actual purchases for which sales tax was not collected, not on a percentage of income.

The intent of the table is to make it more convenient for taxpayers not registered with the BOE to comply with their use-tax obligations. In effect, the table will cause some taxpayers to unknowingly overpay their use tax by following the estimate.

And use tax actually owed may be significantly less than estimates suggest. According to the U.S. Census Bureau, about 4 percent of retail sales nationally are made online – the main source for individual use-tax liabilities. The vast majority of retail sales are still made at brick-and-mortar stores, which collect sales tax. No wonder almost no one pays the use tax.

If you do owe use tax, however, there is an easy way to pay. When you buy something online or by mail order, keep your receipt. When you file your income taxes, simply calculate the sales tax due on your untaxed purchases and enter that amount on the line labeled "use tax."

If you do decide to use the lookup table, check your records first to ensure your estimated liability is in line with what you think you owe. There is no reason to pay estimated use tax if you don't owe it.