

Memorandum

To : Ms. Cynthia Bridges
Executive Director (MIC 73)

Date: October 28, 2014

From : Mr. Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department (MIC 43)



Subject : Board Meeting November 19-20, 2014
Item N: Administrative Agenda
Proposed Revision to Compliance Policy and
Procedures Manual (CPPM) Chapter 5, Returns

I am requesting approval to forward the attached revision to CPPM Chapter 5, *Returns*, to the Board Proceedings Division to be placed as a consent item on the Administrative Agenda at the November 2014 meeting.

The proposed revision of sections 535.055 – 535.100 incorporates policies regarding requests for relief from penalty and interest. This revision has been reviewed and approved by SUTD management, provided to Board Members, and posted on the Board’s website at <http://www.boe.ca.gov/sutax/pmr.htm> to solicit comments from interested parties. No comments were received from Board Members or other interested parties.

If you have any questions, please let me know, or contact Ms. Susanne Buehler at 324-1825.

JLM:rs
Attachment

Approved

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the November 19, 2014 Board Meeting

Joann Richmond
Joann Richmond, Chief
Board Proceedings Division



Ms. Cynthia Bridges
Executive Director

cc: (all with attachment)

Mr. David Gau (MIC 101)

Mr. Wayne Mashihara (MIC 46)

Ms. Susanne Buehler (MIC 92)

Ms. Lynn Bartolo (MIC 57)

Mr. Richard Parrott (MIC 88)

Mr. Kevin Hanks (MIC 49)

Mr. John Thiella (MIC 82)

Mr. Marc Alviso (MIC 101)

Mr. Chris Lee (MIC 101)

Mr. Gary Lambert (MIC 43)

REQUESTS FOR RELIEF FROM PENALTY – REASONABLE CAUSE **535.055**

Requests for relief from penalty can result in the reduction or elimination of penalty amounts previously assessed. Under certain criteria, requests submitted online may be automatically granted or denied (see CPPM section 535.015). For those not automatically processed, staff will make a recommendation whether the request should be granted, denied, or denied in part.

Statutes identified for each tax and fee program in the following table provide for relief of certain specified penalties in instances where a person’s failure to make a timely return or payment was 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. Taxpayers seeking relief are required to file a request with the BOE that includes a statement setting forth the facts upon which the claim for relief is based. Online requests include a “Declaration of Intent to Submit a Relief Request,” which states that the taxpayer’s statement is made under “penalty of perjury.” If a written request is received, it must also include the statement that it is signed under “penalty of perjury” (BOE-735, *Request for Relief from Penalty, Collection Cost Recovery Fee, and/or Interest*, contains the penalty of perjury statement).

<u>Tax or Fee Program</u>	<u>Revenue and Taxation Code</u>
<u>Sales and Use Tax</u>	<u>6592</u>
<u>Motor Vehicle Fuel Tax</u>	<u>7657</u>
<u>Use Fuel Tax</u>	<u>8877</u>
<u>Tax on Insurers</u>	<u>12636</u>
<u>Cigarette and Tobacco Products Tax</u>	<u>30282</u>
<u>Alcoholic Beverage Tax</u>	<u>32255</u>
<u>Timber Yield Tax</u>	<u>38452</u>
<u>Energy Resources Surcharge</u>	<u>40102</u>
<u>Emergency Telephone Users Surcharge</u>	<u>41096</u>
<u>Hazardous Substances Tax</u>	<u>43157</u>
<u>Integrated Waste Management Fee</u>	<u>45155</u>
<u>Oil Spill Response, Prevention, and Administration Fees</u>	<u>46156</u>
<u>Underground Storage Tank Maintenance Fee</u>	<u>50112.2</u>
<u>Fee Collection Procedures Law¹</u>	<u>55044</u>
<u>Diesel Fuel Tax</u>	<u>60209</u>

For more information on relief from penalty requests, see CPPM section 535.010.

¹ The fees and taxes collected pursuant to the Fee Collection Procedures Law include the following programs: California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, Water Rights Fee, and Lumber Products Assessment.

