Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Skinner	Analyst:	William Koch	Bill Number:	AB 1530
Related Bills:	See Legislative History	Telephone:	845-4372	Amended Dates:	June 1, 2010 & June 14, 2010
		Attorney:	Patrick Kusiak	Sponsor:	Franchise Tax Board

SUBJECT: Collection Of Restitution Orders Awarded To The Franchise Tax Board In Criminal Proceedings

SUMMARY

This bill would provide the Franchise Tax Board (FTB) express authority to collect orders of restitution awarded to the FTB in criminal proceedings in the same manner and with the same priority as tax liabilities.

SUMMARY OF AMENDMENTS

The June 1, 2010, amendments removed provisions of the bill relating to greenhouse gas emission reduction measures and added the provisions discussed in this analysis.

The June 14, 2010, amendments made technical changes to the bill relating to the application of the Revenue and Taxation Code with respect to the collection of restitution orders and resolved technical drafting errors relating to the costs of investigation incurred by the FTB.

PURPOSE OF THE BILL

The purpose of this FTB-sponsored bill is to improve the collection process for orders of restitution awarded to the FTB in criminal proceedings.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2011, and would be specifically operative for amounts authorized to be collected pursuant to this bill that are due and payable to the FTB before, on, or after January 1, 2011.

POSITION

Support.

In its meeting of December 3, 2009, the three-member FTB voted 2-0, with the member from the Department of Finance abstaining, to support the provisions contained in this bill.

Board Position:			Department Director	Date
X S	NA	NP		
SA	O	NAR	Selvi Stanislaus	06/22/10
N	OUA	PENDING		

ANALYSIS

FEDERAL

The Internal Revenue Service (IRS) may pursue criminal prosecution against a taxpayer for certain offenses and the court may award an order of restitution. The offenses that may be pursued criminally include, but are not limited to, the following:

- Willful attempt to evade or defeat tax,
- Willful failure to collect or pay over collected tax, or
- Willful failure to file a return or supply information.

Because the U.S. Department of Justice (DOJ) represents the IRS in the prosecution of criminal cases, verdicts awarded to the IRS are collected by the DOJ staff under the Federal Debt Collection Procedures Act of 1990.[1] Within the US Attorney's office, the Financial Litigation Units are responsible for collection of restitution orders using procedures for enforcing collections—such as filing liens, searching for offender assets, wage garnishments, writs of execution, and demand letters.[2]

Federal law provides restitution pursuant to the Mandatory Victims Restitution Act,[3] which provides that restitution must be made to the victim of certain crimes regardless of the offender's ability to pay. Orders of restitution issued in a federal criminal action for certain crimes are enforceable in the same manner as a civil judgment.

FTB Investigations may obtain federal court orders of restitution for criminal charges referred to a federal court. Charges that can be pursued in federal court include federal offenses such as the following:

- Wire fraud;
- Mail fraud;
- Money laundering; and
- Financial crimes.

Current State Law

Restitution Orders

Victims of crimes are entitled to restitution under the California Constitution.[4] All persons who suffer losses as a result of criminal activity have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer. Courts are required to award an order of restitution from a convicted wrongdoer in every case that a crime victim suffers a loss.

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[1] See Title 28 U.S.C. sections 3001 through 3308.
[2] GAO report-GAO 01-664 Criminal Debt-Oversight and Actions Needed to Address Deficiencies in Collection Processes.
[3] See Title 18 U.S.C. section 3663A.
[4] Article I section 28, subdivision (b).

Under existing law, the FTB may refer cases for criminal prosecution in state courts against a person for certain offenses and the court may award restitution. The offenses that may be referred for criminal prosecution include the following:

- Failure to file returns,
- Forging a spouse's signature,
- False, fraudulent, or deceptive conduct,
- Tax evasion,
- Conversion of a taxpayer refund by a tax preparer, and
- Employer's failure to collect or deposit tax.

