

**Add Revenue and Taxation Code Section 6593.7 to the Sales and Use Tax Law to authorize the Members of the BOE, meeting as a public body, to relieve all or any part of interest imposed, not to exceed \$50,000 during a 12-month period, on a late payment if the Members find, in their discretion, that a person's late payment was due to specified extraordinary circumstances and that it is inequitable to compute interest as the law requires.**

**Source: Honorable Michelle Steel**

**Current Law.** Under existing law, persons who are late paying their sales and use tax obligations are required to pay a penalty, plus simple, monthly interest on those unpaid taxes from the date the tax was due to the end of the month in which they are paid. Interest on late payments is based on the rate specified in the Internal Revenue Code plus three percentage points, and is currently imposed at a rate of six percent annually (effective January 1, 2012, the rate increases to seven percent annually).

Under existing law, the BOE has authority to relieve a late payment *penalty* when the BOE 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 special circumstances<sup>1</sup>:

- 1) In the case of a disaster (defined in the BOE's Regulation 1703 as fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes).
- 2) Where the failure to pay the tax timely was due to an unreasonable error or delay by a BOE employee.

**This Proposal.** This proposal would enable the Members of the BOE, meeting as a public body, to relieve all or a portion of the interest imposed on a person's late payment, if the BOE finds that the person's late payment was due to extraordinary circumstances and that it is inequitable to hold the person liable for all or part of the accrued interest as existing law currently requires. The proposal would limit the dollar amount for interest relief granted pursuant to this proposal to an aggregate of \$50,000 in any 12-month period.

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

- a) The occurrence of a death or medical incapacity of the person or the person's next of kin that caused the person's failure to make a timely payment.

---

<sup>1</sup> SB 1028, Ch. 316, Stats. 2010, effective January 1, 2011 allows, under specified circumstances, the imposition of interest on a daily basis on a late payment of sales and use tax or a special tax or fee in cases where the BOE, itself, meeting as a public body finds that it would be inequitable to impose an entire month's interest on a payment made *one day* late.

- 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. This would include a state of war emergency with or without the Governor's proclamation, a proclaimed "state of emergency" or proclaimed "local emergency" which includes the existence of disaster or extreme peril to the safety of persons and property within this state or a city or county, as described.
- 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.

This proposal was prompted by a sales and use tax case that was heard by the BOE 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 has been fired and prosecuted and is currently serving a prison sentence, under the law, the taxpayer remains liable for the tax and interest. 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.

This proposal would therefore add a new provision in law to provide the BOE with some limited flexibility in providing relief of interest in those extraordinary cases that come before it.

This proposal is the same as the April 29, 2010 version of AB 2375 (Knight), sponsored by BOE Member Steel, which was considered in the 2010 Legislative Session. That bill ultimately failed passage in the Senate Revenue and Taxation Committee.

This proposal is also the same as BOE-sponsored proposal 3-2 adopted unanimously by the Members of the BOE at its February 23, 2011 Legislative Committee, and incorporated into AB 1352 (Logue). The BOE language was amended out of the bill in the Senate Appropriations Committee due to fiscal concerns.

*Section 6593.7 is added to the Revenue and Taxation Code, to read:*

6593.7. (a) If the board finds in its discretion that a person's failure to make a timely payment was due to extraordinary circumstances and that it is inequitable to compute interest in accordance with this part, the board may relieve all or any part of the interest imposed on that payment, not to exceed the amount specified in subdivision (b), if all of the following occur:  
(1) The person was granted relief from all penalties that applied to that payment.

(2) The person has paid the payment on which the interest was imposed, or in the case of interest attributable to an unpaid liability for which the person has filed a petition for redetermination, the person pays the amount of the payment due on which the interest was imposed within 30 days after service upon the person of the final order or decision of the board on that petition for redetermination.

(3) The person files a request for an oral hearing before the board.

(4) The person files with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief and any other information which the board may require.

(b)(1) The aggregate relief granted to all persons pursuant to subdivision (a) shall not exceed fifty thousand dollars (\$50,000) in a 12-month period. The board shall not exceed this fifty thousand dollar (\$50,000) limitation without further statutory authorization.

(2) The limitation specified in paragraph (1) shall not apply to the relief provided by the board pursuant to Section 6593.

(c) For purposes of this section:

(1) "Board" means the members of the State Board of Equalization meeting as a public body.

(2) "Extraordinary circumstances" means any of the following:

(A) The occurrence of a death or medical incapacity 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.

(3) Payment includes any of the following:

(A) A payment of tax.

(B) A prepayment of tax on which interest is imposed under this part.

(C) A payment of an amount of tax required to be collected and paid to the state.

(d) Any relief granted under this section may be rescinded, and all interest liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, if the person fails to comply with paragraph (2) of subdivision (a).