

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Ass. Judiciary Committee Analyst: LuAnna Hass Bill Number: AB 1704

Related Bills: See Legislative History Telephone: 845-7478 Amended Date: May 27, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Child Support Obligor's Claims Of Exemption From Levy

SUMMARY

With respect to child support collections administered by the Franchise Tax Board (FTB), this bill would make clarifying changes to the laws regarding the information obtained through the Financial Institution Match System.

This analysis will not address the bill's other provisions relating to child support, as they do not impact the department or state income tax revenue.

SUMMARY OF AMENDMENTS

The May 27, 2004, amendments would make changes to provisions of the law regarding child support that do not impact the Franchise Tax Board (FTB).

The May 24, 2004, amendments would make changes to the child support law administered by FTB and are discussed in this analysis.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to committee staff, the purpose of this bill is to do technical clean up of various child support statutes.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2005.

POSITION

Pending.

ANALYSIS

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Will Bush

6/24/04

FEDERAL/STATE LAW

Federal law requires each state to have a single entity that is responsible for child support enforcement in that state, which is commonly referred to as the Title IV-D agency. Current law provides that the Department Of Child Support Services (DCSS) is California's Title IV-D agency and each county is required to create a local child support agency to oversee child support enforcement. Additionally, each local agency is required to transfer to FTB the responsibility for accounts receivable management of child support delinquencies. The accounts receivable management activities are in support of DCSS and local agencies and subject to all federal and state laws, regulations, and directives relating to child support programs prescribed by federal law.

Upon transfer of the child support delinquency, FTB is authorized to enforce collection of the child support delinquency as though it were a delinquent personal income tax liability. The department uses an automated tax collection system to send notices of delinquency to taxpayers and to garnish wages and levy bank accounts. This automated system searches through more than 220 million income records (including wage, dividend, and interest information) to locate an individual's assets. Once assets are located, the system can issue levies on bank accounts, wages, commissions, rents, and other miscellaneous sources of income. At the time collection of the child support delinquency is enforced, FTB is required to also enforce payment of any current child support obligation owed by that obligor.

State tax law authorizes FTB to issue orders to withhold (OTWs) to various institutions, including financial institutions, that have in their possession or control personal property or other things of value that belong to a taxpayer or debtor that owe a liability under the tax and non-tax programs administered by FTB. The financial institution is required to transmit the amount to FTB not less than 10 business days after receiving the OTW. In addition, the financial institution, person, or securities intermediary is required to liquidate the financial assets of an individual obligor who owes child support when a local child support agency or FTB issues a levy.

FTB, in conjunction with DCSS and financial institutions in the state, is required by law to operate a Financial Institution Match System (or Financial Institution Data Match (FIDM)) using automated data exchanges. This process consists of a quarterly cross-reference of the name and social security number of any obligor of past-due child support with financial institution records. In the event assets are located, FTB issues an OTW for any amount of past-due child support.

The counties are required to notify FTB of the following instances regarding an obligor of past-due child support:

- A court has ordered an obligor to make scheduled payments and the obligor is in compliance with that order.
- An earnings assignment order that includes an amount for past-due support has been served to the obligor's employer and earnings are being withheld.
- At least 50% of the obligor's earnings are being withheld for support.

Once FTB is notified of an obligor who meets any of the above conditions, FTB is allowed to use the information received through FIDM to collect any past-due child support through a levy issued to the financial institution. The first \$3,500 is exempt from levy without the obligor having to file a claim for exemption. In the event the amount to be levied upon is more than \$3,500, state law outlines the process that allows an obligor to file a claim for exemption for an amount that is less than or equal to the total amount levied. The obligor's claim for exemption must be based on financial hardship.

THIS BILL

This bill would make a non-substantive technical clarification of recently enacted law that allows an obligor under financial hardship that meets certain conditions to file for a claim of exemption for an amount that is less than or equal to the amount levied by FTB, as described above under State Law.

In addition, this bill would make non-substantive technical changes regarding the use of the term "transfer" when referring to delinquent child support debts referred to FTB.

IMPLEMENTATION CONSIDERATIONS

Generally, this bill could be implemented by FTB without significant difficulties.

TECHNICAL CONSIDERATIONS

Under recently enacted law described above, under certain circumstances, the first \$3,500 of an obligor's assets is to be exempt from levy without the obligor having to file a claim for exemption. However, the law is unclear as to whether the \$3,500 exemption applies to each financial institution that receives a levy or to an obligor's total assets. Since this bill would seem to clarify the circumstances for which a financial hardship exemption may be filed by an obligor, the author may wish to clarify the provision relating to the \$3,500 exemption and whether it applies to each financial institution or an obligor's total assets and whether the \$3,500 exemption is a one-time exemption or an annual exemption.

LEGISLATIVE HISTORY

AB 1752 (Assembly Budget Committee, Ch. 2003, Stats. 225) made various changes to the laws regarding child support, including changes regarding the information obtained through the Financial Institution Match System.

AB 2081 (Wright, 1999/2000) would have allowed a court to relieve any or all unpaid child support delinquencies with respect to an order for support of a child who is receiving public assistance, if 1) the obligor is 55 years of age or older, and 2) the child receiving support is 23 years of age or older. This bill failed in the Assembly Judiciary Committee.

AB 1995 (Aaroner, 1999/2000) would have required DCSS and the local child support agencies to offer a one-time child support amnesty program for amounts owed to the state. This bill was vetoed by the Governor due to the costs associated with the bill.

AB 3589 (Speier; Stats. 1992, Ch. 1223) created FTB's delinquent child support collection program. Under this program, counties (local child support agencies) refer child support delinquencies to FTB for collection as though they were delinquent income tax debts.

OTHER STATES' INFORMATION

Since this bill would make clarifying changes to an existing law, a review of other states' information would not be relevant.

FISCAL IMPACT

This bill is not anticipated to impact the department's programs or operations.

ECONOMIC IMPACT

This bill is not anticipated to impact collection efforts associated with FTB's child support collections program.

LEGISLATIVE STAFF CONTACT

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