

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Chu Analyst: LuAnna Hass Bill Number: AB 2203

Related Bills: See Legislative History Telephone: 845-7478 Amended Date: April 13, 2004

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Franchise Tax Board Administer Tax Amnesty

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 \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED \_\_\_\_\_ STILL APPLIES.

OTHER - See comments below.

## SUMMARY

This bill would create an amnesty program for certain taxpayers that:

- failed to file income tax <sup>1</sup>returns,
- underreported income on a previously filed income tax return, or
- failed to pay any taxes previously assessed.

## SUMMARY OF AMENDMENTS

The April 13, 2004, amendments removed the bill's legislative intent provision and replaced it with the provisions discussed in this analysis.

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

## PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to increase revenue and address those taxpayers that are nonfilers that contribute to the overall tax gap.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2005. The amnesty program would apply to taxable years beginning before January 1, 2003, only.

<sup>1</sup> In this analysis, "income tax" is intended to include generally the income tax for individuals, fiduciaries, estate, trusts, partnerships, and corporations, as well as the franchise tax, which is the corporate tax measured by income.

Board Position:

\_\_\_\_ S      \_\_\_\_ NA      \_\_\_\_ NP  
\_\_\_\_ SA      \_\_\_\_ O      \_\_\_\_ NAR  
\_\_\_\_ N      \_\_\_\_ OUA      \_\_\_\_ X PENDING

Department Director

Date

Gerald H. Goldberg

4/16/04

## **POSITION**

Pending.

## **ANALYSIS**

### FEDERAL LAW AND PRACTICE

Federal law does not provide for a comparable amnesty program. However, the federal government did provide for an “offshore voluntary compliance initiative” for abusive offshore credit card tax shelter schemes that involve taxpayers depositing unreported income in foreign banks and using credit or debit cards drawn on the foreign bank to spend the money. After applying by April 15, 2003, the taxpayer must cooperate with the Internal Revenue Service (IRS) and pay all tax, interest, and the accuracy related penalty by October 15, 2003.

Existing federal law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute.

### STATE LAW AND PRACTICE

Under current state income tax laws, numerous penalties may be imposed against individuals and corporate taxpayers for the nonreporting or underreporting of income. Additionally, certain penalties are imposed against third parties that assist taxpayers in the nonreporting or underreporting of income. Further, certain fees are imposed against taxpayers that fail to file returns or pay their tax liabilities. Appendix A provides details regarding these fees and penalties.

Taxpayers that fail to report or underreport their income also may be subject to criminal sanctions. Depending upon the gravity of the offense, such taxpayers may be guilty of either a misdemeanor or felony. Upon conviction, such taxpayers are subject to fines or imprisonment or both, together with costs of investigation and prosecution. Typically, the district attorney acts as the prosecuting attorney.

When a taxpayer fails to file an income tax return, there is no statute of limitations for enforcing the filing requirement.

To encourage certain out-of-state business entity taxpayers that were previously unaware of the requirement to file a California tax return, current state law allows the Franchise Tax Board (FTB) and the taxpayer to enter a voluntary disclosure agreement. These agreements allow FTB to waive penalties for these taxpayers that: (1) voluntarily file all required returns, (2) pay all the tax, penalties, and interest with respect to the preceding six taxable years, and (3) agree for the future to subsequently comply with all of California’s income tax laws.

If a taxpayer fails to report or underreport their income, FTB has the authority to estimate net income from any available information. Once the tax liability is determined based upon the estimate of net income, FTB may issue a notice of proposed deficiency assessment (NPA) for the additional tax, penalties, and interest.

As a result of the 1984-85 tax amnesty, the legislature increased the ability of FTB to target nonreporting and underreporting of tax liabilities. Appendix B provides details relating to these activities: enforcement, collection, and criminal investigation.

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Taxpayer information includes the amount of income earned, or any particulars on the return, including the business affairs of a corporation. Under the corporation tax law, a taxpayer is defined as any association, corporation, business, trust, or organization of any kind subject to corporation franchise tax.