Orders of restitution do not expire and are not dischargeable in an individual bankruptcy proceeding.

Collection of Restitution by the FTB through the Court Ordered Debt (COD) Program

Under existing state law, the FTB administers COD, where fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California on a person that are due and payable in an amount no less than $100 and are at least 90 days delinquent can be referred to the FTB for collection.[5]

Restitution orders may be referred to the FTB only by a governmental entity that meets the following criteria:

- The governmental entity has the authority to collect on behalf of the state or the victim.
- The governmental entity is responsible for distributing the restitution order collections, as appropriate.
- The governmental entity ensures that it coordinates with any other related collection activities that may occur regarding that debt.

Restitution orders referred to the FTB for collection by other government entities are collected through an automated collection system and are subject to the limitations of that system. Restitution orders awarded to the FTB in federal cases do not meet the requirements for referral under the COD provisions.

Collection Using the Civil Process

In general, the civil process is the means used by a court to acquire or exercise its jurisdiction over a person or specific property. In California, the marshal or the sheriff serves, executes, or processes court notices, writs, orders or other actions as authorized based on judgments received in the court proceedings. The civil process includes both a notice process, where persons that are required to receive notice in certain actions are provided that notice, and the enforcement process, where the sheriff or marshal can seize funds belonging to a debtor on behalf of a judgment creditor. A sheriff or marshal issues garnishments, levies bank accounts, or seizes property in the hands of a third party in the enforcement process. Fees for services are set by statute.

[5] Revenue and Taxation Code section 19280.

The FTB uses the services of the sheriff or marshal when conducting any of the following collection actions:

- Seizing personal property such as vehicles,
- Seizing cash receipts of a business through till taps or keeper actions,
- Seizing assets in a safe deposit box, or
- Issuing subpoenas to enforce the tax code.

The rate of interest on the unpaid liability is computed in accordance with the Revenue and Taxation Code when using the civil process to collect taxes.

FTB Administrative Collection Authority

The FTB has administrative authority to collect delinquent income tax and other debts referred to the FTB for collection through the issuance of wage garnishments, bank levies, and Notices of State Tax Liens when an amount owed for state income tax is due and payable, and the taxpayer has not complied with their obligation to pay the amount due. The garnishments and levies issued by the FTB are treated like warrants that are issued under the civil process.

Payment Priority

State law establishes a priority for payment of debts when multiple debts are owed by the same debtor and are collected by the FTB. Payments are applied in the following order:

1. Payment of any child support delinquencies transferred for collection.
2. Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable for Non Admitted Insurance Taxes, Personal Income Taxes, or Corporation Income Taxes.
3. Payment of delinquent wages collected pursuant to the Labor Code.
4. Payment of delinquent vehicle license fees.
5. Payment of any amounts due referred for collection under the COD Collection.
6. Payment of any amounts that are referred for collection under the Cal-OSHA targeted inspection program.
7. Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.
8. Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.
9. Payment of delinquencies referred by the Student Aid Commission.

Program History/Background

The FTB can seek restitution for economic losses incurred as a result of a crime. The order of restitution provides that the FTB (as a victim of the crime) receive restitution of the FTB's economic loss from a person convicted of a crime. The FTB's economic loss in these situations is the amount of state income tax (including applicable penalties, interest and costs of investigation or prosecution) that the person failed to pay as a result of the crime for which the person is guilty. Because an order of restitution is not specifically a tax or a tax penalty, when awarded in any criminal case, the FTB's administrative tax collection tools are unavailable for use in collecting restitution orders owed to the FTB.

Currently, the FTB could collect its orders of restitution either through the existing COD provisions in the Revenue and Taxation Code or as a civil money judgment using collection remedies available under the Code of Civil Procedure. The FTB does not use COD to collect its orders of restitution for the following reasons:

- The billing notices that the FTB issues to taxpayers owing both tax and restitution would be inaccurate because the balances are maintained on two separate systems that do not communicate in either billing or collection processes. The average balance due for an order of restitution is substantially larger and more complex, thereby requiring higher levels of collection expertise to resolve than the average COD account that relies primarily on automated processes.
- The COD system does not assess interest--the client agency that refers the debt to the FTB for collection provides updates for accrued interest. Restitution orders accrue interest until paid.

