

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Steinberg Analyst: LuAnna Hass Bill Number: AB 2358

Related Bills: See Legislative History Telephone: 845-7478 Amended Date: June 21, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Repeal Franchise Tax Board Child Support Collections/Department Of Child Support Services Collect Child Support Effective July 1, 2005

SUMMARY

This bill would transfer the authority and responsibility for the collection of past due child support from the Franchise Tax Board (FTB) to the Department of Child Support Services (DCSS) effective July 1, 2005.

SUMMARY OF AMENDMENTS

The June 21, 2004, amendments would propose changes to the collection of past due child support as discussed in this analysis.

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

PURPOSE OF THE BILL

It appears the purpose of the bill is to transfer collection of past due child support from FTB to DCSS.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2005, and states that the provisions that impact FTB would be operative July 1, 2005.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Child Support

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 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. The local agency can collect child support and is able to use enforcement tools such as earnings withholding orders and the issuance of judgment liens. Additionally, each local agency is required to transfer to FTB child support delinquencies for collection by FTB. The FTB collection 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.

Board Position:

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Department Director

Date

Gerald H. Goldberg

7/12/04

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 (PIT) 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. However, FTB is unable to use any tax information received from the Internal Revenue Service (IRS) for child support collections due to the nature of the sharing agreement between IRS and FTB. Since child support delinquencies are judgments and the local child support agency has the ability to issue judgment liens, FTB does not file a state tax lien or a judgment lien for the child support delinquency.

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 owes a liability under the tax and non-tax debt collection 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 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.

Disclosure

Current federal law allows disclosure of tax return and return information for use in federal personnel matters. Upon written request, the Secretary of the Treasury (Secretary) is authorized to disclose confidential taxpayer information to an employee or former employee of the Department of the Treasury or his or her authorized legal representative solely for use in the preparation of or in a disciplinary action affecting the personnel rights of an employee. The Secretary is authorized to disclose the confidential taxpayer information to the extent the Secretary determines that such confidential taxpayer information is or may be relevant to the action. The Secretary also is authorized to disclose the confidential taxpayer information to officers and employees of the Department of the Treasury for use in those administrative actions. Federal law also authorizes the Department of Treasury to disclose the relevant confidential taxpayer information to other specified recipients, including the Department of Justice, for prosecution and other purposes.

State law prohibits the disclosure or unauthorized inspection of any confidential taxpayer information, except as specifically authorized by statute. Any FTB employee responsible for the unauthorized disclosure or inspection of state or federal tax information is subject to criminal prosecution. Improper disclosure or inspection of state tax information is a misdemeanor and improper disclosure or inspection of federal tax information is a felony.

Under Revenue & Taxation Code (R&TC) Section 19556, the department has authority to disclose confidential taxpayer information to an employee or former employee of FTB, a representative of an employee or former employee, an administrative law judge, SPB members, and Superior Court judges for purposes of disciplinary actions.

THIS BILL

This bill would render the current FTB child support collections provisions, as described above, in the R&TC, inoperative as of July 1, 2005, and repeal those provisions as of January 1, 2006. In addition, this bill would add R&TC Section 19270 that would:

- Require DCSS to assume responsibility for the collection of child support delinquencies and FIDM pursuant to a letter of agreement between DCSS and FTB. The agreement would set forth the following:
 - DCSS would assume responsibility for leadership and staff of collection of child support delinquencies and FIDM as of July 1, 2005, which would be contingent upon the Budget Act and staffing authorization from the Department of Finance (DOF) and Department of Personnel Administration (DPA).
 - All FTB employees and personnel who staff or provide support for the child support collections and FIDM would, at their option, become employees of DCSS at their existing or equivalent classification, salaries, and benefits.
 - DCSS would use the FTB child support collection and FIDM automated systems until the California Child Support Automated System (CCSAS) becomes operational.
 - Any other provisions necessary to ensure continuity of function and meet or exceed existing levels of service. This would include, but not be limited to, agreements for DCSS to continue using FTB automated systems to locate child support obligors and their assets.
- Specify the intent of the legislature to allow DCSS to have the same ability and authority to collect child support delinquencies and operate FIDM as is currently provided to FTB.

This bill would require certain employers to make child support payments to the State Disbursement Unit via electronic funds transfer (EFT). Other employers that are not required to make payment via EFT may do so with approval of DCSS.