### THIS BILL

This bill would create a tax amnesty program, which would include, but is not limited to, the following provisions:

- FTB would have the authority to administer an amnesty for taxpayers subject to the personal income tax laws (PITL) and corporation tax laws (CTL).
- Taxpayers under criminal investigation would be excluded from participating in amnesty.
- Those taxpayers eligible for either the state or federal abusive tax shelter voluntary compliance initiatives would be excluded from participating in amnesty for items and amounts that would have been eligible under the initiatives. However, those same taxpayers would be eligible for amnesty for items and amounts that are not related to abusive tax shelters.
- The amnesty filing timeframe would be February 1, 2005 - March 31, 2005, or during any other 2-month period ending no later than June 30, 2005.
- Amnesty would provide a penalty and fee waiver for taxable years 2002 and older.
- No refunds would be allowed on balances paid prior to amnesty.
- Payment in full would be required by the end of the amnesty period or an installment agreement would need to be initiated with final payment due by June 30, 2006. A taxpayer that defaults on an installment agreement entered under amnesty would have the amnesty revoked.
- FTB would be allowed to issue deficiency assessments post-amnesty for taxable years eligible for amnesty. Penalties would be assessed on only the additional assessment amount and not on the amount self-assessed and paid during amnesty.
- A taxpayer that takes advantage of amnesty would waive their right to file a claim for refund for amounts paid in connection with amnesty.

In addition, this bill would provide:

- Legislative intent language.
- A permanent 2% increase to the current personal income tax (PIT) and corporation underpayment interest rates on a going forward basis upon the conclusion of the amnesty program that would apply to all taxpayers.
- A repeal of the current interest netting provisions. Interest netting allows amounts of underpayments and overpayments for different taxable years to be combined retroactively in determining the total amount of interest due or payable. FTB PIT automated systems are currently unable to "net" an interest differential that would be created by the amendment described above. Reprogramming the systems to allow such interest netting would be costly administratively and have a significant impact on the integrity of the systems.

- Increase the current accuracy related penalty for a taxable year that would be eligible for amnesty from 20% to 50% of the understatement for any assessment issued after the close of amnesty.
- Two new interest “penalties” equal to 1) 50% of the existing unpaid interest amount on any tax year for a taxpayer that failed to take advantage of amnesty, and 2) 50% of the unpaid interest subsequently assessed on deficiency amounts where the taxpayer could have but failed to take part in amnesty. A taxpayer with a current installment agreement with FTB that fails to take advantage of amnesty would avoid this penalty.
- A requirement that FTB publish quarterly on the Internet a list of the ten largest corporate tax delinquencies and ten largest PIT liabilities. For purposes of the list:
  - Tax delinquency would mean the underreporting, nonreporting, or failure to pay a tax liability, as determined by FTB.
  - Tax delinquency would not include a delinquency 1) under litigation, 2) that a taxpayer has filed a petition for redetermination, 3) where the taxpayer and FTB have agreed upon and the taxpayer is in compliance with an installment agreement, and 4) for which the taxpayer has filed for bankruptcy protection.
  - Each quarterly list would include 1) the name and last known address of the person or persons liable, 2) the amount of the delinquency, including interest and penalties, 3) the length of time the amount has been delinquent, and 4) the type of tax that is delinquent.
  - Prior to a person being included on the list, FTB would be required to provide written notice to the person. The person would have 30 days to remit payment or make an installment agreement prior to being included on the list.
  - The quarterly list would be required to include 1) an FTB address and phone number for the person to contact regarding the list, and 2) the total number of persons that have appeared on the list who have satisfied their delinquencies and the total dollar amounts paid to satisfy those delinquencies.
  - FTB would be required to remove a person’s name within five days of any of the following occurrences with respect to a tax delinquency:
    - The person contacts FTB and the delinquency is resolved or being resolved.
    - FTB has verified that an active bankruptcy has been initiated.
    - FTB has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount.
    - FTB has determined that the tax delinquency is uncollectible.
  - A person that appears on the quarterly list could request FTB to include any payments that the person made to satisfy the delinquency in whole or in part. FTB would be required to include the payments on the list as promptly as feasible.

## IMPLEMENTATION CONSIDERATIONS

Implementing this bill would have a significant impact on the department, as discussed below under Fiscal Impact. To ensure that the amnesty program will be adequately funded, an appropriation should be provided in the bill. As the department creates an implementation plan and department costs are completed, department staff would be willing to work with the author’s staff to draft appropriate amendments.

Department staff has identified the following concern regarding the posting of taxpayer information on the Internet and are available to work with the author’s staff to draft any amendments for this concern and any other concerns that may be identified.

When posting taxpayer information on the Internet, this bill would require FTB to include the ten largest corporate and the ten largest PIT delinquencies and the length of time an amount is delinquent. It is unclear on what basis the author intends for FTB to determine the largest liabilities: tax year or total amount due for all taxable years combined for a particular taxpayer. In addition, this bill is unclear regarding when a tax debt becomes delinquent. The author may wish to clarify the definition of a delinquency and include whether it should be defined as the length of time from when the tax return and tax were due or the length of time from when FTB issues an assessment. Depending on the timeframe for the completion of an audit or assessment process, the taxpayer may have an older tax year with a newer deficiency assessed that subsequently becomes a delinquency.

