

Add Revenue and Taxation Code Section 6593.7 to the Sales and Use Tax Law to authorize the Members of the Board of Equalization (BOE), 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 requires, under specified circumstances.

Source: Honorable Michelle Steel

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 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 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 circumstances¹:

- 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 define "extraordinary circumstances" to mean "a highly unusual set of facts that are not commonly associated with a person's failure to make a timely return or payment." This proposal would also require that, as a condition for relief of interest, the person shall have paid the tax to which the interest is imposed, or, in the case of interest imposed on an amount of tax for which a petition for redetermination is pending, this proposal would require that the person pay the

¹ 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.

tax found to be due within 30 days from the date of the notice of the BOE's final order or decision.

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.

Staff has noted other rare, but 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 remained due.

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 unusual cases that come before it, such as those previously described.

This proposal is similar to the introduced version of [AB 2375](#) (Knight) which was considered in the 2010 Legislative Session. That bill ultimately failed passage in the Senate Revenue and Taxation Committee.

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 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) 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 a highly unusual set of facts, which are not commonly associated with a 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.

(c) 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).