

SENATE BILL

No. 54

Introduced by Senator Hollingsworth

February 12, 2010

An act to add Section 19137 to, to add Chapter 9.2 (commencing with Section 19740) to Part 10.2 of Division 2 of, and to repeal Section 19138 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 54, as introduced, Hollingsworth. Tax amnesty.

(1) Existing law imposes specified taxes, including personal income and corporate taxes collected and administered by the Franchise Tax Board.

This bill would require the Franchise Tax Board to administer a tax amnesty program during the period beginning February 1, 2009, and ending on March 27, 2009, inclusive, as provided.

(2) Existing law imposes a penalty on a taxpayer subject to the Corporation Tax Law with a specified understatement of tax, as defined, in an amount equal to 20% of that understatement, except as specified.

This bill would delete the provisions imposing that penalty.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 19137 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 19137. (a) There shall be added to the tax for amounts in each
- 4 taxable year for which amnesty could have been requested:

1 (1) For amounts that are due and payable (as provided in
2 subdivision (f)) on the last day of the tax amnesty period, an
3 amount equal to 50 percent of the accrued interest payable under
4 Section 19101 for the period beginning on the last date prescribed
5 by law for the payment of that tax (determined without regard to
6 extensions) and ending on the last day of the tax amnesty period
7 specified in Section 19741.

8 (2) For amounts that become due and payable (as provided in
9 subdivision (f)) after the last date of the tax amnesty period, an
10 amount equal to 50 percent of the interest computed under Section
11 19101 on any final amount, including final deficiencies and
12 self-assessed amounts, for the period beginning on the last date
13 prescribed by law for the payment of the tax for the year of the
14 deficiency (determined without regard to extensions) and ending
15 on the last day of the tax amnesty period specified in Section
16 19741. In computing the final amount upon which the penalty is
17 computed, deposits made before the end of the tax amnesty period
18 pursuant to Section 19041.5 shall reduce the amount upon which
19 the penalty is computed. Payments or deposits made after the end
20 of the tax amnesty period shall not reduce the amount upon which
21 the penalty is computed.

22 (3) For purposes of paragraph (2), Sections 19107, 19108,
23 19110, and 19113 shall apply in determining the amount computed
24 under Section 19101.

25 (b) The penalty imposed by this section is in addition to any
26 other penalty imposed under Part 10 (commencing with Section
27 17001), Part 11 (commencing with Section 23001), or this part.

28 (c) (1) This section shall not apply to any amounts that are
29 treated as paid during the tax amnesty period under paragraph (1)
30 or (2) of subdivision (b) of Section 19743.

31 (2) This section shall not apply to any amount attributable to
32 an assessment resulting from either of the following:

33 (A) An examination, within the meaning of Section 19032,
34 where the Franchise Tax Board first contacted the taxpayer in
35 writing in connection with that examination before March 27,
36 2009, and that assessment was not final before March 27, 2009.

37 (B) A proposed assessment under Section 19087 where the
38 Franchise Tax Board first contacted the taxpayer in writing in
39 connection with failing to file a return before March 27, 2009, and
40 that assessment was not final before March 27, 2009.

1 (d) Article 3 (commencing with Section 19031), relating to
2 deficiency assessments, shall not apply with respect to the
3 assessment or collection of any penalty imposed by subdivision
4 (a) or the determination of when an amount is considered due and
5 payable.

6 (e) A refund or credit for any amounts paid to satisfy a penalty
7 imposed under this section may be allowed only on the grounds
8 that the amount of the penalty was not properly computed by the
9 Franchise Tax Board.

10 (f) For purposes of this section, amounts are due and payable
11 on the following dates:

12 (1) For amounts of any liability disclosed on a return filed on
13 or before the date payment is due (with regard to any extension of
14 time to pay), the date the amount is established on the records of
15 the Franchise Tax Board, except that in no case shall it be prior to
16 the day after the payment due date.

17 (2) For amounts of any liability disclosed on a return filed after
18 the date payment is due (with regard to any extension of time to
19 pay), the date the amount is established on the records of the
20 Franchise Tax Board.

21 (3) For amounts of any liability determined under Section 19081
22 or 19082 (pertaining to jeopardy assessments), the date the notice
23 of the Franchise Tax Board's finding is mailed or issued.

24 (4) For all other amounts of liability, the date the assessment is
25 final.