RECONSIDERATION OF DENIED REQUEST FOR RELIEF FROM PENALTY 535.060

When a request for relief from penalty is denied, a letter is sent to the taxpayer with the reason for the denial. The letter also includes a statement that the decision may be reconsidered if the taxpayer provides new information within 15 days. (Note that if the penalty has already been paid in full, the taxpayer's recourse is to file a claim for refund.) The 15-day period should not be regarded as absolute, and staff may consider information received after the 15 days. The letter also explains that if the taxpayer provides additional information and the request for relief is still denied by BOE staff, the request for relief will then be reviewed by the Deputy Director.

Requests for Reconsideration for Penalties over \$100,000

The Deputy Director will review the request and send the taxpayer a letter containing his or her recommendation. The Deputy Director will submit the recommendation to grant or deny the request for reconsideration to the Board Members for approval. The letter to the taxpayer will also include the anticipated date the Board Members will consider the request.

Requests for Reconsideration for Penalties of \$100,000 or Less

The Deputy Director will review the request and send the taxpayer a letter containing his or her decision. These requests will not be submitted to the Board Members. If the taxpayer disagrees with a decision to deny the request for reconsideration, staff should inform the taxpayer that he or she may pay the amount due of the denied request and file a timely claim for refund.

If an amount exceeding \$50,000 is to be granted, the proposed determination to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date. For accounts under the Integrated Waste Management Fee Law, the threshold for making the determination a public record is any refund, credit, or cancellation of amounts over \$15,000.

REQUEST FOR RELIEF FROM INTEREST – UNREASONABLE ERROR OR DELAY

535.065

RTC 6593.5 and similar provisions for special taxes and fees (see following table) provide the BOE authority to grant relief of all or part of the interest imposed, provided the reason for the failure to pay is due in whole or in part to an unreasonable error or delay by an employee of the BOE acting in his or her official capacity. Additionally, if the failure to pay use tax on a vehicle or vessel registered with the DMV was the direct result of an error by the DMV in calculating the use tax, interest may be relieved. No significant aspect of the error or delay can be attributable to an act of, or failure to act by, the taxpayer.

Tax or Fee Program	Revenue and Taxation Code
Sales and Use Tax	6593.5
Motor Vehicle Fuel Tax	7658.1
Use Fuel Tax	8878.5
Private Railroad Car Tax	11409
Cigarette and Tobacco Products Tax	30283.5
Alcoholic Beverage Tax	32256.5
Timber Yield Tax	38455
Energy Resources Surcharge	40103.5
Emergency Telephone Users Surcharge	41097.5
Hazardous Substances Tax	43158.5
Integrated Waste Management Fee	45156.5
Oil Spill Response, Prevention, and Administration Fees	46157.5
Underground Storage Tank Maintenance Fee	50112.4
Fee Collection Procedures Law²	55046
Diesel Fuel Tax	60212

[Taxpayers seeking relief under these statutes should submit their request online setting forth the facts on which the claim for relief is based. Online requests include a “Declaration of Intent to Submit a Relief Request,” which states that the taxpayer’s statement is made under “penalty of perjury.” If a written request is received, it must also include the statement that it is signed under “penalty of perjury” \(BOE-735, *Request for Relief from Penalty, Collection Cost Recovery Fee, and/or Interest, contains the penalty of perjury statement*\).](#)

GUIDELINES FOR CONSIDERATION OF INTEREST RELIEF FOR UNREASONABLE ERROR OR DELAY **535.070**

[Each request for relief of interest should be evaluated on its own merits and only the interest attributable to an unreasonable error or delay by the BOE or DMV is eligible for relief. The following are guidelines that may assist staff in determining if an unreasonable error or delay has occurred. Circumstances that may be considered as causing an unreasonable delay include, but are not limited to, the following:](#)

- [• The auditor was on sick leave for an extended period, or left the BOE, and the audit was not timely reassigned.](#)
- [• A BOE employee misplaced audit work files/papers, resulting in reconstruction of data or requesting duplicate information from a taxpayer.](#)
- [• Mail was sent to an incorrect address when BOE had prior knowledge of the](#)

² [The fees and taxes collected pursuant to the Fee Collection Procedures Law include the following programs: California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, Water Rights Fee, and Lumber Products Assessment.](#)

correct address and failed to update the records timely.

