

M e m o r a n d u m**320.0123**

To: Ms. Jean A. McNeill
Return Review

Date: July 22, 1987

From: E. L. Sorensen, Jr.
Legal

Subject: Request for Relief from Interest

This is in reply to your inquiry regarding the application of section 6593 of the Revenue and Taxation Code to --- request for relief from interest as iterated in his letter drafted by counsel, --- dated June 8, 1987, addressed to you and Ms. Carter. We are to consider whether --- factual circumstances entitle him to such relief.

As we understand the facts, --- is the owner of --- a florist shop. In December of 1986, --- and his florist shop were victimized by fraud, theft, and embezzlement. The criminal acts were perpetrated by an employee and non-employee. The period for which --- is requesting relief of interest accruing on his account is from that tax which was due on or before January 31, 1987 for the period October through December 1986.

Under penalty of perjury, --- has stated that the fraud, theft, and embezzlement created serious cash flow problems which nearly terminated his business. He further stated that the acts occurred notwithstanding his exercise of ordinary care and the absence of willful neglect.

--- contends that the Legislation, by deleting the word "natural" before "disaster" in a 1981 amendment of section 6593, has intended that any taxpayer who experiences a "disaster" should qualify for waiver of interest. --- believes that his circumstances constitute a "disaster" as defined by section 6593 and that any interest accruing on his account should be waived.

Section 6591 of the Revenue and Taxation Code provides that in addition to imposing a penalty of 10 percent of the tax or amount of the tax, interest may be applied to the account of a taxpayer if that taxpayer has failed to pay and tax to the State or any amount of tax required to be collected and paid to the State within the time required.

--- has correctly stated that relief from interest may be granted in failure to make a timely return or payment was due to a disaster occurring despite the exercise of ordinary care and the absence of willful neglect (Rev. & Tax. Code § 6593). Further, he correctly states that Stats. 1981, Ch. 947, deleted the word "natural" before the word "disaster" in Section 6593.

Assembly Bill 357 provided the textual change in section 6593. this bill was an annual “clean-up” bill of the State Board of Equalization written to alleviate various administrative problems and inefficiencies.

One such inefficiency is characterized by the following example. If a disastrous fire, stated by lightning, causes a taxpayer to make an untimely return or payment and that taxpayer had exercised ordinary care and there was an absence of willful neglect, then that taxpayer would be entitled to waiver of the interest. But if the disastrous fire was the result of an arsonist at work, the taxpayer would be required to pay the interest even though he/she had exercised ordinary care and there was an absence of willful neglect. The determinative factor was the word “natural”. To prevent such injustice, “natural” has been deleted.

Regulation 1703 (b) (C) (6) provides:

“[N]atural disaster” means fire, flood, storm, tidal wave, earthquake or similar public calamity resulting from natural causes, “disaster” means fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes.

Although we can empathize with --- we are statutorily unable to recommend that the Board relieve him of the interest accruing on his account. Section 6593 applies to “disasters” as defined by Regulation 1703 (b) (c) (6). Clearly, --- “disaster” is not within the ambit and meaning which the legislative intent.

If you have further questions, feel free to write again.

ELS:md