

Add Section 6593.7 to the Sales and Use Tax Law to authorize the Board to relieve all or a portion of interest imposed if the Board finds that a person's failure to make a timely payment was due to extraordinary circumstances and that it would be inequitable to hold the person liable for the applicable interest, under specified circumstances.

Source: Honorable Bill Leonard

Current Law

Under existing law, persons who are late in payment of their sales and use tax obligations are required to pay a penalty, plus monthly, simple interest on those unpaid taxes from the date the tax was due to the date upon which they are paid. The rate of interest for late payments is currently seven percent annually. Whether a payment is one day late or 29 days late, an entire month's interest is charged for late payments.

Under existing law, the Board has authority to relieve a late payment *penalty* when the Board finds that the taxpayer's failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. However, interest on a late payment is generally not relievable (except in cases of a disaster or where the failure to pay the tax timely was due to an unreasonable error or delay by a Board employee).

This Proposal

This proposal would enable the Members of the Board, meeting as a public body, to relieve all or a portion of the interest imposed on a person's late payment, if the Board finds that the person's late payment was due to extraordinary circumstances and that it is inequitable to hold the person liable for all or part of the accrued interest as existing law currently requires. The proposal would define "extraordinary circumstances" to mean "a highly unusual set of facts that are not commonly associated with a person's failure to make a timely return or payment." This proposal would also require that, as a condition for relief of interest, the person shall have paid the tax to which the interest is imposed, or, in the case of interest imposed on an amount of tax for which a petition for redetermination is pending, this proposal would require that the person pay the tax found to be due within 30 days from the date of the notice of the Board's final order or decision.

This proposal was prompted by a sales and use tax case that was heard by the Board at its December 2009 public hearing. In this particular case, the taxpayer's bookkeeper revised the taxpayer's computerized accounting records and embezzled a substantial amount of sales tax reimbursement collected from the taxpayer's customers. Although the bookkeeper has been fired and prosecuted and is currently serving a prison sentence, under the law, the taxpayer remains liable for the tax and interest. Even though the taxpayer had previously an excellent record of payment of sales and use taxes, and acted swiftly and

appropriately upon discovery of the embezzlement, the fact that the taxpayer was a victim of such a crime is not a basis for relief. The law does not provide relief from tax or interest based on a loss of the funds after the sale, by embezzlement or otherwise.

Staff has noted other rare, but extraordinary cases that have occurred in the past where charging interest on a late payment appeared severe and punishing. For example, there have been situations in which taxpayers had documented medical emergencies or family deaths that occurred the day the taxpayers' returns were due, and even though the returns were filed only a day or two late, and the taxpayers had histories of timely payments, the monthly interest remained due.

This proposal would therefore add a new provision in law to provide the Board with some limited flexibility in providing relief of interest in those unusual cases that come before it, such as those previously described.

Section 6593.7 is added to the Revenue and Taxation Code, to read:

6593.7. (a) If the board finds in its discretion that a person's failure to make a timely return or payment was due to extraordinary circumstances, and that it is inequitable to compute interest in accordance with this part, the board may relieve all or any part of the interest imposed on the late payment if:

(1) The person was granted relief from all penalties that applied to that payment of tax or prepayment;

(2) The person has paid the tax to which the interest was imposed, or in the case of interest attributable to an unpaid tax liability for which the person has filed a petition for redetermination, the person has paid the amount of tax due to which the interest was imposed within 30 days after service upon the person of the final order or decision of the board on that petition for redetermination;

(3) The person files a request for an oral hearing before the board; and

(4) The person files with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief and any other information which the board may require.

(b) For purposes of this section, "board" means the members of the State Board of Equalization meeting as a public body.

(c) For purposes of this section, "extraordinary circumstances" means a highly unusual set of facts that are not commonly associated with a person's failure to make a timely return or payment.

(d) Any relief granted under this section may be rescinded, and all interest liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable) if the person fails to comply with paragraph (2) of subdivision (a).