

Memorandum

320.0215

To : Mr. Philip Spielman
Supervisor, Petitions Section (MIC: 38)

Date: February 16, 2005

From: Trecia M. Nienow
Senior Tax Counsel

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Subject: Request for Interpretation of Revenue and Taxation Code (RTC) section
6593.5 – Relief of Interest

This is in response to your memorandum dated September 21, 2004, requesting clarification of my memorandum to Mr. J. W. Cornelius dated August 10, 2004 (copy attached).

You state:

“Does the law now permit us to relieve interest that accrued prior to January 1, 2002, for periods commencing on or after July 1, 1999, even though we could not do so prior to January 1, 2002?”

“For example: In November 2001, a taxpayer files for relief of interest that accrued from November 1, 1999, to June 30, 2001, for a determination covering the third quarter 1999. Although the taxpayer otherwise would have qualified for relief, the request was denied because there was no statutory basis for relief. Is this taxpayer now permitted to file a new request for relief, after January 1, 2002, and obtain relief of the interest that accrued from November 1, 1999, to June 30, 2001?”

We understand you to ask two questions: 1) whether interest accrued from November 1, 1999 to June 30, 2001 that is imposed by section 6482¹ on tax liabilities arising in the third quarter 1999 can be relieved under section 6593.5 when the taxpayer requests relief after January 1, 2002; and 2) whether relief denied prior to January 1, 2002, can be reconsidered.

DISCUSSION

As you know, effective January 1, 2002, subdivision (a) of section 6593.5 was amended to substitute “this part” for “Sections 6480.4, 6480.8, 6513, 6591, and 6592.5.” I concluded previously, that this amendment permits the board, in its discretion, on or after January 1, 2002, to relieve interest imposed by section 6482 for tax liabilities arising during taxable reporting periods commencing on or after July 1, 1999, provided all other requirements for relief are met. That is, the board could not grant this relief prior to January 1, 2002, because the provisions of section 6593.5 applied only to interest imposed by sections 6480.4, 6480.8, 6513, 6591 and 6592.5. I based this conclusion on the general rule that statutes are to be given prospective effect in the

¹ We assume your reference to determination means a determination computed in accordance with section 6481 that bears interest as specified in section 6482.

absence of a legislative statement or history to the contrary.² (See 58 Cal. Jr. 3, Statutes § 23; *Balen v. Peralta Junior College District* (1974) 11 Cal.3d 821.)

However, no change was made to subdivision (d) of section 6593.5 which provides that the “board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after July 1, 1999.” Interest imposed on a third quarter 1999 tax liability includes interest that accrues on and after November 1, 1999. The legislature did not change or limit this subdivision to interest that accrues on and after January 1, 2002. This means that the amendment to section 6593.5 does not preclude a taxpayer from obtaining relief of interest accrued from November 1, 1999 to June 30, 2001 on a tax liability arising in the third quarter 1999 when such relief is requested on or after January 1, 2002, provided all other requirements for relief are met.

With respect to your second question, our administrative process provides taxpayers with various opportunities for review of their liabilities such as during audit, appeal, or before the board. Moreover, Regulation 5082 authorizes a petition for rehearing under certain circumstances. To the extent our administrative process does not otherwise prohibit a taxpayer from requesting relief, another request made on or after January 1, 2002, should not render that request ineligible for consideration.

I hope this answers your question. If you have any further questions, please write again.

TMN:bb

Attachment: Trecia Nienow Memorandum Dated August 10, 2004

cc: Mr. Vic Anderson, Supervisor, Audit Support Unit (MIC: 44)

² An exception to the general rule that statutes are not construed to apply retroactively arises when the legislation merely clarifies existing law. (*Martin v. California Mut. B. & L. Assn.* (1941) 18 Cal.2d 478, 484.) Although the board inadvertently omitted some section references when it sponsored the original bill (AB 821) and sponsored AB 1123 to clean up this oversight, the amendment to section 6593.5(a) expands the original language by removing the limitation that relief may only be granted for interest imposed by sections 6480.4, 6480.8, 6513, 6591, and 6592.5. Thus, since the amendment does not merely clarify prior law (i.e., declare existing law), it is not retroactive.