### TECHNICAL CONSIDERATION

The department has identified the following technical concerns. Department staff is available to work with the author's office to resolve and draft amendments for these and other concerns that may be identified.

The provision of this bill that requires FTB to publish taxpayer information on the Internet references FTB as the "board." For purposes of the Revenue and Taxation Code, "board" is defined as the State Board of Equalization. Staff recommends the author amend the bill to replace the references to "board" with FTB.

This bill refers to corporate "delinquencies" and PIT "liabilities." The term "delinquency" would be defined but "liability" is not. For consistency purposes, staff recommends the author amend the bill to replace the references to PIT "liabilities" with the term "delinquency."

This bill would prohibit the Internet listing from including taxpayers that have filed a petition for redetermination. A petition for redetermination is filed with the federal Tax Court by a taxpayer to have a federal deficiency redetermined. Staff recommends the author amend this exception to reflect the correct terminology for California law.

### **LEGISLATIVE HISTORY**

AB 3230 (Hannigan; Stats. 1984, Ch. 1490) provided for an amnesty program for individual taxpayers relating to the nonpayment and underreporting of tax or the nonpayment of any previously assessed tax. Attachment C provides additional details about that program.

ABX 8 and AB 2635 (Martinez; 1997/98) both would have provided an income tax amnesty program. The revenue generated from the program would have been transferred to special funds to provide disaster loss assistance and provide relief from damages caused by uninsured motorists, respectively. Neither bill passed its first policy committee.

SB 1439 (Oller, 2001/2002) would have created a tax penalty amnesty program for certain taxpayers that had not reported or had underreported their income taxes. This bill was held in the Assembly Appropriations Committee.

### **PROGRAM BACKGROUND**

#### 1. 1984-1985 State Income Tax Amnesty Program

According to a 1986 report completed by FTB, California's 1984-85 amnesty program emerged from a growing perception among tax administrators and others that the state's "tax gap" was unacceptably large and growing larger. The general intent of the 1984 legislation, as outlined in the legislative intent language of AB 3230 (Hannigan, Ch. 1490, Stats. 1984), was to improve compliance with the income tax laws and accelerate and increase collections. In addition to the acceleration of collections, it was anticipated there would be a future benefit in that taxpayers would permanently be brought into the tax system. The Legislature expressly indicated that the amnesty program would be a one-time occurrence, not to be repeated in the future, as that would be counterproductive. The amnesty provisions were enacted along with post-amnesty enforcement tools and penalty provisions.

The 1984-85 amnesty program administered by FTB applied to the nonreporting or underreporting of an individual's income and nonpayment of individual income tax liabilities. It did not apply to corporate taxpayers. This legislation also included amnesty for sales and use tax that was administered by the Board of Equalization. The legislation provided for an amnesty window of 94 days (December 10, 1984, through March 15, 1985). The amnesty program produced total gross revenues of \$154 million in income taxes and interest. The department estimated it would have collected \$119.5 million from those individuals through its ongoing enforcement programs even if amnesty had not been adopted. Departmental costs were \$6.5 million (\$5.2 million for personnel and \$1.3 million for operating costs), which resulted in a cost-to-benefit ratio (CBR) of 1:24. Though the amnesty program ended in March 1985, the processing of amnesty applications and returns continued through June 1986 because the returns and payments could be filed or paid after making an application.

As part of marketing the amnesty program, FTB significantly increased the visibility of its enforcement program. FTB publicized the amnesty program to taxpayers by publicizing property seizures and criminal prosecutions. The legislation also gave FTB new enforcement tools, such as enhanced penalties and misdemeanor sanctions, and the authority to use private collection agencies to resolve out-of-state collection accounts. These new tools were also publicized. The message that was presented on billboards throughout the state was that detection methods, penalties, and collection tools would be improved and enhanced, so "get to us before we get to you."

## 2. 2002 Revenue Acceleration Project

In 2002 legislation was enacted<sup>1</sup> that allowed FTB to identify eligible taxpayers with high-risk collection accounts and offer those taxpayers the opportunity to satisfy an unpaid tax liability by paying the tax in full and receiving a waiver of interest, penalties, and fees. This interest and penalty waiver program, also known as the Revenue Acceleration Project (RAP), was in effect from October 1, 2002, through June 30, 2003. RAP generated approximately \$32 million in revenue and had a CBR of 1:8.

