BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Committee on Revenue and Taxation**	**AB 1747**

SUBJECT

Check Casher Reporting Requirements Not Applicable to Incidental Cashers/Use of Last Known Address/TBOR Change Due Date Of Report To Legislature

SUMMARY

This bill would make three changes to the Revenue and Taxation Code:

- Revise check casher reporting requirements to eliminate duplicative reporting,
- Define the term "last known address" for legal notices, and
- Change the date that the annual Taxpayers' Bill of Rights Report is due to the Legislature.

The provisions are discussed separately in this document.

CHECK CASHER REPORTING REQUIREMENTS NOT APPLICABLE TO INCIDENTAL CASHERS

PURPOSE OF THE PROVISION

According to the Assembly Revenue and Taxation Committee staff, the purpose of this provision is to reduce the burden of reporting for check cashers by removing duplicative reporting requirements related to government, payroll, and one-party checks.

EFFECTIVE/OPERATIVE DATE

This provision would be effective January 1, 2008, and would be operative for information returns due on or after that date.

ANALYSIS

FEDERAL/STATE LAW

Federal law requires financial institutions to report each deposit, withdrawal, exchange of currency, or other payment or transfer that involves a transaction in currency of $10,000 or more. Financial institutions are also required to file a suspicious activity report if the institution detects or suspects certain activities conducted through the institution involve money laundering, criminal violations, or illegal activities.

Current state law requires any check casher engaged in the business of cashing checks to report specific transactions to the Franchise Tax Board (FTB) in an annual information return.

Transactions that are reportable would include one or more transactions for the same person that totals more than $10,000 in a given year. Failure to file the required return could result in fines or imprisonment or both.

THIS PROVISION

This provision would exclude government, payroll, and one-party checks, as defined, from the reportable transactions required to be made by check cashers.

The provision would define the following terms:

- Government checks are checks issued by a federal, state, or local entity.
- Payroll checks are checks subject to withholding under the Unemployment Insurance Code and subject to certain fee restrictions under the Civil Code.
- One-party checks are checks drawn on the maker's account and presented by the maker.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would not significantly impact the department's operations or programs.

LEGISLATIVE HISTORY

AB 139 (Assembly Budget Committee, Stats. 2005, Ch. 74) enacted the requirement for check cashers to provide information returns on transactions that total over $10,000 in a year for the same person.

FISCAL IMPACT

Implementing the check casher provisions of this bill would not significantly impact department costs.

ECONOMIC IMPACT

The check casher provisions of this bill would not impact state income tax revenues because the government and payroll checks are already reported through other processes. One party checks that would be excluded under this provision carry no tax revenue impacts.

USE OF LAST KNOWN ADDRESS

PURPOSE OF THE PROVISION

The purpose of this provision of the bill is to create a statutory standard for mailing notices to taxpayers by substantially conforming to federal law.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2008, and would be operative for notices or reports issued on and after that date.

ANALYSIS

CURRENT FEDERAL LAW

The fourteenth amendment of the United States Constitution guarantees to individuals specific rights, including the right to due process of law before property can be taken from the individual by the government. The essential elements of due process include reasonable notice.

Under current federal law, the due process element of reasonable notice is met when the IRS mails a required notice to the taxpayer at the taxpayer's last known address. Federal regulations require that unless the IRS has been given clear and concise notice of a different address, the address that appears on the taxpayer's most recently filed federal tax return is the taxpayer's last known address. The regulation also provides that under certain conditions, updated address information received from the United States Postal Service (USPS) National Change of Address (NCOA) database will be considered the taxpayer's last known address, unless the IRS is given clear and concise notification of a different address.

The purpose of the "last known address rule" is to place the responsibility on the taxpayer to notify the taxing agency of any change of address. This rule absolves the taxing agency in instances where the taxing agency does not have the taxpayer's correct address because of the failure of the taxpayer to notify the agency of a change. The rationale for this rule is that with the transient nature of many taxpayers, the taxing agency does not have sufficient resources to track the movements of several hundred thousand taxpayers each year. When the tax agency has reason to believe that the address previously provided by the taxpayer is no longer correct, the agency does have a duty to exercise reasonable diligence to ascertain the correct address.

