



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/19/10	Bill No:	AB 2375
Tax:	Sales and Use	Author:	Knight
Related Bills:	AB 2556 (Fuller) SB 1028 (Correa)		

BILL SUMMARY

This bill would authorize the Members of the Board, meeting as a public body, to relieve all or a portion of interest imposed by law when the Board finds that a person's failure to make a timely payment was due to extraordinary circumstances, as defined, and that that it would be inequitable to hold the person liable for the applicable interest, under specified circumstances.

ANALYSIS

CURRENT LAW

Under existing law, persons who are late in payment of their sales and use tax obligations are required to pay a penalty, plus monthly, simple interest on those unpaid taxes from the date the tax is due to the date upon which they are paid. The rate of interest for late payments is currently seven percent annually. Whether a payment is one day late or 29 days late, an entire month's interest is charged for late payments.

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 taxpayer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. However, interest on a 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).

PROPOSED LAW

This bill would add Section 6593.7 to the Sales and Use Tax Law to authorize the Members of the Board, meeting as a public body, to relieve all or any part of interest imposed on a late payment if the Members find, in their discretion, that a person's late payment was due to extraordinary circumstances and that it is inequitable to compute interest as the law requires, when all of the following apply:

- 1) The person was granted relief from all penalties that applied to the late payment.
- 2) The person has paid the tax on which the interest is imposed, or, in the case of an unpaid tax liability for which a petition for redetermination is pending, the person pays the tax on which the interest is imposed within 30 days from the date the final decision of the Board on that petition was issued.
- 3) The person files a request for an oral hearing before the Board.
- 4) The person files a statement with the Board under penalty of perjury setting forth the facts upon which the claim for relief is based and any other information the Board may require.

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 Board's formal position.

The bill would define “extraordinary circumstances” to mean a highly unusual set of facts which are not commonly associated with a person’s failure to make a timely payment.

The bill would allow the interest liability to be reestablished if the person fails to pay the tax in accordance with the provisions of the bill.

The bill would become effective January 1, 2011.

BACKGROUND

This bill was prompted by a sales and use tax case that was heard by the Board at its December 2009 public hearing. In this particular case, the taxpayer’s bookkeeper revised the taxpayer’s computerized accounting records and embezzled a substantial amount of sales tax reimbursement collected from the taxpayer’s customers. Although the bookkeeper was fired and prosecuted and is currently serving a prison sentence, under the law, the taxpayer remains liable for the tax and interest. And, even though the taxpayer had previously an excellent record of payment of sales and use taxes, and acted swiftly and appropriately upon discovery of the embezzlement, the fact that the taxpayer was a victim of such a crime is not a basis for relief. The law does not provide relief from tax or interest based on a loss of the funds after the sale, by embezzlement or otherwise.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Board Member Michelle Steel in order to give the Members of the Board some limited flexibility to provide relief of interest in those unusual cases that come before it, such as that described above.
2. **An “extraordinary circumstance” can mean a lot of things.** Staff has noted other extraordinary cases that have occurred in the past where charging interest on a late payment appeared severe and punishing. For example, there have been situations in which taxpayers had documented medical emergencies or family deaths that occurred the day the taxpayers’ returns were due, and even though the returns were filed only a day or two late, and the taxpayers had histories of timely payments, the monthly interest was imposed.
3. **Related legislation.** Two other bills have been introduced this session to provide relief of interest in specific situations. SB 1028 (Correa), sponsored by the Board, would enable the Members of the Board, meeting as a public body, to compute daily interest, rather than monthly interest, on a payment that is only one day late, under specified circumstances. AB 2556 (Fuller) would allow the Board to relieve all or part of the interest imposed on use tax that is remitted to the Board within 90 days of the Board notifying the taxpayer of the nonpayment of use tax, when that notification is made as a result of the Board obtaining information with respect to the liability from the United States Customs Service.

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. An estimate of these costs is pending.

REVENUE ESTIMATE

In the embezzlement case that came before the Board, discussed previously, the accumulated interest amounted to \$15,662. However, it is difficult to determine with any degree of certainty to what extent the Board would have provided relief, and to what extent relief of interest would be sought by taxpayers in general under the provisions of this bill. Therefore, the interest revenue loss related to this bill is indeterminable.

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