- A taxpayer failed to file a timely return or payment due to their reliance on erroneous, *documented* verbal advice from the BOE.
- An account was closed in error by BOE staff, which caused the taxpayer to be unable to pay the taxes or fees when due. (This would not include accounts closed due to apparent inactivity caused by the failure of the taxpayer to notify BOE of an address change.)
- BOE staff caused an unusual delay in registration of the taxpayer.
- The BOE mailed a billing for the collection of a fee based on incorrect information provided by another agency, causing a delay in issuing a correct billing.

Circumstances that would not qualify for consideration of relief from interest include, but are not limited to, the following:

- Action was delayed because of a regulatory or policy change being considered by the BOE.
- Audits and appeals that involved complex issues or required extensive examination of records which resulted in additional time needed for completion.
- The taxpayer failed to timely notify the BOE of a change of address.
- The taxpayer failed to register with the BOE in a timely manner, or failed to provide required information and/or documentation in a timely manner.
- Another state or federal agency (e.g., DMV, Department of Housing and Community Development, Federal Aviation Administration, or US Coast Guard) failed to inform the taxpayer of the need to register with the BOE which resulted in a delay in assessment of the taxes or fees.
- The taxpayer received a billing for unpaid, self-assessed taxes or fees within the statute of limitations.
- DMV calculated the use tax because the taxpayer did not present a bill of sale, which resulted in an understatement of the actual sales price and an assessment of the difference.

STAFF PROCESSING OF RELIEF OF INTEREST REQUESTS FOR UNREASONABLE ERROR OR DELAY

535.075

A comprehensive analysis of each case is required and the evidence to support relief from interest must be convincing. Copies of documentary evidence should be provided whenever possible. To ensure no further perceived delays are noted, a recommendation for relief should be made within 30 days from receipt of the request. Recommendations for relief are prepared by the office where the alleged delay or error occurred. These offices will receive either a paper request or an assignment in Assignment Control (ASC) for online requests, which can be viewed in IRIS on the DIF BQ screen.

For SUTD, if an online Relief from Interest (ROI) request is referred to a division, section, or district office from the Petitions Section or Return Analysis Unit (RAU) for a recommendation, the pending assignment (ONLROIRQ or ONLROIBA) will be reassigned in Assignment Control (ASC) to that division, section, or district office, using one of the following in-baskets:

<u>Office: CENTCOLL (ICAT Accounts)</u> <u>Workgroup: 1H</u>
<u>Office: District Office (e.g., AA, GH, FH)</u> <u>Workgroup: DOADMIN</u>
<u>Office: CENTCOLL</u> <u>Workgroup: IH</u>
<u>Office: CENTCOLL (Customs Accounts)</u> <u>Workgroup: UH</u> <u>Role: TEAM SUPV</u>
<u>Office: RAS</u> <u>Workgroup: RAS</u> <u>Role: BTRxx (where xx = terminal digit)</u>

The responsible office will review the ROI assignment in the DIF BQ screen in IRIS, and will either provide a written response to the taxpayer with a copy to the Petitions Section/RAU if the request is \$5,000 or less, or if the request is over \$5,000, send a memo with their recommendation via email to the appropriate SUTD-Petitions email box or the SUTD-RAU Electronic Maintenance Requests email box. The assignment should then be reassigned in ASC to the originating individual from Petitions Section or RAU.

Staff Processing Interest Relief Requests over \$100,000

The responsible office must submit their recommendation for approval or denial in a memo which includes the following information:

- Taxpayer’s name and account number,
- Summary of the taxpayer’s reason for requesting relief,
- The tax period involved and the measure on which relief is based,
- The interest from/to dates, and the dollar amount of relief being requested,
- Division, section, or district office summary of the circumstances involved, including the facts as determined by review leading to the recommendation to approve or deny the request, and if appropriate, a statement stating it was not possible to prove or disprove the taxpayer’s position,
- Documentation included with the recommendation should be identified, or if no

documentation is available, this should be stated,

- Division, section, or district office recommendation to approve or deny the request,
- If the recommendation is to approve the request, information regarding corrective steps taken to prevent the unreasonable error or delay from recurring, and
- Name and signature of the supervisor making the recommendation.