26 SEC. 2. Section 19138 of the Revenue and Taxation Code is
27 repealed.

28 ~~19138. (a) (1) A taxpayer subject to the tax imposed under~~
29 ~~Part 11 (commencing with Section 23001) with an understatement~~
30 ~~of tax in excess of one million dollars (\$1,000,000) for any taxable~~
31 ~~year shall be subject to the penalty imposed under this section.~~

32 ~~(2) For taxpayers that are required to be included in a combined~~
33 ~~report under Section 25101 or authorized to be included in a~~
34 ~~combined report under Section 25101.15, the threshold amount~~
35 ~~prescribed in paragraph (1) shall apply to the aggregate amount~~
36 ~~of tax liability under Part 11 (commencing with Section 23001)~~
37 ~~for all taxpayers that are required to be or authorized to be included~~
38 ~~in a combined report.~~

39 ~~(b) The penalty under this section shall be an amount equal to~~
40 ~~20 percent of any understatement of tax. For purposes of this~~

1 section, “understatement of tax” means the amount by which the
2 tax imposed by Part 11 (commencing with Section 23001) exceeds
3 the amount of tax shown on an original return or shown on an
4 amended return filed on or before the original or extended due
5 date of the return for the taxable year. For any taxable year
6 beginning before January 1, 2008, the amount of tax paid on or
7 before May 31, 2009, and shown on an amended return filed on
8 or before May 31, 2009, shall be treated as the amount of tax shown
9 on an original return for purposes of this section.

10 (e) ~~The penalty imposed by this section shall be in addition to~~
11 ~~any other penalty imposed under Part 11 (commencing with Section~~
12 ~~23001) or this part.~~

13 (d) ~~Article 3 (commencing with Section 19031), relating to~~
14 ~~deficiency assessments, shall not apply with respect to the~~
15 ~~assessment or collection of any penalty imposed by subdivision~~
16 ~~(a).~~

17 (e) ~~A refund or credit for any amounts paid to satisfy a penalty~~
18 ~~imposed under this section may be allowed only on the grounds~~
19 ~~that the amount of the penalty was not properly computed by the~~
20 ~~Franchise Tax Board.~~

21 (f) (1) ~~No penalty shall be imposed under this section on any~~
22 ~~understatement to the extent that the understatement is attributable~~
23 ~~to a change in law that is enacted, promulgated, issued, or becomes~~
24 ~~final after the earlier of either of the following dates:~~

25 (A) ~~The date the taxpayer files the return for the taxable year~~
26 ~~for which the change is operative.~~

27 (B) ~~The extended due date for the return of the taxpayer for the~~
28 ~~taxable year for which the change is operative.~~

29 (2) ~~For purposes of this subdivision, a “change of law” means~~
30 ~~a statutory change or an interpretation of law or rule of law by~~
31 ~~regulation, legal ruling of counsel, within the meaning of~~
32 ~~subdivision (b) of Section 11340.9 of the Government Code, or a~~
33 ~~published federal or California court decision.~~

34 (3) ~~The Franchise Tax Board shall implement this subdivision~~
35 ~~in a reasonable manner.~~

36 (g) ~~No penalty shall be imposed under this section to the extent~~
37 ~~that a taxpayer’s understatement is attributable to the taxpayer’s~~
38 ~~reasonable reliance on written advice of the Franchise Tax Board,~~
39 ~~but only if the written advice was a legal ruling by the Chief~~

1 Counsel, within the meaning of paragraph (1) of subdivision (a)
2 of Section 21012.

3 (h) This section shall apply to each taxable year beginning on
4 or after January 1, 2003, for which the statute of limitations on
5 assessment has not expired.

6 SEC. 3. Chapter 9.2 (commencing with Section 19740) is added
7 to Part 10.2 of Division 2 of the Revenue and Taxation Code, to
8 read:

9

10 CHAPTER 9.2. TAX AMNESTY 2009

11

12 19740. The Franchise Tax Board shall administer a tax amnesty
13 for taxpayers subject to Part 10 (commencing with Section 17001)
14 and Part 11 (commencing with Section 23001), as provided in this
15 chapter.

16 19741. The tax amnesty shall be conducted during the period
17 beginning February 1, 2009, and ending March 27, 2009, inclusive,
18 pursuant to Section 19743. The tax amnesty shall apply to tax
19 liabilities for taxable years beginning on or after January 1, 2003,
20 and before January 1, 2007.

