



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

Draft

Date Amended:	Enrolled	Bill No:	AB 2065
Tax:	Sales and Use	Author:	Oropeza
Board Position:		Related Bills:	AB 433 (Assembly Budget Committee) SB 1849 (Senate Budget Committee)

BILL SUMMARY

This is a budget trailer bill implementing various provisions incorporated into the 2002-03 Budget. Among other things, this bill would authorize the Board to waive any penalties and interest on unpaid sales and use taxes owed by eligible taxpayers, as defined, to the extent that the underlying tax liability is paid.

The remaining provisions of this measure would be outside the scope of the Board.

ANALYSIS

Current Law

Under existing law, when a sales or use tax liability is not paid when due, interest is imposed on the unpaid tax and one or more penalties may be added to the liability. Generally, a penalty of ten percent is imposed for failure to pay the tax timely, but the law contains other provisions for additional penalties for other reasons for noncompliance. Under the law, interest continues to accrue on any unpaid portion of the tax until the tax is paid in full. Interest is computed on a simple basis, and only accrues on the unpaid tax liability. Interest does not accrue on any unpaid penalty amounts.

If a payment is not timely received, the Board generally negotiates with the taxpayer for payments, and if the liability remains unpaid, the Board ultimately searches for any assets of the taxpayer, and takes collection actions to use the assets to satisfy the tax liability. Collection actions may include manually searching records for assets, seizing bank accounts, or seizing and selling vehicles, vessels, or stocks. In the event of a financial hardship, existing law allows installment payment arrangements, or collection may be deferred until the financial situation of the taxpayer improves. However, if taxpayers can obtain loans or can use credit lines to pay their tax liabilities, they are expected to do so.

If a debt remains unpaid for a number of years, and a lien has been filed and assets cannot be located, the Board may write off the debt pursuant to provisions in the Government Code (discharge from accountability). When a debt is written off, however, the debt is still due and owing and any liens recorded are still valid, but routine billing and collection actions are discontinued unless assets are subsequently located. There is no statute of limitations on the Board's collection of a tax debt (except liens last for

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

ten years, and can only be renewed twice for an additional 20 years), and interest and applicable penalties continue to accrue. The debt also remains on the taxpayer's credit record, impeding his or her ability to obtain credit.

Under existing law, under specified circumstances, the Board may reduce a delinquent tax liability, commonly called an "offer in compromise." In general, an offer in compromise is a process whereby the taxpayer offers to pay an amount that he or she believes to be the maximum amount that can be paid within a reasonable period of time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount.

Proposed Law

This bill would add Section 7093.8 to the Sales and Use Tax Law to authorize, for the period beginning October 1, 2002 and ending June 30, 2003, an eligible taxpayer's liability with respect to any unpaid taxes, to be satisfied by the payment of an amount equal to the tax liability, excluding penalties and interest. The bill would specify that this authority would be limited to an unpaid tax liability that has been determined by the Board to be a "high-risk" collection account.

The bill would provide the following definitions:

- "Eligible taxpayer" means any person that receives notification from the Board that the taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount.
- "Eligible amount" means an amount equal to any unpaid tax liability, excluding penalties and interest, owed by the eligible taxpayer that is paid in one or more installments, as determined by the Board, on or before the due date established by the Board, but in no event later than June 30, 2004.
- "High-risk collection account" means any unpaid tax liability of a taxpayer where satisfaction of that liability under this bill would be in the best interest of the state, and shall include any unpaid tax liability for which the Board has made either of the following determinations:
 - (1) Under the Board's collection modeling policies, practices, and procedures, efforts to collect the unpaid tax liability would not be economical.
 - (2) The unpaid tax liability would not be paid in full within a reasonable period of time.
- "Unpaid tax liability" means any final liability under Part 1 (commencing with Section 6001), including tax, penalties, and interest, that are owed by an individual and, as of October 1, 2002, are unpaid.

The bill would further provide:

- No refund or credit shall be granted with respect to any penalty or interest paid or collected with respect to an unpaid tax liability prior to October 1, 2002.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

- The determinations made by the Board pursuant to this bill shall be final and conclusive and shall not be subject to review by any other officer, employee, or agent of the state, or by any court.
- Nothing in Section 7056, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used in connection with any determinations made by the Board for purposes of this bill, or the data used or to be used for determining those standards if the Board determines that the disclosure will seriously impair assessment, collection, or enforcement of sales or use taxes.
- Nothing in this bill shall authorize the Board to compromise any final tax liability.
- Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code (the Administrative Procedure Act) shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued in implementing and administering the program required by this bill.
- This provision is operative with respect to unpaid tax liabilities of high-risk collection accounts that are the subject of notifications made to eligible taxpayers on or after October 1, 2002, and before July 1, 2003.
- Whenever a "high-risk collection account" is forgiven of any penalties and interest pursuant to this bill, the public record shall include all of the following information:
 - (1) The name of the taxpayer.
 - (2) The amount of related penalties and interest relieved.
 - (3) A summary of the reason why the relief is in the best interest of the state.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to address, in part, the projected 2002-03 Budget shortfall.
2. **August 31, 2002 amendments.** The amendments deleted the property tax provisions and instead incorporated the budget provisions.
3. **Related legislation.** These provisions are similar to the provisions in AB 433 (Assembly Budget Committee), and Senate Bill 1849 (Senate Budget and Fiscal Review Committee), other trailer bills. The Board voted to support the provisions in both measures.

Also, AB 1458 (Kelley) was signed into law this session (Chapter 152, Kelley) to provide the Board with the administrative authority to compromise tax debts. This Board-sponsored bill provides the Board with the administrative authority to compromise a tax or fee debt under the Sales and Use, Use Fuel, and Underground Storage Tank Maintenance Fee laws when the reduction amount is \$10,000 or less. This authorization essentially eliminated the need to obtain a judgment through a court proceeding, which the prior law required. Elimination of the court proceeding, should result in expediting the in compromise process with a greater amount of efficiency.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

