

**ASSEMBLY BILL**

**No. 2692**

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**Introduced by Assembly Member Brough**

February 19, 2016

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An act to amend Section 19777.5 of, to add Article 4 (commencing with Section 7100) to Chapter 8 of Part 1 of Division 2 of, and to add Chapter 9.3 (commencing with Section 19740) to Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2692, as introduced, Brough. Personal income tax: corporation tax: sales and use taxes: tax penalty and fee waiver programs.

Under existing law, the Franchise Tax Board collects and administers taxes imposed under the Personal Income Tax Law and the Corporation Tax Law. The State Board of Equalization collects and administers, among others, taxes imposed under the Sales and Use Tax Law, the Bradley-Burns Uniform Sales and Use Tax Law, and local laws imposed pursuant to the Transactions and Use Tax Law. Existing law sets forth various penalties, including penalties for the nonpayment or late payment of those taxes, and the failure to file or intentional filing of incorrect returns. Existing law established a tax amnesty program, conducted in 2005, for sales, use, personal income, and corporation tax liabilities due and payable for tax reporting periods or taxable years beginning before January 1, 2003.

This bill would require the State Board of Equalization and the Franchise Tax Board to administer tax penalty and fee waiver programs, as applicable, during the period beginning on February 1, 2017, to April 30, 2017, inclusive, or a period ending no later than June 30, 2017, for specified taxpayers with respect to penalties and fees for tax reporting

periods beginning before January 1, 2015. This bill would require the applicant to the waiver program to file the application under the penalty of perjury. By expanding the crime of perjury, this bill would impose state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Article 4 (commencing with Section 7100) is  
2 added to Chapter 8 of Part 1 of Division 2 of the Revenue and  
3 Taxation Code, to read:

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Article 4. Tax Penalty Waiver Program

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7100. The board shall develop and administer a tax penalty  
8 waiver program for taxpayers subject to Part 1 (commencing with  
9 Section 6001), as provided in this article.

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7100.2. The tax penalty waiver program shall be conducted  
11 for a three-month period beginning February 1, 2017 to April 30,  
12 2017, inclusive, or during a timeframe ending no later than June  
13 30, 2017. The program shall apply to tax liabilities due and payable  
14 for tax reporting periods beginning before January 1, 2015.

15

7100.4. (a) For any taxpayer who meets the requirements of  
16 Section 7100.6:

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(1) The board shall waive all penalties imposed by this part, for  
18 the tax reporting periods for which a waiver is allowed for the  
19 nonreporting or underreporting of tax liabilities or the nonpayment  
20 of any taxes previously determined or proposed to be determined.

21

(2) Except as provided in subdivision (b), no criminal action  
22 shall be brought against the taxpayer, for the tax reporting periods  
23 for which a waiver is requested, for the nonreporting or  
24 underreporting of tax liabilities.

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(b) This section does not apply to violations of this part for  
26 which, as of the first day of the waiver period specified in Section

1 7100.2, (1) the taxpayer is on notice of a criminal investigation by  
2 a complaint having been filed against him or her or by written  
3 notice having been mailed to him or her that he or she is under  
4 criminal investigation, or (2) a court proceeding has already been  
5 initiated.

6 (c) No refund or credit shall be granted of any penalty paid  
7 prior to the time the taxpayer makes a request for a waiver pursuant  
8 to Section 7100.6.

9 7100.6. (a) This article shall apply to any taxpayer who, during  
10 the waiver period specified in Section 7100.2, meets all of the  
11 following:

12 (1) Is eligible to participate in the tax penalty waiver program.

13 (2) Files a completed waiver application with the board, signed  
14 under penalty of perjury, to participate in the tax penalty waiver  
15 program.

16 (3) Within 60 days after the conclusion of the waiver period,  
17 does all of the following:

18 (A) Files completed tax returns for all tax reporting periods for  
19 which he or she has not previously filed a tax return and files  
20 completed amended returns for all tax reporting periods for which  
21 he or she underreported his or her tax liability.

22 (B) Pays in full the taxes and interest due for all periods for  
23 which a waiver is requested, or applies for an installment agreement  
24 under subdivision (b).

25 (C) For taxpayers who have not paid in full any tax liabilities  
26 due and payable for tax reporting periods beginning before January  
27 1, 2015, pays in full the taxes and interest due for each period for  
28 that portion of the proposed determination for each period for  
29 which a waiver is requested or applies for an installment payment  
30 agreement under subdivision (b).

