STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	**02/26/09**	Bill No:	**AB 693**
Tax:	**Sales and Use Special Taxes**	Author:	**Silva**
Related Bills:		Position:	**Support as Sponsor**

BILL SUMMARY

This Board of Equalization (Board) sponsored bill would impose interest on a daily basis in cases where the Board, itself, meeting as a public body finds, taking into account all facts and circumstances, that it would be inequitable to impose an entire month's interest on a prepayment or payment made one day late, under specified circumstances.

ANALYSIS

CURRENT LAW

Under existing law, persons who pay their tax and fee (hereinafter tax) obligations after the date they are due are required to pay a penalty of 10 percent of the tax, plus monthly, simple interest on those unpaid taxes. In the case of a late prepayment, the law imposes a 6 percent penalty. The current rate of interest for late payments is 8 percent annually. Under current law, interest accrues on any unpaid tax, from the date the tax was due to the last day of the month in which it is paid. For example, if a taxpayer makes a late payment on the third of the month, interest would accrue to the end of that month.

Regardless of whether a taxpayer makes a tax payment two days after the return due date or at the end of the month following the due date, the taxpayer, under current law, is charged interest for the entire month. In the case of electronic funds transfers (EFT), a payment made after the 3:00 p.m. deadline is likewise subject to an entire month's interest charge.

Under existing law, the Board has authority to relieve a late payment penalty when the Board finds that the taxpayer's failure to make a timely payment is due to reasonable cause and circumstances beyond the person's control. However, interest on the late payment is generally not relievable (except in cases of a disaster or where the failure to pay the tax timely was due to an unreasonable error or delay by a Board employee or a Department of Motor Vehicles employee under specified circumstances). Consequently, aside from these exceptions, and regardless of the reason, whether a taxpayer is 10 minutes late, as in the case of an EFT taxpayer, or 28 days late, current law requires that an entire month's interest be assessed.

PROPOSED LAW

This bill would add 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 to the sales and use tax and special tax and fee laws in the Revenue and Taxation Code to provide that, if the Members of the Board, meeting as a public body, find, taking into account all facts and circumstances, that it is inequitable to compute interest on a monthly basis when a taxpayer is only one day late in making a payment, interest shall be computed on a daily basis, provided all of the following apply:

1) The payment of the tax or prepayment was made one 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.

The bill would become effective January 1, 2010.

BACKGROUND

During a 47-year period ending in 1997, the Board's administrative policy was, in essence, to allow a 1-day grace period in cases where a mailing of a return or payment was postmarked one day after the due date. For example, if a remittance was due by law on April 30, and postmarked May 1, the payment was nevertheless deemed timely. This policy recognized the complications in the U.S. Postal Service and gave the taxpayer the benefit of the doubt that the mailing was actually timely made, but the postmark did not reflect the actual date in which it was placed in the mail. However, the Board's legal staff reviewed this policy and opined that there was no legal basis on which the Board could legally provide this 1-day grace period. The Board therefore eliminated the 1-day grace period policy. As a consequence of the Board's change in policy, staff workload increased significantly. This change resulted in a large increase in late billings, followed by hundreds of taxpayers filing declarations of timely mailing requesting that the penalty and interest be cancelled, with over half of the declarations filed attributable to a mailing that was postmarked only one day after the due date. This change in policy has also had a negative impact with taxpayers who are usually otherwise in compliance with the law.

Many taxpayers are required to file returns on a monthly basis, or a quarterly basis, or on a quarterly basis with two prepayments within each quarter. Due to the frequency of the return filings, it seemed logical to authorize the Board to adopt a uniform policy of acceptance of returns based on considerations such as current U.S. Postal Service and technology available for filing. Therefore, in the 1999 Legislative Session, the Board sponsored AB 1638 (Stats. 1999, Ch. 929) to allow the Board to reinstate its prior practice of allowing taxpayers a uniform grace day with respect to their filings under all Board-administered taxes and fees. However, this uniform grace day is only allowed with respect to remittances, claims for credit or refund, documents, or returns that are delivered to the Board by United States mail or through a bona fide commercial delivery service, and does not apply to electronic payments of tax.

A similar bill was sponsored by the Board last year (AB 1901, Silva). Although the measure passed the Assembly on a 75 to 0 vote, it failed passage in the Senate Revenue and Taxation Committee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Board in order to provide some limited flexibility for the Members of the Board to address the inequity of applying an entire month's interest to a liability when the liability is paid only one day

late and the late payment is due to reasonable cause or circumstances beyond the taxpayer's control.

2. **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 remittance of tax due. Enactment of this bill is consistent with that principle, as the bill would continue to require the imposition of interest on the late payment, but only for the one day that the payment is late. Moreover, it would encourage those otherwise law-abiding taxpayers who, due to unique situations, inadvertently missed by one day the payment deadline to pay the tax promptly so that they could be considered for relief of the entire remaining month's interest charge. (Currently, if a taxpayer is late in making his or her payment, there's no real financial incentive to quickly remit the payment, since an entire month's interest is charged regardless if the payment arrives 1 day late or 28 days late.)

3. **Bill would not undermine the filing deadline.** The sanctions imposed in current law for making payments after the due date far outweigh the limited relief this bill would provide.

   Generally, a taxpayer who is only one day late in making a tax payment is not making a conscious decision to be late. Usually, such late payments are a result of an inadvertent error or circumstances beyond the taxpayer's control. However, when any taxpayer is late in making a payment, delinquency charges (penalty and interest) automatically apply. These delinquency charges are mandatory, i.e., they are imposed in every case and regardless of the facts behind the late payment (e.g., an accounting error, an incorrect judgment or a willful act). The taxpayer can request relief of the imposed penalty, but not every request is granted, and ongoing, repeated requests are rarely granted. This proposal would not change the imposition of these sanctions.

   The most severe delinquency charge for persons who make a payment one day after the due date is the late payment penalty – 10% for a late tax payment and 6% for a late prepayment. Taxpayers who remit their late payment within one month of the due date are, in addition to the penalty, required to pay the monthly interest charge of 2/3 of one percent. A taxpayer who makes a conscious decision to pay one day beyond the due date runs the risk of having to pay the late payment penalty as well as having to pay the entire monthly interest charge. These risks far outweigh the possible benefit of the bill's daily computation of interest. Thus, enactment of this bill would not undermine compliance with the filing deadlines imposed by law.

COST ESTIMATE

Some costs would be incurred due to an increase in the number of cases coming before the Board with a corresponding increase in staff workload to prepare the cases for hearing. These costs would be absorbable.

REVENUE ESTIMATE

The bill states that it is the intent of the Legislature that the Board strictly and narrowly apply its provisions on a case-by-case basis and only in special circumstances. We expect that the limited interest relief this bill would provide would result in annual interest loss of less than $10,000 annually.

Analysis prepared by:	Sheila T. Waters	445-6579	03/02/09
Contact:	Margaret S. Shedd	322-2376	

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