

[Assembly Bill 358](#) (Grove)

Date: Introduced

Program: Sales and Use Tax

Sponsor: BOE Member Runner

Government Code Section 15620.5

Effective: January 1, 2016

Michele Pielsticker (Chief) 916.322.2376

Sheila T. Waters (Analyst) 916.445.6579

Bill Benson (Revenue) 916.445.0840

Summary: Extends the BOE's authorization to adopt a uniform policy to ensure voluntary compliance with the statutory due dates for electronically submitted payments and documents, as described.

Purpose: To streamline efficiencies, eliminate cumbersome relief procedures, and promote goodwill between the BOE and its taxpayers.

Fiscal Impact Summary: Pending

Existing Law: Under existing law, persons who pay their tax, fee, or surcharge (hereinafter "tax") obligations after the statutory due dates generally must pay a 10 percent penalty on the late tax payment, plus six percent interest monthly. Under current law, simple interest accrues on any unpaid tax, from the tax due date to the last day of the month in which it is paid. For example, if a taxpayer makes a late payment on the third of the month, interest accrues to that month's end.

Uniform policy. Under existing law, as necessary to ensure voluntary compliance with statutory due dates, the BOE is authorized to establish a uniform policy to accept payments and various documents (claims for credit or refund, returns, or other information) as timely when the payment or document's envelope or delivery document's stamped cancellation mark shows a date after the statutory due date. Existing law states that this uniform policy shall not be construed as a statutory extension for taxpayers to file or remit taxes and fees. The BOE has adopted a uniform policy that allows the BOE to accept as timely payments or documents mailed or delivered to the BOE when the envelope or delivery document's postmark date shows a date one day after the due date. These provisions do not apply, however, to returns, payments, or documents *electronically* submitted to the BOE.

EFT requirements. Under existing law, taxpayers that have an average monthly sales or use tax liability of \$10,000 or more, and special taxes accounts that have average monthly tax payments of at least \$20,000, are required to remit amounts due by an electronic funds transfer (EFT). For these taxpayers, the law requires that their EFT payments settle into (be deposited in) the state's account on the next banking day following the tax due date. The law requires the BOE to impose a late payment penalty and interest, as described above, when a taxpayer fails to initiate an EFT payment in sufficient time so that the funds settle to the state's account in accordance with the law.

The law prescribes three methods for taxpayers to make an EFT payment: an automated clearinghouse (ACH) debit, an ACH credit, or by Federal Reserve Wire Transfer. A 10 percent penalty applies if a taxpayer fails to pay by an appropriate EFT method.

Interest relief. Under certain circumstances, existing law allows the BOE to impose a day's interest (rather than a month's) on a late tax or fee electronic payment where the BOE Members, meeting as a public body, find that it would be inequitable to impose interest for the entire month, given that the payment is only one day late. These circumstances include:

- (1) The tax or fee payment must have been made one business day after the due date.
- (2) The person must have been granted relief from all penalties that applied to the payment.
- (3) The person must have filed a request for an oral hearing before the BOE Members.

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 BOE's formal position.

Proposed Law: Extends to electronic transmissions the BOE's uniform policy for the acceptance of payments, returns and other information, to ensure compliance with the statutory due dates.

Background: During a 47-year period ending in 1997, the BOE's administrative policy allowed a one-day grace period when a taxpayer mailed a return or payment and the envelope (or delivery document) was postmarked one day after the due date. This policy recognized the potential complications inherent in the U.S. Postal Service and gave the taxpayer the benefit of the doubt that he or she mailed the item timely, even though the postmark did not reflect the actual date the taxpayer mailed it. However, the BOE's legal staff reviewed this policy and opined that there was no legal basis on which the BOE could provide this one-day grace period. The BOE therefore eliminated the one-day grace period policy. As a consequence, staff workload increased significantly. This change caused late billings to increase dramatically, and led to hundreds of timely mailing declarations requesting penalty and interest relief due to postmarks indicating that the mailing was one day late. This policy change also negatively impacted taxpayers who were otherwise compliant with the law.

BOE-sponsored provisions. Taxpayers file returns on a monthly, quarterly, or annual basis, depending on their taxable sales volume. The return filing frequency requirements for many taxpayers created more opportunity to have an inadvertent late postmark and it seemed logical to authorize the BOE to adopt a uniform policy to accept returns and payments as timely when postmarked one day after the due date. Therefore, in 1999, the BOE sponsored legislation¹ which was enacted into law to reinstate the BOE's prior practice of providing a uniform grace day for their mailed payments and documents under all BOE-administered taxes and fees. Since at the time, the BOE lacked the technology to accept electronically-transmitted payments and documents, the legislation only applied to mailed or physically delivered returns, payments, and documents.

In 2010, the BOE sponsored legislation² that addressed the inequity of imposing an entire month's interest charge on an *electronic* payment that is only one day late. Under this provision, the BOE Members approved 72 relief requests in 2013 and 71 requests in 2014.

Commentary:

- 1. Effect of the bill.** This bill gives the BOE additional flexibility to establish a policy that will ensure taxpayers comply with the statutory deadlines for submitting timely electronic payments, returns, and documents. For example, instead of requiring taxpayers whose fund transfers or electronic transmissions are one day late to seek relief through the BOE hearing process, this bill enables the BOE to establish a uniform policy for acceptance of such electronic transmissions as timely, if taxpayers miss their 3:00 pm deadline inadvertently or the electronic transmission is otherwise one day late.
- 2. Not all electronic transmission deadlines are alike.** The standards for making a timely payment differ among the various forms of electronic submissions, and the bill gives the BOE discretion to adopt a uniform policy for those electronic submissions that the BOE deems necessary to ensure voluntary compliance with those filing deadlines.

For example, EFT ACH debit payments (the most commonly used EFT payment method), made later than 3:00 p.m. Pacific time, or that have the next banking day as the debit date, are considered late and the delinquency charges apply. Each financial institution handles ACH payments differently. Thus, to be timely, taxpayers must initiate the payment in accordance with a financial institution's processes to ensure the deposit into the state's account occurs on the next banking day following the due date. Some financial institutions require taxpayers to initiate the payment two days in advance of the due date.

¹ AB 1638 (Stats. 1999, Ch. 929).

² SB 1028 (Stats. 2010, Ch. 316).

Other than EFT payments, most electronically-transmitted payments that taxpayers initiate by midnight on the tax due date are regarded as timely, even though the funds may be deposited into the state's account more than one day after the due date. The payment initiation date determines the payment's timeliness.

- 3. Bill provides efficiencies and promotes goodwill.** The inconsistencies described above, and the increasing number of taxpayers either required or encouraged to electronically transmit their tax payments (over 94 percent file electronically in the sales and use tax program, and over 26 percent in the other BOE tax and fee programs) call for the BOE to establish a uniform policy for acceptance of electronic payments and returns in a manner similar to mailed documents. This change would improve efficiency and promote goodwill between the BOE and its taxpayers.

Administrative Costs: Some moderate programming costs will be incurred and some cost savings may be realized attributable to a reduction in workload related to billings, processing relief requests for Board hearings, and payment processing. An estimate is pending.

Revenue Impact:

Pending