For SUTD, recommendations under section 6593.5 for sales and use tax are reviewed by the Audit and Information Section (AIS) and may be submitted via email to the SUTD-Section 6593.5 Relief of Interest Requests email box. All other recommendations are reviewed by the appropriate Property and Special Taxes Department (PSTD) Division Chief. An Executive Summary for Action is prepared by AIS or the PSTD Division Chief, and submitted to the appropriate Deputy Director. The Deputy Director reviews each recommendation to ensure consistent application of the law and to determine if further corrective action is required to prevent recurrence of the unreasonable error or delay. After this review, the request will be submitted to the Board Members for consideration. AIS will notify the supervisor submitting the relief request of the Department's recommendation and the supervisor will notify the taxpayer of the Department's decision.

Staff Processing Interest Relief Requests Between \$5,001 and \$100,000

SUTD and PSTD Deputy Directors, or their designees, have been delegated the authority to grant relief of interest requests of \$100,000 or less. The procedure stated previously for requests over \$100,000 should be followed for requests between \$5,001 and \$100,000, except the final decision will be made by the appropriate Deputy Director, or designee.

If an amount exceeding \$50,000 is to be granted, the proposed determination to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date. For accounts under the Integrated Waste Management Fee Law, the threshold for making the determination a public record is any refund, credit, or cancellation of amounts over \$15,000.

SUTD Staff Processing Interest Relief Requests of \$5,000 or Less

The SUTD Deputy Director delegated authority to grant or deny requests of \$5,000 or less to the following designees:

- District Administrators,
- Administrator, Return Analysis and Allocation Section,
- Administrator, Centralized Collection Section,
- Administrator, Use Tax Administration Section,
- Supervisor, Consumer Use Tax Section, or

- Supervisor, Audit and Information Section.

The designees identified above will make the decision to grant or deny relief, notify the taxpayer in writing, and make or request the necessary updates to the IRIS system. Interest relief requests on consumer use tax accounts impacted by alleged errors made by DMV will be processed by the Consumer Use Tax Section. Other cases where the area responsible for the error or delay is not supervised by the first five designees listed above will be processed by AIS. If the designee does not have the ability to enter updates in IRIS, a copy of the letter to the taxpayer may be emailed to the appropriate SUTD-Petitions email box or the SUTD-RAU Electronic Maintenance Requests email box. Additionally, where applicable, the associated online relief assignment in ASC should be reassigned back to the originating office.

PSTD Staff Processing Interest Relief Requests of \$5,000 or Less

The PSTD Deputy Director delegated authority to approve or deny these requests to the appropriate Division Chief or their designee. The Division Chief or their designee will make the decision to grant or deny relief in their area of responsibility, notify the tax or fee payer, and make or request the necessary updates to the IRIS or Teale system.

Requests for Relief of Interest - Audit Liabilities

In cases where the interest relates to an unbilled audit, the memo from the Deputy Director or designee will authorize relief of interest where appropriate and the SUTD district office or PSTD division will include the adjustment as part of the audit report. In cases where the audit has been billed, approved relief requests will be forwarded through the normal adjustment channels, similar to penalty relief. Copies of the reply from the Deputy Director or designee are to be included in the audit working papers.

Information Entered in IRIS for Requests for Relief of Interest

IRIS users who are authorized to make adjustments may select the period of interest to abate through the DIF RR screen in IRIS for a paper request, or the DIF W4 screen in IRIS for an online request. Users may select a partial period or the entire period, and will enter the reason code UED (Unreasonable Error or Delay). When interest is relieved for only a portion of the taxable measure, a manual calculation of the interest amount may be required. This amount can be entered through the Legal Adjustment (LA) screen in the Difference (DIF) subsystem.