## 3. 2003 California Abusive Tax Shelter Legislation

Recently enacted California legislation<sup>2</sup> to combat abusive tax shelters included a state voluntary compliance initiative (VCI) from January 1, 2004, through April 15, 2004. This initiative permits a taxpayer that participated in an abusive tax shelter transaction to file an amended return to pay the tax and interest associated with an abusive tax shelter and not be assessed any penalties. In

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<sup>1</sup> AB 2065 (Oropeza, Ch. 499, Stats. 2002)

<sup>2</sup> SB 614 (Cedillo, Ch. 656, Stats. 2003) and AB 1601 (Frommer, Ch. 654, Stats. 2003)

addition, the bills provide several enforcement tools, including an expanded regime of penalties and reporting requirements applicable to investors, promoters, tax advisors, and tax preparers involved in abusive tax shelters. VCI was projected to bring in approximately \$90 million in revenue for each fiscal year 2003-04 and 2004-05. To date, VCI has brought in over \$200 million.

**OTHER STATES' INFORMATION**

According to information furnished by the Federation of Tax Administrators, as of March 2004, 11 states<sup>3</sup> and New York City had enacted legislation providing for a tax amnesty during 2003. Each state's amnesty varies. The number of months in the amnesty window varies, as does the taxes that amnesty covers. For additional information, Appendix C provides a chart of the past and current amnesties administered by other states. The chart is from the website of the Federation of Tax Administrators at [www.taxadmin.org/fta/rate/surveys.html](http://www.taxadmin.org/fta/rate/surveys.html).

A review of the Department of Revenue websites for *Connecticut, Georgia, and Minnesota* found that these states publish debtor information on the Internet. The states surveyed include *Connecticut, Georgia, Illinois, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

**FISCAL IMPACT**

Until an implementation plan is fully developed the departmental costs cannot be determined. For discussion purposes, staff looked at 1) potential increased customer contact and notices, 2) publicity costs necessary to the success of amnesty, and 3) basic processing functions and systems that would need to be modified to incorporate the filing of the amnesty documents, and made some cursory cost calculations. Based on these calculations, staff estimates that the preliminary department costs could range from \$10-\$15 million to implement this bill. As the implementation plan is further developed and in the event this bill is amended in the future, department costs will change and be completed.

**ECONOMIC IMPACT**

Revenue Estimate

Based on the discussion below, the revenue impact of this proposal is as follows:

Estimated Revenue Impact of AB2203 For Tax Reporting Periods Ending On or Before January 1, 2003 Fiscal Year (In Millions)				
	2004-05	2005-06	2006-07	2007-08
Total Gross Revenue	\$595	\$70	\$55	\$40
Collections Absent Amnesty Attributable To Amnesty Participants	-\$410	-\$85	-\$45	-\$20
Total Net Revenue	\$185	-\$15	\$10	\$20

<sup>3</sup> Arizona, Colorado, Florida, Illinois, Kansas, Maine, Massachusetts, Missouri, New York, North Dakota, and Virginia.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

#### Revenue Discussion:

The number of taxpayers that file approved amnesty applications, file the appropriate returns, and pay the required tax under the amnesty program (less what would have been collected under current law) will determine the net revenue impact for this bill.

These estimates are based on New York's experiences in administering a tax amnesty program during 2002/2003. Using New York's experience, adjusted to better fit California's filing and non-filing profile, this analysis attempts to measure the extent to which people would respond to tax amnesty based on relative economic elasticities experienced by New York. The essence of the calculation is to apply New York's elasticity factor response to their amnesty program (compared to the cost implications of not participating in amnesty) to California's relative advantage of participating in amnesty versus the cost implication of non-participation.

#### **ARGUMENTS/POLICY CONCERNS**

- This bill could benefit tax law-abiding businesses. Under this bill, tax law-abiding businesses and those businesses that will become tax law-abiding under amnesty would both be paying their respective fair share of taxes.
- Programming, managerial, and other key staff would be redirected from other projects or core functions for an amnesty. Many of these experienced staff would undoubtedly be redirected from revenue-producing activities, namely auditing and collecting. Such redirection may result in backlogs in other operations within FTB. The current hiring freeze could make the redirection of staff to an amnesty an even more critical issue for FTB.
- Experience with the 1984-85 amnesty indicates that the estimated workload and time necessary to resolve the amnesty accounts could be understated. For example, the department continued to handle miscellaneous amnesty workloads for several years after the close of the amnesty program. To the extent that this is the case, a General Fund deficiency or budget change proposal could be needed in addition to the appropriation suggested in this analysis. Under the present budgetary process, the likelihood of readily receiving such a deficiency to complete an unforeseen amnesty workload would be remote.
- On occasion prosecuting attorneys (Attorney General, district attorneys, and city attorneys) may seek FTB's assistance in their criminal cases where a person has received income as a result of criminal activities. FTB assists in these cases when the person has criminally violated the income tax laws by not reporting that income to FTB. If amnesty were granted under this bill, the prosecuting attorneys would be unable to pursue criminal penalties for violations of the tax laws. Therefore, prosecuting attorneys may have concerns with amnesty.
- This bill would require FTB to remove persons from the delinquency list if FTB verifies that a bankruptcy proceeding has been completed and there are no assets available to pay the delinquency. However, a taxpayer may not have their tax debts discharged in a bankruptcy proceeding and once the proceeding is completed, FTB is able to renew collection efforts to collect the debt. The department has a sophisticated automated collections computer system that continually searches for assets and levies upon an asset once located. Therefore, while the taxpayer may not have any immediate wage or bank account assets, which would require FTB to remove the taxpayer from the Internet listing, the automated system will continue to look for assets. Since the system is automated, department staff generally has minimal intervention with the process and may experience issues in tracking taxpayers that may be able to return to the listing once assets are located.

