California State
Board *of* Equalization

Legislative Bill Analysis

Legislative and Research Division

Assembly Bill 756 (Chang)
Date: 04/13/15
Program: Sales and Use Tax, Special Taxes and Fees
Sponsor: Author
Revenue and Taxation Code (RTC) Section 42
Effective: January 1, 2016

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This analysis only addresses the provisions that impact the Board of Equalization (BOE).

Summary: Authorizes the BOE, Franchise Tax Board, and Employment Development Department to waive fines and penalties for small businesses in their first 120 days of operation.

Purpose: According to the author's fact sheet, "...give[s] new businesses a better opportunity to build their business before facing overwhelming fines and penalties."

Fiscal Impact Summary: Unknown impact to various state funds.

Existing Law: The BOE administers the sales and use tax and over 30 excise taxes and fees,[1] sets state assessee property values, monitors the property tax assessment practices of county assessors, reviews, equalizes and adjusts assessments of certain land owned by local government entities, and hears appeals of personal income and corporation taxes administered by the Franchise Tax Board. The California Constitution establishes that the BOE consists of 5 voting members: the Controller and four members elected at gubernatorial elections from districts for 4-year terms.

Existing law provides for the imposition of a variety of penalties for noncompliance with the laws. An example[2] of some of the penalties imposed under the Sales and Use Tax Law include:

Nature of Penalty	Rate	RTC Section
Failure to make a timely prepayment	6%	6476
Failure to file a return	10%	6511, 6591
Failure to make a timely payment	10%	6591
Negligence or intentional disregard of the laws or regulations	10%	6484
Fraud or intent to evade the law or regulations	25%	6485
Knowingly not obtaining a valid permit in order to avoid the tax	50%	7155
Improper use of a resale certificate for personal gain or to evade the tax	10%or $500[3]	6072; 6094.5
Registration of vehicle, vessel, or aircraft out of state to evade the tax	50%	6485.1; 6514.1
Failure to obtain evidence that operator of catering truck holds valid seller's permit	$500	6074

In general, existing law[4] authorizes the BOE to relieve specified penalties when the BOE finds that a

[1] BOE Publication 41, Taxes and Fees Administered by the California State Board of Equalization, FY 2013-14.
[2] Some, but not all of the same penalties exist in the various tax and fee programs the BOE administers. Each tax or fee program may have differences that account for the type of tax or fee, industry, or compliance issues.
[3] 10% of the tax due or $500, whichever is greater, plus any other applicable penalty.
[4] Revenue and Taxation Code (RTC) Section 6592.

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person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. To be relieved, the law requires taxpayers to file a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

In addition to penalties, interest is imposed on a late tax payment, currently at a rate of six percent annually. The interest is computed from the tax due date to the last day of the month of payment. Generally, interest on a late tax payment is not relievable. However, under specified provisions,[5] the BOE is authorized to relieve interest:

(1) When the BOE finds that a person's failure to make a timely return or payment was due to a disaster,[6] and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.
(2) Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by a BOE employee acting in his or her official capacity.

Under these provisions, similar to relief of penalty requests, any person seeking relief of interest must file a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Under the law,[7] if the BOE finds that a person's failure to timely file a return or make a payment is due to the person's reasonable reliance on BOE written advice, the person may be relieved of tax, interest and penalty. To be relieved, among several other requirements, the law requires the person to have requested in writing advice as to the taxability of a particular activity or transaction, and the BOE to have responded in writing to the person stating whether or not the described transaction or activity is subject to tax.

Under this provision, person's seeking relief must also file a statement under penalty of perjury setting forth the facts upon which the claim is based.

Proposed Law: This bill adds RTC Section 42 to allow the BOE, Franchise Tax Board, and the Employment Development Department to waive any fine or penalty assessed against a small business within the first 120 days of operation for violation of the agencies' respective laws.

A "small business" is defined as a business with 100 or fewer employees.

The penalty or fine may only be waived if the violation does not create a threat to health or safety, does not violate any provision of the Labor Code, and was not intentional.

This bill is effective January 1, 2016.

Background: As stated previously, the BOE is involved in administering several tax and fee programs, including the following laws: Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, and the Diesel Fuel Tax Law.

