ASSEMBLY BILL No. 2065

Introduced by Assembly Member Gorell

February 20, 2014

An act to repeal and add Section 19132.5 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2065, as introduced, Gorell. Income taxation: timeliness penalty: abatement.

Existing law imposes penalties when a taxpayer fails to timely file an income tax return or fails to timely pay the tax due as shown on, or as required to be shown on, the tax return, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

The bill would require the Franchise Tax Board, upon taxpayer request, to abate a failure-to-file or failure-to-pay timeliness penalty when specified circumstances are met, including where the taxpayer has paid, or is in a current arrangement to pay, all tax currently due and the Franchise Tax Board has not imposed a timeliness penalty in the year of the request or prior 4 years. The bill would make a continuous appropriation from the General Fund to the Franchise Tax Board in those amounts necessary to make payments to those taxpayers who have paid the penalty that is being abated before the effective date of this bill.

The bill would make a legislative finding and declaration regarding the public purpose served by the bill.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 19132.5 of the Revenue and Taxation Code is repealed.

~~19132.5. (a) In the case of a qualified taxpayer, no penalty shall be assessed under Section 19132 if the return is filed timely (not later than the extended due date granted under Section 18567 or 18604) and the tax required to be paid on or before the due date of the return, without regard to extension, is paid within the following time:~~

~~(1) In the case of an individual, partnership, or fiduciary, within six months of the original due date of the return.~~

~~(2) In the case of a corporation, within seven months of the original due date of the return.~~

~~(b) Any penalty imposed under Section 19132 shall be assessed from the original due date of the return if the taxpayer fails to pay the tax within the time specified in this section.~~

~~(c) This section shall apply to payment of the amount shown as tax on the original returns required to be filed during calendar year 1994.~~

~~(d) For purposes of this section, "qualified taxpayer" means any corporation, fiduciary, partnership, or individual taxpayer to whom one of the following applies as a result of the Northridge earthquake of January 1994, any related aftershock, or any related casualty:~~

~~(1) The qualified taxpayer sustained any significant property loss.~~

~~(2) The qualified taxpayer suffered a loss of employment due to property damage suffered by his or her employer.~~

~~(3) The qualified taxpayer realized significant loss of business income from a business located within the Northridge earthquake area.~~

SEC. 2. Section 19132.5 is added to the Revenue and Taxation Code, to read:

19132.5. (a) (1) A taxpayer may elect to request abatement of a timeliness penalty under this section for a timeliness penalty that has been considered and rejected for abatement, waiver, or rescission pursuant to the provisions of the section under which the penalty is imposed.

(2) A taxpayer may, in lieu of requesting consideration for abatement, waiver, or recission pursuant to the provisions of the section under which the timeliness penalty is imposed, instead request abatement of a timeliness penalty under this section.

(b) If a taxpayer described in subdivision (a) requests, either orally or in writing, the abatement of a timeliness penalty pursuant to this section, the timeliness penalty shall be abated if all of the following apply:

(1) The taxpayer has not previously been required to file a California return under Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001), or no other timeliness penalty has been imposed by the Franchise Tax Board in the calendar year of the request for abatement or in the prior four tax years.

(2) The taxpayer has filed all returns required under Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001), as of the date of the taxpayer's request for abatement.

(3) Excluding the timeliness penalty that is the subject of the abatement request, the taxpayer has paid in full, or arranged to pay pursuant to an installment agreement, any tax, penalties, fees, and interest due for all currently required returns and the taxpayer is current with all installment payments.

(c) For purposes of this section, "timeliness penalty" means a penalty imposed under Section 19131, 19132, 19172, or 19172.5.

(d) For purposes of this section:

(1) A timeliness penalty imposed and subsequently abated due to a determination of reasonable cause or reasonable cause and not willful neglect with respect to the taxpayer or the taxpayer's spouse, shall be considered to have not been imposed.

(2) A timeliness penalty is considered imposed on the original due date of the return for the taxable year for which the penalty is imposed.

(3) If a taxpayer requests abatement for more than one taxable year and two or more taxable years would be eligible for abatement under this section, then only the penalty for the earliest taxable year shall be abated.

(4) This section shall apply to requests for abatement made before, on, or after the effective date of the act adding this section.

(e) The Franchise Tax Board may issue any regulations necessary or appropriate to implement this section.

(f) Notwithstanding Section 13340 of the Government Code, and without regard to fiscal year, there is hereby continuously appropriated from the General Fund to the Franchise Tax Board those amounts necessary to make the payments required by the act adding this subdivision with respect to the abatement of penalties paid before the effective date of the act adding this subdivision.

SEC. 3. The Legislature finds and declares that the abatement by this act of timeliness penalties with respect to the abatement of penalties paid before the effective date of the act adding this subdivision, serves a public purpose and does not constitute a gift of public funds within the meaning of Section of Article XVI of the California Constitution.

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