- FTB and the IRS routinely share taxpayer information via an interagency agreement. Once the department receives data from the IRS, such as address information, that data, although maintained and used by FTB, is still considered IRS information. Since FTB is prohibited from disclosing any information received by the IRS, and this bill would result in FTB being required to disclose taxpayer information, FTB may be in violation of the information sharing agreement with the IRS.
- This bill would require FTB to post the 10 largest corporation delinquencies and PIT liabilities. Tax delinquency would include the nonreporting of a tax liability. Under current law, a taxpayer that fails to file a tax return could be issued a failure to file assessment by the department. Often the taxpayer may provide the department information that may result in a reduction in the amount of the department's provisional failure to file assessment. As a result, this bill could result in taxpayers with a larger assessment to be included in the Internet listing.

### **LEGISLATIVE STAFF CONTACT**

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## **APPENDIX A PENALTY AND FEE INFORMATION**

### Commonly Imposed Penalties

The following are the more commonly imposed penalties under current income tax laws against taxpayers that do not report or underreport their income, or do not pay deficiency assessments:

- Late filing – income tax returns that are filed late are subject to a late filing penalty that is: (1) a basic penalty of 5% of the unpaid tax per month that the return is late, up to a maximum of 25% of the tax, or (2) a minimum penalty of the lesser of \$100 or 100% of the tax liability, if the return is filed 60 days or more late and the basic penalty is less than \$100. If the failure to file is due to fraud, the basic penalty is 1% per month, up to a maximum of 75%.
- Underpayment — income taxes that are not paid by the original due date of the income tax return are subject to a penalty of 5% of the unpaid tax PLUS 1/2 of 1% per month, up to a maximum of 40 months (20%).
- Demand — income tax returns that are not filed upon notice and demand from the FTB are subject to a penalty of 25% of the amount of the tax required to be shown on the return.
- Frivolous return — income tax returns that are not sufficiently completed to substantially determine the correct self-assessed tax are subject to a penalty of \$500.
- Accuracy-related — negligence or disregard of rules or regulations, substantially understating income tax, overstating values of items, or overstating pension liabilities are subject to a penalty of 20% of the underpayment amount. If the misstatements are due to fraud, the penalty is 75% of that resulting tax.

### Corporate Penalties Relating To Doing Business

Corporations that are doing business while out of compliance with the tax laws are subject to the following penalties that may be significant:

- If a corporation's rights, powers, and privileges are suspended or forfeited for failure to file an income or franchise tax return or pay the tax, the corporation's contracts are voidable. To be relieved of voidability, the corporation must be brought to full compliance with the tax laws. In addition, a corporation suspended by FTB must pay a penalty of \$100 for each day that voidability relief is being sought (not to exceed the tax amount).
- Certain corporations that are doing business in California and have not filed franchise tax returns are subject to a \$2,000 penalty per tax year.

### Enforcement Fees

Taxpayers that fail to file returns or pay their income or franchise tax liabilities during fiscal year 2003-04 may be liable for the following fees relating to the enforcement of the income or franchise tax return or liability:

- \$108 for individuals and \$175 for corporations that fail to file income or franchise tax returns within 25 days after FTB mails its formal legal demand for the returns.

- \$101 for individuals and \$150 for corporations that fail to pay their income or franchise taxes after FTB mails its notice for payment that advises that continued nonpayment may result in collection action.

### Third-Party Penalties

Third parties that assist taxpayers in their failure to comply with the income tax laws may be subject to the following penalties:

- tax preparers who understate a taxpayer's tax liability on any return are subject to a \$250 penalty, which increases to \$1,000 if the understatement is a result of willful or reckless conduct.
- persons who aid and abet a taxpayer in understating the taxpayer's tax liability are generally subject to a penalty of \$1,000 per taxpayer for each year.