IMPLEMENTATION AND POLICY CONSIDERATIONS

This bill would have a significant impact to the department and the following implementation concerns have been identified. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

With respect to the addition of R&TC Section 19270, the department notes the following:

- This section would require a letter of agreement between DCSS and FTB that would outline the transfer of the child support collections and FIDM. This bill would require that the transfer be effective July 1, 2005. Historically, letters of agreement between DCSS and FTB have taken between six and nine months to finalize. Due to the time constraints related to the finalizing of letters of agreement, it may be preferable for the statute to specify the transition. In addition, until FTB and DCSS prepare a transition implementation plan, including resolving several budget issues, it is unknown if the transition could be effectively completed by July 1, 2005.
- This section would provide FTB employees who staff or provide support for the collection of child support and FIDM the option of becoming DCSS employees upon transfer of the collection responsibility. Research is needed to determine if employee unions would need to be notified for possible involvement. Furthermore, several personnel and staffing issues need to be addressed in the legislation. At a minimum, the department has identified the following concerns related to the personnel provision.
 - It is unclear what the phrase "employees who staff or provide support" is intended to mean. For example, would support staff such as IT helpdesk staff have the option to transfer to DCSS?
 - The phrase "at their option" raises several issues. If an employee chooses to stay at FTB, would the department be required to find that employee another position within FTB? Would the department have authority to create positions for staff in the event no open positions are available? DCSS should be required by the bill to have a contingency plan if FTB staff choose not to transfer to DCSS.
 - The bill uses the phrase "existing or equivalent classification." Currently, FTB child support collection staff is classified under FTB exclusive classifications. It is unclear whether DCSS has equivalent classifications. If not, would the FTB exclusive classification be open to DCSS employees?
- It appears this bill would allow DCSS to use FTB automated systems for the purpose of collecting child support prior to CCSAS being operational. In addition, it appears this bill would allow DCSS to enter into an agreement that would provide DCSS continued use of FTB automated systems once CCSAS is operational. This bill appears to permit DCSS to have unlimited access to FTB automated systems, which maintain confidential taxpayer information. Any sharing of confidential taxpayer information would need to be addressed for purposes of disclosure and to ensure authorized access safeguards. The bill should clarify how FTB would share the data with DCSS and whether FTB would be responsible for managing the information. It is unclear how FTB would be compensated for its costs associated with use of the information and to manage the information?

- A provision of Section 19270 reads, "It is the intention of the legislature that DCSS shall have the same ability and authority to collect child support delinquencies and operate FIDM as is provided to FTB."
 - This phrase is not executing language and instead only expresses legislative intent. The department would recommend that the author modify 19270 by moving this provision to the beginning of Section 19270 and use the entire section as the intent provision leading into the executing language of the bill.
 - This provision appears to allow DCSS to collect child support delinquencies as if these debts were tax debts which would allow DCSS to issue earnings withholding orders for taxes (EWOT's), OTW's, and state tax liens. FTB has the ability through various statutes to collect tax and non-tax debts administratively without seeking court intervention for issuing OTW's, EWOT's, and state tax liens. Currently, the local child support agencies (LCSA's) have the administrative authority to issue earnings withholding orders (EWO's) and OTW's. However, it appears that DCSS does not specifically have this authority. Since the LCSA's authority has evolved since 1993 from needing a court order to execute collection actions to today being allowed to collect through administrative action, the authority this bill would give DCSS should be consistent with existing authorities granted to the LCSA's, instead of using the authority granted to FTB to collect taxes. This would preserve the tax collection statutes and authorities for tax purposes, which are entwined with federal tax collection statutes and authorities.

This provision would render the current FTB child support provisions inoperative as of July 1, 2005, and would repeal all provisions, including the new provision above, as of January 1, 2006. However, the bill does not contain any provisions to transfer the statutes and their authority to DCSS. Without statutes in place allowing an agency to continue collecting child support delinquencies, it is possible that collections of child support could be adversely affected.

This bill would allow DCSS to have access to FTB automated systems that contain confidential taxpayer information. Currently, other state tax agencies have access to FTB's databases via interagency agreements that outline the use of such information. Such an agreement would be needed prior to sharing confidential taxpayer information with DCSS. In addition, this bill should be amended to include a statutory scheme outlining the safeguards DCSS would undertake to protect FTB confidential taxpayer information, including but not limited to, possible criminal and civil sanctions for the unauthorized disclosure of FTB information.

As described above under state law, FTB may disclose confidential taxpayer information to an employee or former employee of FTB, a representative of an employee or former employee, an administrative law judge, SPB members, and Superior Court judges for purposes of disciplinary actions. However, other state tax agencies and public entities that receive confidential FTB taxpayer information through information sharing agreements are currently unable to disclose those records when necessary to prosecute disciplinary actions involving inappropriate browsing or disclosure. If FTB is required to share confidential taxpayer information with a non-tax agency such as DCSS, this bill should be amended to authorize other state tax agencies and public entities to disclose confidential FTB confidential taxpayer information in disciplinary actions. Language to amend the bill is attached to this analysis.

The attached amendment would assist a state tax agency or public entity to prosecute disciplinary actions by allowing the careful and sensible disclosure of confidential FTB taxpayer information while satisfying an employee's due process rights. This amendment to current law is necessary to ensure the privacy of taxpayer records by deterring employees from illegally browsing and disclosing confidential FTB taxpayer information. Any state tax agency or public entity granted access to confidential FTB taxpayer information in the future would also be allowed to disclose those records for purposes of disciplinary actions.

