

**Add Revenue and Taxation Code Section 7093.8 to the Sales and Use Tax Law to provide for a penalty and interest reprieve program for high risk collection accounts.**

**Source: Sales and Use Tax Department**

**Existing Law.** Under existing law, when a sales or use tax liability is not paid when due, interest is imposed on the unpaid tax and one or more penalties may be added to the liability. Generally, a penalty of ten percent (10%) is imposed for failure to pay the tax timely, but the law contains other provisions for additional penalties for other noncompliance reasons. Under the law, interest continues to accrue on any unpaid portion of the tax until the tax is paid in full. Interest is computed on a simple basis, and only accrues on the unpaid tax liability. Interest does not accrue on any unpaid interest and/or penalty amounts.

Existing law authorizes the BOE to use various collection actions to collect delinquent liabilities, including, but not limited to: bank levies, liens, wage garnishments, till-taps or keeper warrants, permit revocations, alcoholic beverage license suspensions, seizures of assets, offsets, and court actions. The BOE's use of these tools is consistent with its established collection policies and procedures as provided in the Compliance Policy and Procedures Manual (CPPM), Chapter 7, [Collections](#).

Revenue and Taxation Code Section 6832 also provides the BOE discretionary authority to allow installment payment arrangements (payments over a period of time) when immediate payment in full is not possible. In general, in the event of a financial hardship, collection may be deferred until the financial situation of the taxpayer improves.

The State's procedures to collect delinquent accounts are detailed in the State Administrative Manual (SAM) Section 8776 (et seq).

Like other state agencies, the BOE follows the Government Code (GC) provisions related to discharge from accountability (discharge or write-off), which provides that when the agency is unable to collect the liability, or collection of the liability is not cost effective, the agency is to make an application for discharge to relieve the agency of the responsibility for collection, thereby removing the item from the accounts receivable. The discharge provisions are as follows:

- Chapter 3 (commencing with 13940) of Part 4 of Division 3 of Title 2 of the GC allows an agency to make an application to the State Victim's Compensation and Government Claims Board (SVC GC) for discharge from accountability to relieve the agency of the responsibility for collection, thereby removing the item from the accounts receivable.
- GC Section 13943.2 provides the SVC GC with authority to approve state agency requests to discharge accounts receivable up to \$500, if the state agency's efforts have not resulted in payment and it would not be cost beneficial to pursue additional collection efforts.

When a debt is written-off it is still due and owing and any liens recorded are still valid. Although routine billing and collection actions are discontinued, the BOE may resume collections if assets are subsequently located. There is no statute of limitations on the BOE's collection of a tax debt (except liens last for ten years, and can only be renewed

twice for an additional 20 years), and interest and applicable penalties continue to accrue. The debt also remains on the taxpayer's credit record, impeding his or her ability to obtain credit.

Under Revenue and Taxation Code Section 7093.6, the BOE may accept a proposal to pay less than the full tax liability due under specified circumstances. This process, commonly called an "offer in compromise," is generally for taxpayers that do not have, and will not have in the foreseeable future, the income, assets, or means to pay the liability in full. In general, an offer in compromise is accepted if it represents the most that can be paid or collected within a reasonable period of time. If the parties agree to the amount offered, the liability is compromised and liens are released.

**Background.** As part of the 2002-03 California budget, the Legislature passed Assembly Bill 2065 (Stats. 2002, Ch. 488) which authorized the BOE, under certain circumstances, to cancel penalties and interest if the tax liability was paid in full. This eight month program (October 2002 through June 2003) was limited to unpaid tax liabilities that BOE determined to be a high-risk collection account. In general, these accounts were written-off, or about to be written-off. BOE identified accounts and sent letters and applications advising taxpayers that they were either eligible for the program or that they might be eligible and encouraged them to apply for relief. Other taxpayers were made aware of the program by the BOE website or from collectors working cases.

Submitted applications were reviewed and if the application was approved, the tax liability had to be paid in full by June 30, 2004. This was not an amnesty program as the BOE had to determine that it was in the best interest of the State to include the liability in the program.

