BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Committee on Budget**	**AB 1389**

SUBJECT

Modify Group Return Provisions/Mandatory E-Pay / COD Collection to Include Bail Amounts/DIR Refer Cal-OSHA Targeted Inspection Debts to FTB for Collection

SUMMARY

The following are the provisions of the bill that would impact Franchise Tax Board (FTB):

1. Modify group return requirements to allow entities to file return on behalf of certain nonresidents.
2. Require taxpayers that meet certain thresholds to make future payments electronically.
3. Add bail as a type of debt that could be referred by the Courts to FTB for collection.
4. Authorize Department of Industrial Relations (DIR) to refer assessments and penalties under the Cal-OSHA[1] Targeted Inspection Program to FTB for collection.

Provisions of the bill that do not impact FTB are not discussed in this analysis.

PURPOSE OF BILL

Provisions 1 and 2 are Franchise Tax Board sponsored provisions whose purpose is the following:

- Make filing state returns more convenient for nonresidents, and
- Take advantage of commonly used technology to increase efficiencies in state government and reduce delays in deposits of payments.

The purpose of the remaining provisions is to take advantage of the tax collection powers and efficiencies of FTB in the collection of DIR debts and amounts owed to courts.

EFFECTIVE/OPERATIVE DATE

As an urgency statute, the bill would be effective immediately. The operative dates will be discussed for each provision below.

[1] California Division of Occupational Safety and Health.

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FISCAL IMPACT SUMMARY

Provision	One-Time Costs	Ongoing Annual Cost (Savings)
No. 1: Modify Group Return	$101,000	Absorbable
No. 2: Mandatory e-pay	$260,000	$61,000
No. 3: FTB Collect Bail Referred By Courts	Absorbable	Absorbable
No. 4: DIR Refer Cal-OSHA Debts to FTB For Collection	Absorbable	Absorbable
Total Costs (Savings)	**$361,000**	**($61,000)**

Additional details on the fiscal impact of this bill are discussed below.

SUMMARY OF ECONOMIC IMPACT

This summary of economic impact discusses the provisions of this bill that impact FTB that have an impact on state income tax revenues.

Summary: Estimated Revenue Impact of AB 1389				
Effective January 1, 2009				
Assumed Enactment Date After June 30, 2008				
Provisions	2007-08	2008-09	2009-10	2010-11
Modify Group Return				
General Fund Reserve		+$ 2 million	+$ 6 million	+$ 6 million
Mental Health Services		+$ 3 million	+$ 7 million	+$ 8 million
Mandatory E-Pay				
Penalty Revenues		Gain <$150K	Gain < $150K	Gain < $150K
Reduced Taxes		$0	Loss < $500K	Loss < $500K
Additional Revenue earned for State		$3 million	$5 million	$7 million
Totals: General Fund		**$5.1 million**	**$10.6 million**	**$12.6 million**
Totals: Mental Health		**+$ 3 million**	**+$ 7 million**	**+$ 8 million**

Note: For purposes of adding totals, estimates of less than $150,000 were assumed to equal $50,000; less than $250,000 equal to $200,000; less or greater than $500,000 equal to $400,000; and less than $1,000,000 equal to $800,000.

Appointments

None.

Support/Opposition

According to the Senate Floor Analysis of the bill, no opposition or support to this bill was identified, although the Franchise Tax Board had voted to support Provisions 1 & 2 of this bill.

PROVISION 1: MODIFY THE GROUP RETURN PROVISIONS

EFFECTIVE/OPERATIVE DATE

As part of an urgency statute this provision would be effective immediately upon enactment and operative as of that date.

ANALYSIS

STATE LAW

Existing state law imposes tax on the entire taxable income of residents of California and upon the taxable income of nonresidents derived from sources within California.

California statutes do not explicitly establish rules to source income. Instead, a body of case law has prescribed source rules and the relevant California statute delegates to the FTB authority to prescribe sourcing rules by regulation.

