

320.0000 INTEREST AND PENALTIES—Regulation 1703

320.0020 Bankruptcy—Postbankruptcy Interest and Penalties. The Board may collect postbankruptcy interest and penalties after a proceeding under Chapter XI of the Bankruptcy Act is closed. Section 17 of the Bankruptcy Act provides in part that a tax debt is not affected by a discharge in bankruptcy. Section 371 of the Bankruptcy Act provides: “The confirmation of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement but excluding such debts as, under section 17 of this Act, are not dischargeable.” The cases of *Salsbury Motors, Inc. v. United States et al.*, 210 F.2d 171, and *Paul F. Bruning v. United States*, 11 L.Ed.2d 772, support the Board’s position that it may collect postbankruptcy interest and penalties after a proceeding under Chapter XI of the Bankruptcy Act is closed. The Board is precluded from claiming penalties in claims filed in both ordinary bankruptcies and Chapter XI proceedings because of the prohibitions contained in section 57(j) of the Bankruptcy Act. Although section 57(j) specifically applies to ordinary bankruptcy proceedings, under section 302 of the Bankruptcy Act relating to Chapter XI proceedings, it is stated that the provisions of the first seven chapters of the Bankruptcy Act apply insofar as Chapter XI proceedings are concerned where such provisions are not inconsistent. 10/9/64.

320.0045 Bankruptcy Setoffs. The Bankruptcy Code does not permit setoffs of post petition debts on pre-petition claims because of the absence of the mutuality of the debts required by section 553(a) of the code. The pre-petition debt relates to the debtor while the post-petition debt relates to the bankrupt estate. 1/7/91.

320.0047 Credit Interest. A corporation went through a merger and reorganization. This caused a disruption in its accounting department, and resulted in overpayment of taxes for a period of two years. Recognizing that the reorganization disrupted the corporation’s normal accounting activities, credit interest was allowed on the tax overpayments for a period of the next six months. The continuing errors beyond six months were regarded as evidence of carelessness, and credit interest was not allowed beyond those six months. 4/12/94.

320.0048 Credit Interest. Assuming that a timely, valid claim for refund is received, the Board is only authorized to pay credit interest on the overpayment of tax. Revenue and Taxation Code section 6907 expressly limits the payment of credit interest to refunds or credits arising from the overpayment of tax. Overpayments of interest and penalty are credited or refunded without the payment of credit interest. 9/18/02. (2003–3).

320.0048.050 Credit Interest. Civil Code section 1793.25 (“Lemon Law claims”), subsection (c), expressly prohibits the payment of credit interest when the Board approves a manufacturer’s Lemon Law claim for sales tax reimbursement. 10/21/02. (2003–3).

320.0049 Date of Interest Computation. Even though an exemption under section 6388.5 provides that property must be removed from the state within 75 days from and after the date of the delivery, interest is calculated based on the due date of the tax on the sale if the property is not removed from the state in the required days. The exemption does not provide a 75 day extension for the due date of taxes on the transactions that could, but do not, qualify. A transaction is either exempt under section 6388.5 or it is not. If not, the due date of the tax is based on the date of sale, as with any other taxable transaction, and not on the date of the sale plus 75 days. 1/7/88.

320.0050 Denial of Credit Interest. A consistent practice of making additions of tax to quarterly sales and use tax returns may be classified as intentional overpayments even though the additional amounts were intended to correct underpayments made for prior periods. Sales and use tax returns are required to record the liability for the reporting period. They may not be used as a means of making payments of an existing deficiency for a prior period. 6/2/78.

320.0055 Effective Date of Payment. Government Code section 11002 provides in part that funds are “deemed received on the date shown by the post office cancellation mark stamped upon the envelope

containing the remittance” In the case of remittances received via a levy served on a bank, the effective date of payment is the date of service not the date of payment by the bank since the Board had ownership as of the date of service. 10/3/90.

