ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author:	Correa	Analyst:	LuAnna Hass	Bill Number:	AB 1845
Related Bills:	See Legislative History	Telephone:	845-7478	Introduced Date:	January 28, 2002
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Lien Priority/Liens To Enforce Victim Restitution Fine Or Order Take Priority Over Liens Filed By The State

SUMMARY

This bill would allow any lien that is filed to enforce either a court-ordered restitution fine or victim's restitution order to take priority over any state tax lien.

PURPOSE OF THE BILL

According to the author's office the purpose of this bill is to allow the victim of a crime to collect on their restitution order prior to the state collecting on a tax debt.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2003.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Criminal restitution is a process by which offenders are held accountable for the financial losses they have caused to the victims of their crimes. The restitution payment is the sum of money paid by the offender to the victim to balance this monetary debt.

Under federal law, it is mandatory for a defendant to pay restitution for many types of federal crimes. The Mandatory Victim Restitution Act of 1996 (MVRA) established procedures for determining the amount of restitution to which a victim may be entitled. In most fraud cases, restitution may be ordered in an amount equal to each victim's actual losses, usually the value of the principal or property fraudulently obtained. The MVRA provides that an order of restitution may be enforced by the United States (U.S.) according to the practices and procedures for the enforcement of a civil judgment under federal or state law. An order of restitution is a lien in favor of the U.S. on all property and rights to property of the defendant as if it were a liability for unpaid taxes.

Board Position:			Department Director	Date
______ S	______ NA	______ NP		
______ SA	______ O	______ NAR	Alan Hunter for GHG	03/21/02
______ N	______ OUA	__X__ PENDING		

In addition, a victim may choose to request the U.S. Clerk of Court to issue an Abstract of Judgment certifying that a judgment has been entered in a victim's favor in the amount specified in the Judgment. A victim may then file this with the Recorder's Office in any county within the state in which a defendant was convicted and where the victim believes the defendant has assets.

Under state law, any person convicted of a crime must pay a court-ordered restitution fine and restitution to any victim of that crime that suffered an economic loss as a result of the crime. The restitution order to the victim is enforced as if the order were a civil judgment. A victim may also request a lien as a judgment creditor to be filed in any county where it is believed the defendant has assets.

Existing state law imposes tax on the income earned by individuals, estates, trusts, and certain business entities. An individual that fails to report any portion of income may be assessed taxes on the unreported income. If the taxpayer fails to pay their taxes in full, the Franchise Tax Board (FTB) notifies the taxpayer that collection action may commence, which may include wage garnishments, liens, or other forms of levies.

An unrecorded, enforceable tax lien is automatically created when a taxpayer fails to pay an amount that becomes due and payable (statutory lien date). Generally, the lien that first comes into existence between competing state tax liens or between a state tax lien and a federal tax lien takes priority over the lien that comes into existence later. To be generally recognized and to compete with non-tax liens, a notice of state tax lien must be recorded in the county where real property is located and attaches to a taxpayer's interest in all real property owned by the taxpayer in that county. Once recorded, real property will be subject to that state tax lien for 10 years, unless released earlier by FTB or extended. State tax law allows FTB to release all or any portion of the property subject to a lien if the department determines that the taxes are sufficiently secured by a lien on other property, or that the release will not endanger or jeopardize the collection of taxes.

Although it is not required under state law, FTB may file a Secretary of State (SOS) lien that is enforceable against all personal property of the taxpayer. State income tax law gives FTB the authority to collect against personal property using other collection remedies, without regard to the statutory lien and without the need for a separate court issued abstract of judgment or a filed SOS lien.

THIS BILL

This bill would allow any lien filed to enforce either a court-ordered restitution fine or victim's restitution order to take priority over any state tax lien, regardless of when the state tax lien is filed or comes into existence.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Until these concerns are resolved, the impact of this bill on the department is uncertain.

