



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/05/10	Bill No:	AB 2556
Tax:	Sales and Use	Author:	Fuller
Related Bills:	AB 2375 (Knight) SB 1028 (Correa)		

BILL SUMMARY

This bill would authorize the Board to relieve all or part of the interest imposed on a person where use tax is remitted to the Board within 90 days of the Board notifying the taxpayer of a 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.

ANALYSIS

CURRENT LAW

Since 1935, existing law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code has imposed a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax. Generally, a use tax liability occurs when a California consumer or business purchases tangible items for their own use from an out-of-state retailer or foreign retailer that is not registered with the Board to collect the California use tax. Generally, when a person is late in payment of his or her use tax obligations, the law imposes a 10 percent penalty, plus simple monthly interest, currently at the rate of seven percent per year.

Voluntary compliance with the use tax law by many businesses and individuals is low. In effort to increase the public's awareness of the use tax and to encourage voluntary compliance in reporting the use tax, for the past seven years, the state income tax returns (both personal income tax and corporations tax) have contained a separate line and accompanying instructions in the booklet for use tax reporting. Few purchasers report their use tax this way - last year, less than .03% of state income tax returns filed contained use tax.

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, current law requires that interest accrue from the due date of the tax until the end of the month in which the tax was paid.

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.

PROPOSED LAW

This bill would amend Section 6593.5 of the Sales and Use Tax Law to 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.

The bill would become effective January 1, 2011.

BACKGROUND

The United States Customs Service (Customs), operating under the Department of Homeland Security, is the resource for duty declarations completed by travelers returning to the United States from foreign destinations. Each individual arriving into the United States must complete the declaration form for all goods acquired abroad. The Board has the authority under Revenue and Taxation Code Section 7054 to audit the customs declarations that passengers fill out for goods entering the United States.

From July 1, 1990 through June 30, 2007, Customs gave the Board access to Customs declarations filed at various ports of entry throughout California for goods purchased abroad and *personally hand-carried* by passengers into California ports of entry. After June 30, 2007, however, Customs modified the access to these duty declarations and only allowed access to the Board in those instances where the Board can first identify the name of the traveler and the date traveled. This somewhat complicated the Board's efforts in identifying unpaid use tax with respect to items coming into California and personally hand-carried. However, for goods *shipped* into California, the Board has been able to acquire data (since July 2005) from Customs regarding declarations by travelers who ship goods from the foreign country with a California destination. The Board matches the Customs electronic records of California imports against the Board's registration records, and determines whether the California businesses and individuals identified have complied with the Sales and Use Tax Law. From fiscal year 2006 through 2008, the program generated over \$19 million, and for 2009-10, the program is expected to generate over \$14 million.

In order to give California travelers the opportunity to report their use tax obligations on their state income tax returns, and to match that data to the Customs declarations, the Board examines Customs data for the years prior to the current calendar year. For example, since the use tax on purchases made during calendar year 2009 should be reported either to the Board or on the state income tax return due April 15, 2010, the Board is not examining declarations for 2009. Instead, the Board is reviewing 2008 declarations and earlier years for potential use tax. Because payment of use tax due on those purchases is already late, when the Board provides notice to the California purchaser of the use tax liability, penalty and interest has already accrued.

The Board sets the annual due date of the tax based on the date of purchase. The due date is either January 31 of the year following the date of purchase if the purchase was made during the first six months of the year, or July 31 for purchases made during the last six months of the previous year. For example, if the purchase subject to use tax was made in February 2008, the Board would establish a January 31, 2009 due date. If a purchase was made in August 2008, the due date for the use tax would be July 31, 2009.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author in order to provide some relief for California travelers making purchases abroad who receive notice of a use tax liability, with penalty and interest added to the notice. These notices come as a surprise to many, and the author believes that the imposition of interest on a liability for which the taxpayer is unaware, is unfair. This bill would enable a taxpayer to request relief of the interest in those cases in which the taxpayer paid the use tax liability within 90 days of the Board's notice.
2. **Use tax liability comes as a surprise to many.** In an effort to close California's use tax gap - estimated to be over \$1 billion annually – the Board has instituted various programs that encourage compliance with the use tax law. For example, during 2009, ABx4 18 was enacted to require every business not already registered with the Board that has at least \$100,000 in gross receipts from business operations to register with the Board and file an annual use tax return. The Board is currently in the process of registering over 180,000 businesses, and is requiring those businesses to report their purchases subject to use tax for years 2007, 2008 and 2009. Penalty and interest charges have already accrued on the 2007 and 2008 purchases, and the law has no provision currently for relief of the interest. The liability for use tax has surprised many of these California purchasers. Should all California purchasers who are billed for use tax also be included within these provisions?
3. **Related legislation.** There are currently two other bills introduced this session that seek to relieve interest in specific situations. AB 2375 (Knight) would allow the Board itself, meeting as a public body, to relieve interest on a late payment of tax if the Board finds that the late payment was due to extraordinary circumstances, as defined. SB 1028 (Correa) would allow the Board to compute interest on a late payment for one day (rather than the entire month) when the payment is only one day late, and the taxpayer was relieved of the penalty due to reasonable cause and circumstances beyond the person's control.

COST ESTIMATE

An estimate of the increase in administrative costs is pending. These costs would be attributable to the staff work associated with the increase in the number of taxpayers seeking relief of interest under this bill. An estimate of these costs is pending.

REVENUE ESTIMATE

An estimate of the interest loss attributable to these provisions is pending.

Analysis prepared by:	Sheila T. Waters	445-6579	04/06/10
Contact:	Margaret S. Shedd	322-2376	
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