[320.0057](#) **Excusability of Interest.** Generally, a taxpayer may not be excused from payment of interest. The two statutory exceptions which would excuse the payment of interest on a tax liability are (1) if the liability was a result of a “disaster” as defined in Regulation 1703(b)(6) or section 6593, or (2) if the taxpayer relied on written advice from the Board. (Section 6596.) 2/11/88.

320.0060 **Failure to File Return.** A seller is not excused from filing a return merely because the purchaser reports the transaction “on a use tax basis,” and the 10 percent penalty applies to any balance of tax due after giving effect to all adjustments and credits for tax paid by purchaser. 4/7/53.

[320.0080](#) **Failure to File Return.** When a person becomes a retailer under section 6019 upon making a third sale within a 12-month period, the 10% penalty under section 6511 does not apply to the tax which then accrues on the two preceding unreported sales made in prior quarters, provided the tax on all three sales is timely reported after the third sale. 4/13/59.

[320.0100](#) **Fraud.** Failure to file returns with intent to evade the tax is established where an out-of-state business collects use tax from its customers for a period of years and fails to pay it to the state. 10/4/65.

[320.0110](#) **Fraud Penalty on Corporation.** A corporation is a person under section 6005 of the Revenue and Taxation Code. If a fraud penalty is properly applied against a corporation, the fact that the stock is purchased by a person who had no participation in the fraud provides no basis for relief from the penalty. 6/21/94.

[320.0120](#) **Fraud Prosecutions.** Although the Board may be estopped from instituting criminal prosecution for fraud after the periods specified in Revenue and Taxation Code section 7154 have expired, the imposition of the fraud penalty on a determination for these same periods is not barred by this section. 1/30/90.

[320.0123](#) **Fraud, Theft, and Embezzlement.** Section 6593 provides for relief from interest for taxpayers whose failure to file returns or pay timely is due to a disaster. Fraud, theft, and embezzlement are not regarded as disasters within the meaning of the statute. 7/22/87.

[320.0125](#) **Interest—Nonabatement.** A determination by the Board to “delete the failure to file penalty and redetermine the tax on a sales price of \$140,000” did not result in the abatement of interest. Section 6593 provides for relief of interest where failure to file a return timely was due to a “disaster.” In this instance, the failure to file timely was due to an apparent misunderstanding by the taxpayer who believed the Coast Guard was going to tell the Board to send a bill for tax upon completion of the documentation process. This is not a “disaster” covered by section 6593.

Additionally, this matter is not eligible for “settlement” consideration pursuant to section 7093.5, as the applicable section pertains only to settlement of certain “civil tax matter disputes.” The object of the section was for the purpose of producing a settlement during the administrative process. Since there is no longer any on-going administrative process, this matter is beyond that stage. The available remedy is to pay the liability and file a claim for refund. 4/11/94.

[320.0129](#) **Interest and Penalty—FDIC Receivership.** The late filing of a tax return by FDIC, acting as receiver of a closed thrift and loan association, is subject to the interest imposed by section 6591 but not to the penalty discussed therein. In as much as the association’s seller’s permit remained in effect during the receivership and FDIC had not requested a permit in its own name as receiver, the penalty and interest was billed to the association. The rights and protections of FDIC as a receiver are contained in 12 U.S.C. section 1825. The courts have interpreted this section to mean that it “prevents local taxing authorities from forcing FDIC to pay penalties for the failure of previous owner to pay taxes.” It also said that FDIC would not have to pay interest on late taxes if it could be shown that the interest imposed was in the nature

of a penalty, and was not “to compensate the taxing unit for not having such tax money available to pay its obligations.” Since the Board collects interest for exactly that purpose and not as a penalty, the assessment of interest on the late payment is proper and payable by the FDIC, although the penalty is not payable by the FDIC. 3/9/94.