These legislative regulations provide that income from services is sourced to California to the extent the services are performed in this state. When nonresidents perform services in California and other states, compensation for these services is sourced to California by using various apportionment methods that reasonably reflect the value of the California services as compared to the total services performed. These regulations are consistent with existing law and federal statutes that limit or preempt California's ability to tax the California source income of nonresidents.
California allows certain nonresidents who receive a distributive or pro rata share of income from a pass-through entity (partnerships[2] or S corporations) that derives income from California sources or is doing business in California to elect to have the pass-through entity file a group nonresident return on their behalf.[3] In addition, California allows filing of a group nonresident return for electing nonresident directors of a corporation.[4] Electing nonresident directors would be those individuals that receive California source wages, salaries, fees, or other compensation from that corporation for director services, including attendance at board of directors' meetings that take place in this state.

Existing state law imposes tax on individuals, corporations, and certain business entities, and each is treated as a distinct entity for tax purposes.

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[2] This includes limited liability companies classified as partnerships, registered limited liability partnerships, and foreign limited liability partnerships.
[3] Revenue & Taxation Code section 18535.
[4] Revenue and Taxation Code section 18536.

Under existing state law and instructions specifically prescribed by FTB, all of the following conditions must be met to be eligible for inclusion in a group nonresident return:

1) The partner/member/shareholder/director must be an individual. Estates, trusts, partnerships, LLCs, C corporations, S corporations, or other business entities cannot be included in the group nonresident return.
2) The individual must be a full-year nonresident of California.
3) The individual must not have California taxable income in excess of $1,000,000.

Assuming these requirements are satisfied, the business entity files the group nonresident return and pays the tax on behalf of the electing nonresidents. The return must be for a calendar year and, except in the case of an S corporation shareholder, must include at least two electing nonresidents. An S corporation may file a group nonresident return on behalf of one shareholder. The business entity must use Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, for the group nonresident return. A nonresident individual can be included on more than one group nonresident return.

Nonresidents subject to the mental health tax (taxable income in excess of $1,000,000) are ineligible to be included in a group nonresident return.

THIS PROVISION

This provision would amend current law to allow the following to be included in a group nonresident return:

- Entities with less than two electing nonresident individuals, and
- Individuals with more than $1,000,000 in California taxable income. The highest marginal rate for these individuals would be 10.3%.

LEGISLATIVE HISTORY

AB 970 (Torrico, Stats. 2006, Ch. 343) authorized nonresident directors that receive California source wages, salaries, fees, or other compensation from that corporation for director services to file a group nonresident return.

SB 219 (Scott, Stats. 2002, Ch. 807) authorized a single shareholder of an S corporation to file a group return.

SB 298 (Campbell, Stats. 1995, Ch. 475) exempted from withholding income that is paid by a corporation for services performed in California to a nonresident corporate director for services.

AB 129 (Jones, Stats. 1987, Ch. 918) authorized nonresident individuals that receive a distributive share of income from a pass-through entity to file a group nonresident return.

PROGRAM HISTORY/BACKGROUND

Currently, electing individuals included in group nonresident returns are taxed at the highest marginal rate (9.3%) without deductions. Individuals with more than $1,000,000 in California taxable income are ineligible to be included in a group nonresident return because their taxable income in excess of $1,000,000 would need to be taxed at the highest marginal rate plus the additional 1% (mental health tax) rate, for a total of 10.3%.

For tax year 2005, the department received approximately 3,300 group nonresident returns on behalf of an estimated 68,000 nonresidents. Currently, per instructions specifically prescribed by FTB, group nonresident returns are not allowed to be filed electronically. After processing group nonresident returns, the department sends these returns to the Filing Enforcement Unit where the member and income information is manually keyed.

