

Reinstate Revenue and Taxation Code Sections 6591.6, 7655.5, 8876.5, 12631.5, 30281.5, 32252.5, 40101.5, 41095.5, 43155.5, 45153.5, 46154.5, 50112.1, 55042.5, and 60207.5 in the sales and use tax and special tax and fee laws to continue to allow the BOE, under specified circumstances, 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.

Source: Honorable Fiona Ma

Existing Law. Under certain circumstances, until January 1, 2016, existing law¹ 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:

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

Beginning January 1, 2016, existing law will require the BOE to impose a 1/2% monthly interest rate (plus penalty) for any electronic payments made after the statutory due dates. Simple interest accrues on the late tax payment, from the tax due date to the last day of the month in which it is paid. For an electronic payment, if a taxpayer makes a payment even one day late, or 12 days late, interest accrues to that month's end.

Under existing law,² for returns and other documents mailed or physically delivered to the BOE by a bona fide commercial delivery service, 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. Existing law requires 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, 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 when a taxpayer fails to initiate an EFT payment in sufficient time so that the funds settle to the state's account as the law requires. For the most commonly used EFT payment method (ACH debit), taxpayers must initiate their payments by 3 pm on the tax due date in order for that payment to be timely deposited in the state's bank account. Beginning January 1, 2016, if a taxpayer misses the 3 pm

¹ As added by SB 1028 (Stats. 2010, Ch. 316).

² Government Code Section 15620.5.

deadline, the payment is considered late, and an entire month's interest charge will be due (along with the applicable penalty).

This Proposal. This proposal reinstates these expiring provisions so that the BOE Members continue to have some limited flexibility to address the inequity of applying an entire month's interest to an electronic tax payment when the tax is paid only one day late and the late payment is due to reasonable cause or circumstances beyond the taxpayer's control. Both the Franchise Tax Board and the Employment Development Department compute interest on a daily basis, and the BOE should continue to have that ability, when the facts and circumstances warrant.

Also, unlike income tax return due dates, most of the taxpayers to which this proposal applies are required to make EFT payments each month to the BOE, and these payment due dates vary. For example, for sales tax, a payment is required every month, and for seven months of the year, the due date is the 24th. For four of the months, the due date is the end of the month. And for the June payment, the due date is the 15th of the month. A payment only 10 minutes late for these taxpayers automatically results in an entire month's interest charge – currently at a six percent annual rate.

Section 6591.6 is added to the Revenue and Taxation Code, to read:

6591.6. (a) If the board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b) of Section 6591.5, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

(1) The payment of tax or the prepayment was made one business day after the date the tax or prepayment was due.

(2) The person was granted relief from all penalties that applied to that payment of tax or prepayment.

(3) The person files a request for an oral hearing before the board.

(b) For purposes of this section, "modified adjusted daily rate" means the modified adjusted rate per annum as defined in subdivision

(a) of Section 6591.5 determined on a daily basis by dividing the modified adjusted rate per annum by 365.

(c) For purposes of this section, "board" means the members of the State Board of Equalization meeting as a public body.

(d) For purposes of this section, "business day" means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(e) This section shall not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination issued by the board.

(f) This section shall only apply to electronic payments or prepayments of taxes.