## **APPENDIX B ENFORCEMENT AND COLLECTION ACTIVITIES**

### Enforcement Activities

In 2001, FTB began its filing enforcement process for individual taxpayers under its newly developed Intergrated Nonfiler Compliance (INC) system. In 2002, INC expanded to include corporate taxpayers. Under INC, the computer sorts through more than 220 million records received from employers, banks, the Internal Revenue Service (IRS), and other sources, and matches them against tax returns filed. Individual taxpayers with California income for whom FTB has no record of an income tax return being filed, and are repeat nonfilers, are sent a demand letter (Demand For Tax Return) requesting that the past due return be filed. Repeat nonfilers that do not file as requested are subject to the demand penalty and the filing enforcement fee. A first-time nonfiler receives a Request For Tax Return notice instead of a demand letter and, hence, is not subject to the demand penalty or fee. All corporate nonfilers are sent demand letters and are subject to the demand penalty and filing enforcement fee if a return is not filed after demand.

If a return is not filed as required, the taxpayer's net income is estimated from the available information, and a deficiency assessment is proposed. For taxpayer assistance, a special Internet website has been created. Under this website, taxpayers identified through INC can request more time to file their income tax returns, retrieve information that can assist them in the filing of the income tax return, learn about payment options, and correct misreported information. The filing enforcement process generally begins after the extended due date of the tax return and with issuance of the demand or reminder letter. During 2001, more than 200,000 NPAs were issued for income tax returns that were not filed for tax year 1999. It is anticipated that when INC for individual taxpayers is fully operational, the proposed assessments will be issued within 12 months from the beginning of the process. Once fully operational, within the next few years, staff anticipates INC NPAs will total 400,000 per year.

In addition to this automated filing program, FTB has a large audit staff designed to encourage compliance with the income tax laws. For this purpose, typically, computer programs search state and federal income records to detect leads as to discrepancies between income items that were reported and should have been reported on income tax returns. Based on the computerized search of these records, one of many audit-type activities may be initiated, ranging from clerical inquiries, computer-generated inquiries, manual desk audits or field audits, to a combination of computer and manual audits. FTB typically seeks funding for audit-type activities for all cases with a CBR of 1:5 or greater, based on the net proposed tax assessments. Audits with a lesser CBR may be conducted on a case-by-case basis.

### Collection Activities

Once assessments are final, taxpayers are notified and payment is requested. Taxpayers having a financial hardship and unable to pay their taxes in full may be eligible to enter into installment payment agreements. For taxpayers who do not have, and will not have in the foreseeable future, the income, assets, or means to pay their tax liability, the taxpayer may consider offering a lesser amount

for payment of the tax liability. If taxpayers disregard FTB's notice for payment, FTB will send taxpayers notice prior to the taking of collection action. There is no statute of limitation on collections. If an account is unpaid after sending the collection notice, FTB uses an automated computer system to continually search asset records. Typically, a notice of state tax lien is recorded as the first action taken. Then, depending upon the type of asset identified, the appropriate collection remedy is initiated, which may include garnishing wages, attaching bank accounts, or taking other collection actions.

### Criminal Investigation Activities

FTB investigators work leads from various information sources to identify the amount of tax that should have been reported. FTB investigators are peace officers, enabling them to issue search warrants and recover the cost of FTB's criminal investigation from the taxpayer. Currently investigators are working approximately 500 cases. In addition to the direct benefit to the state from the compliance achieved from the taxpayers that are prosecuted, the primary objective is to create a deterrent effect by discouraging others from committing similar frauds.

Taxpayers that are under criminal investigation are not immediately or readily notified of the on-going criminal investigation. The element of surprise is necessary in obtaining the needed records or information through a search warrant, subpoena, interviews, or other actions. It is only when these actions are taken that the taxpayer may be aware of pending criminal investigations.

FTB's criminal investigation cases are turned over to the appropriate district attorney, who in turn files a complaint against the taxpayer. A criminal investigation case may take several years to complete from the time the lead is obtained until the time the complaint is filed.