- This bill only addresses liens filed to enforce restitution fines or orders in relation to the unrecorded statutory lien date of a state tax lien. The department normally only asserts the statutory lien date when competing interests exist with a federal tax lien.
- It is unclear whether this bill would have any direct impact on the department's other means of collecting taxes by levy on personal property. This bill could be construed to allow a victim with a restitution order to supersede any collection actions taken by FTB.
- Staff is uncertain whether:
    - FTB would be required to search out the restitution judgment liens prior to taking collection action against a taxpayer, or
    - if the victim would be required to assert their priority under this bill at the time FTB takes collection action.
- It is unclear if FTB would be required to substantiate the amount of unpaid restitution to be collected by the victim, and how the department would substantiate those amounts.
- Assuming this bill is effective and operative January 1, 2003, the language is silent on whether this bill applies to restitution orders issued before or after that date.
- This bill is also silent with regard to the department engaging in active collections on an account of a taxpayer that owes restitution.

OTHER STATES' INFORMATION

After a review of *Florida Illinois, Massachusetts, Michigan, Minnesota*, and *New York* laws, it appears that none of these states allow a lien for a restitution fine or victim restitution order to take priority over a state tax lien. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until the implementation concerns have been resolved.

ECONOMIC IMPACT

Collection Estimate

Based on limited information and the discussion below, it is estimated that the potential reduction in Personal Income Tax (PIT) collections due to the change in collection priorities would be on the order of $2 million annually.

This proposal does not take into consideration any collection revenue attributable to wage levies or other collection actions nor does it consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Collection Discussion

This analysis is based on data accumulated by the department in its administration of the Court Ordered Debt (COD) collection program and from data collected by PIT collections. Definitive information on total victim restitution fines and orders statewide is not available. For this estimate the impact for victim restitution cases focuses on the convergence of victim restitution and tax liens for the same individual. In addition, the following data and assumptions were used:

- It is estimated that there are approximately 700,000 delinquent victim restitution cases statewide. This is based on information from FTB's COD collection program and assumes 25% of debts owed are for victim restitution.
- Based on data collected from FTB's COD collection program and from data collected by PIT collections the following assumptions were made: (1) FTB's COD collection program maintains approximately one fourth of all delinquent victim restitution debts. (2) Approximately 22% of cases with victim restitution fines and orders would also have a state tax liability. Of these it is estimated that liens would be filed on approximately 40% of the cases. (3) Assumes a 5% collection rate annually on liens. These assumptions are based on data collected from FTB's existing COD collection program and from data collected by PIT collections.
- The average case balance for FTB's existing COD delinquent caseload is $643.

Therefore, assuming that there are approximately 700,000 delinquent victim restitution cases statewide, the annual reduction in PIT collection would be on the order of $2 million annually unless the victim restitution debts were satisfied and tax collections continued thereafter.

ARGUMENTS/POLICY CONCERNS

Criminal restitution fines are assessed against a defendant for any crime committed in California. Many taxpayers that have delinquent state taxes (income, sales, or employment) also may owe restitution. Generally, the tax debt would have no relation to the crime committed by the taxpayer and it is unclear why tax collection efforts, which benefit the state as a whole, should be given a lower priority.

Victims of "white-collar" crimes (embezzlement, fraud) often are individuals that are business owners that have insurance to cover financial losses due to these types of crimes. Depending on the insurance policy, the insurance company may reimburse the victim to cover the loss and then collect on the restitution order to reimburse their funds. Other policies may reimburse the victim to cover the loss (up to a maximum amount stated in the policy) and require the victim to collect on the restitution order. The victim would be allowed to keep any additional funds recovered after reimbursing their insurance company for the amount of the loss coverage. Therefore, this bill could be construed to give collection of restitution by insurance companies a higher priority than the collection of taxes.

Although this bill would allow liens filed to enforce a restitution fine or victim's restitution order to take priority over state tax liens, it would not affect federal tax liens that come into existence before the lien for restitution. Therefore, if a federal lien has first priority followed by the department's state income tax lien, a lien for restitution would take priority over the department's lien. The department would lose priority to the restitution lien, but the lien for restitution would still only be satisfied to the extent that the federal lien is satisfied first.

Similarly, if the department's lien has first priority and a federal lien has second priority, the liens for restitution would take precedence for the department's lien. Since this bill has no effect on the federal lien, the department's lien would move from first priority to third priority as a result of this bill. The federal lien would become first in priority followed by the restitution lien and finally the department's lien.

LEGISLATIVE STAFF CONTACT

LuAnna Hass	Brian Putler
Franchise Tax Board	Franchise Tax Board
845-7478	845-6333