**SCS Agency**
Franchise Tax Board

# SUMMARY ANALYSIS OF AMENDED BILL

Author: Pacheco | Analyst: Gloria McConnell | Bill Number: AB 2613

Related Bills: _____ | Telephone: 845-4336 | Amended Date: 05/05/98

Attorney: Janet Ballou | Sponsor:

**SUBJECT**: Court Ordered Fines, Fees and Costs/Change Offset Priority

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED 02/23/98 STILL APPLIES.

X OTHER - See comments below.

SUMMARY OF BILL

Under this bill, the offset priority for income tax refunds (and lottery winnings) would be changed so that restitution, fines or other amounts imposed by order pursuant to Section 1202.4 of the Penal Code and payable to the state or counties, would be offset immediately following child and spousal support and overpaid unemployment benefits. All other offset amounts would then be satisfied as determined by the Controller.

SUMMARY OF AMENDMENT

This amendment returns unpaid court ordered debts that are other than restitution, fines or other amounts imposed by order pursuant to Section 1202.4 of the Penal Code to the current position in the offset hierarchy, which follows state debts.

The April 23, 1998, amendment includes in establishing the offset priority for unpaid court-ordered debts, "restitution, fines or other amounts imposed by order pursuant to Section 1202.4 of the Penal Code."

DEPARTMENTS THAT MAY BE AFFECTED:

____ STATE MANDATE ____ GOVERNOR'S APPOINTMENT

| Board Position: | Agency Secretary Position: | GOVERNOR'S OFFICE USE |
|---|---|---|
| ____ S ____ O | ____ S ____ O | Position Approved ____ |
| ____ SA ____ OUA | ____ SA ____ OUA | Position Disapproved ____ |
| ____ N ____ NP | ____ N ____ NP | Position Noted ____ |
| ____ NA ____ NAR | ____ NA ____ NAR | |
| ____X____ PENDING | DEFER TO _____ | |
| Department/Legislative Director Date | Agency Secretary Date | By: Date: |
| Johnnie Lou Rosas 5/19/98 | | |

PROGRAM HISTORY/BACKGROUND

Currently, the offset program, which is administered by FTB on behalf of the Controller, is an automated computer process limited to amounts of indebtedness submitted by governmental agencies. Under this program, income tax refunds and lottery winnings are offset against debts owed participating governmental agencies (participating agencies). The participating agencies are responsible for account maintenance, including maintaining the debtor's complete name and address. If payments or other adjustments are made on the account, the participating agency makes the necessary adjustments to the amount due and notifies FTB via magnetic media. In the event the debtor disputes the amount of the debt, the debtor is directed to the participating agency. FTB has no account information and has no responsibility other than the interception and transmission.

In general, the state or local government agency responsible for collecting the particular debt sends to FTB for inclusion on the offset file a magnetic media tape or disk containing the amount due, the debtor's social security number, the first four letters of the debtor's last name (name control) and the two-digit code number identifying the participating agency that is seeking the offset. Before FTB issues an income tax refund or the lottery commission pays out lottery winnings, FTB searches the offset file. When the SSN and name on the refund or lottery winnings match that on the offset file, FTB intercepts the refund or lottery winnings up to the amount owed the participating agency and transmits the intercepted funds to that agency as determined by the identifying code number. After offset, the debtor receives any remaining refund from FTB or lottery winnings from the commission.

Under Section 1202.4 of the Penal Code, the court can order the defendant to pay a "restitution fine" and/or "restitution" to the victim. "Restitution fines" are recovered by the district attorney or Attorney General. For purposes of the offset program, a "restitution fine" generally is deemed a debt owed to the state (Section 13967.5 of the Government Code). "Restitution fines" are deposited in the Restitution Fund.

"Restitution" is made directly to the victim. However, the state may have a lien on the restitution to the extent the victim received assistance from the state for the same losses covered by the restitution order. When a court orders restitution paid to a victim, the order is deemed a money judgment enforceable by the victim. However, the Department of Corrections on behalf of the victim, may garnish a portion of an incarcerated offender's wages or trust fund. Additionally, county probation officers may collect on behalf of the victim restitution from offenders on probation/parole. If there is a lien because the victim received assistance from the state, the Department of Corrections and county officers deposit restitution payments up to the amount of the lien in the Restitution Fund.

SPECIFIC FINDINGS

**Currently**, if a debtor owes more than one debt subject to offset, an offset hierarchy is provided: child and spousal support obligations are satisfied first, then unemployment benefit overpayments, followed by state debts, followed by city and county debts, which can include certain court-ordered amounts. Only governmental agencies to which the debt is owed are authorized to participate in the offset program.

**Under this bill**, in the event the debtor owes more than one debt subject to offset, restitution, fines and other amounts that are court-ordered and due the state or county would be given priority treatment after payments of child and spousal support obligations and unemployment benefit overpayments but before state debts.

Implementation Considerations

The bill does not extend the offset program to restitution owed directly to a victim. According to the author's office, this is the intent of the bill. Since current offset authority is limited to amounts submitted by governmental agencies, the bill does not accomplish the author's goal. To achieve the author's goal the bill should be amended to:

- designate a governmental agency that would be responsible for submitting the victim's restitution amount to FTB for offset;
- authorize that governmental agency to participate in the offset program on behalf of the victim; and
- require that governmental agency to maintain the account records, resolve any disputes about the amount of the debtor, distribute the intercepted amounts to the victim and ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

To receive this new priority, the participating agency would be required to request an identification code solely for court-ordered restitution, restitution fines or other amounts imposed pursuant to Section 1202.4 of the Penal Code and owed the state or county.

BOARD POSITION

Pending.