INTEREST RELIEF REQUEST REPORT

535.085

On a calendar year basis, the Board Members are provided a summary of relief requests considered under this section. With the implementation of the online relief request process, a yearly interest relief report is electronically generated. The information is reviewed and compiled for each department and provided by the Data Analysis Section to AIS by January 31st of each year. AIS reviews the data, makes

adjustments, and summarizes the information into a report. The table below is a sample that may be used. Any format is acceptable if it contains the following fields: Cases Approved, Cases Denied, Cases Pending, and Total Cases. For each field, both the count and dollars should be provided in relevant incremental ranges.

Interest Relief Requests
Sales & Use Tax Department/Property & Special Taxes Department
January 1, 20XX through December 31, 20XX

<u>Range</u>	<u>Cases Approved</u>		<u>Cases Denied</u>		<u>Cases Pending</u>		<u>Total Cases</u>	
	<u>Count</u>	<u>Dollars</u>	<u>Count</u>	<u>Dollars</u>	<u>Count</u>	<u>Dollars</u>	<u>Count</u>	<u>Dollars</u>
<u>\$0 to \$1,000</u>								
<u>\$1,001 to \$5,000</u>								
<u>\$5,001 to \$25,000</u>								
<u>\$25,001 to \$50,000</u>								
<u>\$50,001 to \$200,000</u>								
<u>\$200,001 to \$500,000</u>								
<u>over \$500,000</u>								
<u>Totals</u>								

Transmittal memoranda are prepared by AIS for Department and Executive approval of the report and subsequent submission to the Board Members.

RECONSIDERATION OF DENIED REQUESTS FOR RELIEF OF INTEREST FOR UNREASONABLE ERROR OR DELAY **535.090**

In the letter notifying the taxpayer their interest relief request has been denied, the headquarters section or district office will include a statement explaining that the decision may be reconsidered if the taxpayer provides new information within 15 days, provided the amount in question has not been paid in full and no active appeals cases exist (please note that if the amount has been paid, the taxpayer’s recourse is filing a claim for refund). The letter will also explain that if the taxpayer provides additional information and their request for relief is still denied by BOE staff, their request for relief will then be reviewed by the Deputy Director. Staff should not regard the 15-day period as an absolute, and may consider information received after the 15 days.

Requests for Reconsideration of Relief of Interest over \$100,000

The Deputy Director will review the final recommendation on all relief of interest reconsideration requests over \$100,000 prior to the case being approved for placement on the Board calendar. The Deputy Director will send the taxpayer a letter indicating whether the recommendation is to grant or deny the reconsideration request for relief, and will include the anticipated date it will be submitted to the Board Members for consideration.

Requests for Reconsideration of Relief of Interest of \$100,000 or Less

For SUTD, the Deputy Director will review the staff recommendation and will send the taxpayer a letter indicating his or her decision to grant or deny the reconsideration request for relief. For Special Taxes and Fees, the applicable division Chief will review the staff recommendation and make the final decision for reconsideration of requests for \$100,000 or less.

If an amount exceeding \$50,000 is to be granted, the proposed determination to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date. For accounts under the Integrated Waste Management Fee Law, the threshold for making the determination a public record is any refund, credit, or cancellation of amounts over \$15,000.

If the taxpayer disagrees with a denial after their request for reconsideration, they should be advised to pay the denied amount and file a timely claim for refund.

ELECTRONIC PAYMENTS – ONE DAY LATE

535.100

Under certain conditions, the BOE may impose interest on a daily basis for an electronic payment or prepayment of taxes or fees (taxes) that is one business day past the date the tax or prepayment was due. Specifically, if the Board Members, meeting as a public body find, taking into account all facts and circumstances, that it is inequitable to compute interest on a monthly basis when a taxpayer is only one day late in making an electronic payment of taxes, interest will be computed on a daily basis, provided all of the following apply:

- Payment was made by electronic means (e.g., payments made by Electronic Funds Transfer, credit card, or ACH debit when a return is filed online) and was made no more than one business day after the due date,
- The taxpayer was granted relief from all penalties that applied to the payment of the tax, prepayment, or fee, and
- The taxpayer filed a request for an oral hearing before the Board.

