

**Add Section 525 to the Evidence Code to specify that in a court of law any assertion of penalties (other than intent to evade or fraud) requires a preponderance of the evidence standard for such penalties and the burden of proof is placed on the Board in its assertion of such penalties.**

**Source: Honorable Bill Leonard**

### **Existing Law**

Under existing law, Section 115 of the Evidence Code provides, in part, "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."

"Preponderance of evidence" is a standard of proof that is used in most tax disputes and other civil trials. It means that the taxpayer is not entitled to a judgement unless he or she convinces the judge or jury by a "preponderance of evidence" that their version of the events is correct.

Absent fraud, in civil tax cases, generally the burden of proof is placed on the taxpayer to disprove by a preponderance of the evidence the government's assessment, which is otherwise presumed correct.

The Revenue and Taxation Code contains a number of penalties for civil tax violations penalizing conduct ranging from a late tax payment to fraud. Although the Board's assertion of a fraud penalty requires a clear and convincing standard, and the burden of proof is on the Board in its assertion of fraud, the standard of proof in disproving other penalties, including negligence, is on the taxpayer, and the standard applied is a preponderance of the evidence.

### **This Proposal**

This proposal would add Section 525 to the Evidence Code to specify that in any civil proceeding to which the Board is a party, the Board shall have the burden of proof by a preponderance of the evidence in sustaining its assertion of a penalty (other than a penalty for fraud or intent to evade).

The purpose of this proposal is to place the burden of proof on the Board in its assertion of any penalty imposed and to codify the evidence standard in law related to civil penalties (other than fraud) so that the standard for asserting penalties is clearly specified at the judicial level.

*Section 525 is added to the Evidence Code, to read:*

525. Notwithstanding any other provision of law, in a civil proceeding to which the State Board of Equalization is a party, that board shall have the burden of proof by a preponderance of the evidence in sustaining its assertion of a penalty, other than a penalty for fraud or intent to evade, against a taxpayer or feepayer.