

AMENDED IN ASSEMBLY MAY 1, 2014

AMENDED IN ASSEMBLY APRIL 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1777**

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**Introduced by Assembly Member Quirk-Silva  
(Principal coauthor: Assembly Member Gorell)**

February 18, 2014

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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 1777, as amended, Quirk-Silva. 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 of a *qualified taxpayer, as defined*, to abate a failure-to-file or failure-to-pay timeliness penalty when specified circumstances are met, including where the *qualified 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 *qualified 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:*

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2 Code is repealed.

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

5 19132.5. (a) (1) A *qualified* taxpayer may elect to request  
6 abatement of a timeliness penalty under this section for a timeliness  
7 penalty that has been considered and rejected for abatement,  
8 waiver, or rescission pursuant to the provisions of the section under  
9 which the penalty is imposed.

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

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

18 (1) The *qualified* taxpayer has not previously been required to  
19 file a California return under Part 10 (commencing with Section  
20 17001), this part, or Part 11 (commencing with Section 23001),  
21 or no other timeliness penalty has been imposed by the Franchise  
22 Tax Board in the calendar year of the request for abatement or in  
23 the prior four tax years.

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

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

33 (c) For purposes of this section, ~~“timeliness section:~~

1 (1) “*Qualified taxpayer*” means any corporation with gross  
2 receipts of less than one million dollars (\$1,000,000) in the taxable  
3 year for which the timeliness penalty is imposed or an individual  
4 taxpayer.

5 (2) “*Timeliness penalty*” means a penalty imposed under Section  
6 19131, 19132, 19172, or 19172.5.

7 (d) For purposes of this section:

8 (1) A timeliness penalty imposed and subsequently abated due  
9 to a determination of reasonable cause or reasonable cause and  
10 not willful neglect with respect to the *qualified* taxpayer or the  
11 *qualified* taxpayer’s spouse, shall be considered to have not been  
12 imposed.

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

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

20 (4) ~~This~~ *Subject to Section 19306, this* section shall apply to  
21 requests for abatement made before, on, or after the effective date  
22 of the act adding this section.

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

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

32 SEC. 3. The Legislature finds and declares that the abatement  
33 by this act of timeliness penalties with respect to the abatement of  
34 penalties paid before the effective date *of* this act, serves a public  
35 purpose and does not constitute a gift of public funds within the  
36 meaning of Section 6 of Article XVI of the California Constitution.