



## Legislative Bill Analysis

[Senate Bill 440](#) (Dodd)

Date: August 15, 2022 (Amended)

Sponsor: State Board of Equalization (BOE)

Program: Alcoholic Beverage Tax

Revenue and Taxation Code sections 32253, 32255 and 32256

Effective: January 1, 2023

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**Summary:** Adds section 32253.5 and amends sections 32255 and 32256 of the Revenue and Taxation Code (RTC) to:

- Authorize the BOE to provide deadline extensions for up to three months for reports, returns or payment of tax under the Alcoholic Beverage Tax (ABT) program for any person in an area identified in a state of emergency proclamation for up to 12 months following the issuance of the state of emergency or during the duration of the state of emergency, whichever is less. If provided a deadline extension, any person in an area identified in a state of emergency would not be required to file a request for the extension.
- Authorize the BOE to provide penalty relief for any person in an area identified in a state of emergency for the period that the emergency is effective regardless of whether the individual has filed a statement under penalty of perjury for up to 12 months following the issuance of the state of emergency or during the duration of the state of emergency, whichever is less.
- Authorize the BOE to provide interest relief for any person in an area identified in a state of emergency for the period that the emergency is effective regardless of whether the individual has filed a statement under penalty of perjury for up to 12 months following the issuance of the state of emergency or during the duration of the state of emergency, whichever is less.

**Summary of Amendments:** The **August 15, 2022**, specify the BOE may grant deadline extensions, penalty relief and interest relief only during the first 12 months following the issuance of the state of emergency or during the duration of the state of emergency, whichever is less.

**Fiscal Impact Summary:** Indeterminable, but possible minor interest and penalty-related revenue loss from deadline extensions if interest abatement is granted.

**Existing Law:** RTC section 32253 authorizes the BOE to extend deadlines for payment of tax or the filing of reports by up to one month for good cause or in the case of disaster, up to three months. The code section additionally defines disaster as “fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.”<sup>1</sup>

Any taxpayer who receives a deadline extension pursuant to RTC section 32253 must pay the tax within the period for which the extension is granted and additionally pay interest at the modified adjusted rate per month established pursuant to RTC section 6591.5, from the date the tax would have been due without the extension to the date of payment.<sup>2</sup>

If the BOE finds that a person’s failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, a taxpayer may

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<sup>1</sup> RTC section [32253\(b\)\(2\)](#).

<sup>2</sup> RTC section [32253 \(c\)](#).

*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 BOE’s formal position.*

be relieved of interest.<sup>3</sup> Additionally, the BOE may provide penalty relief if the person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control.<sup>4</sup> Taxpayers seeking interest and penalty relief must file a statement with the BOE under penalty of perjury stating the facts supporting their claim for relief.

**Proposed Law: Provides Up To Three-Month Deadline Extension.** The **June 8, 2022**, amendments authorize the BOE to provide up to a three-month deadline extension for reports, returns, and payment of tax under the ABT program during a state of emergency proclamation. Persons in an area identified in a state of emergency would not need to file a request for an extension. The **August 15, 2022**, amendments specify the BOE may grant deadline extensions only during the first 12 months following the issuance of the state of emergency or during the duration of the state of emergency, whichever is less.

**Penalty and Interest Relief.** The **June 8, 2022**, amendments provide that penalty and interest-related relief may be given to persons affected by a state of emergency proclamation regardless of whether the person has filed a statement under penalty of perjury for requesting the penalty or interest relief. The **August 15, 2022**, amendments specify the BOE may grant penalty relief and interest relief only during the first 12 months following the issuance of the state of emergency or during the duration of the state of emergency, whichever is less.

**In General:** Article 20, section 22 of the California Constitution charges the BOE to administer the ABT and is constitutionally responsible for the program.

Through an Interagency Agreement (IAA), the California Department of Tax and Fee Administration (CDTFA) collects the ABT and administers the program in cooperation with the BOE. In accordance with the IAA, the CDTFA would review taxpayer requests for deadline extensions and provide deadline extensions for those requests that meet the statutory requirements. The BOE/CDTFA has authority to provide deadline extensions of up to one month for good cause for a taxpayer to submit any return or pay an underlying tax due, and up to three months if the request meets the qualifications of disaster under RTC section 32253.

Disasters and emergencies vary from year to year and can differ dramatically regarding type, geographic size, infrastructure, impact costs, and duration. As discussed above, the BOE considers a disaster for possible interest relief purposes to include fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes. A disaster includes, but does not require, a Governor proclaimed state of emergency.

