

Add Sections 6511.1, 7213, and 7268 to, and amend Section 6592 of, the Revenue and Taxation Code to allow the Board to assess a penalty when a taxpayer fails to furnish the required local tax and special taxing district tax return schedules at the time a sales and use tax return is filed.

Source: Sales and Use Tax Department

Under current law, any taxpayer who fails or refuses to furnish a return, a supplemental return, or other data required by the Board, is guilty of a misdemeanor punishable by a fine of not less than \$1,000 and not more than \$5,000, and imprisonment not to exceed one year in the county jail as determined by the court.

Also, under current law, a 10 percent penalty applies when a taxpayer fails to file a sales and use tax return. The penalty is assessed on the total amount of tax due as determined by the Board. Currently, there is no statutory authority that allows the Board to assess a penalty when a taxpayer fails to furnish tax return schedules, such as a Schedule B - "Detailed Allocation by County" or a Schedule C - "Detailed Allocation by Suboutlet."

This proposal would establish an administrative step in the compliance process by providing statutory authority to assess a penalty applicable only to the total local and/or district tax portion of the sales and use tax return when a taxpayer fails to furnish the required tax return schedules.

The Board has entered into contracts with each city, county, city and county, and special tax district within the state to administer and distribute the various taxes collected on their behalf. The mechanism used by taxpayers to provide accurate local and district tax information consists of several tax return schedules. Certain taxpayers are assigned a Taxable Activity Type Indicator, which determines the additional return schedule(s) that will be provided with the taxpayer's quarterly, yearly, or fiscal yearly tax return. The information received on those return schedules is used to allocate and distribute the local and district taxes to the correct jurisdiction(s).

Taxpayers that fail or refuse to provide local and/or district tax return schedules create an additional workload for the Local Revenue Allocation Section's (LRAS) technical and audit staff, as well as staff in the district offices. Ultimately, when a taxpayer is unwilling to provide the return schedules, the Board must use an alternative methodology to distribute the tax, such as ratios, estimates, and industry averages. Unfortunately, none of these methodologies will result in a truly accurate reflection of actual activity, and frequently it is impossible for the Board to identify the correct jurisdictions to which the local tax should be allocated. In addition, those jurisdictions wishing to dispute the Board's estimates of local and/or district tax amounts have appeal rights under the newly adopted Regulation 1807 and can challenge the Board's results thereby requiring resources be expended to identify the correct amounts.

It is estimated that each quarter approximately \$13.8 million in local tax cannot be allocated due to taxpayers' unwillingness to provide allocation schedules. On a yearly basis, this amounts to approximately \$55.2 million (\$13.8 x 4) in revenues remaining in Suspense following the quarterly allocations.

The recent downturn in the State's economy has led to restrictions on spending as well as a hiring freeze relating to the replacement of employees leaving state service. The result has been an increase in workload levels, compounded by curtailed program efforts. Budget cuts have also impacted Board resources, limiting the number of investigations of taxpayers unwilling to file the appropriate local and/or district tax schedules. An expected additional 20% budget cut will impact the Board further in its ability to monitor returns insuring that local and/or district taxes will be correctly distributed. A penalty provision for those who do not file the required local and/or district tax schedules will assist the Board's staff in gaining compliance from non-compliant taxpayers and/or their representatives. In addition, it will provide a means by which Board staff can assess a penalty, thereby emphasizing the point that the accompanying return schedules are as important as the filing of a tax return.

Each local jurisdiction is assessed an administrative fee every calendar quarter. Accordingly, the jurisdictions are entitled to an accurate and timely distribution of the tax revenues due them. This legislative proposal would provide the Board with the necessary leverage to serve demands upon uncooperative taxpayers to submit the tax return schedules. Staff would continue to informally contact these taxpayers to request the required return schedules, allowing them a thirty-day response period. However, if no return schedules are received, staff would be authorized to send a follow-up letter, giving the taxpayer an additional thirty days to file the return schedules, and the penalty provision would be cited. In the event that the tax return schedules are not received after the second letter, the penalty would be assessed at 10% of the total amount of the missing return schedules.

Additionally, Section 6592 which provides relief from penalty charges would be amended to reference the new Section 6511.1.

This proposal would provide a compliance tool for Board employees to impose a 10 percent penalty on the local and/or district tax portion of the sales and use tax return when a taxpayer fails to furnish the required tax return schedule(s).

Section 6511.1 of the Revenue and Taxation Code is added to read:

6511.1. Determination: failure to file schedules with the sales and use tax return. Any person who fails to furnish the tax schedule(s) required to accompany a sales and use tax return, as defined in Section 6452 and 6453, after the board has notified the person, in writing, of the requirement to file the schedule(s), shall be subject to a penalty of 10 percent of the aggregate tax amount on the tax return schedule(s).

The penalty for failure to furnish the return schedule(s) will be applicable whenever the required return schedule(s) are not furnished, and after the board has notified the person, in writing, that 30 days will be allowed to furnish the schedule(s). One 30-day extension may be granted if the request is made by the person or the person's authorized representative prior to the expiration of the original 30-day period. Upon expiration of the extension period, the penalty shall apply. One or more determinations may be made for one or more reporting periods.

(a) For the purposes of this section, "any schedule required to accompany a sales and use tax return" is defined as the tax return schedules required by the Board for the administration of the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200) and the Transactions and Use Tax Law (commencing with Section 7251).

(b) Any penalty amounts paid pursuant this part shall be pro-rated among the taxes due for the entire return regardless of the tax return schedule(s) from which the penalty amount originates. "Pro-rated" means distributed systematically among the state, county, local and district tax components that appear on the return.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the taxes for which the return is required, exclusive of any prepayments, for any one return.

Section 6592 of the Revenue and Taxation Code is amended to read:

6592. If the board finds that a person's failure to make a timely return, return schedule(s), or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the penalties provided by Sections 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6511.1, 6565, 6591 and 7051.2.

Any person seeking to be relieved of the penalty shall file 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.

Section 7213 of the Revenue and Taxation Code is added to read:

7213. Any person who fails to furnish the required tax return schedule(s), is subject to a penalty in accordance with Part 1, Section 6511.1.

Section 7268 of the Revenue and Taxation Code is added to read:

7268. Any person who fails to furnish the required tax return schedule(s), is subject to a penalty in accordance with Part 1, Section 6511.1.