



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date:	03/29/12	Bill No:	Assembly Bill 2225
Tax Program:	Special Taxes & Fees	Author:	Perea
Sponsor:	Author	Code Sections:	See below
Related Bills:	AB 2688 (Committee on Revenue and Taxation)	Effective Date:	01/01/13

BILL SUMMARY

This bill:

- Allows a taxpayer or feepayer (together, taxpayer) to file a claim for reimbursement of bank charges and third-party check charge fees incurred by the taxpayer as the direct result of an erroneous processing action or erroneous collection action by the BOE; and
- Allows the BOE to waive, for reasonable cause, the requirement that a taxpayer file a claim for reimbursement within 90 days under the various special taxes and fees programs the BOE administers.

ANALYSIS

CURRENT LAW

Under current law, the BOE is authorized, as part of its administrative duties with respect to the collection of taxes, to seize property of a delinquent taxpayer. Existing law authorizes the BOE to issue a levy or notice to withhold to specified financial institutions to withhold and remit credits or personal property of a delinquent taxpayer to satisfy the delinquent tax obligations of that taxpayer.

Under Revenue and Taxation Code Section 7096 of the Sales and Use Tax Law, a taxpayer may file a claim with the BOE for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges that may be reimbursed are those actually paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Claims are required to be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action.

Identical provisions are also contained in the other BOE-administered special tax and fee laws, except that they do not expressly provide that a taxpayer may claim reimbursement for bank and third-party check charge fees due to an "erroneous processing action or erroneous collection action" by the BOE.

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 would amend Revenue and Taxation Code Sections 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1 to conform the claim for reimbursement of bank charges provisions in the other tax and fee programs administered by the BOE with the provision in the Sales and Use Tax Law by expressly providing that, in addition to reimbursement of bank or third-party check charge fees incurred by a taxpayer as the direct result of an erroneous levy or notice to withhold, a taxpayer may claim reimbursement for bank and third-party check charge fees due to an erroneous processing action or erroneous collection action by the BOE. The other tax and fee laws to which these provisions would be extended include: Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage 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 Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

The bill would also amend the above-specified sections of the special tax and fee laws to provide the BOE with the authority to approve, for reasonable cause, a claim for reimbursement of bank charges or third-party check charge fees filed later than 90 days from the date of the erroneous BOE levy or action.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and intended to provide taxpayers with relief from erroneous collection actions taken by the BOE.
2. **Erroneous collection action.** Occasionally, an erroneous BOE action has resulted in the imposition of bank or third-party check charge fees and the particular erroneous BOE action was not technically a result of a BOE levy or notice to withhold. Occasionally, due to a BOE error, a taxpayer's account has been double-debited when an electronically-transferred payment made in connection with an installment payment agreement was erroneously applied by the BOE to another taxpayer's account. Due to the double payment, the taxpayer's account had insufficient funds, which resulted in bank fees for overdrafts. While the BOE is able to reverse the erroneous debit, the special tax and fee laws contain no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third-party check charge fees incurred by the taxpayer due to the error.

It is only fair and equitable to reimburse taxpayers for bank and third-party check charge fees when those charges are a direct result of a BOE error and are not due to any fault of the taxpayer. This proposed change is consistent with the Sales and Use Tax Law and the intent of the original legislation that authorized the BOE to reimburse taxpayers for such charges stemming from BOE errors. Also, these proposed amendments are consistent with provisions in Revenue and Taxation Code Section 21018 administered by the Franchise Tax Board (FTB). The FTB sponsored AB 1767 (Ch. 349, Stats. 2005) to specifically allow taxpayers to claim reimbursement for bank charges incurred by taxpayers through similar types of FTB processing and collection errors.

3. **Extending the claim filing deadline for reasonable cause.** Taxpayers are sometimes prevented from filing a claim within 90 days from the date of the erroneous BOE action. In one example where the BOE filed a levy in error, the taxpayer did not receive the BOE's Notice of Levy because it was sent to an incorrect address. The taxpayer's financial institution delayed complying with the

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levy for nearly three months and notified the taxpayer of the levy at that time. Since that was the taxpayer's first notification of the levy, which resulted in early withdrawal fees and bank processing fees, the taxpayer was unable to meet the 90-day deadline for filing a claim with the BOE for reimbursement of bank charges. The BOE did not then have the statutory authority to grant the claim, even though all other conditions were met. These amendments are also consistent with provisions in Revenue and Taxation Code Section 21018 that allow the FTB to extend the period for filing a claim.

The bill allows the BOE to waive, for reasonable cause, the requirement that a taxpayer file a claim for reimbursement within 90 days under the various special taxes and fees programs the BOE administers. It is suggested amending the bill to extend these same provisions to the Sales and Use Tax Law.

4. **Related bills.** Identical provisions are contained in BOE-sponsored [AB 2688](#) (Assembly Revenue and Taxation Committee).

COST ESTIMATE

The provisions of the bill involve tasks and costs which are absorbable.

REVENUE ESTIMATE

This measure would have a negligible impact on state and local revenues, which would be due to some additional taxpayer claims for reimbursement of bank charges and third-party check charge fees and for some claims being allowed beyond the 90-day filing date for reasonable cause.

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