

Assembly Bill No. 821

CHAPTER 612

An act to amend Sections 11002 and 11003 of the Government Code, and to amend Sections 7084, 7091, and 7097 of, and to add Sections 6593.5, 6832, 6964, and 7094.1 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 19, 1998. Filed
with Secretary of State September 21, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 821, Takasugi. Taxpayer bill of rights.

The Katz-Harris Taxpayers' Bill of Rights Act, among other things, governs the assessment, audit, and collection of various state taxes administered by the State Board of Equalization.

This bill would expand, modify, or supplement that taxpayer's act with respect to provisions relating to, among other things, relief of interest, installment payment agreements, interest on erroneous refunds, education and information programs, reimbursement of certain fees and expenses, return of levied property, release of lien to facilitate collection or in the best interest of the state and taxpayer, and private delivery systems, as provided.

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

SECTION 1. Section 11002 of the Government Code is amended to read:

11002. If a remittance to cover a payment required by law to be made to the state or to a state agency on or before a specified date is sent through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, it shall be deemed received on the date shown by the cancellation mark stamped upon the envelope containing the remittance or on the date it was mailed if proof satisfactory to the state or state agency establishes that the mailing occurred on an earlier date.

If a remittance to cover a payment required by law to be made to the state or to a state agency on or before a specified time on a specified date is sent through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, and the cancellation mark is placed on the envelope after it is deposited in the mail:

(a) Where the cancellation mark shows both date and time, the remittance shall be deemed received on the date shown by the cancellation mark and by the time specified by law for that date.

(b) Where the cancellation mark shows only the date, the remittance shall be deemed received within the time and date specified when the cancellation mark bears a date on or before which payment is required.

SEC. 2. Section 11003 of the Government Code is amended to read:

11003. If an application, tax return or claim for credit or refund required by law to be filed with the state or state agency on or before a specified date is filed with a state agency through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, it shall be deemed filed on the date shown by the cancellation mark stamped on the envelope containing it, or on the date it was mailed if proof satisfactory to the state agency establishes that the mailing occurred on an earlier date.

If an application, tax return or claim for credit or refund required by law to be filed with the state or state agency on or before a specified time on a specified date is sent through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, and the cancellation mark is placed on the envelope after it is deposited in the mail:

(a) Where the cancellation mark shows both date and time, the application, tax return or claim for credit or refund shall be deemed filed on the date shown by the cancellation mark and by the time specified by law for that date.

(b) Where the cancellation mark shows only the date, the application, tax return or claim for credit or refund shall be deemed filed within the time and date specified when the cancellation mark bears a date on or before the specified date of filing.

SEC. 3. Section 6593.5 is added to the Revenue and Taxation Code, to read:

6593.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 6480.4, 6480.8, 6513, 6591, and 6592.5 under the following circumstances:

(1) Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(2) Where failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles was the direct result of an error by the Department of Motor Vehicles in calculating the use tax.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.



(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after July 1, 1999.

SEC. 4. Section 6832 is added to the Revenue and Taxation Code, to read:

6832. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 5. Section 6964 is added to the Revenue and Taxation Code, to read:

6964. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 6961, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section is operative for any action for recovery under Section 6961 on or after July 1, 1999.

SEC. 6. Section 7084 of the Revenue and Taxation Code is amended to read:



7084. (a) The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Taxpayer or industry groups identified in the annual report described in Section 7085.

(3) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.

(2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 7. Section 7091 of the Revenue and Taxation Code is amended to read:

7091. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.



(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

SEC. 8. Section 7094.1 is added to the Revenue and Taxation Code, to read:

7094.1. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 7096.

SEC. 9. Section 7097 of the Revenue and Taxation Code is amended to read:

7097. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon



as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