Government Code (GC) section [8625](#) authorizes the Governor to proclaim a state of emergency under specified circumstances.

**Background:** In 2016, the BOE sponsored [AB 1559](#) (Dodd) that authorized the BOE to extend for up to three months the time for a tax or fee payer to file a tax return or report, or to pay the tax, in the case of a disaster across several tax and fee programs the BOE administered at the time and additionally added the definition of disaster in RTC section 32253 in effect today to conform with BOE Regulation 1730 in relation to the sales and use tax law.<sup>5</sup>

Taxpayers who receive a deadline extension pursuant to RTC section 32253 and pay the full tax within the period for which the extension is granted must also pay interest at a modified adjusted rate per month from the date the tax would have been due without the extension to the date of the payment. However,

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<sup>3</sup> RTC section [32256](#).

<sup>4</sup> RTC section [32255](#).

<sup>5</sup> AB 1559, ch.257, Stats. 2016.

RTC section 32256 provides a taxpayer relief of interest if the CDTFA finds that a taxpayer's failure to make a timely return or payment was due to a disaster and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. A taxpayer seeking interest relief must file a statement under penalty of perjury stating the facts supporting their claim to relief.<sup>6</sup>

Taxpayers that fail to pay any tax within the time required shall pay a penalty of 10 percent of the amount of the tax,<sup>7</sup> together with the interest accrued pursuant to section 32253. Additionally, taxpayers may be assessed penalties if electronic fund transfers are not received in time,<sup>8</sup> returns are filed late,<sup>9</sup> and if all amounts determined by the BOE to be due and payable are not paid.<sup>10</sup> The BOE may provide penalty relief to taxpayers if the BOE finds that a person's failure to make a timely return or payment was due to reasonable cause and circumstances beyond the person's control. Taxpayers requesting penalty relief must file a statement under penalty of perjury stating the facts supporting their claim to relief.<sup>11</sup>

On March 4, 2020, Governor Gavin Newsom signed a Proclamation of a State of Emergency<sup>12</sup> to contain the spread of COVID-19. During this time and the resulting economic shutdown, taxpayers were still liable to file reports and remit tax liabilities by specified deadlines. Under existing law, the BOE could extend deadlines for good cause by one month and up to three months in the case of a disaster.<sup>13</sup>

Governor-issued Executive Orders (EOs) stated that persons affected by the COVID-19 pandemic did not need to file requests for extensions with the BOE or CDTFA nor file a statement under penalty of perjury for penalty or interest related relief.<sup>14</sup>

### Commentary:

1. **Summary of Amendments.** The **August 15, 2022**, amendments specify the BOE may grant deadline extensions, penalty relief and interest relief only during the first 12 months following the issuance of the state of emergency or during the duration of the state of emergency, whichever is less.
2. **Disaster Victims Generally Require More Time.** This bill grants additional time to those who have less presence of mind, resources, and necessary documentation under the circumstances to timely file their return and pay the tax.
3. **Tax and Interest Still Due.** This bill does not automatically relieve a taxpayer of the underlying tax liabilities, any accrued interest, or penalties. However, existing law already provides a taxpayer relief of interest if the BOE finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. The bill simply allows an extension of time to remit due taxes and file reports and returns. The **June 8, 2022**, amendments clarify that a person seeking such extensions and relief of interest and penalties does not need to file a request for extension or a statement under penalty of perjury.
4. **Eases Administrative Burden.** The **June 8, 2022**, amendments reduce taxpayer and agency

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<sup>6</sup> RTC section [32256](#).

<sup>7</sup> RTC section 32252.

<sup>8</sup> RTC section 32260.

<sup>9</sup> RTC section 32291.

<sup>10</sup> RTC section 32305.

<sup>11</sup> RTC section 32255.

<sup>12</sup> [Proclamation of State of Emergency](#), 3/4/20.

<sup>13</sup> RTC section [32253](#).

<sup>14</sup> Executive Order [N-25-20](#), 3/12/20; Executive Order [N-40-20](#), 3/30/20; Executive Order [N-84-20](#), 12/14/20.

administrative burden by waiving the taxpayer requirement to file for deadline extensions for those affected in state of emergency areas and by additionally waiving the requirement for taxpayers in the time and location of a state of emergency to file statements under penalty of perjury for penalty and interest-related relief.

**Costs:** The administrative costs to the BOE and CDTFA are minor and absorbable as there are currently procedures in place to handle the deadline extensions.

**Revenue Impact:** The revenue impact is unknown, but could result in minor revenue loss from interest and penalty-related relief that may be provided to taxpayers who receive a deadline extension under the bill.