31 (4) In the case of any taxpayer that has filed for bankruptcy  
32 protection under Title 11 of the United States Code, submits an  
33 order from a Federal Bankruptcy Court allowing the taxpayer to  
34 participate in the waiver program.

35 (b) The board may enter into an installment payment agreement  
36 in lieu of the complete payment required under subparagraph (B)  
37 of paragraph (3) of subdivision (a), but only if final payment under  
38 the terms of that installment payment agreement is due and is paid  
39 no later than June 30, 2018. The installment payment agreement  
40 shall include interest on the outstanding amount due at the rate

1 prescribed by law. Failure by the taxpayer to fully comply with  
2 the terms of the installment payment agreement shall render the  
3 waiver of penalties null and void, unless the board determines that  
4 the failure was due to reasonable causes, and the total amount of  
5 tax, interest, and all penalties shall be immediately due and payable.

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

15 7100.8. The board shall issue forms and instructions and take  
16 other actions needed to implement this article. The provisions  
17 contained in subdivision (c) of Section 19745, to the extent feasible  
18 and practical, shall also apply to the board.

19 7100.10. The board shall adequately publicize the tax penalty  
20 waiver program so as to maximize public awareness of the  
21 participation in the program. The board shall coordinate to the  
22 highest degree possible its publicity efforts and other actions taken  
23 in implementing this article with similar programs administered  
24 by the Franchise Tax Board.

25 7100.12. Subdivision (b) of Section 19746, to the extent  
26 feasible and practical, shall also apply to the board.

27 SEC. 2. Chapter 9.3 (commencing with Section 19740) is added  
28 to Part 10.2 of Division 2 of the Revenue and Taxation Code, to  
29 read:

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31 CHAPTER 9.3. TAX PENALTY AND FEE WAIVER PROGRAM

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33 19740. The Franchise Tax Board shall administer a tax penalty  
34 and fee waiver program for taxpayers subject to Part 10  
35 (commencing with Section 17001) and Part 11 (commencing with  
36 Section 23001), as provided in this chapter.

37 19741. The tax penalty and fee waiver program shall be  
38 conducted during a three-month period beginning February 1,  
39 2017, to April 31, 2017, inclusive, or during a timeframe ending  
40 no later than June 30, 2017, pursuant to Section 19743. The

1 program shall apply to tax liabilities for taxable years beginning  
2 before January 1, 2015.

3 19742. (a) For any taxpayer who meets each of the  
4 requirements of Section 19743 both of the following apply:

5 (1) The Franchise Tax Board shall waive all unpaid penalties  
6 and fees imposed by this part for each taxable year for which a  
7 waiver is allowed, but only to the extent of the amount of any  
8 penalty or fee that is owed as a result of previous nonreporting or  
9 underreporting of tax liabilities or prior nonpayment of any taxes  
10 previously assessed or proposed to be assessed for that taxable  
11 year.

12 (2) Except as provided in subdivision (b), no criminal action  
13 shall be brought against the taxpayer for the taxable years for which  
14 a waiver is allowed for the nonreporting or underreporting of tax  
15 liabilities or the nonpayment of any taxes previously assessed or  
16 proposed to be assessed.

17 (b) This chapter shall not apply to violations of this part, for  
18 which, as of February 1, 2017, any of the following applies:

19 (1) The taxpayer is on notice of a criminal investigation by a  
20 complaint having been filed against the taxpayer.

21 (2) The taxpayer is under criminal investigation.

22 (3) A court proceeding has already been initiated.

23 (c) This section shall not apply to any nonreported or  
24 underreported tax liability amounts attributable to tax shelter items  
25 that could have been reported under either the voluntary compliance  
26 initiative under Chapter 9.5 (commencing with Section 19751),  
27 the Internal Revenue Service's Offshore Voluntary Compliance  
28 Initiative described in Revenue Procedure 2003-11, or the Internal  
29 Revenue Service's Voluntary Disclosure Program.

30 (d) No refund or credit shall be granted with respect to any  
31 penalty or fee paid with respect to a taxable year prior to the time  
32 the taxpayer makes a request for a waiver for that taxable year  
33 pursuant to Section 19743.

34 (e) Notwithstanding Chapter 6 (commencing with Section  
35 19301), a taxpayer may not file a claim for refund or credit for any  
36 amounts paid in connection with the tax penalty and fee waiver  
37 program under this chapter.