21 19742. (a) For any taxpayer that meets each of the
22 requirements of Section 19743, both of the following shall apply:

23 (1) The Franchise Tax Board shall waive all unpaid penalties
24 and fees imposed by this part for each taxable year for which tax
25 amnesty is allowed, but only to the extent of the amount of any
26 penalty or fee that is owed as a result of previous nonreporting or
27 underreporting of tax liabilities or prior nonpayment of any taxes
28 previously assessed or proposed to be assessed for that taxable
29 year.

30 (2) Except as provided in subdivision (b), no criminal action
31 shall be brought against the taxpayer for the taxable years for which
32 tax amnesty is allowed for the nonreporting or underreporting of
33 tax liabilities or the nonpayment of any taxes previously assessed
34 or proposed to be assessed.

35 (b) This chapter shall not apply to violations of this part for
36 which, as of February 1, 2009, any of the following applies:

37 (1) A criminal complaint was filed against the taxpayer.

38 (2) The taxpayer is under criminal investigation.

39 (c) This chapter shall not apply to any nonreported or
40 underreported tax liability amounts attributable to a potentially

1 abusive tax avoidance transaction. For purposes of this chapter, a
2 “potentially abusive tax avoidance transaction” means any of the
3 following:

4 (1) A tax shelter as defined in Section 6662(d)(2)(C) of the
5 Internal Revenue Code. For purposes of this chapter, Section
6 6662(d)(2)(C) of the Internal Revenue Code is modified by
7 substituting the phrase “income or franchise tax” for “Federal
8 income tax.”

9 (2) A reportable transaction, as defined in Section 6707A(c)(1)
10 of the Internal Revenue Code, with respect to which the
11 requirements of Section 6664(d)(2)(A) of the Internal Revenue
12 Code are not met.

13 (3) A listed transaction, as defined in Section 6707A(c)(2) of
14 the Internal Revenue Code.

15 (4) Any entity, investment plan or arrangement, or other plan
16 or arrangement that is of a type that the Secretary of the Treasury,
17 Internal Revenue Service, or the Franchise Tax Board determines
18 by regulations, notices, coordinated issue papers, or other official
19 public notification as having a potential for tax avoidance or
20 evasion.

21 (5) A gross misstatement, within the meaning of Section
22 6404(g)(2)(D) of the Internal Revenue Code.

23 (6) Any transaction to which Section 19774 applies.

24 (d) No refund or credit shall be allowed with respect to any
25 penalty or fee paid with respect to a taxable year prior to the time
26 the taxpayer makes a request for tax amnesty for that taxable year
27 pursuant to Section 19743.

28 (e) Notwithstanding Chapter 6 (commencing with Section
29 19301), no claim for refund or credit for any amounts paid in
30 connection with the tax amnesty program under this chapter shall
31 be allowed.

32 19743. (a) This chapter shall apply to any taxpayer that
33 satisfies all of the following requirements:

34 (1) During the tax amnesty period specified in Section 19741,
35 is eligible to participate in the tax amnesty.

36 (2) During the tax amnesty period specified in Section 19741,
37 files a completed amnesty application with the Franchise Tax
38 Board electing to participate in the tax amnesty.

39 (3) By June 1, 2009, does the following:

1 (A) (i) For any taxable year eligible for the tax amnesty where
2 the taxpayer has not filed any required return, files a completed
3 original tax return for that year.

4 (ii) For any taxable year eligible for the tax amnesty where the
5 taxpayer filed a return but underreported tax liability on that return,
6 files an amended return for that year.

7 (B) Pays in full any taxes and interest due for each taxable year
8 described in clauses (i) and (ii) of subparagraph (A), as applicable,
9 for which amnesty is requested, or applies for an installment
10 payment agreement under subdivision (b). For taxpayers that have
11 not paid in full any taxes previously proposed to be assessed, pays
12 in full the taxes and interest due for that portion of the proposed
13 assessment for each taxable year for which amnesty is requested
14 or applies for an installment payment agreement under paragraph
15 (2) of subdivision (b).

16 (4) In the case of any taxpayer that has filed for bankruptcy
17 protection under Title 11 of the United States Code, submits an
18 order from a Federal Bankruptcy Court allowing the taxpayer to
19 participate in the tax amnesty.

20 (b) (1) For purposes of complying with the full payment
21 provisions of paragraph (3) of subdivision (a), if the full amount
22 due is paid within the period set forth in paragraph (3) of
23 subdivision (c) of Section 19101 after the date the Franchise Tax
24 Board mails a notice resulting from the filing of an amnesty
25 application or the full amount is paid by June 1, 2009, the full
26 amount due shall be treated as paid during the amnesty period.