OTHER STATES' INFORMATION

Of the 40 states with a personal income tax, 39 states (Nebraska is the one exception) allow either the filing of group returns or impose an entity level tax similar to the group return concept. Specifically, *New York*, *Delaware, Pennsylvania*, and *Connecticut* allow group nonresident returns to be filed by pass-through entities, and they all require the electing partners to be individuals (the same as current California law). Requirements and criteria such as what entities can file, allowable deductions, exemptions, and tax rates vary widely for each state.

FISCAL IMPACT

Implementing this provision would require changes to existing tax forms and instructions (Form 540NR, California Part-Year Resident or Nonresident Income Tax Return and Publication 1067, Guidelines for Filing a Group Form 540NR), manually validating filed group returns, programming changes to computer systems, and electronic applications. The department would incur one-time costs for these items of approximately $101,000, with absorbable annual ongoing costs.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, this provision would result in the following revenue gains.

The Revenue Estimate for AB 1389 Effective for Tax Years BOA 1/1/2008 Assumed Enactment Date After 6/30/08			
($ In Millions)			
	2008/09	2009/10	2010/11
General Fund Revenue	$6	$6	$6
Mental Health Fund Revenue	$7	$7	$8

This analysis does not account for changes in employment, personal income, or gross state product that could result from this provision.

Revenue Discussion

The revenue impact of this provision would depend on the following:

- The extent compliance increases among nonresident non-filers that would generate new revenue.
- The extent taxpayers switch their method of filing, from filing individual nonresident returns to filing as part of a group return.
- The extent that taxpayers with income in excess of $1,000,000 no longer erroneously file as part of a group return.

1. Increase in Compliance

To the extent this provision eases the filing process, some non-filing nonresident taxpayers may become compliant. The number of noncompliant nonresident taxpayers and their tax liabilities are unknown.

An estimate of the expected increase in compliance can be made with the amount of tax currently paid by nonresident taxpayers that report partnership income. For taxable year 2005, the amount of tax paid by nonresidents who only report partnership income is estimated to total $280 million. This includes nonresidents who file a single nonresident return, as well as those who file as part of a group nonresident return. Assuming that nonresident partners are on average 90% compliant regarding the reporting of partnership income to California, approximately $30 million [($280 million ÷ 90%) - $280 million)] in taxes currently go unreported.

This provision is not anticipated to substantially entice taxpayers to fulfill their filing or reporting requirements. Assuming that unreported tax would be reduced by 1%, this would result in a minor revenue gain of $300,000 ($30 million x 1%).

2. Change in Method of Filing

This provision would expand group return eligibility rules to include:

- Group 1: Single nonresident members of partnerships, LLCs, or corporations, and
- Group 2: Nonresident members of flow-through entities with taxable income in excess of $1 million.

This change is anticipated to ease the filing process and entice nonresidents that file single returns to start filing as part of a group return. Based on a review of nonresident data, taxpayers from Group 1 that would be enticed to switch are estimated to currently report $15 million in adjusted gross income (AGI). Tax liabilities for Group 1 taxpayers would increase because they would be assessed at a higher tax rate and not be allowed to use any exemptions, deductions, or credits. A comparison of data on reported AGI and tax liabilities implies that, on average, taxpayers would be assessed an additional 2.3% that would result in approximately $350,000 ($15 million x 2.3%) positive revenue impact.

For Group 2, based on a review of tax return data for nonresident taxpayers currently subject to the mental health tax, it is estimated that 305 taxpayers would switch and file as part of a group return.

Taxpayers with more than $1 million in taxable income are currently assessed an effective tax rate of 9.4%, of which 8.9% represents revenue attributed to the General Fund and 0.5% represents revenue attributed to the Mental Health Fund. By filing a group return, these taxpayers would not be allowed to use any exemptions, deductions, or credits. Essentially, this provision would assess these taxpayers at a new effective tax rate of 10.3%, of which 9.3% would be attributed to the General Fund and 1% to the Mental Health Fund. It is estimated that AGI currently reported by these taxpayers approximates $975 million. The difference in tax rates within each fund would generate approximately $4 million increase in revenue for the General Fund [($975 million x 9.3%) – ($975 million x 8.9%)] and approximately $5 million increase in revenue for the Mental Health Fund [($975 million x 1%) – ($975 million x 0.5%)].

