

Senate Bill No. 603

CHAPTER 203

An act to add Section 6166 to the Government Code, and to amend Sections 19005 and 19104 of the Revenue and Taxation Code, relating to state levies.

[Approved by Governor July 27, 1999. Filed with
Secretary of State July 28, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 603, Speier. Remittances and interest.

Existing law authorizes the Franchise Tax Board to accept payment by credit card for taxes, interest, penalties, and fees, if specified conditions are met.

This bill would remove the present restrictions regarding payments by credit card, and instead would permit these payments to be made by credit cards at that time and under those conditions as the Franchise Tax Board may prescribe. This bill would also require the Franchise Tax Board and any other state agency accepting payment by credit card to notify each eligible payer of that fact, and to provide, as specified, for billing statements that allow for payment by credit card.

Under existing law, the Franchise Tax Board is authorized to abate interest on unpaid taxes that is attributable to errors or delays caused by an officer or employee of the Franchise Tax Board in the performance of a ministerial or managerial act.

This bill would also permit the abatement of interest accruing from a deficiency based on a final federal determination of tax for the same period that interest was abated on the related federal deficiency under specified provisions of the Internal Revenue Code.

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

SECTION 1. Section 6166 is added to the Government Code, to read:

6166. Any state agency accepting payment by a means of credit card, whether pursuant to this chapter or Section 19005 of the Revenue and Taxation Code, shall, when sending a billing statement, notify each payer permitted to make payment to that agency by means of a credit card of his or her option of making payment by means of a credit card. Each state agency that sends a billing statement to an individual who is allowed to make payment to that agency by means of a credit card shall provide either of the following on that statement or on a document provided with the statement:

(a) A designated space on the payment form upon which the payer can provide a credit card number, expiration date, and signature.

(b) Complete instructions as to the procedure, by means of telephone or otherwise, that the payer must follow in order to pay by means of a credit card.

SEC. 2. Section 19005 of the Revenue and Taxation Code is amended to read:

19005. The tax, and any interest and penalties, shall be paid to the Franchise Tax Board. Except as provided in Section 19011 with respect to an electronic funds transfer, remittances may be in the form of a check, payable in United States funds to the Franchise Tax Board, at the time and in the manner as the Franchise Tax Board may prescribe or, notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Title 3 of the Civil Code, in the form of a credit card or other payment device as defined in Chapter 2.6 (commencing with Section 6160) of the Government Code, at the time and in the manner that the Franchise Tax Board may prescribe. If a check or credit card remittance is not paid by the bank on which it is drawn, the taxpayer tendering the check or credit card remittance remains liable for the payment of the tax, and all interest and penalties, as if the check or credit card remittance had not been tendered.

SEC. 3. Section 19104 of the Revenue and Taxation Code is amended to read:

19104. (a) Interest upon the amount assessed as a deficiency shall be assessed, collected, and paid in the same manner as the tax at the adjusted annual rate established pursuant to Section 19521 from the date prescribed for the payment of the tax or, if the tax is paid in installments, from the date prescribed for payment of the first installment, until the date the tax is paid. If any portion of the deficiency is paid prior to the date it is assessed, interest shall accrue on that portion only to the date paid.

(b) If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Interest on amounts erroneously made or allowed shall not accrue until 30 days from the date the Franchise Tax Board mails a notice and demand for repayment as provided by this subdivision.



(c) (1) In the case of any assessment of interest, the Franchise Tax Board may abate the assessment of all or any part of that interest for any period in any of the following circumstances:

(A) Any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(B) Any payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to that officer or employee being dilatory in performing a ministerial or managerial act.

(C) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable or income year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(D) For purposes of this paragraph:

(i) Except as provided in subparagraph (C), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(ii) Within 180 days after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization. The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(iii) Except for the amendment adding clause (ii), the amendments made by the act adding this clause are operative with respect to taxable or income years beginning on or after January 1, 1998. The amendment adding clause (ii) is operative for requests for abatement made on or after January 1, 1998.

(2) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless either of the following has occurred:

(A) The taxpayer (or a related party) has in any way caused that erroneous refund.



(B) That erroneous refund exceeds fifty thousand dollars (\$50,000).

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