**APPENDIX C**  
**State Tax Amnesty Programs**  
**November 22, 1982 -- Present**

STATE	AMNESTY PERIOD		LEGISLATIVE AUTHORIZATION		MAJOR TAXES COVERED	ACCOUNTS RECEIVABLE INCLUDED	Collections (\$ Millions) (a)		INSTALLMENT ARRANGEMENTS PERMITTED (b)
ALABAMA	1/20/84	- 4/1/84	No	(c)	All	No	3.2	No	
ARIZONA	11/22/82	- 1/20/83	No	(c)	All	No	6.0	Yes	
	1/1/02	- 2/28/02	Yes		Ind. Income	No		No	
	9/1/03	- 10/31/03	Yes		All (t)		73.0	Yes	
ARKANSAS	9/1/87	- 11/30/87	Yes		All	No	1.7	Yes	
	7/1/04	- 12/31/04	Yes		All				
CALIFORNIA	12/10/84	- 3/15/85	Yes		Ind. Income	Yes	154.0	Yes	
			Yes		Sales	No	43.0	Yes	
COLORADO	9/16/85	- 11/15/85	Yes		All	No	6.4	Yes	
	6/1/03	- 6/30/03			All		18.4	Yes	
CONNECTICUT	9/1/90	- 11/30/90	Yes		All	Yes	54.0	Yes	
	9/1/95	- 11/30/95	Yes		All	Yes	46.2	Yes	
	9/1/02	- 12/2/02			All		109.0		
FLORIDA	1/1/87	- 6/30/87	Yes		Intangibles	No	13.0	No	
	1/1/88	- 6/30/88	Yes	(d)	All	No	8.4	(d) No	
	7/1/03	- 10/31/03	Yes		All		80.0		
GEORGIA	10/1/92	- 12/5/92	Yes		All	Yes	51.3	No	
IDAHO	5/20/83	- 8/30/83	No	(c)	Ind. Income	No	0.3	No	
ILLINOIS	10/1/84	- 11/30/84	Yes		All(u)	Yes	160.5	No	
	10/1/03	- 11/17/03	Yes		All		532.0		
IOWA	9/2/86	- 10/31/86	Yes		All	Yes	35.1		
KANSAS	7/1/84	- 9/30/84	Yes		All	No	0.6	No	
	10/1/03	- 11/30/03	Yes		All	Yes	53.7		
KENTUCKY	9/15/88	- 9/30/88	Yes	(c)	All	No	100.0	No	
	8/1/02	- 9/30/02	Yes	(c)	All	No	100.0	No	
LOUISIANA	10/1/85	- 12/31/85	Yes		All	No	1.2	Yes (f)	
	10/1/87	- 12/15/87	Yes		All	No	0.3	Yes (f)	
	10/1/98	- 12-31-98	Yes		All	No (q)	1.3	No	
	9/1/01	- 10/30/01	Yes		All	Yes	173.1	No	
MAINE	11/1/90	- 12/31/90	Yes		All	Yes	29.0	Yes	
	9/1/03	- 11/30/03	Yes		All		34.7		
MARYLAND	9/1/87	- 11/2/87	Yes		All	Yes	34.6	(g) No	
	9/1/01	- 10/31/01	Yes		All	Yes	39.2	No	
MASSACHUSETTS	10/17/83	- 1/17/84	Yes		All	Yes	86.5	Yes (h)	
	10/1/02	- 11/30/02	Yes		All	Yes	96.1	Yes	
	1/1/03	- 2/28/03	Yes		All	Yes			
MICHIGAN	5/12/86	- 6/30/86	Yes		All	Yes	109.8	No	

	5/15/02	-	6/30/02	Yes		All	Yes		
MINNESOTA	8/1/84	-	10/31/84	Yes		All	Yes	12.1	No
MISSISSIPPI	9/1/86	-	11/30/86	Yes		All	No	1.0	No
MISSOURI	9/1/83	-	10/31/83	No	(c)	All	No	0.9	No
	8/1/02	-	10/31/02	Yes		All	Yes	76.4	
	8/1/03	-	10/31/03	Yes		All	Yes	20	
NEVADA	2/1/02	-	6/30/02			All		7.3	
NEW HAMPSHIRE	12/1/97	-	2/17/98	Yes		All	Yes	13.5	No
	12/1/01	-	2/15/02	Yes		All	Yes	13.5	
NEW MEXICO	8/16/99	-	11/12/99	Yes		All	Yes	45	Yes
NEW JERSEY	9/10/87	-	12/8/87	Yes		All	Yes	186.5	Yes
	3/15/96	-	6/1/96	Yes		All	Yes	359.0	No
	4/15/02	-	6/10/02	Yes		All	Yes	276.9	
NEW MEXICO	8/15/85	-	11/13/85	Yes		All (i)	No	13.6	Yes
NEW YORK	11/1/85	-	1/31/86	Yes		All (j)	Yes	401.3	Yes
	11/1/96	-	1/31/97	Yes		All	Yes	253.4	Yes (o)
	11/18/02	-	1/31/03	Yes		All	Yes	520.0	Yes (s)
NEW YORK CITY	10/20/03	-	1/23/04	Yes		All (v)	Yes (w)		No
NORTH CAROLINA	9/1/89	-	12/1/89	Yes		All (k)	Yes	37.6	No
NORTH DAKOTA	9/1/83	-	11/30/83	No	(c)	All	No	0.2	Yes
	10/1/03	-	1/31/04	Yes				6.9	
OHIO	10/15/01	-	1/15/02	Yes		All	No	48.5	No
OKLAHOMA	7/1/84	-	12/31/84	Yes		Income, Sales	Yes	13.9	No (l)
	8/15/02	-	11/15/02			All (r)	Yes		
PENNSYLVANIA	10/13/95	-	1/10/96	Yes		All	Yes	n.a.	No
RHODE ISLAND	10/15/86	-	1/12/87	Yes		All	No	0.7	Yes
	4/15/96	-	6/28/96	Yes		All	Yes	7.9	Yes
SOUTH CAROLINA	9/1/85	-	11/30/85	Yes		All	Yes	7.1	Yes
	10/15/02	-	12/2/02	Yes		All	Yes	66.2	
SOUTH DAKOTA	4/1/99	-	5/15/99	Yes		All	Yes	0.5	
TEXAS	2/1/84	-	2/29/84	No	(c)	All (m)	No	0.5	No
	3/11/04	-	3/31/04	No	(c)	All (m)	No		No
VERMONT	5/15/90	-	6/25/90	Yes		All	Yes	1.0	(e) No
VIRGINIA	2/1/90	-	3/31/90	Yes		All	Yes	32.2	No
	9/2/03	-	11/3/03	Yes		All	Yes	98.3	
WEST VIRGINIA	10/1/86	-	12/31/86	Yes		All	Yes	15.9	Yes
	?/?/04	-	?/?/04	Yes					
WISCONSIN	9/15/85	-	11/22/85	Yes		All	Yes (n)	27.3	Yes
	6/15/98	-	8/14/98	Yes		All	Yes	30.9	
DIST. OF COLUMBIA	7/1/87	-	9/30/87	Yes		All	Yes	24.3	Yes
	7/10/95	-	8/31/95	Yes		All (p)	Yes	19.5	Yes (p)