38 19743. (a) This chapter shall apply to any taxpayer who  
39 satisfies all of the following requirements:

1 (1) During the tax penalty and fee waiver program period  
2 specified in Section 19741, is eligible to participate in the waiver  
3 program.

4 (2) During the tax penalty and fee waiver program period  
5 specified in Section 19741, files a completed waiver application  
6 with the Franchise Tax Board, signed under penalty of perjury,  
7 electing to participate in the tax penalty and fee waiver program.

8 (3) Within 60 days after the conclusion of the waiver period,  
9 does the following:

10 (A) (i) For any taxable year eligible for the tax penalty and fee  
11 waiver program where the taxpayer has not filed any required  
12 return, files a completed original tax return for that year.

13 (ii) For any taxable year eligible for the tax penalty and fee  
14 waiver program where the taxpayer filed a return but underreported  
15 tax liability on that return, files an amended return for that year.

16 (B) Pays in full any taxes and interest due for each taxable year  
17 described in clauses (i) and (ii) of subparagraph (A), as applicable,  
18 for which a waiver is requested, or applies for an installment  
19 payment agreement under subdivision (b). For taxpayers who have  
20 not paid in full any taxes previously proposed to be assessed, pays  
21 in full the taxes and interest due for that portion of the proposed  
22 assessment for each taxable year for which a waiver is requested  
23 or applies for an installment payment agreement under subdivision  
24 (b).

25 (4) For purposes of complying with the full payment provisions  
26 of paragraph (3) of subdivision (a), if the full amount due is paid  
27 within the period set forth in paragraph (3) of subdivision (c) of  
28 Section 19101 after the date the Franchise Tax Board mails a notice  
29 resulting from the filing of a waiver application or the full amount  
30 is paid within 60 days after the conclusion of the tax penalty and  
31 fee waiver program period, the full amount due shall be treated as  
32 paid during the waiver period.

33 (5) In the case of any taxpayer that has filed for bankruptcy  
34 protection under Title 11 of the United States Code, submits an  
35 order from a Federal Bankruptcy Court allowing the taxpayer to  
36 participate in the waiver program.

37 (b) (1) For purposes of complying with the full payment  
38 provisions of subparagraph (B) of paragraph (3) of subdivision  
39 (a), the Franchise Tax Board may enter into an installment payment  
40 agreement, but only if final payment under the terms of that

1 installment payment agreement is due and is paid no later than  
2 June 30, 2018.

3 (2) Any installment payment agreement authorized by this  
4 subdivision shall include interest on the outstanding amount due  
5 at the rate prescribed in Section 19521.

6 (3) Failure by the taxpayer to fully comply with the terms of an  
7 installment payment agreement under this subdivision shall render  
8 the waiver of penalties and fees under Section 19732 null and void,  
9 unless the Franchise Tax Board determines that the failure was  
10 due to reasonable cause and not due to willful neglect.

11 (4) In the case of any failure described under paragraph (3), the  
12 total amount of tax, interest, fees, and all penalties shall become  
13 immediately due and payable.

14 (c) (1) The application required under paragraph (2) of  
15 subdivision (a) shall be in the form and manner specified by the  
16 Franchise Tax Board, but in no case shall a mere payment of any  
17 taxes and interest due, in whole or in part, for any taxable year  
18 otherwise eligible for a waiver under this part, be deemed to  
19 constitute an acceptable waiver application under this part. For  
20 purposes of the prior sentence, the application of a refund from  
21 one taxable year to offset a tax liability from another taxable year  
22 otherwise eligible for a waiver shall not, without the filing of a  
23 waiver application, be deemed to constitute an acceptable waiver  
24 application under this part.

25 (2) The Legislature specifically intends that the Franchise Tax  
26 Board, in administering the waiver application requirement under  
27 this part, make the waiver application process as streamlined as  
28 possible to ensure participation in the waiver program will be  
29 available to as many taxpayers as possible without otherwise  
30 compromising the Franchise Tax Board's ability to enforce and  
31 collect the taxes imposed under Part 10 (commencing with Section  
32 17001) and Part 11 (commencing with Section 23001).

33 (d) Upon the conclusion of the tax penalty and fee waiver  
34 program period, the Franchise Tax Board may propose a deficiency  
35 upon any return filed pursuant to subparagraph (A) of paragraph  
36 (3) of subdivision (a), impose penalties and fees, or initiate criminal  
37 action under this part with respect to the difference between the  
38 amount shown on that return and the correct amount of tax. This  
39 action shall not invalidate any waivers previously granted under  
40 Section 19732.