While this bill would require certain employers to make child support payments electronically to the State Disbursement Unit, it should be noted that the actual State Disbursement Unit is not in existence as of yet. Therefore, it is unclear if DCSS would anticipate that employers should meet the EFT requirement under this bill by submitting payments electronically to FTB until the State Disbursement Unit is operational. If so, FTB staff would anticipate additional payments received and would need to do further research regarding possible additional costs to monitor the payments.

TECHNICAL CONSIDERATION

AB 1704 (Assembly Judiciary Committee, 2003/2004) would make technical corrections to numerous provisions of the Family Code and the existing FIDM provision under the R&TC. The author should consider language in this bill to double join the bills. Otherwise, the possibility exists that provisions of this bill or AB 1704 could be chaptered out.

LEGISLATIVE HISTORY

AB 1704 (Assembly Judicial Committee, 2003/2004) would make clarifying changes to the laws regarding the information obtained through the Financial Institution Match System. This bill is currently with the Senate Appropriations Committee.

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 transfer the collections of child support delinquencies to DCSS, which is the Title IV-D agency in California, a review of other states would not be relevant.

FISCAL IMPACT

This bill would have a significant impact on the department. Department costs to implement this bill cannot be determined until the above implementation concerns are resolved and the department has an opportunity to formulate an implementation transition plan. It is anticipated that budgetary actions would be necessary to effectuate the implementation of this bill for reasons that include, but are not limited to, the fact that FTB employees would have the option to transfer to DCSS under this bill.

ECONOMIC IMPACT

Collections Estimate

It is projected that the proposed transfer of collection efforts will result in unknown but minor slowdown of collection revenues over the initial years following the transition of this program from FTB to DCSS.

Collections Discussion

The potential impact on child support collection revenue depends on the extent DCSS is able to operate this program with the same degree of effectiveness as FTB has demonstrated over the last decade. The effectiveness of any future collection efforts by DCSS is unknown, but will likely be impacted by several factors. Initially, it is likely that the dollar volume of collections associated with delinquent child support arrearages would experience a certain amount of slowdown. This would occur as a result of certain administrative constraints including the extent DCSS has sufficient levels of experienced staff, comparable database infrastructure, etc.

Finally, this proposal specifies the legislature's intent that DCSS be given the same legal authority to collect child support debts as the FTB has to collect income tax revenues. This language should not be interpreted to mean that DCSS could access the same information as FTB uses in pursuit of income tax revenues. FTB has no intentions to violate its standing confidentiality agreement that strictly prohibits it from sharing any information it receives from IRS with third parties. Doing so would potentially have a drastic impact on FTB income tax revenues since any violations could potentially result in the complete elimination of FTB's right to obtain the extensive amounts of invaluable IRS information used in FTB's personal income tax and corporate tax revenue enforcement programs.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2358
As Proposed To Be Amended

AMENDMENT 1

Section 19556 of the Revenue and Taxation Code is amended as follows:

19556. (a) A state agency or a local public entity (~~The Franchise Tax Board~~) may disclose to persons described in paragraphs (1) to (4), inclusive, of subdivision (b) tax return and return information solely for use in an action or proceeding affecting the personnel rights of an employee or former employee of the state agency or local public entity, or in preparation of the action or proceeding, but only to the extent the state agency or local public entity ~~Franchise Tax Board~~ determines that the tax return or return information is, or may be, relevant and material to the action or proceeding.

(b) Tax return and return information may be disclosed pursuant to this section to any of the following persons:

(1) An employee or former employee of the state agency or local public entity ~~the Franchise Tax Board~~ who is, or may be, a party to an administrative action or proceeding affecting the personnel rights of that employee or former employee.

(2) Upon written request by the employee or former employee of the state agency or local public entity, to the employee's or former employee's duly authorized legal representative.

(3) Officers and employees of the state agency or local public entity ~~the Franchise Tax Board~~ for use in any action or proceeding affecting the rights of an employee or former employee of the state agency or local public entity, to the extent necessary to advance or protect the interests of the State of California.

(4) An administrative law judge, administrative board member, judge, or justice, or authorized officer or employee thereof, in connection with an administrative hearing, adjudication, or appeal thereof, related to an action or proceeding affecting the personnel rights of an employee or former employee of the state agency or local public entity.

(c) The disclosure by a state agency or local public entity, as authorized by this section, is limited to those state agencies and local public entities where officers, employees, agents, deputies, clerks, or other persons of the agency or entity have access to tax return or return information pursuant to some other provision of law. ~~For purposes of this section an action or proceeding affecting the personnel right of an employee or former employee of the Franchise Tax Board means an action proceeding arising under either of the following:~~

~~(1) The State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of the Government Code).~~

~~(2) The Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).~~

(d) Any unauthorized disclosure by a person described in paragraphs (1) to (4), inclusive, of subdivision (b) of any tax return or return information disclosed to that person pursuant to this section shall be subject to criminal penalty and civil liability under this part for that unauthorized disclosure.

(e)(1) For purposes of this section, "state agency" has the same meaning as under Government Code section 11000, et. seq.

(2) For purposes of this section, "local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision of the State.