320.0131 Late Tax Payment. Interest for a late payment of tax accrues at a monthly rate and if any payment of tax is late, the full monthly rate is applicable for any portion of a monthly period for which the tax has not been paid. 6/18/93.

320.0133 Multiple Penalties for Fraud. Several sections of the Revenue and Taxation Code impose penalties for fraud or intent to evade tax. Only one such penalty can be imposed on the same determination when the penalties apply to the same series of acts or course of action. 5/19/86.

320.0140 Negligence Penalty of 10% not warranted where sales are not reported because of belief in exemption as exports and bona fide difference of opinion as to taxability. 7/26/50.

320.0160 Prepayment. The penalty provided for under section 6476 applies only to the amount for which a prepayment is required, not the amount of advance payment actually made. 11/16/66.

320.0180 Purchaser Liable for Sales Tax. A purchaser who becomes liable for payment of sales tax as if he were a retailer making a retail sale under the provisions of section 6421 of the Revenue and Taxation Code has an obligation to file returns and is subject to the failure to file penalty provisions of section 6511 of the Revenue and Taxation Code. 9/3/64.

320.0205 Relief from Penalty Billed Under Section 6829. A corporation was assessed a penalty for filing a late return. The same penalty was later assessed to an individual as the responsible party under section 6829, personal liability of corporate officer. The responsible party then submitted a request for relief of penalty pursuant to section 6592, excusable delay, for both the corporation and for himself as the responsible party.

Section 6829 imposes, under certain circumstances, a liability on corporate officers and other responsible persons for the unpaid liabilities of various defunct business entities. This section is not a “penalty” provision subject to the relief provisions of section 6592 and is not listed as one of the statutes with respect to which relief may be obtained under section 6592. Instead section 6829 holds such responsible persons dually liable because of their own conduct in failing to cause the defunct business entity to be in compliance with the reporting and payment requirements of the Sales and Use Tax Law. Therefore, the Board cannot grant relief from a section 6829 liability pursuant to section 6592.

However, because section 6829 establishes a dual liability that is contingent on, and derives from, the liability of the subject defunct business entity, if the Board relieves a penalty imposed on that business entity pursuant to section 6592 and if this penalty amount was included in the responsible person’s liability under section 6829, the responsible person’s liability should consequently be reduced by the same amount. 3/29/04. (2005–2).

320.0210 Resolution Trust Corporation. Interest and penalties are properly part of the tax liability and should be paid by the Resolution Trust Corporation. 12 U. S. C. section 1821(d)(2)(H) states: “The [Resolution Trust] Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this chapter.” 10/30/92.

320.0215 Relief of Interest—Section 6593.5. Section 6593.5(a) was amended effective January 1, 2002, to substitute “this part” for “sections 6480.4, 6480.8, 6513, 6591 and 6592.5.” This amendment allows the Board to grant relief of interest imposed under section 6482 for audit determinations that contain tax liabilities for reporting periods commencing on or after July 1, 1999.

In November 2001, a taxpayer filed a request for relief of interest that accrued from November 1, 1999 to June 30, 2001 for a determination covering the third quarter of 1999. Prior to the January 1, 2002, effective date of the amendment, the Board did not have the authority to grant the relief, and the request was denied.

Although the taxpayer's initial request for relief was denied, the amendment to section 6593.5 does not preclude a qualifying taxpayer from resubmitting a request for the same period and obtaining relief. 2/16/05. (2006-1).

[320.0220](#) **Relieved of Penalty and Interest.** If a taxpayer is eligible to be relieved of a penalty and/or interest pursuant to Revenue and Taxation Code sections 6592 and 6593, it is irrelevant that the penalty and interest were assessed by a determination. 6/11/93.

320.0240 **Return Not Filed for Another Location.** The "failure to file" penalty applies when a person files no return. If a person files a return, the failure to file penalty does not apply even if that person's return did not include sales made at another unpermitted location for which a permit should have been held. 11/22/82.