



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	02/21/13	Bill No:	Senate Bill 442
Tax Program:	Special Taxes & Fees Sales and Use	Author:	Wyland
Sponsor:	BOE	Code Sections:	See below
Related Bills:		Effective Date:	01/01/14

BILL SUMMARY

This bill:

- Allows a taxpayer¹ to file a reimbursement claim for certain charges and fees incurred due to certain Board of Equalization (BOE) collection errors, and
- Waives for reasonable cause the requirement that the taxpayer file a reimbursement claim within 90 days of erroneous collection.

ANALYSIS

CURRENT LAW

Current law authorizes the BOE to seize property of a delinquent taxpayer. Existing law also authorizes the BOE to issue a levy or notice to withhold to satisfy tax obligations of a delinquent taxpayer.

Revenue and Taxation Code (RTC) Section 7096 allows a taxpayer to file a reimbursement claim with the BOE for bank charges and any other reasonable third-party check charge fees (charges and fees). The charges and fees must directly result from an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Charges and fees include:

- A financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions, and
- Reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action.

Reimbursable charges and fees include those actually paid by the taxpayer. Reimbursable charges and fees do not include those waived or reimbursed by the financial institution or third party.

Other BOE-administered special tax and fee laws contain identical provisions, except they don’t authorize a taxpayer to claim charge or fee reimbursement due to a BOE “erroneous processing action” or “erroneous collection action.”

In order to grant a claim, current law requires the BOE to determine that the following conditions are satisfied:

- BOE error caused the erroneous levy, notice to withhold, processing action, or collection action.

¹ Taxpayer or feepayer

- Prior to the BOE's erroneous action, the taxpayer (1) responded to all BOE contacts, and (2) provided the BOE with any requested information or documentation sufficient to establish the taxpayer's position. The BOE may waive this condition for reasonable cause.

All relevant statutes require a taxpayer to file a claim within 90 days from the date of BOE's erroneous action. The statutes require the BOE to respond within 30 days from the date the claim is received.

PROPOSED LAW

This bill conforms relevant special tax and fee law bank charge reimbursement provisions to the Sales and Use Tax Law. Accordingly, the bill amends the special tax and fee laws to allow taxpayer fee and charge reimbursement due to an erroneous processing action or erroneous collection action by the BOE. The relevant special tax and fee laws include: Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Act, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

In addition, this bill authorizes the BOE to extend the reimbursement claim filing date beyond 90 days *for reasonable cause*.

This bill allows the BOE to fairly and equitably administer the law under certain circumstances that arise from an erroneous BOE collection action. This provision also provides consistency with the Franchise Tax Board's authority under RTC Section 21018.

Background. The BOE Members unanimously adopted an identical proposal as part of its 2012 Legislative package. The Committee on Revenue and Taxation introduced the proposal in BOE-sponsored omnibus bill, Assembly Bill 2688. AB 2225 (Perea) contained similar provisions, although it was not BOE-sponsored. Both measures passed the Assembly Revenue and Taxation Committee and Assembly Appropriations Committee on consent. The bills were also placed on the Assembly Floor's consent calendar.

The Senate Governance and Finance Committee passed AB 2225 and AB 2688 (8 ayes, 0 noes), as amended. The AB 2688 amendment removed the BOE-sponsored erroneous processing and collection provisions. AB 2225 continued to include the erroneous processing and collection provisions.

The Senate Appropriations Committee placed AB 2225 on second reading pursuant to Senate Rule 28.8. On August 23, 2012², Assembly Member Perea gutted and amended AB 2225 to incorporate provisions related to courts. BOE staff learned of the amendment the next day, too late to amend the erroneous processing and collection provisions into another BOE-sponsored measure.

² August 24, 2012, was the last day to amend on the Floor.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the BOE to provide taxpayers with relief from charges and fees incurred due to an erroneous BOE collection or processing action.
2. **Erroneous collection or processing action.** Occasionally, an erroneous BOE action results in a taxpayer incurring charges and fees unrelated to a BOE levy or notice to withhold. Existing special tax and fee laws only allow reimbursement due to an erroneous levy or notice to withhold. Accordingly, existing law prohibits reimbursement for an erroneous processing action or erroneous collection action by the BOE.

An erroneous processing or collection action occurs when the BOE double-debits a taxpayer's bank account and erroneously credits the electronic payment to another taxpayer's account. The double-payment results in insufficient funds, which in-turn leads to overdraft bank fees. Existing special tax and fee laws authorize the BOE to reverse the erroneous debit; however, the laws do not expressly authorize reimbursement of the charges and fees incurred.

3. **Stringent filing deadline.** Sometimes taxpayers are unable to file a claim within 90 days from the erroneous BOE action date.

In one example, the BOE filed an erroneous levy and sent the taxpayer's Notice of Levy to an incorrect address. Additionally, the taxpayer's financial institution delayed compliance with the levy for nearly three months. As a result, the financial institution sent the first levy notice to the taxpayer about three months from the erroneous BOE action date. The erroneous levy resulted in early withdrawal fees and bank processing fees. The taxpayer failed to meet the 90-day reimbursement claim deadline due to the delayed levy notice. Existing law required the BOE to deny the claim even though the taxpayer met all other conditions.

4. **Tax agency conformity.** RTC Section 21018 contains Franchise Tax Board's erroneous collection reimbursement provisions. Those provisions apply to charge and fee reimbursement claims related to erroneous levies, erroneous processing actions, or erroneous collection actions. The provision also requires claims be filed within 90 days from the erroneous action date, identical to RTC Section 7096; however, Section 21018 provides, "*The board may extend the period for filing a claim under this section.*"

COST ESTIMATE

Costs associated with the bill are absorbable.

REVENUE ESTIMATE

The measure results in a negligible state and local revenue loss due to some additional taxpayer claims for charge and fee reimbursement.

Analysis prepared by:	Cindy Wilson	916-445-6036	03/22/13
Contact:	Michele Pielsticker	916-322-2376	
ls			0442sb022113cw.docx

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.