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

3 19744. Notwithstanding any other provision of this chapter, if  
 4 any overpayment of tax shown on an original or amended return  
 5 filed under this article is refunded or credited within 180 days after  
 6 the return is filed, no interest shall be allowed under Section 19340  
 7 on that overpayment.

8 19745. (a) The Franchise Tax Board may issue forms,  
 9 instructions, notices, rules, or guidelines, and take any other  
 10 necessary actions, needed to implement this chapter, specifically  
 11 including any forms, instructions, notices, rules, or guidelines that  
 12 specify the form and manner of any acceptable form of waiver  
 13 application described in Section 19743.

14 (b) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
 15 Division 3 of Title 2 of the Government Code does not apply to  
 16 any standard, criterion, procedure, determination, rule, notice, or  
 17 guideline established or issued by the Franchise Tax Board  
 18 pursuant to this chapter.

19 19746. (a) The Franchise Tax Board shall conduct a public  
 20 outreach program and adequately publicize the tax penalty and fee  
 21 waiver program so as to maximize public awareness and to make  
 22 taxpayers aware of the program. In addition, the Franchise Tax  
 23 Board shall make taxpayers aware of the new and increased  
 24 penalties associated with taxpayer failure to participate in the tax  
 25 penalty and fee waiver program.

26 (b) The Franchise Tax Board shall make reasonable efforts to  
 27 identify taxpayer liabilities and, to the extent practicable, will send  
 28 written notice to taxpayers of their eligibility for the tax penalty  
 29 and fee waiver program. However, failure of the Franchise Tax  
 30 Board to notify a taxpayer of the existence or correct amount of a  
 31 tax liability eligible for waiver shall not preclude the taxpayer from  
 32 participating in the tax penalty and fee waiver program.

33 SEC. 3. Section 19777.5 of the Revenue and Taxation Code  
 34 is amended to read:

35 19777.5. (a) There shall be added to the tax for each taxable  
 36 year for which amnesty could have been requested:

37 (1) For amounts that are due and payable on the last day of the  
 38 amnesty period, an amount equal to 50 percent of the accrued  
 39 interest payable under Section 19101 for the period beginning on  
 40 the last date prescribed by law for the payment of that tax

1 (determined without regard to extensions) and ending on the last  
2 day of the amnesty period specified in Section 19731.

3 (2) For amounts that become due and payable after the last date  
4 of the amnesty period, an amount equal to 50 percent of the interest  
5 computed under Section 19101 on any final amount, including  
6 final deficiencies and self-assessed amounts, for the period  
7 beginning on the last date prescribed by law for the payment of  
8 the tax for the year of the deficiency (determined without regard  
9 to extensions) and ending on the last day of the amnesty period  
10 specified in Section 19731.

11 (3) For purposes of paragraph (2), Sections 19107, 19108,  
12 19110, and 19113 shall apply in determining the amount computed  
13 under Section 19101.

14 (b) The penalty imposed by this section is in addition to any  
15 other penalty imposed under Part 10 (commencing with Section  
16 17001), Part 11 (commencing with Section 23001), or this part.

17 (c) This section does not apply to any amounts that are treated  
18 as paid during the amnesty program period under paragraph (4)  
19 of subdivision (a) of Section 19733 or paragraph (1) of subdivision  
20 (b) of Section 19733.

21 (d) Article 3 (commencing with Section 19031), (relating to  
22 deficiency assessments) shall not apply with respect to the  
23 assessment or collection of any penalty imposed by subdivision  
24 (a).

25 (e) (1) Notwithstanding Chapter 6 (commencing with Section  
26 19301), a taxpayer may not file a claim for refund or credit for any  
27 amounts paid in connection with the penalty imposed in subdivision  
28 (a), except as provided in paragraph (2).

29 (2) A taxpayer may file a claim for refund for any amounts paid  
30 to satisfy a penalty imposed under subdivision (a) on the grounds  
31 that the amount of the penalty was not properly computed by the  
32 Franchise Tax Board.

33 (f) Notwithstanding Section 18415, the amendments made to  
34 this section by the act adding this subdivision shall apply to  
35 penalties imposed under paragraph (2) of subdivision (a) after  
36 March 31, 2005.

37 (g) *This section shall not apply to the waiver period provided*  
38 *for in Part 9.4 (commencing with Section 19740).*

39 SEC. 4. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

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