

## RESOLUTION 11-08-2014 (as amended)

### DIGEST

#### Unfiled State Income Tax Returns: Statutory Penalties for Failure to File/Respond

Amends Revenue and Taxation Code section 19133 to clarify that the Franchise Tax Board has discretion in assessing penalties for failing to respond to inquiries or filing a return.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Revenue and Taxation Code section 19133 to clarify that the Franchise Tax Board has discretion in assessing penalties for failing to respond to inquiries or filing a return. This resolution should be approved in principle because it allows the Franchise Tax Board to exercise discretion where taxpayers have made a good faith effort to comply with their obligations.

The stated purpose of this resolution is to confirm that the added penalty for failing to respond to the Franchise Tax Board, or failing to file a return (of 25% of the amount of tax determined pursuant to section 19087, or of any deficiency) only applies to taxes actually owed, and to give the Franchise Tax Board discretion as to the amount of such penalty if imposed, based on the good faith efforts of the taxpayer in resolving the problem and/or responding to inquiries.

The proponent notes that currently, a taxpayer who does not pay the full amount of tax when due, or simply fails for whatever reason to respond to correspondence from the Franchise Tax Board is subject to a 25% penalty of the full tax, in addition to any other penalties.

This resolution would bring fairness and clarity to the subject, and bring the Revenue and Taxation Code more closely into line with the Federal position, which does not impose a penalty for failure to file if a taxpayer owes no tax, and caps the penalty at 10 ~~25~~% of the tax actually owed if there is a failure to file when tax is owed. (26 U.S.C. § 6651(a).)

### TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Revenue and Taxation Code section 19133 to read as follows:

#### § 19133

- 1           If any taxpayer fails or refuses to furnish any information requested in writing by the
- 2 Franchise Tax Board or fails or refuses to make and file a return required by this part upon notice
- 3 and demand by the Franchise Tax Board, then, unless the failure is due to reasonable cause and
- 4 not willful neglect, the Franchise Tax Board may add a penalty of up to 10 ~~25~~ percent of the

5 amount of tax determined pursuant to Section 19087 or of any deficiency tax assessed by the  
6 Franchise Tax Board concerning the assessment of which the information or return was required.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Contra Costa County Bar Association

## **STATEMENT OF REASONS**

The Problem: Existing law provides that a taxpayer who fails to respond to a notice and demand letter for tax return is subject to a 25 percent penalty of the amount of tax determined pursuant to Section 19087 or of any deficiency tax assessed by the Franchise Tax Board irrespective of whether the tax liability has been paid. In addition, the use of the word “may” indicates the penalty is within the discretion of the Franchise Tax Board, but does not specifically indicate the percentage used to compute the penalty may be adjusted pursuant to the discretion of the Franchise Tax Board.

Under current law a taxpayer who pays his or her tax liability in whole, or in part, but who does not respond to a notice and demand letter within the time indicated in said letter, is subject to a 25% penalty on the tax liability without any limitation. The fact the penalty is without limitation may subject a taxpayer who fails to respond to a letter, but who has paid his or her tax liability in whole, or in part, to an excessive fine in violation of the Excessive Fines Clause of the Eighth Amendment. It is possible a penalty of \$25,000 or more may be assessed against a taxpayer for simply failing to respond to a letter.

The Solution: This resolution would reduce the maximum penalty that may be imposed to 10 percent, and further clarify the fact the penalty, and the percentage applied to the computation of the penalty, is within the sound discretion of the Franchise Tax Board, and not mandatory.

## **LEGISLATIVE HISTORY**

Not known.

## **IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

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