



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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December 28, 2010

VIA INTERNET

Dear Interested Party:

The Audit Manual (AM) is a guide for the Board of Equalization (BOE) staff in conducting tax and fee audits. It is available to the public and can be accessed from the BOE web page at <http://www.boe.ca.gov/sutax/staxmanuals.htm>.

The attached revisions to AM Chapter 5, *Penalties*, clarify the imposition of mandatory and discretionary penalties (section 0501.22) and the preparation of audit reports in cases where penalties apply only to a part of the audit period (section 0506.30). If you have any comments or suggestions related to these proposed revisions, you may contact the BOE at [AM.RevisionSuggestions@boe.ca.gov](mailto:AM.RevisionSuggestions@boe.ca.gov). Your comments or suggestions must be received by BOE no later than **February 28, 2011** in order to be considered by staff. Thank you for your consideration.

Sincerely,

Susanne Buehler, Acting Chief  
Tax Policy Division  
Sales and Use Tax Department

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## TYPES OF PENALTIES — OVERVIEW

### MANDATORY VS DISCRETIONARY PENALTIES

0501.22

Numerous sections of the Revenue and Taxation Code (RTC) impose penalties. Some penalties are mandatory and are imposed automatically. Other penalties are discretionary and may be assessed ~~by auditors in the conduct of their audits.~~ based on the -auditor's judgment to and facts supporting the specific penalty. (See AM section 0203.21 for typical ~~explanations of~~ penalty recommendations in sales and use tax audits.) ~~Whenever circumstances warrant the imposition of either a mandatory or a discretionary penalty, but not both, the mandatory penalty will apply. For example, the penalty for failure to file a return (mandatory penalty) rather than the negligence penalty (discretionary penalty) should be applied in those cases where either penalty is applicable.~~

The tables that follow classify penalties as mandatory or discretionary.

**Mandatory Penalties**

<b>Nature of Penalty</b>	<b>Rate</b>	<b>RTC Sections</b>
Failure to file a return	10%	6511; 6591
Failure to pay taxes	10%	6565; 6591
Failure to pay prepayment amounts	6%	6476; 6477
Electronic Fund Transfer (EFT) related penalties exclusive of prepayments	10%,	6479.3
Failure to pay prepayments by EFT	6%	6479.3
Amnesty interest penalty	50% <sup>a</sup>	7074
Double amnesty penalty	<sup>b</sup>	7073
Failure to pay prepayment amounts by suppliers and wholesalers of fuel	10% <sup>c</sup>	6480.4

<sup>a</sup> This penalty applies only to periods eligible for amnesty and is based on the unpaid tax as of March 31, 2005 (see AM sections 0505.00 – 0505.10 for more information).

<sup>b</sup> This penalty applies only to periods eligible for amnesty and is applicable to a Notice of Determination issued after April 1, 2005 (see AM sections 0505.00 – 0505.10 for more information).

<sup>c</sup> The rate of penalty is increased to 25 percent if the supplier or wholesaler knowingly or intentionally fails to make a timely remittance of the prepayment amounts.

**Discretionary Penalties**

Negligence or intentional disregard of the law or authorized rules and regulations	10%	6478; 6484
Fraud or intent to evade the law or authorized rules and regulations	25%	6485; 6514
Improper use of a resale certificate for personal gain to evade the tax	<sup>d</sup>	6072; 6094.5
Failure to remit sales tax reimbursement or use tax collected	40% <sup>e</sup>	6597
Knowingly fails to obtain a valid permit for the purpose of evading the payment of tax	50%	7155
Registration of a vehicle, vessel, or aircraft outside the State of California for the purpose of evading the payment of tax	50%	6485.1; 6514.1
Failure to obtain evidence that the operator of catering truck holds a valid seller's permit	\$500	6074
Failure of a retail florist to obtain a permit before engaging in or conducting business as a seller	\$500 <sup>f</sup>	6077

<sup>d</sup> 10% of the tax due or \$500 whichever is greater.

<sup>e</sup> RTC section 6597 operative January 1, 2007.

<sup>f</sup> Plus any other applicable penalties.

## **PENALTIES APPLICABLE TO ONLY PART OF AUDIT PERIOD**

**0506.30**

Situations may be encountered where the condition warranting the imposition of a negligence penalty is not present during the entire period under audit and where the imposition of the penalty to the entire amount of the tax liability would be inequitable. For example, a complete change of management occurred and conditions under one management were entirely different from those under the other. In this type of situation the auditor will prepare two sets of Form BOE-414-A or Form BOE-414-B, one includes the 10 percent penalty [for the period in which it is imposed](#), and the other without the penalty. Audit Determination and Refund Section will issue ~~the two~~ [Notices](#) of Determination accordingly. The audit report with the penalty must include a full statement of the facts involved.

When considering the recommendation to impose a negligence penalty on a partial audit period, auditors should determine if the taxpayer made any effort during a subsequent period in the audit to correct the situation which led to negligence. If such an effort has been made, a penalty may not be appropriate.