In addition, the BOE administers and collects several fees under the Fee Collection Procedures Law (FCPL). The FCPL governs the BOE's collection function for these programs, which includes some fee programs that are jointly administered with the following agencies: California Tire Fee (Department of Resources Recycling and Recovery (DRRR), and the Air Resources Board); Marine Invasive Species Fee

[5] RTC Sections 6593, and 6593.5.
[6] BOE Regulation 1703 defines "disaster" to mean fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes.
[7] RTC Section 6596.

(State Lands Commission); Covered Electronic Waste Recycling Fee (Department of Toxic Substances Control, and the DRRR); Fire Prevention Fee (Department of Forestry and Fire Protection (CAL FIRE) and the Board of Forestry and Fire Protection); Lumber Products Assessment (Board of Forestry and Fire Protection); Natural Gas Surcharge (Public Utilities Commission); and the Water Rights Fees (State Water Resources Control Board).

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

Commentary:

1. **Existing penalty relief provisions may be sufficient.** As explained in Existing Law, the Legislature has provided the BOE broad authority to relieve penalties and interest. Similar penalty and interest relief is provided in almost all of the various tax and fee programs administered by the BOE.[8] The BOE Members and staff work with all levels of stakeholders to address the necessity of legislative, regulatory, or policy changes that can assist the BOE in being fair, efficient, and responsive to both large and small businesses. BOE stakeholders include, but are not limited to, the Legislature, regulating state agencies, state-level advising agencies and offices, local governments, industry representatives, business owners, and the general public. BOE staff is willing to discuss issues that can improve California's business environment, including penalty waivers.

2. **The BOE does not generally categorize a business by its size.** This bill defines "small business" to mean a business with 100 or fewer employees. Currently sales tax registrants do not disclose their number of employees. Some BOE programs jointly administered with other state agencies require disclosure of employee numbers, including the occupational lead poisoning prevention fee, the environmental fee, or the hazardous substances tax. However, given that most BOE-administered tax and fee programs do not require this disclosure, the BOE would need to access Employment Development Department (EDD) records to verify employment records. Current law allows the BOE to access the EDD new employment registry for tax or fee enforcement purposes.[9] Access to the registry for relief of a penalty may not be an authorized "enforcement" purpose. Instead, the BOE uses EDD's wage information online, which is based on quarterly employment returns filed by employers. Given that this bill proposes a penalty or fine waiver within the first 120 days of operation, verifying employment information could be difficult.

   For sales tax purposes, a more efficient method to verify whether a business qualifies as a "small business" may be to define small business by reference to gross receipts. The sales tax is generally imposed on a retailer's taxable gross receipts, which is required to be reported on the sales tax return.

   However, given the various tax and fee programs the BOE administers, it may be difficult to establish one standard to fit all programs. BOE staff can provide technical assistance to the author's office on this issue.

3. **Is the intent to provide relief from "fine or penalty" assessed by another agency?** This bill specifies that the BOE may waive "any fine or penalty" with respect to the laws administered by the BOE. However, since the BOE jointly administers many tax and fee programs with other state agencies, some penalties would not be relieved under this bill. For example, the BOE only handles billing and collections for the fire prevention fee and the water rights fee programs. Except for the State Controller's collections function, the BOE handles most administrative aspects of the motor vehicle fuel tax. The tax on insurers is administered by three different state agencies; the BOE is

[8] BOE Publication 75, Interest, Penalties, and Fees, see esp. p.10, which discusses the various provisions to provide penalty relief.
[9] Unemployment Insurance Code Section 1088.5.

responsible for issuing deficiency assessments and refunds, and evaluating appeals. Under the cigarette and tobacco products licensing program,[10] the BOE's authority is limited to correcting a mistake or clerical error when deciding an appeal of a license suspension or revocation, as well as the civil penalty assessed for violation of the Stop Tobacco Access to Kids Enforcement (STAKE) Act.

Administrative Costs: BOE would incur absorbable costs to update online relief request forms, publications, regulations, policies and procedures, train staff, and answer questions from the public.

Revenue Impact: The penalty and fine waiver provisions are permissive. Staff is unaware of specific issues or tax or fee programs that would be significantly impacted beyond the BOE's current authority to provide penalty relief. The revenue impact of waiving penalties associated with taxes and fees jointly administered by the BOE and other state agencies is unknown.

[10] Business and Professions Code Section 22974.8