3. Group Returns that Currently Erroneously Include Taxpayers Subject to the Mental Health Tax

Currently, some group returns erroneously include taxpayers subject to the mental health tax. The taxpayers erroneously filing group returns will be issued a filing enforcement notice and be required to pay the tax calculated on an individual basis, for which the actual tax rate on AGI will likely be between 9.3% and 10.3%.

Assuming the combined tax rate calculated on an individual nonresident return for a particular taxpayer's income is 9.7%, General Fund revenue under current law would be composed of two parts: (1) 9.3% of income would be received by the return filing date, and (2) an additional 0.4% of income would be received after the taxpayer is served with a filing enforcement notice and subsequently files an individual return. For this same taxpayer, under this provision, the amount of revenue would be 10.3% of income, and it would be received by the return due date. This provision would, essentially, lead to a trade off; the 0.4% of income that is received into the General Fund with a lag of one to two years after the return due date would be lost, in exchange for a gain of 1% of income for the Mental Health Fund. This revenue would be received by the return filing date.

The revenues generated by allowing these taxpayers to file as part of group returns, rather than file erroneously as part of a group return and then be subject to filing enforcement activity, is estimated to result in an increase in mental health tax revenues of approximately $1 million. It is also expected to reduce General Fund revenue by an insignificant amount with a year lag.

Summary

Based on taxable year 2005 data, General Fund revenues would increase by approximately $5 million ($300,000 for Group 1 additional compliance + $350,000 for Group 2, the single nonresident member for partnership, LLC, or corporation + $4 million for Group 2 taxpayers with more than $1,000,000 in taxable income) and the Mental Health Fund would increase by approximately $6 million ($5 million for Group 2 + $1 million for Group 3). The revenue estimate in the chart above includes adjustments for projected growth in taxable income and reflects a fiscal year cash flow basis.

PROVISION 2: MANDATORY E-PAY FOR TAXPAYERS THAT MEET CERTAIN THRESHOLD REQUIREMENTS

EFFECTIVE/OPERATIVE DATE

As part of urgency statute, this provision is effective immediately and specifically operative for payments, without regard to taxable year, required to be made on or after January 1, 2009.

FEDERAL/STATE LAW

Federal Reserve Banks and certain financial institutions that are depositories or financial agents of the United States have authority to accept tax payments for tax imposed under the federal tax laws. Because federal tax payments can be made at most local banks, the need for electronic payment processing is reduced significantly at the federal level.

Taxpayers with aggregate tax payments over $200,000 in a calendar year are required to make those tax payments by Electronic Funds Transfer (EFT) methods.

Under current state law, for tax years beginning on or after January 1, 1995, a corporate taxpayer with a tax liability exceeding $80,000 in a taxable year or with an estimated tax payment in excess of $20,000 is required to remit its tax payment electronically. If a taxpayer is required to remit payment electronically and remits payment using another method, it is subject to a penalty calculated at 10% of the amount paid, unless the failure was due to reasonable cause. Taxpayers subject to these requirements may request a waiver from Franchise Tax Board (the Department) under certain circumstances. PIT taxpayers can voluntarily choose to remit funds by EFT.

THIS PROVISION

This provision would require for all payments made by an individual on or after January 1, 2009, regardless of the taxable year to which the payments apply, to be electronically remitted to the Department in a form and manner prescribed by the Department once either of the following conditions are met for taxable years beginning on or after January 1, 2009:

- Any installment payment of estimate tax or extension payment exceeds $20,000.
- The total tax liability, as defined, exceeds $80,000.