CURRENT STATE LAW

Current state tax law does not define "last known address," nor does state tax law specify the address to which required notices must be sent to satisfy the reasonable notice element of due process. In practice, FTB has generally followed the federal "last known address" law and procedures. The department mails notices to the taxpayer's last known address as shown on the taxpayer's last filed return, unless the taxpayer provides clear and concise notice of a different address.

Department policy requires staff to exercise reasonable diligence to ascertain and utilize the current address when mailing correspondence and notices to taxpayers. Department policy is similar to the federal regulation requiring use of information from the USPS NCOA database to update a taxpayer's address for sending notices to taxpayers.

In addition, the department may receive taxpayer address information from sources, such as the Employment Development Department, 1099 Information Returns, and interest income statements from financial institutions. If FTB determines that an address provided by such a third party source is the current address over the address in departmental records, the new address will be used. In accordance with this policy, the department's Integrated Non Compliance system uses the address with the most recent date to send a notice to a taxpayer.

State Board of Equalization decisions on administrative taxpayer appeals from FTB action have generally interpreted the term "last known address" to be the same as the federal "last known address" definition when determining the sufficiency of FTB notices.

THIS PROVISION

This provision would provide that any notice mailed to a taxpayer is sufficient if it is mailed to the taxpayer's last known address. Last known address would be defined as the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has provided FTB clear and concise written or electronic notification of a different address or FTB has an address it has reason to believe is the most current address for the taxpayer.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would not impact the department's programs or operations because it would codify current administrative practice.

FISCAL IMPACT

This provision would not impact the department's costs because it would codify current administrative practice.

ECONOMIC IMPACT

This provision would not impact the state's income tax revenues.

TAXPAYERS' BILL OF RIGHTS REPORT CHANGE DATE DUE TO LEGISLATURE

PURPOSE OF THE PROVISION

The purpose of this provision is to provide FTB with sufficient time to prepare a complete and accurate report. The existing statutory due date of October 1st for the annual Taxpayers' Bill of Rights Report provides insufficient time for FTB staff to prepare the report because the statutory due date is either too close or overlaps the period for the Governor to act on legislation.

EFFECTIVE/OPERATIVE DATE

This provision would be effective January 1, 2008, and would be operative for reports issued on and after that date.

State Law

FTB is required to provide an annual Taxpayers' Bill of Rights Report to the Legislature no later than October 1st of each year. The report is required to include information on proposals needing legislative changes resulting from the annual Taxpayers' Bill of Rights hearing, as well as other changes in statute or regulations.

The Legislature maintains a legislative calendar governing the introduction and processing of legislative measures during each two-year regular session. The first year of the two-year session allows the Legislature until the second week of September to pass bills, and the second year of the two-year session allows the Legislature until August 31st to pass bills. The Governor has 30 days from either of those dates to sign or veto bills passed by the Legislature. (See chart below under Background.)

Background

The following were the 2000 to 2006 legislative calendars commencing with the end of the session:

- 2000 - Session ended August 31, last day for Governor to act September 30
- 2001 - Session ended September 14, last day for Governor to act October 14
- 2002 - Session ended August 31, last day for Governor to act September 30
- 2003 - Session ended September 12, last day for Governor to act October 12
- 2004 - Session ended August 31, last day for Governor to act September 30
- 2005 - Session ended September 9, last day for Governor to act October 9
- 2006 - Session ended August 31, last day for Governor to act September 30
- 2007-Session would end September 14, last day for Governor to act October 14.

THIS PROVISION

This provision would change the due date of the annual Taxpayers' Bill of Rights Report to the Legislature from October 1st of each year to December 1st of each year. The department needs until December 1st to provide a complete and accurate report because the report is currently due before or at the time the Governor has to sign legislation.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would assist the department's programs and operations because it would allow sufficient time between when legislation is enacted and when the report addressing that legislation is submitted to the Legislature.

FISCAL IMPACT

This provision would not impact department costs.

ECONOMIC IMPACT

This provision would not impact state tax revenues.

VOTES

Assembly Floor – Ayes: 73, Noes: 0
Senate Floor – Ayes:75, Noes: 0

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