

Amend Government Code Section 15620.5 to extend the authorization for the BOE to adopt a uniform policy to ensure voluntary compliance with the due dates prescribed by law for a submission of a remittance, claim for credit or refund, document, return, or other information to the BOE, to include electronic transmissions.

Source: Honorable George Runner

Existing Law. Under existing law, persons who pay their tax, fee or surcharge (hereinafter "tax") obligations after the statutory due dates are required to pay generally a penalty of 10 percent of the tax, plus monthly, simple interest on those unpaid taxes at a rate of six percent (seven percent effective January 1, 2012). 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.

Under existing law, the BOE, as necessary to ensure voluntary compliance with statutory due dates, is authorized to establish a uniform policy for the acceptance of payments and various documents (claims for credit or refund, returns, or other information) where the cancellation mark stamped on the envelope containing the document or information shows a date after the due date specified in law. Existing law states that this uniform policy shall not be construed as an extension of the prescribed time limits for filing or remitting taxes and fees to the BOE. The BOE has adopted a uniform policy that allows for the acceptance of payments or documents mailed or delivered to the BOE as timely when the envelope is postmarked one day after the due date. These provisions do not apply, however, to electronic payments or electronic transmissions of documents or returns.

Under the law, sales and use tax taxpayers that have an average monthly tax liability of \$10,000 or more per month, and special taxes accounts with an average monthly tax or fee payment of \$20,000 or more, are required to remit amounts due by an electronic funds transfer (EFT). For EFTs, a payment made after the 3:00 p.m. deadline is subject to an entire month's interest charge. However, SB 1028, Chapter 316, Statutes of 2010, effective January 1, 2011, allows under specified circumstances for the imposition of only a day's interest (rather than a month's) on a late electronic payment of sales and use tax or a special tax or fee in cases where the Members of the BOE, meeting as a public body, find that it would be inequitable to impose an entire month's interest on a payment made one day late. The specified circumstances include:

- (1) The payment of tax or the prepayment must have been made one business day after the date the tax or prepayment was due.
- (2) The person must have been granted relief from all penalties that applied to that payment of tax or prepayment.
- (3) The person must have filed a request for an oral hearing before the Members of the BOE.

Although this legislation became effective January 1, 2011, no requests for relief have been filed under these provisions.

Aside from the statutory requirement to remit by EFT for taxpayers meeting the tax liability thresholds, the overwhelming majority of taxpayers (over 80 percent) that have a tax or fee reporting obligation with the BOE file their returns electronically.

This Proposal. This proposal would, with respect to an electronic transmission, extend the authorization for the BOE to allow a uniform policy for the acceptance of payments, returns and other information, to ensure compliance with the statutory due dates.

This proposal would apply to those taxpayers that are required by law to remit their tax obligations through an EFT as well as other taxpayers who voluntarily file or pay through electronic means. For EFT taxpayers, the timeliness of the EFT payments is determined by the date the State's bank account is credited with the funds (the law requires that the funds settle to the state's account on the next banking day following the due date of the tax). As stated previously, if a taxpayer fails to initiate the payment by a 3:00 p.m. deadline, the payment is considered late, resulting in an entire month's interest charge. Instead of requiring taxpayers whose funds transfers or electronic transmissions are effectively one day late to seek relief of the entire month's interest charge through the BOE's hearing process, this proposal would essentially enable the BOE to establish a uniform policy for acceptance of such electronic transmissions as timely, if the 3:00 pm is inadvertently missed or the electronic transmission is one day late.

Background. During a 47-year period ending in 1997, the BOE'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 BOE's legal staff reviewed this policy and opined that there was no legal basis on which the BOE could legally provide this 1-day grace period. The BOE therefore eliminated the 1-day grace period policy. As a consequence of the BOE'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 BOE 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 BOE sponsored AB 1638 (Stats. 1999, Ch. 929) to allow the BOE to reinstate its prior practice of allowing taxpayers a uniform grace day with respect to their filings under all BOE-administered taxes and fees.

With the increasing number of taxpayers either required to transmit their tax obligations to the BOE through an EFT, or who are encouraged to file returns and remit payments electronically, it is in California's best interest to extend the courtesy of a one-day grace period that is currently granted to paper filers. Enabling the BOE to establish a uniform policy for acceptance of electronic payments and returns in a manner similar to mailed documents would streamline efficiencies, be significantly less cumbersome for those taxpayers seeking relief under SB 1028, and promote goodwill between the BOE and its taxpayers.

Section 15620.5 of the Government Code is amended to read:

15620.5. The board, whenever it deems it necessary to ensure voluntary compliance with the due dates prescribed by law for submission of any remittance, claim for credit or refund, document, return, or other information delivered to the board through electronic means, or through the United States mail, or through a bona fide commercial delivery service, may establish a uniform policy for the acceptance of the remittance, claim for credit or refund, document, return, or other information. This uniform policy shall apply in cases where the electronic transmission of the remittance, claim for credit or refund, document, return, or other information, or the cancellation mark stamped upon the envelope containing the remittance, claim for credit or refund, document, return, or other information, shows a date after the date specified in law. This policy shall not be construed as an extension of the prescribed time limits for remitting payments, filing claims for refund or credit, submitting documents, returns, or other information.