For purposes of this section, the following definitions apply:

- "Total tax liability" is the total tax liability as shown on the original return after any adjustments are made for mathematical errors or erroneously omitted tax.
- "Electronically remit" means to send payment through use of any of the electronic payment applications provided by the Department.

This provision would permit a taxpayer that is required to remit electronic payments to elect to discontinue making electronic payments in instances where the threshold requirements are not met in the preceding taxable year. A taxpayer required to remit electronic payments may obtain a waiver of those requirements if the Department determines that the amounts paid in excess of the threshold amounts were not representative of the taxpayer's tax liability. Once the waiver is received, the requirement to make, or not make, future electronic payments are subject to the terms of the waiver.

A taxpayer that is required to remit electronic payments, but remits payment by other means, can be subject to a penalty of 10% of the amount paid, unless the failure to remit electronically was for reasonable cause and not willful neglect.

This provision would specify that requirements of the Administrative Procedures Act are not applicable to the provisions of this bill.

LEGISLATIVE HISTORY

AB 1756 (Assembly Budget Committee, Stats. 2003, Ch. 228) generally requires returns prepared by tax practitioners that prepare more than 100 individual income tax returns in a calendar year to be filed electronically with the Department beginning with the following calendar year.

AB 2480 (Campbell, Stats 2004, Ch. 267) authorizes for tax returns required to be filed on or after January 1, 2005, a penalty for tax preparers that are required to file returns electronically but fail to do so, unless that failure is attributable to reasonable cause and not willful neglect.

PROGRAM BACKGROUND

The Department processed 8.1 million PIT paper payments in fiscal year (FY) 2006-07. These large volumes of paper payments require extensive manual processing. In addition, delays in depositing these payments of several days after receipt occur during tax return filing season, which results in significant loss of interest income to the State.

During FY 2006-07, the Department processed approximately 141,000 paper payments over $20,000 totaling $14.2 billion. The Department received approximately 59,000 payments over $20,000 between April 16 and April 27. It took an average of seven days to deposit these payments. The remaining paper payments received in FY 2006-07 took an average of three days for deposit. The following table highlights this scenario:

Criteria	Number of Days To Make Deposits	Annual Daily Interest Rate[5]	Annual Deposit	Increase in Interest Earned
Estimated Paper Deposits: payments greater than $20,000 received 4/16/07-4/27/07	7	0.0142465753%	$6,770,392,318	$6,751,843
Estimated Paper Deposits: payments greater than $20,000 (remainder of year)	3	0.0142465753%	$7,400,288,004	$3,162,862
TOTAL			$14,170,680,322	$9,914,705

Paper payment processing results in a minimum two-day delay in depositing the paper payment (one day for the post office and one day to deposit) and can take up to 16 days. Currently, 13.6% of PIT payments are remitted electronically, which represents 2.4% of all PIT payment dollars. For corporations, the volume of electronic payments is 3.2% of the total payments made, representing approximately 80% of the total payment dollars remitted.

[5] Per State Treasurer's Office, Annual Interest rate – 5.2%, daily Interest Rate Annualized - 0.0142465753%

Personal income taxpayers can currently use the following options to pay their taxes:

- Payment by paper check, money order, or cashier's check,
- Payment by credit card, subject to payment of a "convenience fee,"
- Payment through an electronic filing application that debits the taxpayer's bank account for a designated amount at a time determined by the taxpayer, or
- Payment through the Department's Web-pay service that debits a bank account for a designated amount at a time determined by the taxpayer.

Businesses and individuals can pay all their federal taxes using the Electronic Federal Tax Payment System (EFTPS). Individuals can pay their quarterly estimated taxes electronically using EFTPS, and they can make payments weekly, monthly, or quarterly, as well as schedule payments for the entire year in advance. EFTPS is accessible via the Internet or telephone. Businesses can initiate a transaction from their financial institutions that will credit their FTB account through Electronic Funds Transfers (EFT), or can instruct the Department to initiate the transaction to debit their financial institution account for their tax liabilities or estimated payments.

