

[Assembly Bill 2201](#) (Brough, et al.)

Date: Introduced

Program: Sales and Use, Special Tax and Fees

Sponsor: Board of Equalization (BOE)

Revenue and Taxation Code Section 6591.6, et al.

Effective: January 1, 2017

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Summary: Reinstates expired provisions that, until January 1, 2016, allowed the BOE, under specified circumstances, to prorate the interest due on a tax or fee electronic payment made one day late where the BOE Members, meeting as a public body, found that it would be inequitable to impose interest for the entire month.

Purpose: To continue to provide BOE Members with some limited flexibility to provide equitable interest relief when a payment is only one day late.

Fiscal Impact Summary: Annual state and local revenue loss of \$78,000.

Existing Law: Under certain circumstances, until January 1, 2016, existing law¹ allowed the BOE to prorate the interest on a late tax or fee *electronic* payment where the BOE Members, meeting as a public body, found that it would be inequitable to impose interest for the entire month, provided the payment was only one day late. These circumstances included:

- The tax, fee or surcharge (“tax”) payment was made no more than one business day after the due date.
- The person was granted relief from all penalties that applied to the payment.
- The person filed a request for an oral hearing before the BOE Members.

Beginning January 1, 2016, existing law requires the BOE to impose a 6% monthly interest rate (plus penalty) for any electronic payments made after the statutory due date. 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, 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.

Electronic Funds Transfer requirements. Existing law requires taxpayers who 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 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

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

² Government Code Section 15620.5.

interest when a taxpayer fails to initiate an EFT payment in sufficient time for the funds to be deposited in 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 deadline, the payment is considered late, and an entire month's interest charge is due (along with the applicable penalty).

Proposed Law: This bill reinstates these expired provisions.

Commentary:

- 1. Effect of the bill.** This BOE-sponsored measure allows BOE Members to prorate interest for an electronic tax payment when the tax payment is no more than one day late and the late payment is due to reasonable cause or circumstances beyond the taxpayer's control.
- 2. Other agencies compute interest on a daily basis.** 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.
- 3. Bill could encourage taxpayers paying late to pay more promptly.** Interest is imposed on outstanding amounts of tax due to compensate the State for its inability to use the funds and to encourage timely tax remittances. This bill is consistent with that principle, as it will continue to impose interest on the late payment, but only for the one day that the payment is late. Moreover, it will encourage those otherwise law-abiding taxpayers who, due to unique situations, inadvertently missed the payment deadline to pay the tax the next day to avoid the interest charge for the entire remaining portion of the month. (Currently, if a taxpayer misses the payment due date, there's no real financial incentive to quickly remit the payment, since an entire month's interest is charged regardless of whether the payment arrives one day late or 28 days late.)

Administrative Costs: BOE will incur absorbable administrative costs due to an increase in the number of cases coming before the BOE with a corresponding increase in staff workload to prepare the cases for hearing.

Revenue Impact: BOE staff maintains data on BOE-approved relief requests. Based on the past three years, the interest amount relieved averages about \$78,000 annually. If we assume similar relief requests will be filed and approved in future years, the annual state and local interest revenue loss would amount to \$78,000.