

ASSEMBLY BILL

No. 2897

**Introduced by Committee on Revenue and Taxation (Knox
(Chair), Alquist, Aroner, Ducheny, Honda, and Romero)**

March 9, 2000

An act to amend Section 6810 of the Corporations Code, and to amend Sections 19411 and 23188 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2897, as introduced, Committee on Revenue and Taxation. Taxation.

Under existing law, the Franchise Tax Board may recover any refund or credit that is erroneously made or allowed, together with interest from the date demand for recovery was made. In the case of a corporation, interest is computed from the date the refund was made or the credit allowed, instead of the date a demand for recovery was made.

This bill would instead provide that for all persons interest shall be computed beginning 30 days after the Franchise Tax Board mails a notice and demand for repayment.

This bill would also correct certain statutory references and make nonsubstantive, technical changes relating to taxation.

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 6810 of the Corporations Code is
2 amended to read:

3 6810. (a) Upon the failure of a corporation to file the
4 statement required by Section 6210, the Secretary of State
5 shall mail a notice of ~~such~~ *that* delinquency to the
6 corporation. The notice shall also contain information
7 concerning the application of this section, and advise the
8 corporation of the penalty imposed by Section 19141 of
9 the Revenue and Taxation Code for failure to timely file
10 the required statement after notice of delinquency has
11 been mailed by the Secretary of State. If, within 60 days
12 after the mailing of the notice of delinquency, a
13 statement pursuant to Section 6210 has not been filed by
14 the corporation, the Secretary of State may pursuant to
15 regulation certify the name of ~~such~~ *the* corporation to the
16 Franchise Tax Board.

17 (b) Upon certification pursuant to subdivision (a), the
18 Franchise Tax Board shall assess against the corporation
19 a penalty of fifty dollars (\$50) pursuant to Section ~~25936~~
20 *19141* of the Revenue and Taxation Code.

21 (c) The penalty herein provided shall not apply to a
22 corporation which on or prior to the date of certification
23 pursuant to subdivision (a) has dissolved or has been
24 merged into another corporation.

25 (d) The penalty herein provided shall not apply and
26 the Secretary of State need not mail a notice of
27 delinquency to a corporation the corporate powers,
28 rights, and privileges of which have been suspended by
29 the Franchise Tax Board pursuant to Section 23301,
30 23301.5, or 23775 of the Revenue and Taxation Code on
31 or prior to, and remain suspended on, the last day of the
32 filing period pursuant to Section 6210. The Secretary of
33 State need not mail a form pursuant to Section 6210 to a
34 corporation the corporate powers, rights, and privileges
35 of which have been so suspended by the Franchise Tax
36 Board on or prior to, and remain suspended on, the day
37 the Secretary of State prepares the forms for mailing.



1 (e) If, after certification pursuant to subdivision (a)
2 the Secretary of State finds the required statement was
3 filed before the expiration of the 60-day period after
4 mailing of the notice of delinquency, the Secretary of
5 State shall promptly decertify the name of the
6 corporation to the Franchise Tax Board. The Franchise
7 Tax Board shall then promptly abate any penalty assessed
8 against the corporation pursuant to Section 19141 of the
9 Revenue and Taxation Code.

10 (f) If the Secretary of State determines that the failure
11 of a corporation to file a statement required by Section
12 6210 is excusable because of reasonable cause or unusual
13 circumstances ~~which~~ *that* justify the failure, the Secretary
14 of State may waive the penalty imposed by this section
15 and by Section 19141 of the Revenue and Taxation Code,
16 in which case the Secretary of State shall not certify the
17 name of the corporation to the Franchise Tax Board, or
18 if already certified, the Secretary of State shall promptly
19 decertify the name of the corporation.

20 SEC. 2. Section 19411 of the Revenue and Taxation
21 Code is amended to read:

22 19411. The Franchise Tax Board may recover any
23 refund or credit or any portion thereof which is
24 erroneously made or allowed, together with interest at
25 the adjusted annual rate established pursuant to Section
26 19521 ~~from the date demand for recovery was made~~
27 *beginning 30 days after the board mails a notice and*
28 *demand for repayment*, in an action brought in a court of
29 competent jurisdiction in the County of Sacramento in
30 the name of the people of the State of California within
31 whichever of the following periods expires the later:

32 (a) Two years after the refund or credit was made.

33 (b) During the period within which the Franchise Tax
34 Board may mail a notice of proposed deficiency
35 assessment.

36 ~~(e) In the case of a corporation, interest shall be~~
37 ~~computed from the date the refund was made or the~~
38 ~~credit allowed, instead of the date a demand for recovery~~
39 ~~was made.~~



1 SEC. 3. Section 23188 of the Revenue and Taxation
2 Code is amended to read:
3 23188. In the event that taxes, interest~~and~~, *or*
4 penalties have been or shall be assessed against, paid by,
5 or collected from a taxpayer under a~~subsection~~
6 *subdivision* of Section 23181 or 23183.1, which assessment,
7 payment, or collection should have been made under a
8 different ~~subsection~~ *subdivision* of ~~such~~ *those* sections,
9 ~~such~~ *the* taxes, interest~~and~~, *or* penalties shall be
10 considered as having been assessed, paid, or collected
11 under ~~such~~ *that* different ~~subsection~~ *subdivision* as of the
12 date or dates they were made.