OTHER STATES' INFORMATION

Laws from the states of *New Jersey, Illinois, Massachusetts, Michigan, Minnesota, and New York* were reviewed due to their similarities to California's economy, business entity types, and tax laws. While all of the states provide electronic payment options, only *New Jersey*, *Massachusetts,* and *Illinois* have mandatory EFT requirements*.*

- *New Jersey* requires any taxpayer with a prior year liability of $10,000 or more in any single tax year to remit payments for all taxes by using EFT methods.
- *Massachusetts* limits mandatory EFT requirements to business taxes and withholding payments, but does not have mandatory EFT requirements for PIT payments.
- *Illinois* requires EFT for any PIT tax payments that exceed $200,000. *Illinois* also participates in an IRS pilot program that allows taxpayers to remit both federal and state tax payments through EFTPS.

FISCAL IMPACT

From an operational cost reduction perspective, the Department estimates that this bill would save approximately 72 cents in processing costs for each paper payment converted into an electronic payment. Assuming this bill would convert approximately 141,000 paper payments into electronic payments, Department staff anticipates it will save over $100,000 in processing costs annually.

The bill would require system reprogramming and processing changes. The Department estimates that one-time costs of $260,000 would offset the anticipated processing savings of $100,000 in the first year. The Department would incur ongoing costs of approximately $161,000 annually to provide customer service for electronic payment specific issues, which would also be offset by $100,000 in processing savings annually.

ECONOMIC IMPACT

Based on data and assumptions discussed below, the proposal would result in the following revenue impact:

Estimated Revenue Impact of AB 1389 Effective for Tax Payments Made On or After 1/1/09 Enactment Assumed after 6/30/08			
Fiscal Impact	2008-09	2009-10	2010-11
Penalty Revenues	Gain < $150K	Gain < $150K	Gain < $150K
Reduced Taxes	$0	Loss < $500K	Loss < $500K
Additional Interest Earnings for the State	$3 million	$5 million	$7 million

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

The revenue impact of this provision depends on the amount of penalties assessed and collected in any given year and the extent taxpayers who use EFT payment methods experience small reductions in their taxable interest income in future years. This would happen as a result of the reduced float times for the interest-bearing funds from which their income tax payments are drawn.

PENALTY REVENUE

FTB estimates that approximately 140,000 mandatory EFT payments over $20,000 would be made by individuals in any given year. Based on corporate taxpayer behavior, compliance with mandatory EFT payments is expected to be very high. Potential penalty assessments and collections from individual income taxpayers failing to comply with the proposed EFT payment requirement are estimated to be less than $150,000 annually.

REDUCED TAXES

It is estimated that mandatory EFT for individuals would result in a reduction of approximately $5 million of interest income by affected taxpayers each year ($14 billion targeted EFT payments x revised money market daily rate of 0.00841% x 5 fewer float days ≈ revised $6 million reduced taxable interest income minus 10% for those who currently pay through EFT ≈ revised $5 million). Assuming a marginal tax rate (MTR) of 9%, the estimated revenue loss from the reduced taxable incomes of affected taxpayers is approximately $500,000 ($5 million interest income x 9% MTR).

ADDITIONAL INTEREST EARNING FOR THE STATE

The projected interest revenue to the general fund portion of this bill's revenue analysis is reduced because the Department of Finance has lowered its projections of PMIA yield rates from the Governor's Budget. The projected revenue gains shown in the above table are included in the May Revision.

PROVISION 3- ADD BAIL AS A CLASS OF DEBTS TO BE REFERRED TO FTB FOR COLLECTION FROM COURTS

EFFECTIVE/OPERATIVE DATE

As part of an urgency statute, this provision is effective immediately.