27 (2) (A) For purposes of complying with the full payment
28 provisions of subparagraph (B) of paragraph (3) of subdivision
29 (a), the Franchise Tax Board may enter into an installment payment
30 agreement, but only if final payment under the terms of that
31 installment payment agreement is due and is paid no later than
32 June 30, 2010.

33 (B) Any installment payment agreement authorized by this
34 subdivision shall include interest on the outstanding amount due
35 at the rate prescribed in Section 19521.

36 (C) Failure by the taxpayer to fully comply with the terms of
37 an installment payment agreement under this subdivision shall
38 render the waiver of penalties and fees under Section 19742 null
39 and void, unless the Franchise Tax Board determines that the
40 failure was due to reasonable cause and not due to willful neglect.

1 (D) In the case of any failure described under subparagraph (C),
2 the total amount of tax, interest, fees, and all penalties shall become
3 immediately due and payable.

4 (c) (1) The application required under paragraph (2) of
5 subdivision (a) shall be in the form and manner specified by the
6 Franchise Tax Board, but in no case shall a mere payment of any
7 taxes and interest due, in whole or in part, for any taxable year
8 otherwise eligible for amnesty under this part be deemed to
9 constitute an acceptable amnesty application under this part. For
10 purposes of the prior sentence, the application of a refund from
11 one taxable year to offset a tax liability from another taxable year
12 otherwise eligible for amnesty shall not, without the filing of an
13 amnesty application, be deemed to constitute an acceptable amnesty
14 application under this part.

15 (2) The Legislature specifically intends that the Franchise Tax
16 Board, in administering the amnesty application requirement under
17 this part, make the amnesty application process as streamlined as
18 possible to ensure that participation in the tax amnesty be available
19 to as many taxpayers as possible without otherwise compromising
20 the Franchise Tax Board's ability to enforce and collect the taxes
21 imposed under Part 10 (commencing with Section 17001) and Part
22 11 (commencing with Section 23001).

23 (d) Upon the conclusion of the tax amnesty period, the Franchise
24 Tax Board may propose a deficiency upon any return filed pursuant
25 to subparagraph (A) of paragraph (3) of subdivision (a), impose
26 penalties and fees, or initiate criminal action under this part with
27 respect to the difference between the amount shown on that return
28 and the correct amount of tax. This action shall not invalidate any
29 waivers previously granted under Section 19742.

30 (e) All revenues derived pursuant to subdivision (c) shall be
31 subject to Sections 19602 and 19604.

32 19744. Notwithstanding any other provision of this chapter, if
33 any overpayment of tax shown on an original or amended return
34 filed under this article is refunded or credited within 180 days after
35 the return is filed, no interest shall be allowed under Section 19340
36 on that overpayment.

37 19745. (a) The Franchise Tax Board may issue forms,
38 instructions, notices, rules, or guidelines, and take any other
39 necessary actions, needed to implement this chapter, specifically
40 including any forms, instructions, notices, rules, or guidelines that

1 specify the form and manner of any acceptable form of amnesty
2 application described in Section 19743.

3 (b) Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code shall not apply to
5 any standard, criterion, procedure, determination, rule, notice, or
6 guideline established or issued by the Franchise Tax Board
7 pursuant to this chapter.

8 19746. (a) The Franchise Tax Board shall conduct a public
9 outreach program and adequately publicize the tax amnesty so as
10 to maximize public awareness and to make taxpayers aware of tax
11 amnesty. In addition, the Franchise Tax Board shall make taxpayers
12 aware of the new and increased penalties associated with taxpayer
13 failure to participate in the tax amnesty.

14 (b) The Franchise Tax Board shall make reasonable efforts to
15 identify taxpayer liabilities and, to the extent practicable, shall
16 send written notice to taxpayers of eligibility for the tax amnesty.
17 However, failure of the Franchise Tax Board to notify a taxpayer
18 of the existence or correct amount of a tax liability eligible for
19 amnesty shall not preclude the taxpayer from participating in the
20 tax amnesty, nor shall that failure be grounds for abating the
21 penalty imposed under Section 19137.

22 19747. Any taxpayer that has an existing installment payment
23 agreement under Section 19008 as of the start of the tax amnesty,
24 and who does not participate in the tax amnesty, shall not be subject
25 to the penalty imposed under Section 19137 with respect to
26 amounts payable under that agreement.

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