



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/18/04	Bill No:	AB 2204
Tax:	Property	Author:	Chu
Board Position:		Related Bills:	

BILL SUMMARY

This bill, with respect to state assessees, would (1) clarify the imposition of penalties for failure to file required information in the property statement; (2) allow for partial abatement of penalties; and (3) expressly provide for penalty abatement at the time values are initially set.

Current Law

Under existing law, each state assessee must annually provide to the Board of Equalization (Board) a "property statement" in which it reports an array of information necessary for the valuation of the assessee's property for property tax assessment. A property statement filing requires the submission of financial schedules, schedules of leased equipment, a tangible property list, annual reports to the California Public Utilities Commission (CPUC), Securities Exchange Commission (SEC) Form 10Ks, annual reports to shareholders, and other documents as specified in the property statement instructions which can vary according to the type of state assessee. Failure to provide this information by March 1 may result in the imposition of a penalty.

Penalty For Failure to File Required Information. The penalty applies to any state assessee that fails to file the property statement, in whole or in part, by March 1.

Partial Penalty Abatement. Under existing law, when an assessee establishes to the satisfaction of the Board that the failure to file the property statement, or any of its parts, within the time required was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the Board is required to order the entire penalty abated. Existing statutory language does not expressly authorize the Board to abate a *portion* of the penalty.

Penalty Abatement – Value Setting Stage. When the Board staff imposes a penalty for late or incomplete filing, the law provides that an assessee may file a written petition for abatement of the penalty within the time prescribed by law for the filing of a petition for reassessment. Although the filing period takes place after, the Board has an administrative procedure of abating some penalties at the time it sets the values of those assessee's properties.

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Proposed Law

Penalty For Failure to File Required Information. This bill would amend Section 830 of the Revenue and Taxation Code to clarify that the penalty applies when a state assessee fails to provide any of the information required to be included with or attached to the property statement. Specifically, it would add subdivision (d) to provide that the assessee is subject to a penalty when the property statement lacks the type of detail information required by Board staff and expressly states that required schedules, documents, and other information are considered a part of the property statement.

Partial Penalty Abatement. This bill would amend Section 830 to allow the Board to abate penalties in part.

Penalty Abatement – Value Setting Stage. This bill would add paragraph (2) to subdivision (g) to specify in statute that the Board may abate a penalty at the time the initial value is set, rather than within the period for filing a petition for reassessment, in accordance with existing administrative procedure.

Escape Assessments – Conforming Amendments. The amendments to Section 830 relate to annual assessments. Conforming amendments are also made to Section 862 which relate to escape assessments, i.e., assessments made for prior years in which property escaped assessment or was underassessed.

In General

Every year for property tax assessment purposes, the Board has a constitutional duty to determine the value of property owned by public utilities and other companies subject to state assessment as provided by Article XIII, Section 19 of the California Constitution. These companies must file detailed information, in a form called a "property statement," with the Board by March 1 of each year. The property statement includes documents such as financial schedules, schedules of leased equipment, a tangible property list, annual reports to the CPUC, SEC Form 10Ks, annual reports to shareholders, and other documents as specified in the property statement instructions which can vary according to the type of state assessee.

Failure to provide this information by March 1 may result in the application of a penalty. The calculation of the penalty varies depending upon the type of information found to be deficient.

- In the case of a state assessee who fails to provide information needed to develop the state assessee's unitary value, the penalty is 10% of the **entire** unitary value (i.e. land, improvements, personal property). The penalty is added to the assessed value adopted by the Board.
- In the case of a state assessee who provides all the data required for purposes of developing the overall unitary value, but does not provide sufficient data with respect to listing and describing specific operating property needed to allocate the unit value so determined, the penalty is limited to an additional 10% of the estimated allocated value of the specific property(s) not timely reported. Therefore the penalty is limited

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to the value of the property that was not timely reported rather than the entire unit value).

However, any penalty imposed on a state assessee for failure to provide information is capped at \$20,000,000 of assessed value which, at the general 1% tax rate, means a maximum fine of \$200,000. In addition, the Board may find that the penalty should be abated, in which case no fine is levied.

COMMENTS:

1. **Sponsor and Purpose.** This bill is sponsored by Board Member John Chiang. The purpose of this bill is to allow the Board to levy appropriate penalties when state assessees fail to file their annual property tax returns timely or completely. Currently, the penalty provisions can be of such a magnitude - at 10% of assessed value - that given the high value of these companies the Board will on occasion abate the penalty in full for minor transgressions. Partial abatement will give the Board an added tool to encourage full and accurate compliance since the Board will be more likely to levy a penalty if it could be tailored to fit the nature and materiality of the omission.
2. **Penalty Abatement – All or Nothing.** The Revenue and Taxation Code specifies that if a state assessee's property statement is late or incomplete a penalty in the amount of 10% of the total value of the property (both real property and personal property) must be added to the assessed value. The penalty may be abated if the company proves to the satisfaction of the Board that the failure to file timely or completely was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and absence of willful neglect. Current law does not allow penalties to be abated in part.
3. **Partial Abatement.** Giving the Board the flexibility to partially abate the penalty depending on the nature and materiality of the omission could achieve a more equitable result. Lack of partial abatement leaves the Board with two extreme alternatives – levy a potentially steep fine or no fine at all. Because the penalty can be substantial, the Board on occasion has chosen to abate the penalty in full, even though it felt some penalty – albeit at a less severe level – was warranted. This bill would grant the ability to abate only a portion of the penalty for late or incomplete filing. Partial abatement would allow the Board to tailor the penalty to fit the nature and materiality of the omission.
4. **Contents of Property Statement.** The Board recently heard a state assessee appeal concerning a petition for reassessment and request for penalty abatement. The Board had levied a penalty for failure to file required information, which was eventually abated in full, because the company did not file certain documents, in this case a balance sheet and an income statement, that are required to be filed as a part of the property statement. The state assessee argued that their failure to provide the required documents should not result in the application of a penalty under its interpretation of the statute because, in its view, the omission of those particular documents did not “involve a failure to report property (i.e., tangible property) to the Board.” The state assessee argued that the information omitted by the company did not result in the under-reporting of property. Thus, it concluded that no penalty could be levied. This bill would expressly provide that all schedules,

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documents, and other required information are part of the "property statement." This will avoid disputes between the Board and state assessees on this matter in the future.

5. **Penalty Abating at Value Setting.** This bill would codify the Board's current administrative practice of abating penalties at the time it initially sets values which is the most cost effective approach and would reduce unnecessary paperwork for the Board and state assessees. Additionally, codifying the existing administrative practice would provide clarity to tax practitioners.

COST ESTIMATE

The Board would not incur any costs as a result of this measure.

REVENUE ESTIMATE

This measure does not have any direct revenue impact. Any change in revenues would result from the Board levying a partial penalty that it previously would have abated in full or where the Board deliberates to reduce a penalty that it previously would have levied at the 10% level.

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