STATE LAW

Under current state law, fees, penalties, forfeitures, restitution orders, fines, or certain amounts imposed by a superior or municipal court or governmental entity in California and delinquent for 90 days or more can be referred by the court or government entity to FTB for collection. Restitution orders may be referred by a government entity under the following conditions:

- The government entity has the authority to collect on behalf of the state or victim.
- The government entity is responsible for distributing the restitution order collection as appropriate.
- The government entity ensures that in making the referral and distribution that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.
- The government entity ensures compliance with the laws relating to reimbursement of the State Restitution Fund.

After issuing a preliminary notice to the debtor, FTB is authorized to collect the referred restitution orders in the same manner as authorized for collection of a delinquent personal income tax liability. FTB's costs attributable to this collection program are reimbursed through the amount FTB collects for the program. The department has followed legislative intent language[6] under the court-ordered debt (COD) collection program that limits FTB reimbursement to 15% of the amounts collected. In general, the county or state fund originally owed the debt receives the net collection proceeds after reduction by the amount of FTB's departmental collection costs.

Current state law authorizes FTB to use administrative collection tools to collect delinquent tax and non-tax debt liabilities. Collection actions include, but are not limited to, attaching bank accounts and garnishing wages.

[6] Revenue and Taxation Code section 19282

PROGRAM BACKGROUND

FTB currently collects restitution orders referred from courts of 43 counties and maintains an inventory of approximately 1.1 million cases. Non-tax debt collection is accomplished primarily through the use of wage garnishments and bank levies. In August 2004, legislation was enacted (SB 246, Stats. 2004, Ch. 380) making FTB's COD program permanent and requiring FTB to expand participation to all 58 counties and superior courts. To meet this requirement, FTB initiated the Court Ordered Debt Expansion (CODE) project to develop and implement a scalable collection and billing system. CODE is in development, and the department expects it to be functional by August 2009. CODE is expected to administer an inventory of approximately 8 million cases from potentially 190 different courts.

THIS PROVISION

This provision would authorize Courts to refer bail that is due and payable as a class of debts to be referred to FTB for collection under existing court ordered debt statutes.

LEGISLATIVE HISTORY

AB 2487 (Berg, 2007/2008) would authorize courts to refer civil judgments awarded to victims of domestic violence to FTB for collection. This bill was held in the Senate Appropriations Committee.

AB 2928 (Spitzer, 2008) would authorize the California Department of Corrections and Rehabilitation (CDCR) to refer restitution orders owed by persons who are or have been under CDCR jurisdiction to the FTB for collection and allow the person who is owed the restitution to decline the collection assistance. This bill was sent to enrollment on August 26, 2008.

AB 367 (de Leon, Stats. 2007, Ch. 132) established a task force to evaluate the imposition of criminal COD and distribution of revenue from the collection of those debts and lowered the balance requirement for referral of COD for collection to the FTB.

SB 246 (Escutia, Stats. 2004, Ch. 380) extended indefinitely the provisions authorizing a county to refer delinquent debts to FTB for collection, thereby requiring FTB and the courts to expand the collection or court ordered debts to all 58 California Counties.

FISCAL IMPACT

Because FTB's costs to collect non tax debts are taken out of the amounts collected, this provision would not impact department costs.

ECONOMIC IMPACT

This provision would not impact state income tax revenues.

PROVISION 4: DIR TO REFER CAL-OSHA DEBTS TO FTB FOR COLLECTION

EFFECTIVE/OPERATIVE DATE

As part of an urgency statute, this provision is effective immediately.

STATE LAW

Under current state law, fees, penalties, forfeitures, restitution orders, fines, or certain amounts imposed by a superior or municipal court or governmental entity in California and delinquent for 90 days or more can be referred by the court or government entity to FTB for collection. Restitution orders may be referred by a government entity under the following conditions:

- The government entity has the authority to collect on behalf of the state or victim.
- The government entity is responsible for distributing the restitution order collection as appropriate.
- The government entity ensures that in making the referral and distribution that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.
- The government entity ensures compliance with the laws relating to reimbursement of the State Restitution Fund.

