

ANALYSIS OF ORIGINAL BILL

Author: Greene Analyst: Marion Mann DeJong Bill Number: SB 2058

Related Bills: See Legislative History Telephone: (916) 845-6979 Introduced Date: 02/20/98

Attorney: Doug Bramhall Sponsor: EDD

SUBJECT: Employer Contributions To EDD/Interest Interest on Unpaid Penalties

SUMMARY

Under the Unemployment Insurance Code (UIC), this bill would provide that interest shall be charged on penalties and that the changes are declaratory of existing law.

Although this provision does not impact the programs administered by the department, a discussion is provided.

EFFECTIVE DATE

The bill specifies that it is declaratory of existing law and would therefore apply as of January 1, 1994.

BACKGROUND

During 1993, the Franchise Tax Board supported SB 3 (Stats. 1993, Ch. 31), which repealed administrative provisions from the PITL and B&CTL and reenacted them in the Administration of Franchise and Income Tax Laws (AFITL) created by the legislation. The AFITL provided a continuity with prior law provision (Section 18412), stating that, where provisions of the AFITL were substantially the same as statutory provisions relating to the same subject matter in the PITL or B&CTL before SB 3, they should be construed as restatements and continuations of the law and not as new enactments. SB 3 became operative on January 1, 1994.

Prior to the January 1, 1994, R&TC Section 19269 contained provisions which determined both the rate of interest to be applied to assessments and refunds and, in subdivision (b), the method for including penalties, interest and additions to tax in the balance due for purposes of applying the daily compounded interest rate.

SB 3 repealed Section 19269 and reenacted its provisions into two sections, Section 19521 (interest rate) and 19106 (method of computing interest on penalties). SB 3 also amended the UIC to update cross-references to the R&TC,

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE

GOVERNOR'S APPOINTMENT

Board Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input checked="" type="checkbox"/> X PENDING	Agency Secretary Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR DEFER TO _____	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/>
Department Director Date Gerald H. Goldberg 3/9/98	Agency Secretary Date	By: Date

including changes to former Section 19269 cross-references. SB 3 included amendments to Sections 1113 and 1129 of the UIC to provide for interest at the adjusted annual rate and by the method established pursuant to Section 19521 of the R&TC, but failed to include a reference to the method of computing interest as provided under prior law.

On December 12, 1997, the Legislative Counsel opined (Legislative Counsel Opinion #24964) that under current law neither Section 1113 of the UIC nor any other provision of law authorizes EDD to charge interest on penalties. However, the opinion continues, prior to the enactment of SB 3, EDD had authority to charge interest on penalties imposed under Section 1112 of the UIC, but did not have authority to charge interest on penalties imposed under section 1112.5 or 1114 of the UIC.

SPECIFIC FINDINGS

Under current law (the UIC) the Employment Development Department (EDD) is responsible for collecting employment taxes from businesses that employ workers in California. These taxes include unemployment insurance contributions and the employment training tax, both paid by employers, and disability insurance contributions and personal income taxes, both withheld from employees' pay and remitted to EDD by employers. EDD collects these taxes from employers as frequently as eight times a month or as seldom as annually, depending on the employer. In addition to paying taxes, the law requires employers to file quarterly returns reporting wages paid to workers, W-2s and other reports.

The UIC provides for the assessment of tax delinquency penalties and report delinquency penalties.

Section 1113 of **the UIC** allows interest to be charged on taxes owed. This applies to employers who owe taxes but are not audited or investigated. Typically, these employers file returns but don't pay taxes on time. Employers are liable for interest on contributions at the adjusted annual rate *and by the method* established pursuant to Section 19521 of the R&TC.

Section 1129 of **the UIC** allows interest to be charged on assessments made pursuant to audit or investigation. The amount of each assessment shall bear interest at the adjusted annual rate *and the method* established by Section 19521 of the R&TC.

The UIC does not address the calculation of interest on penalties.

This bill would amend Sections 1113 and 1129 of the UIC to specifically provide that interest shall be charged on penalties. Interest would not be charged on penalties that are not directly related to, and added to, an assessment.

This bill would provide that these changes are declaratory of existing law.

Policy Considerations

Proponents argue that the UIC, prior to the enactment of SB 3, clearly provided for the assessment of interest on penalties. When SB 3 repealed R&TC Section 19269 and reenacted its provisions into two sections (Section

19521 and 19106), proponents argue, the authority was not removed; the UIC simply did not contain the same clarity of language that existed prior to the enactment of SB 3.

Opponents argue that the UIC does not provide authority to charge interest on penalties related to tax or report delinquencies and therefore the EDD should issue refunds of overcollected interest amounts.

Implementation Considerations

This provision does not impact the programs administered by FTB.

FISCAL IMPACT

Departmental Costs

This bill would not impact the department's costs.

Tax Revenue Estimate

This bill would not impact PIT or B&CT revenues.

BOARD POSITION

Pending.