

**M e m o r a n d u m****320.0057**

To: Mr. James J. Delaney

Date: February 11, 1988

From: E. L. Sorensen, Jr.

Subject: Sales and Use Tax Law – Excusability of Interest

This is in response to your request that we provide you with information regarding when interest on tax liabilities may and may not be excused by the Board.

Generally speaking, interest is not excusable. The exceptions to the general rule are found in Revenue and Taxation Code Sections 6593 and 6596.

SECTION 6593

Section 5593 provides, in essence, that if the Board finds a person's failure to make a timely return or payment was due to a disaster and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest imposed under Sections 6459, 6480.4, 6480.8, 6513, and 6591. Regulation 1703(b)(6) (copy enclosed) defines "disaster" for periods beginning January 1, 1982 to mean fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes. (Prior to January 1, 1982, "disaster" was limited to the foregoing phenomena occurring only from natural causes).

Following is a brief description of the sections enumerated in Section 6593:

Section 6459 - provides that the board for good cause may extend for up to one month the time for making a return or payment. In such cases, interest is due from the date on which the tax was due without the extension until the date of actual payment.

Sections 6480.4 and 6480.8 - pertain to interest due for failure to prepay sales tax (§ 6480.4) or failure to remit certain credits (§ 6480.8) from vehicle fuel distributions.

Section 6513 – requires interest be paid with respect to estimated determinations made by the board for periods in which the taxpayer failed to file returns.

Section 6591 – this is the general interest provision of the law which requires imposition of interest for failure to timely pay tax or amounts of tax required to be collected and paid to the state.

Please Note that certain other Revenue and Taxation Code provisions not specifically mentioned in Section 6593 refer to the enumerated sections outlined above and, therefore, could also afford the taxpayer relief under certain circumstances. Those sections are: Sections 6291-6294 (taxes and interest due as a result of the purchase of certain vehicles, vessels, and aircraft); Section 6537 (interest due on jeopardy determinations).

Finally, please note that no relief under Section 6593 is available in the case of interest imposed on deficiency determinations (§ 6482) or in cases where a person knowingly issues a resale certificate for personal gain or to evade the payment of taxes while not actually engaged in business as a seller (§ 6072).

### SECTION 6596

This section provides:

"Excusable delay - reliance on advice. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by Sections 6051 and 6201 and any penalty or interest added thereto.

"(b) For the purpose of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

"(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

"(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

"(3) In reasonable reliance on the board's written advice, the person did not charge or collect from his or her customers amounts designated as sales tax reimbursement or use tax for the described activity or transaction.

"(4) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

"(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

"(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

"(c) Any person seeking relief under this section shall file with the board:

"(1) A copy of the person's written request to the board and a copy of the board's written advice.

"(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

"(3) Any other information which the board may require.

"(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person."

As can be seen, if the board fines that a person's failure to make a timely return or payment comes within the purview of Section 6596, it may excuse the interest.

Hopefully, this information is what you require. If additional data or explanation is needed, please contact me.

ELS: jb

bc: Mr. Gary J. Jugum  
Mr. Donald J. Hennessy