

Add Article 2.1 (commencing with Section 7070.1) to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code to authorize the Board to develop and administer a sales and use tax amnesty program.

Source: Taxpayers' Bill of Rights Hearing

Under existing law, there is currently no amnesty program available to taxpayers who are not registered with the Board of Equalization (Board) and have sales and/or use tax liability owing the State of California. Nor is there a provision in the Revenue and Taxation Code to provide relief of penalties through an amnesty program.

However, in 1984, AB 3230 (Hannigan et al.), Chapter 1490, Statutes of 1984, imposed the state's only tax amnesty program. The amnesty program waived penalties and criminal sanctions for taxpayers who had not properly complied with reporting and payment requirements under the Sales and Use Tax Law, the Personal Income Tax Law, and the Bank and Corporation Tax Law but who came forward during the amnesty period to file proper returns and make proper payments (including accumulated interest). The 1984 tax amnesty program was enacted as a "one-time-only" program that was linked to law changes which strengthened both this Board's and the Franchise Tax Board's enforcement tools and penalties immediately after the amnesty program's expiration. Offering tax penalty amnesty immediately prior to strengthening enforcement tools and penalties was intended to convince evaders that the penalties for failure to comply would be much greater once the tax amnesty period passed and give taxpayers one last chance to voluntarily comply with tax laws before the stronger enforcement rules became effective.

This proposal, which is substantially similar to the 1984 amnesty program, was brought to the attention of the Board at a Taxpayers' Bill of Rights hearing by Mr. Joe Micallef of the Associated Sales Tax Consultants. Mr. Micallef contends that these taxpayers will not come forward and inform the Board of their existing tax liability because they are aware they would be subject to significant penalties. Therefore, these taxpayers continue to remain hidden from the Board and the State of California is not receiving the tax for which these taxpayers are liable. In addition, the State is not receiving future tax payments from these taxpayers. The Board may discover a few of these taxpayers, but the vast majority will continue to remain hidden from the Board.

Mr. Micallef also points out that the amnesty program would benefit taxpayers and the State by bringing out of hiding taxpayers who have existing tax liabilities which would be paid. Further, these taxpayers will become part of the system and will start remitting tax on a continuing basis into the future. The State will receive tax monies that it would not otherwise receive, and at a minimal cost.

Article 2.1 (commencing with Section 7070.1) is added to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code to read:

Article 2.1. Tax Penalty Amnesty

7070.1. The board shall develop and administer a tax penalty amnesty program for the sales and use tax program administered by the board.

7071.1. The tax penalty amnesty program shall be conducted during the period of October 1, 2001 through March 31, 2002. The program shall apply to tax liabilities due and payable for tax reporting periods beginning on October 1, 1996 and ending on or before September 30, 2001. A statute of limitations shall bar collection of taxes, interest and penalties for periods prior to October 1, 1996 for all persons filing taxes under the Tax Amnesty Program.

7072.1. (a) For any taxpayer who meet the requirements of Section 7073.1:

(1) The board shall waive all penalties imposed by this part, for the tax reporting periods for which tax penalty amnesty is requested, which are owed as a result of the nonreporting or underreporting of tax liabilities.

(2) No criminal action shall be brought against the taxpayer, for the tax reporting periods for which tax amnesty is requested, for the nonreporting or underreporting of tax liabilities.

(3) Paragraphs (1) and (2) shall not apply to the nonpayment of any taxes previously assessed.

(b) This section shall not apply to violations of this part for which, as of October 1, 2001, (1) the taxpayer is on notice of a criminal investigation by a complaint having been filed against him or her or by written notice having been mailed to him or her that he or she is under criminal investigation, or (2) a court proceeding has already been initiated.

(c) No refund or credit shall be granted of any penalty paid prior to the time the taxpayer makes a request for tax penalty amnesty pursuant to Section 7073.1.

7073.1 (a) The provisions of this article shall apply to any taxpayer who, on or after October 1, 2001 and before March 31, 2002, files an application for tax penalty amnesty and does both of the following:

(1) Files completed tax returns for all tax reporting periods for which he or she has not previously filed a tax return and files completed amended returns for all tax reporting periods for which he or she underreported his or her tax liability.

(2) Pays in full the taxes and interest due.

(b) The board may enter into an installment payment agreement in lieu of the complete payment required under paragraph (2) of subdivision (a). Any such agreement shall include interest on the outstanding amount due at the

rate prescribed by law. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, unless the board determines that the failure was due to reasonable causes, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) If, subsequent to March 31, 2002, the board issues a deficiency assessment upon a return filed pursuant to subdivision (a), the board shall have the authority to impose penalties and criminal action may be brought under this part only with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 7072.1.

7074.1 The board shall issue forms and instructions and take other actions needed to implement this article.

7075.1 The board shall adequately publicize the tax penalty amnesty program so as to maximize public awareness of the participation in the program. The board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article with similar programs administered by the Franchise Tax Board