Definition of “One Business Day Late”

An electronic payment is deemed complete on the date the funds transfer is initiated, if settlement to the state’s demand account occurs on or before the following banking day. If settlement to the state’s demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs. To be considered “one business day late,” the payment must settle in the state’s demand account on the second banking day following the due date. The following time restrictions apply:

- **EFT accounts - ACH debit:** a payment must be made before 3:00 p.m. Pacific

Time in order for the payment to settle on the next banking day.

- **Non-EFT accounts - online return/payment (ACH debit) and credit card payments:** a payment must be made before 12:00 midnight Pacific Time in order for the payment to settle on the next banking day. Please note that payments made before midnight by credit card settle on the following day, regardless of holidays or weekends.

Eligible Periods

The effective date of the relevant Revenue and Taxation Codes in the table below is January 1, 2011, and is operative through January 1, 2016. Taxpayers may request the alternative interest calculation for periods prior to the effective date if the statute is open for the return period in question. Board Members may approve alternative interest calculation requests through December 31, 2015. Accordingly, unless the operative dates in the statutes are extended, the last approvals of these requests will be at the December 2015 Board Meeting.

<u>Tax or Fee Program</u>	<u>Revenue and Taxation Code</u>
<u>Sales and Use Tax</u>	<u>6591.6</u>
<u>Motor Vehicle Fuel Tax</u>	<u>7655.5</u>
<u>Use Fuel Tax</u>	<u>8876.5</u>
<u>Diesel Fuel Tax</u>	<u>60207.5</u>
<u>Cigarette and Tobacco Products Tax</u>	<u>30281.5</u>
<u>Alcoholic Beverage Tax</u>	<u>32252.5</u>
<u>Tax on Insurers</u>	<u>12631.5</u>
<u>Energy Resources Surcharge</u>	<u>40101.5</u>
<u>Emergency Telephone Users Surcharge</u>	<u>41095.5</u>
<u>Hazardous Substances Tax</u>	<u>43155.5</u>
<u>Integrated Waste Management Fee</u>	<u>45153.5</u>
<u>Oil Spill Response, Prevention, and Administration Fees</u>	<u>46154.5</u>
<u>Underground Storage Tank Maintenance Fee</u>	<u>50112.1</u>
<u>Fee Collection Procedures Law³</u>	<u>55042.5</u>

How to Request Alternative Interest Calculation

Taxpayers must submit a BOE-734, *Request for Oral Hearing Electronic Payments – One Day Late*. There is no online request function for these requests. The form allows taxpayers to request an oral hearing, request a refund of interest paid in excess of daily interest due, and provides an opportunity for a taxpayer to waive their right to appear before the Board at the oral hearing. The form also advises taxpayers where to

³ The fees and taxes collected pursuant to the Fee Collection Procedures Law include the following programs: California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, Water Rights Fee, and Lumber Products Assessment.

send the form based on the tax or fee program. Publication 159-EFT, *efile Guide for EFT Accounts*, and the EFT Frequently Asked Questions page on the BOE website also contain information explaining how to request an alternative interest calculation.

Board Approval

Requests received must be approved by the Board Members meeting as a public body. When staff recommends the Board approve or deny the request and the taxpayer waives the right to appear, the case will be placed on the Board calendar by the Board Proceedings Division as a Nonappearance Matter consent item. When staff recommends the request be denied, staff will send the taxpayer a notice of the intent to deny. The notice will advise the taxpayer that if they previously waived the right to appear but now want to appear before the Board, they must contact the Department within 15 days. If the taxpayer requests to appear at the oral hearing, the item will be placed on the Board calendar as either a Sales and Use Tax or Special Taxes and Fees Hearing.

Staff Responsibility

A summary prepared by staff for the Board will include the following:

- Confirmation that penalties have been relieved or are on the same Board calendar requesting approval for relief,
- Type of electronic payment,
- Due date of payment,
- Actual payment date and time or settlement date,
- Interest amount due,
- Amount of daily interest due, and
- Amount of interest that will be adjusted if the Board approves the request.

If the Board approves the request, the amount of interest will be adjusted in IRIS by RAU for SUTD accounts, or by the Appeals and Data Analysis Branch for Special Taxes and Fees accounts.