

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Price Analyst: Brian Werking Bill Number: SB 1158

Related Bills: See Legislative History Telephone: 845-5103 Introduced Date: February 22, 2012

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Declarations Of Disaster/Abatement Of Interest

SUMMARY

This bill would allow the Franchise Tax Board (FTB) to do the following:

- Postpone certain tax-related deadlines¹ for taxpayers affected by a gubernatorially declared disaster, and
- Abate interest accrued against liabilities owed by taxpayers located within a disaster area if the accrued interest is the result of the FTB's decision to delay notices sent to the disaster area.

RECOMMENDATION

No position.

PURPOSE OF THE BILL

It appears the purpose of the bill is to provide equitable treatment to taxpayers located in presidentially or gubernatorially declared disaster by ensuring that taxpayers are not charged interest due to actions that are beyond their control and for which they are not responsible.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2013, and would specifically apply to interest abatement requests regarding presidentially or gubernatorially declared disasters that are made on or after January 1, 2013, for which the enumerated periods for filing an appeal would begin running on or after January 1, 2013.

¹ As listed under paragraph (1) of subsection (a) of section 7508 of the Internal Revenue Code.

Board Position:	Executive Officer	Date
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ANALYSIS

FEDERAL/STATE LAW

In the case of a presidentially declared disaster, current federal law provides authority for the IRS to specify a period of up to one year to postpone deadlines for tax-related acts. These acts² could be actions or requirements such as filing a tax return, payment of tax, or filing a claim for refund. When an affected taxpayer must perform a tax-related act by a due date falling within the postponement period, the affected taxpayer is eligible for postponement of time to perform the act until the last day of the postponement period. The affected taxpayer is eligible for relief during the postponement period from interest, penalties, additional amounts, and/or additions to tax.

Existing state law conforms to federal law concerning postponement of certain tax-related deadlines³ for presidentially-declared disasters.

Existing state law provides that the FTB may abate interest for disaster victims if the FTB extends the period for filing a return or paying the tax for any taxpayer located in a presidentially or gubernatorially-declared disaster area.

Current state law also allows abatement of interest when an unreasonable delay occurs in the administrative process due to the FTB's error or delay in performing a ministerial (procedural) or managerial (administrative) act.

In addition, current state law allows interest to be waived for any period that a taxpayer demonstrates extreme financial hardship caused by significant disability or other catastrophic circumstance.

PROGRAM BACKGROUND

During a presidentially-declared disaster, the department routinely delays billings, notices, and correspondence to affected individuals and business entities in a disaster area. An FTB public service bulletin is published to inform the public of the period of the suspended notices and the counties affected by the disaster. When the taxpayers are identified by zip code, the department delays all mailings until a specified time. As a result of the delayed mailings to disaster areas, many taxpayers in the area who are unaffected by the disaster, but who are engaged in the administrative audit, protest, or appeal process, suffer delays in that process, which ultimately result in additional interest being accrued. Under current law, the FTB lacks the authority in these instances to abate the interest.

THIS BILL

This bill would allow the FTB to postpone certain tax-related deadlines⁴ for gubernatorially declared disasters.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

This bill would also allow the FTB to abate interest to the extent that interest is attributable to the FTB's delay in mailing of a notice or correspondence in connection with a presidentially or gubernatorially declared disaster.

This bill would require taxpayers to request abatement of interest in writing. If the FTB determines not to abate the interest, the taxpayer may appeal⁵ to the Board of Equalization within 30 days in the case of any unpaid interest, or 90 days in the case of any paid interest.

This bill also corrects an invalid cross-reference.⁶

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

OTHER STATES' INFORMATION

The states surveyed include: *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Illinois, and Michigan do not postpone the mailing of correspondence, nor do they provide for an extension for filing returns or paying taxes, nor do they provide for the abatement of penalties or interest for taxpayers located in presidentially or gubernatorially declared disaster areas.

Minnesota allows the Tax Commissioner to abate any penalty or interest imposed by the tax law if the taxpayer is located in a presidentially or gubernatorially declared disaster area. *Minnesota* does not automatically postpone the mailing of correspondence or provide extensions to file returns or pay tax for taxpayers located in declared disaster areas.

New York provides up to a 90-day extension to file a tax return or pay any tax obligation for taxpayers affected by a presidentially or gubernatorially declared disaster. *New York* does not automatically postpone the mailing of correspondence or provide extensions to file returns or pay tax for taxpayers located in declared disaster areas.

Massachusetts grants an automatic extension of time to file returns and submit tax payments for taxpayers affected by a presidentially declared disaster, as determined by the IRS and announced in an IRS release, unless the Department of Revenue publicly announces otherwise. *Massachusetts* does not automatically postpone the mailing of correspondence to taxpayers located in declared disaster areas.

⁵ This appeals process is the same as currently provided for interest abatement under subdivision (b) of section 19104 of the Revenue and Taxation Code.

⁶ The reference to subdivision (b) of section 18572 of the Revenue and Taxation Code is invalid. The referenced subdivision was removed by the 2005 conformity bill, AB 115 (Klehs/Machado, Stats 2005, Ch. 691).

FISCAL IMPACT

This bill would require a one-time system enhancement that would require changes to existing notices, letters, instructions, and information systems. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

Due to the unpredictable nature of disasters, department staff is unable to provide a revenue estimate.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Some may advocate that this bill would relieve taxpayers from paying increased interest because of the FTB's decision to delay the mailing of notices.

Con: Some may argue, that with the state's current fiscal crisis, reductions in state revenue should be avoided.

LEGISLATIVE STAFF CONTACT

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