



SOURCE: Board Action

SUMMARY

Amend section 32253(b)(2) of the Revenue and Taxation Code (RTC) to expand the definition of disaster to include "infectious disease" which would authorize the Board of Equalization (BOE) to provide a three-month deadline extension for the alcoholic beverage tax programs for situations similar to the COVID-19 pandemic.

EXISTING LAW

RTC section 32253 authorizes the Board 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."¹

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.²

Taxpayers who receive a deadline extension must pay accrued interest on the tax liability. The BOE may provide interest relief if the BOE finds that a taxpayer's failure to make a timely return or payment was due to a disaster. A taxpayer seeking interest relief must file a claim with the California Department of Tax and Fee Administration (CDTFA).³

CODE SECTIONS TO AMEND

RTC section 32253.

IDENTIFICATION OF PROBLEM

On March 4, 2020, Governor Gavin Newsom signed a Proclamation of a State of Emergency⁴ to contain the spread of COVID-19. During this time and the resulting economic shutdown, taxpayers were still liable to remit tax liabilities by specified deadlines. The Board may extend deadlines for good cause by one month and up to three months in the case of a disaster.⁵ However, the Board was not able to utilize these sections to extend deadlines and relieve interest for COVID-19 because the definition of disaster was interpreted as not including disasters such as the current COVID-19 pandemic.

¹ RTC section [32253\(b\)\(2\)](#).

² RTC section [32253\(c\)](#).

³ RTC section [32256](#).

⁴ [Proclamation of State of Emergency](#), 3/4/20. Executive Order [N-35-20](#), 3/21/20.

⁵ RTC section [32253](#).

As a result, the BOE was reliant upon Governor issued Executive Orders (EOs) to extend deadlines and provide relief from interest.⁶ Without these EOs, the BOE would not have the authority to extend alcoholic beverage tax program deadlines or relieve interest from deadline extensions during situations such as the COVID-19 pandemic.

Additionally, 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.

PROPOSED SOLUTION

Amend RTC section 32253(b)(2) to expand the definition of disaster to include “infectious disease.”

JUSTIFICATION

A. Briefly describe the ramifications of not acting.

Without legislative action, the BOE would not have the authority to extend alcoholic beverage tax deadlines in another pandemic like COVID-19 without the issuance of EOs specifying such provisions by future governors.

B. State the reasons why the BOE should have the responsibility for this program and why it should not be placed at another level of government (if applicable).

Article 20, section 22 of the California Constitution authorizes the BOE to administer the alcoholic beverage tax and is constitutionally responsible for the program. Through an Interagency Agreement (IAA), the California Department of Tax and Fee Administration (CDTFA) collects the alcoholic beverage tax and administers the program in cooperation with the BOE. This proposal would authorize the CDTFA to extend deadlines during a pandemic on behalf of the BOE.

C. Note whether a similar proposal has been submitted in the past and the outcome.

AB 1559 authorized the BOE to extend deadlines by up to three months due to a disaster with specified types of disaster. The bill was signed by the governor (Ch. 257, Stats. Of 2016).

PROGRAM BACKGROUND/LEGISLATIVE HISTORY

Article 20, section 22 of the California Constitution authorizes the BOE to administer the alcoholic beverage tax and is constitutionally responsible for the program.

Through an Interagency Agreement (IAA), the California Department of Tax and Fee Administration (CDTFA) collects the alcoholic beverage tax and administers the program in cooperation with the BOE. In

⁶ Executive Order [N-25-20](#), 3/12/20; Executive Order [N-40-20](#), 3/30/20; Executive Order [N-61-20](#), 5/6/20; Executive Order [N-84-20](#), 12/14/20.

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.

Previously, the BOE only had 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.

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.⁷

Taxpayers who are provided a deadline extension are not automatically relieved of accrued interest. However, existing law already provides a taxpayer relief of interest if the CDTFA finds that a taxpayers' 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 with the BOE under penalty of perjury stating the facts supporting their claim to relief.⁸

ARGUMENTS PRO AND CON

Pros

- Provides the flexibility to extend taxpayer deadlines under the alcoholic beverage tax programs for up to three months during a pandemic.
- 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.
- Provides taxpayer relief of interest if the BOE 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.

Cons

- Delay in the state receiving alcoholic beverage tax program revenue from taxpayers who receive a three-month deadline extension.
- Possible revenue loss from interest abatement from taxpayers who receive a three-month deadline extension.

PROBABLE SUPPORT AND OPPOSITION

Unknown

OTHER EXTERNAL PARTIES THAT MAY BE AFFECTED

⁷ AB 1559, ch.257, Stats. 2016.

⁸ RTC section [32256](#).

California Department of Tax and Fee Administration (CDTFA)

FISCAL IMPACT (If known)

Minor, interest-related revenue loss from a deadline extension.

PERFORMANCE INDICATORS

Not applicable

DRAFT LANGUAGE

Section 32253(b)(2) of the Revenue and Taxation Code is amended to read:

For purposes of this section, “disaster” means fire, flood, storm, tidal wave, earthquake, [infectious disease](#), or similar public calamity, whether or not resulting from natural causes.