When the FTB collects an order of restitution as a civil money judgment, the FTB must use the collection remedies available to any creditor under the Code of Civil Procedure, which are generally time consuming and cumbersome. The statutory procedures for obtaining levies can delay the collection of the order of restitution, and the FTB must rely on the availability of external resources to collect amounts owed as a civil money judgment. In general, depending on the nature of the assets involved, the civil process can take anywhere from 90 days to one year from the date of seizure to the date of the auction to complete.

FTB Investigations estimates that orders of restitution are received in approximately 40 criminal cases annually with an estimated value of $15 million.

THIS BILL

This bill would provide express authority for the FTB to collect restitution orders, fines, penalties or any other amounts awarded to the FTB by a court of competent jurisdiction (federal or state court) in criminal proceedings in the same manner and with the same priority as tax liabilities.

In addition, this bill would:

- Specify that voluntary payments made expressly for orders of restitution owed by a taxpayer must be applied as the taxpayer designates.
- Treat orders of restitution awarded to the FTB for criminal offenses as final and due and payable on the date the amount is established on the FTB's records.
- Specify that the provisions of the Personal Income Tax Law, the Administration of Franchise and Income Tax Law, the Taxpayer's Bill of Rights, and the Corporation Tax Law shall apply to amounts collected under this bill, except to the extent that any provision is inconsistent or not relevant to the provisions of this bill.
- Specify that no refund or credit may be allowed for amounts paid or payments applied under this bill.
- Specify that the amounts authorized to be collected pursuant to this bill shall accrue interest at the greater of the rate applicable to restitution orders provided under Section 1202.4 of the Penal Code or the rate provided under Section 19521 of the Revenue and Taxation Code, from and after the date the amounts are established on the records of the FTB.
- Specify that the amounts authorized to be collected pursuant to this bill would not be subject to Section 19255 of the Revenue and Taxation Code, relating to the statute of limitations on collections.
- Specify that the FTB may record or extend a recorded Notice of State Tax Lien at any time until the amount due, including any accrued interest, has been paid in full.
- Allow the FTB to retain the amounts the restitution order includes for the costs of investigation incurred by the FTB.
- Apply to amounts authorized to be collected pursuant to this bill that are due and payable to the FTB before, on, or after January 1, 2011.

IMPLEMENTATION CONSIDERATIONS

Implementing this proposal would require changes to the accounting and collection systems and modification of notices to incorporate the restitution amounts to be collected.

TECHNICAL CONSIDERATIONS

The following suggested amendment would remove unnecessary language from the bill.

On page 3, line 5, strikeout "orders, fines, penalties," and insert:

"orders"

LEGISLATIVE HISTORY

No similar current or prior legislation found.

FISCAL IMPACT

The department estimates that one-time costs to modify existing systems and processes to incorporate orders of restitution to taxpayer accounts would be approximately $110,000 (1.0 P.Y.). Due to the current fiscal environment and the need for increased resources necessary to implement this and other pending bills, implementation of this bill could be delayed without funding. If this bill is enacted without appropriation language, the department will pursue a budget augmentation ("legislative budget change proposal") through the normal budgetary process.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1530 as Amended June 1, 2010, and June 14, 2010 Enactment Assumed by September 30, 2010 Effective January 1, 2011 ($ In Dollars)		
2009-10	2010-11	2011-12
+$50,000	+$100,000	+$100,000

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

LEGISLATIVE STAFF CONTACT

Legislative Analyst
William Koch
(916) 845-4372
william.koch@ftb.ca.gov

Revenue Manager
Monica Trefz
(916) 845-4002
monica.trefz@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov