



# Special Notice

STATE BOARD  
OF EQUALIZATION

## New 40-percent Penalty on Unreported Tax Collected from Customers

450 N Street  
Sacramento  
California 95814

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Board website and  
Member contact  
information:  
[www.boe.ca.gov](http://www.boe.ca.gov)

Taxpayers' Rights  
Advocate  
888-324-2798

Information Center  
800-400-7115  
TDD/TTY: 800-735-2929



### Overview

A new 40-percent penalty can apply to a person who knowingly collects and fails to pay sales tax reimbursement or use tax (tax) to the Board of Equalization (BOE). A number of exceptions apply, and every application of the penalty will be carefully reviewed by the BOE to determine whether reasonable cause or uncontrollable circumstances were involved in the failure to remit taxes.

The penalty can only apply to BOE-determined liabilities for reporting periods that began after December 31, 2006.

**The penalty will not be assessed** if any of the following apply:

- The taxpayer failed to remit tax only once during the past three years in business
- The unreported tax averages less than \$1,000 per month
- The unreported tax is less than 5 percent of the total tax due from that period
- The taxpayer voluntarily reported or corrected errors before being contacted by the BOE
- The failure to file and pay is due to reasonable cause or circumstances beyond the person's control, such as
  - a death or serious illness in the immediate family
  - a natural disaster or catastrophe directly affecting the business
  - the BOE sent tax returns to an incorrect address

The penalty only applies to intentional withholding of tax amounts that are owed to the state. Penalized taxpayers can seek relief by establishing reasonable cause or circumstances beyond their control that affected the reporting of tax. Taxpayers should use form BOE-735 or send the Board a written request, signed under penalty of perjury, explaining why the tax was not remitted timely.

### Example application of the penalty:

A taxpayer collects \$200,000 in tax from customers over the course of one year but only reported three months and \$45,000 in tax collected. An audit discovers the unreported tax and also notes the taxpayer has a history of failing to file and report the taxes due. The BOE carefully reviews the audit findings to determine whether reasonable cause or uncontrollable circumstances were involved in the taxpayer's failure to pay. If reasonable cause or circumstances beyond the taxpayer's control are not evident, it is likely the penalty would be applied to the unreported \$155,000 in tax.

The new penalty is found in Revenue and Tax Code section 6597. For more information, please phone the Board's Information Center at 800-400-7115.