



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/21/10	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, not to exceed a specified amount, 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.

SUMMARY OF AMENDMENTS

The amendments to this bill since our last analysis specify that the aggregate relief to all persons under these provisions shall not exceed \$50,000 during any 12-month period. The amendments also revise the definition of "extraordinary 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). A "disaster" is defined in the Board's Regulation 1703 to mean fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes.

Under existing law, Government Code Section 8558 specifies three conditions or degrees of emergency: state of war, state of emergency, and local emergency:

"State of war emergency" means the condition which exists immediately, with or without a proclamation by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

"State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than

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conditions resulting from a labor controversy or conditions causing a "state of war emergency," which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

"Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

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, not to exceed \$50,000 during any 12-month period, 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.

The bill would define "extraordinary circumstances" to mean any of the following:

- a) The occurrence of a death or serious illness of the person or the person's next of kin that caused the person's failure to make a timely payment.
- b) The occurrence of an emergency, as defined in Section 8558 of the Government Code, that caused the person's failure to make a timely remittance.
- c) Criminal misconduct by a person, other than the person that failed to make a timely payment, that caused the 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.

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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. **The April 21, 2010 amendments** specify that the aggregate relief to all persons under these provisions shall not exceed \$50,000 during any 12-month period. The amendments also revise the definition of "extraordinary circumstances." These amendments were suggested by the Assembly Revenue and Taxation Committee.
3. **The definition of "extraordinary circumstances" would eliminate uncertainties.** The definition of "extraordinary circumstances" removes any subjective standards for relief, and instead, has three specific circumstances that would warrant the granting of interest relief. While these specific circumstances would certainly simplify administration of these provisions, listing specific occurrences as the bill provides could have the potential of disallowing relief for other equally compelling circumstances that led to a late payment.
4. **There is some overlap between the availability of relief under this bill and existing law.** Revenue and Taxation Code Section 6593 already allows the Board to relieve interest when the Board finds that a person's failure to make a timely payment was due to a disaster. This bill includes disaster-related circumstances that may be considered for relief by reference to Government Code Section 8558. Since the bill contains a \$50,000 limit during any 12-month period, it appears relief granted under circumstances described under Section 6593 would not be counted towards that \$50,000 limit. However, this should be made specific. The following amendment is recommended:

On page 3, line 14, add "to the extent that emergency is not a disaster as provided for in Section 6593" after "remittance"
5. **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, under specified circumstances, 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. These costs would be absorbable.

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, however, under the terms of the bill, the loss would not exceed \$50,000 during any 12-month period.

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