Program results:

Notices sent:	24,000
Applications received:	1,641
Applications approved:	964
Total received as a result of the program:	\$7.3 million
Total penalty & interest adjusted off:	\$10.8 million
Personnel:	6.5 PY s

The notices were sent to accounts identified by the BOE to be qualifying. However, many taxpayers did not respond to the notice simply because they did not have the funds available to pay the tax liability in full. Taxpayers that did submit applications but were unable to pay the liability in full were referred to other programs, such as the offer in compromise program.

In 2004 a proposal to reinstitute the penalty and interest reprieve as an ongoing program was suggested by BOE staff, but the proposal was not adopted by the BOE Members. However, that year the Legislature approved a tax amnesty program that allowed taxpayers to apply and receive relief of penalty for sales and use tax liabilities prior to January 1, 2003.

**This Proposal.** The BOE's number of taxpayers with overdue accounts receivables, as well as the overall balance, continues to increase - further complicating the State's budget woes. Within the last three-year period, the BOE's accounts receivable balances for unpaid final liabilities (liabilities that are due and not under appeal) have nearly doubled. As of the end of 2010, these outstanding liabilities totaled over \$1.5

billion. The reinstatement of the penalty and interest reprieve program may provide an incentive for certain taxpayers to resolve their liabilities and also allow the BOE to resolve unproductive account receivables and in turn be more efficient and effective in managing the current liabilities.

This proposal would add Section 7093.8 to the Sales and Use Tax Law to authorize an eligible taxpayer's liability with respect to any unpaid taxes, to be satisfied by the payment of an amount equal to the tax liability, excluding penalties and interest. The language specifies that this authority would be limited to an unpaid tax liability that has been determined by the BOE to be a "high-risk" collection account.

*Section 7093.8 of the Revenue and Taxation Code is added to read as follows:*

7093.8. (a) (1) An eligible taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount. The authority granted by this section is limited to an unpaid tax liability that has been determined by the State Board of Equalization to be a high-risk collection account.

(2) The liability of an eligible taxpayer for any unpaid penalties and interest included in the computation of the unpaid tax liability shall be extinguished only upon receipt by the State Board of Equalization of all payments equal to the eligible amount on or before the final due date for payment established by the State Board of Equalization.

(b) For purposes of this section, the following definitions apply:

(1) "Eligible taxpayer" means any person that receives notification from the State Board of Equalization that the taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount.

(2) "Eligible amount" means an amount equal to any unpaid tax liability, excluding penalties and interest, owed by the eligible taxpayer that is paid in one or more installments, as determined by the State Board of Equalization, on or before the final due date established by the State Board of Equalization.

(3) "High-risk collection account" means any unpaid tax liability of a taxpayer where satisfaction of that liability under this section would be in the best interest of the state and shall include any unpaid tax liability for which the State Board of Equalization has made either of the following determinations:

(A) Under the State Board of Equalization's collection modeling policies, practices, and procedures, efforts to collect the unpaid tax liability would not be economical.

(B) The unpaid tax liability would not be paid in full within a reasonable period of time.

(4) "Unpaid tax liability" means any final liability under Part 1 (commencing with Section 6001), including tax, penalties, and interest, that are owed by a person and, as of January 1, 2013, are unpaid.

(5) "Final due date" means the first business day following one hundred twenty (120) days after notification of an eligible taxpayer by the State Board of Equalization that the liability may be satisfied by payment of an eligible amount.

(c) No refund or credit shall be granted with respect to any penalty or interest paid or collected with respect to an unpaid tax liability prior to January 1, 2013.

(d) The determinations made by the State Board of Equalization pursuant to this section shall be final and conclusive and shall not be subject to review by any other officer, employee, or agent of the state, or by any court.

(e) Nothing in Section 7056, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used in connection with any determinations made by the State Board of Equalization for purposes of this section, or the data used or to be used for determining those standards if the State Board of Equalization determines that the disclosure will seriously impair assessment, collection, or enforcement under this part.

(f) Nothing in this section shall authorize the State Board of Equalization to compromise any final tax liability.

(g) This section shall be operative with respect to unpaid tax liabilities of high-risk collection accounts that are the subject of notifications made to eligible taxpayers on or after January 1, 2013.

(h) Whenever a "high-risk collection account" is forgiven of any penalties and interest pursuant to this section, the public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of related penalties and interest relieved.

(3) A summary of the reason why the relief is in the best interest of the state.