

# ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Ashburn Analyst: Anne Mazur Bill Number: SB 1713  
Related Bills: See Legislative History Telephone: 845-5404 Introduced Date: February 24, 2006  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Suit For Tax/Reduce Time Period For Action By FTB To Recover Unpaid Taxes, Penalties, and Interest To 4 Years

## SUMMARY

This bill would decrease the period in which FTB could take court action to collect unpaid tax from ten to four years.

## PURPOSE OF THE BILL

According to the author's staff, the intended purpose of this bill is to conform California law to the federal 10-year statute of limitations to collect unpaid tax.

## EFFECTIVE/OPERATIVE DATE

As specified, the bill would apply only to a determination of liability for any tax, penalty, and interest that is made on or after January 1, 2007.

## POSITION

Pending.

## ANALYSIS

### FEDERAL/STATE LAW

Under both federal and state income tax laws, in general, once a tax liability becomes due and payable, a statutory lien arises for that amount upon all real and personal property belonging to that taxpayer. For state purposes, the statutory lien exists for 10 years unless renewed, but the liability does not become unenforceable by lapse of time until 20 years, as of July 1, 2006, and then is abated. The statutory lien may be extended by filing a Notice of State Tax Lien with the county recorder within 10 years from the date the statutory lien is created.

Board Position:

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

Department Director

Date

S.Stanislaus

5/18/06

Under federal law, the IRS is precluded from taking any collection action 10 years after the assessment of tax, unless the taxpayer agrees to waive this period of limitation. The 10-year limitation on collection is extended or suspended under a number of circumstances, such as bankruptcy actions, installment agreements, offers in compromise, wrongful levies, or pending court actions. The federal 10-year limitation period for collection applies to all taxpayers.

Recently enacted state law<sup>1</sup> established a statute of limitations on collections that sets the period during which tax may be collected to the period that expires 20 years from the last statutory lien date for each tax year. After that date, the liability for the tax year would be extinguished by abating the underlying tax.

Current state law authorizes FTB to use several collection tools in order to collect delinquent tax liabilities. As one of these tools, FTB may bring a court action to recover a tax liability within 10 years or within the period during which a recorded state tax lien is in force.

### THIS BILL

This bill would decrease the time during which FTB may bring a court action to recover a tax liability from a minimum of 10 years to 4 years irrespective of the existence of a state tax lien. The bill specifies that its provisions would apply only to a determination of a liability for any tax, penalty, and interest made on or after January 1, 2007.

### IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations. Staff assumes this bill would apply to final determinations made on or after January 1, 2007. The author may consider clarifying.

### TECHNICAL CONSIDERATIONS

As written, it appears that this bill would not accomplish the author's intent to conform to the federal collections limitations period as stated above in Purpose of the Bill. Staff is available to work with the author's office to assist in drafting language.

### **LEGISLATIVE HISTORY**

AB 911 (Chu, Stats. 2005, Ch. 398) established a 20-year limitation for FTB to collect a final liability, which is then abated by reason of lapse of time.

### **PROGRAM BACKGROUND**

FTB currently uses an automated billing/collection system to collect the majority of its delinquent accounts. Taxpayers with tax delinquencies receive one or more notices informing them of the balance due and that collection actions may occur if the balance is not resolved. Collection

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<sup>1</sup> Revenue and Taxation Code Section 19255 was added by Stats. 2005, Ch. 398 (AB 911, Chu) to apply on and after July 1, 2006, to tax liabilities that are due and payable, as defined, before, on, and after that date.

actions include, but are not limited to, attaching bank accounts, garnishing wages, filing a Notice of State Tax Lien with the county recorder, or initiating action in court.

**FISCAL IMPACT**

This bill would not significantly impact the department's costs.

**ECONOMIC IMPACT**

Revenue Estimate

Based on data and assumptions discussed below, the revenue loss from this bill would be as follows:

Estimated Revenue Impact of SB 1713 Applicable For Tax Liability Determinations Beginning On Or After 1/1/07		
2005/06	2006/07	2007/08
None	None	None

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

Revenue Discussion

This proposal would not affect any determinations of liability made prior to January 1, 2007. For determinations of liability made after January 1, 2007, the proposal would not alter FTB's ability to pursue the liabilities until four years after the date of determination or January 1, 2011, at the earliest. Therefore, no revenue impact would occur during the current budget window. After January 1, 2011, the proposed decrease in time to initiate court action to 4 years would result in revenue losses of \$500,000 starting in 2011. This projected annual loss would grow to \$3 million by 2016, and remain approximately at that level for subsequent years.

**ARGUMENTS/POLICY CONCERNS**

A 4-year period to bring a court action is inconsistent with both the 10-year life of a state tax lien and the recently established 20-year period for FTB to collect unpaid liabilities. This bill would restrict the period in which FTB could take such action to the early years when collection often can be resolved with more moderate and efficient administrative methods.

**LEGISLATIVE STAFF CONTACT**

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