Assembly Bill 1559 (Dodd)
Date: 01/04/16
Program: Business Taxes
Sponsor: Author
Revenue and Taxation Code Sections 6459, 7656, 8754, 30185, 32253, 38405, 40065, 41054, 43154, 45152, 46153, 50111, 55041, and 60208
Effective immediately

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Summary: Authorizes the State Board of Equalization (BOE) to extend for up to three months the time for a tax or fee payer to file a tax return or report, or to pay the tax, in the case of a disaster.

Purpose: To provide business owners in disaster areas more time to file returns and pay tax obligations to the BOE.

Fiscal Impact Summary: Minor, penalty-related revenue loss.

Existing Law: Under existing Sales and Use Tax Law,[1] taxpayers must file sales and use tax returns on or before the last day of the month following the end of the reporting period. Persons who are late paying a tax, fee, or surcharge must pay a 10% penalty, plus interest on the unpaid tax from the tax due date to the date of payment.[2] One month's interest is due for each month or fraction of a month that the payment is late. Similar statutes cover the Motor Vehicle Fuel Tax, Use Fuel Tax, Cigarette and Tobacco Products Tax, Alcoholic Beverage Tax, Timber Yield Tax, Energy Resources Surcharge, Emergency Telephone Users Surcharge, Hazardous Substance Tax, Integrated Waste Management Fee, Oil Spill Response, Prevention, and Administration Fees, Underground Storage Tank Fee, Fee Collections Procedures, and Diesel Fuel Tax Laws.[3]

Existing RTC Section 6459 allows the BOE for good cause to extend up to one month the time for making any return or paying the tax due. The extension may be granted at any time provided the request is filed with the BOE within or prior to the period for granting the extension. An extension provides the taxpayer additional time to make a return and pay the tax, and relieves the person for any late payment penalty. However, the law continues to impose interest from the due date until the payment date, except in the case of a disaster.[4]

If the BOE finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, a taxpayer will be relieved of interest. Disaster means fire, flood, storm, tidal wave, earthquake, or a similar public calamity, whether or not it results from natural causes. Taxpayers seeking interest relief must file a statement with the BOE under penalty of perjury stating the facts supporting their claim for relief.

Likewise, a taxpayer, including a disaster-affected taxpayer, may seek penalty relief.[5] Specified penalties are relieved if the BOE finds that a 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. A taxpayer seeking relief under this provision must also file a statement under penalty of perjury supporting the claim for relief.

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[1] Revenue and Taxation Code (RTC) Section 6451.
[2] RTC Section 6591.
[3] RTC Sections 7656, 8754, 30185, 32253, 38405, 40065, 41054, 43154, 45152, 46153, 50111, 55041, and 60208, respectively.
[4] RTC Section 6593.
[5] RTC Section 6592.

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: This bill allows the BOE, in the case of a disaster, to extend the time for making any return or paying BOE-administered taxes and fees for a period not to exceed three months. The extension may be granted at any time provided a request for relief is filed with the BOE within or before the period at issue.

This bill becomes operative immediately upon enactment.

In General: Disasters and emergencies vary from year to year and can differ dramatically with regard to type, geographic size, infrastructure, impact costs, and duration. The BOE considers a disaster to include fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes. A disaster includes, but does not require, a Governor declared state of emergency.

Government Code (GC) Section 8625 authorizes the Governor to proclaim a state of emergency under specified circumstances. GC Section 8558 establishes three conditions under which the Governor may proclaim a state of emergency:

- "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.
- "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state.
- "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city.

Generally, major disasters such as earthquake, firestorms, storm damage, or flooding satisfy the second condition described as a "state of emergency."

Since March 2013, Governor Brown has declared 24 states of emergency for fire, rainstorm, oil spill, earthquake, drought, and terrorist attack-related disasters. In 2015 alone, Governor Brown declared 7 states of emergency impacting 25 different counties.

Commentary:

1. **Peace of mind.** Currently, a sales and use taxpayer affected by a disaster has two avenues to seek avoid penalty: one-month extension (RTC Section 6459) and excusable delay relief (RTC Section 6592). This bill revises the one-month extension to three months in the case of a disaster thereby providing disaster-affected taxpayers an additional two months to file their return and pay the tax.

   Although a taxpayer currently may request penalty relief for periods exceeding one month, *they must file their return and pay the tax due*. If a taxpayer does not file their return or pay the tax by the due date (varies by tax program), the BOE may commence delinquency-related action. This may include sending late notices, beginning collection action, or revoking permits during that period, adding more stress to an already stressful situation. This bill provides a disaster-affected taxpayer peace of mind from any BOE delinquency-related action by allowing the taxpayer to file the extension within or prior to the period for which the extension may be granted.

   This bill also benefits the BOE administratively by avoiding a potentially lengthy staff review to verify “reasonable cause” and the penalty of perjury verification.

2. **Disaster victims generally require more time.** This bill grants additional time to those who have less presence of mind, resources, and necessary documentation under the circumstances to timely file their return and pay the tax.

3. **Tax and interest still due.** This bill does not automatically relieve a taxpayer of accrued interest, only a potential 10% late filing penalty. However, existing law already provides a taxpayer relief of interest if the BOE finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. A person seeking interest relief must file a claim with the BOE.

Administrative Costs: BOE administrative costs related to this bill are absorbable. The BOE has procedures to handle the time extension provisions in existing law.

Revenue Impact: This bill could result in a minor revenue loss related to foregone penalties for late returns and payment beyond the existing one-month extension.

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