After issuing a preliminary notice to the debtor, FTB is authorized to collect the referred restitution orders in the same manner as authorized for collection of a delinquent personal income tax liability. FTB's costs attributable to this collection program are reimbursed through the amount FTB collects for the program. The department has followed legislative intent language under the COD collection program that limits FTB reimbursement to 15% of the amounts collected. In general, the county or state fund originally owed the debt receives the net collection proceeds after reduction by the amount of FTB's departmental collection costs.

Current state law authorizes FTB to use administrative collection tools to collect delinquent tax and non-tax debt liabilities. Collection actions include, but are not limited to, attaching bank accounts and garnishing wages.

CDCR has authority to refer restitution orders owed by parolees to FTB for collection because a parolee is still under the jurisdiction of CDCR. When a parolee is discharged from parole, CDCR no longer has authority to collect on behalf of the state or the victim and FTB must return the uncollected portion of the account back to CDCR.

PROGRAM BACKGROUND

FTB currently collects restitution orders referred from courts of 43 counties and maintains an inventory of approximately 1.1 million cases. Non-tax debt collection is accomplished primarily through the use of wage garnishments and bank levies. In August 2004, legislation was enacted (SB 246, Stats. 2004, Ch. 380) making FTB's COD program permanent and requiring FTB to expand participation to all 58 counties and superior courts.

To meet this requirement, FTB initiated the Court Ordered Debt Expansion (CODE) project to develop and implement a scalable collection and billing system. CODE is in development, and the department expects it to be functional by August 2009. CODE is expected to administer an inventory of approximately 8 million cases from potentially 190 different courts.

THIS PROVISION

This provision would authorize DIR to refer assessments and penalties issued under the Cal-OSHA Targeted Inspection activities to FTB for collection. The provisions would deem the assessments and penalties as delinquent debts.

The provision would allow existing collection agreements in place between FTB and DIR to be amended, or would authorize a new agreement to be entered into by both agencies for the collection of these debts. Payments collected under this provision would be deposited into the Cal-OSHA Targeted Inspection and Consultation Fund.

The provision would allow FTB to refer an employer who is disputing the amounts due and payable to DIR for resolution, return the account, or rescind any collection action taken by FTB. FTB would be required to provide DIR with activity reports on a quarterly basis identifying the total amount referred for collection, the amount collected from each employer, and the actual costs of collection incurred by FTB. Upon appropriation by the Legislature, FTB would be reimbursed from the Cal-OSHA Targeted Inspection and Consultation Fund for its actual costs of collection. Interest would not be assessed on any amounts referred to FTB for collection.

LEGISLATIVE HISTORY

AB 2487 (Berg, 2007/2008) would authorize courts to refer civil judgments awarded to victims of domestic violence to FTB for collection. This bill was held in the Senate Appropriations Committee.

AB 2928 (Spitzer, 2008) would authorize the California Department of Corrections and Rehabilitation (CDCR) to refer restitution orders owed by persons who are or have been under CDCR jurisdiction to the FTB for collection and allow the person who is owed the restitution to decline the collection assistance. This bill was sent to enrollment on August 26, 2008.

AB 367 (de Leon, Stats. 2007, Ch. 132) established a task force to evaluate the imposition of criminal COD and distribution of revenue from the collection of those debts, and lowered the balance requirement for referral of COD for collection to the FTB.

SB 246 (Escutia, Stats. 2004, Ch. 380) extended indefinitely the provisions authorizing a county to refer delinquent debts to FTB for collection, thereby requiring FTB and the courts to expand the collection or court ordered debts to all 58 California Counties.

FISCAL IMPACT

Because FTB's costs of collection of the debts referred under this provision would be reimbursed, this provision would not impact department costs.

ECONOMIC IMPACT

This provision would not impact state income tax revenues.

VOTES

Assembly Floor – Ayes: 55, Noes: 22
Senate Floor – Ayes: 28, Noes: 12

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