**Source: *The Federation of Tax Administrators.***  
**Last Updated: *March 2004***

- (a) Where applicable, figure includes local portions of certain taxes collected under the state tax amnesty program.
- (b) "No" indicates requirement of full payment by the expiration of the amnesty period. "Yes" indicates allowance of full payment after the expiration of the amnesty period.
- (c) Authority for amnesty derived from pre-existing statutory powers permitting the waiver of tax penalties.
- (d) Does not include intangibles tax and drug taxes. Gross collections totaled \$22.1 million, with \$13.7 million in penalties withdrawn.
- (e) Preliminary figure.
- (f) Amnesty taxpayers were billed for the interest owed, with payment due within 30 days of notification.
- (g) Figure includes \$1.1 million for the separate program conducted by the Department of Natural Resources for the boat excise tax.
- (h) The amnesty statute was construed to extend the amnesty to those who applied to the department before the end of the amnesty period, and permitted them to file overdue returns and pay back taxes and interest at a later date.
- (i) The severance taxes, including the six oil and gas severance taxes, the resources excise tax, the corporate franchise tax, and the special fuels tax were not subject to amnesty.
- (j) Availability of amnesty for the corporation tax, the oil company taxes, the transportation and transmissions companies tax, the gross receipts oil tax and the unincorporated business tax restricted to entities with 500 or fewer employees in the United States on the date of application. In addition, a taxpayer principally engaged in aviation, or a utility subject to the supervision of the State Department of Public Service was also ineligible.
- (k) Local taxes and real property taxes were not included.
- (l) Full payment of tax liability required before the end of the amnesty period to avoid civil penalties.
- (m) Texas does not impose a corporate or individual income tax. In practical effect, the amnesty was limited to the sales tax and other excises.
- (n) Waiver terms varied depending upon the date of tax liability was accessed.
- (o) Installment arrangements were permitted if applicant demonstrated that payment would present a server financial hardship.
- (p) Does not include real property taxes. All interest was waived on tax payments made before July 31, 1995. After this date, only 50% of the interest was waived.
- (q) Exception for individuals who owed \$500 or less.
- (r) Except for property and motor fuel taxes.
- (s) Multiple payments can be made so long as the required balance is paid in full no later than March 15, 2003.
- (t) All taxes except property, estate and unclaimed property.
- (u) Does not include the motor fuel use tax.
- (v) All NYC taxes administered by the NYC Dept. of Finance are covered except for Real Estate Tax. NYC Sales & Use Tax & NYC Resident Personal Income Tax also are not covered because they are administered by the NYS Dept. of Taxation & Finance.
- (w) Taxpayers under audit as of 3/10/03 are ineligible; Taxpayers with an existing installment agreement are ineligible; Taxpayers under criminal investigation are ineligible; Taxpayers party to an administrative or court proceeding must withdraw as a condition of amnesty.