

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Eng Analyst: Angela Raygoza Bill Number: AB 2038
Related Bills: See Legislative History Telephone: 845-7814 Amended Date: April 5, 2010 and April 7, 2010
Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Failure To Resolve Outstanding Liability As Grounds For Refusal To Renew, Issue, Or Revoke A License

SUMMARY

This bill would suspend occupational and professional licenses as a matter of law because of an unpaid income tax liability and require the Franchise Tax Board (FTB) to notify the applicable licensing agency of the suspension.

This bill would also provide discretionary authority to licensing entities to determine whether to suspend occupational or professional licenses, as specified.

SUMMARY OF AMENDMENTS

The April 5, 2010, amendments removed language that would have made technical non-substantive changes to the Revenue and Taxation Code (R&TC) and added language that would allow the licensing entities to suspend a taxpayer's occupational or professional license for unpaid taxes.

Additionally, the amendments provide that if the licensing entity fails to suspend the taxpayer's license, the FTB would be required to notify the taxpayer that their license would be suspended 60 days after the mailing of a preliminary notice.

The April 7, 2010, amendments added provisions to clarify the suspension process under the Business and Professions Code, as discussed below.

This analysis addresses sections of the Business and Professions Code only as they pertain to the FTB.

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

PURPOSE OF THE BILL

The purpose of this FTB-sponsored bill is to increase the effectiveness of the collection of delinquent taxes and to promote fairness among taxpayers.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2011, and would be operative as of that date.

Board Position:	Department Director	Date
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POSITION

Support.

On November 28, 2007, the three-member Franchise Tax Board voted 2-0, with the representative from Department of Finance abstaining, to sponsor the R&TC sections of this bill.

ANALYSIS

PROGRAM BACKGROUND

Current FTB data indicates that there are over 25,000 delinquent taxpayers that possess an occupational or professional license. The department is unable to use its most effective collection tools, namely Earnings Withholding Order For Taxes (EWOTs), Orders To Withhold (OTWS), and warrants, to collect delinquent liabilities from individuals who operate on a cash basis because of the lack of third-party reporting on transactions such as commissions, rents, and payment for services provided.

FEDERAL/STATE LAW

Under both federal and state income tax laws, in general, if taxpayers have delinquent tax amounts, a tax lien automatically arises by operation of law for that amount, known as a statutory tax lien. A statutory tax lien is a claim upon real and personal property for the satisfaction of a tax debt. For federal purposes, the statutory tax lien exists as long as the delinquency exists or until automatically released ten years after a tax is assessed.

For state purposes, a statutory tax lien arises automatically when the debt becomes final and exists for ten years, unless the liability becomes satisfied or, if the debt remains unpaid, a Notice of State Tax lien is recorded. The recording of the notice provides notice to the world of the debt against all real and personal property belonging to the taxpayer and located in the California county where recorded.

Current state law authorizes the FTB to use several collection tools to collect delinquent tax liabilities:

An OTW can be issued to any third-person in possession of funds or properties belonging to the debtor, for example vacation trust funds, interest, financial assets, and 1099 miscellaneous payors. Upon receipt of an OTW, the entity notified is required to submit to the department all cash or cash equivalents due the debtor that will satisfy the amount of the OTW.

A warrant can be issued to seize property and convert it to cash to satisfy a debt. Warrants are enforced by a marshal. The most common use of the warrant is to seize and sell vehicles.

An EWOT is used to collect delinquent tax liabilities for which a tax lien is in effect. An EWOT is a continuing wage garnishment based on a percentage of a debtor's earnings, not to exceed 25 percent of disposable income.

Current state law specifies that the Contractors' State License Board (CSLB) may refuse to issue, reinstate, reactivate, suspend, or renew a contractor's license for the failure of a licensee to pay state taxes and any fees that may be assessed by the CSLB, the Department of Industrial Relations, the Employment Development Department, or the FTB.

Current state law also authorizes professional license denial and suspension for failure to pay court-ordered child support debt. The local child support agencies compile a list for the Department of Child Support Services (DCSS) of obligors who are more than 30 calendar days in arrears in making their child support payments. DCSS reviews the list to verify the information is accurate and then sends the list of obligors to the various licensing boards. Once the list is received, those boards immediately send a 150-day compliance letter to the obligor. If the obligor fails to comply within the 150-day timeframe and the licensing board fails to receive a release letter from the local child support agency, the occupational, professional, or driver's license is suspended by the licensing board.

Under current state tax law, the FTB is prohibited from disclosing any confidential taxpayer information unless an exception to the general disclosure law specifically authorizes the disclosure.

Current state law provides that the California Supreme Court may suspend or disbar an attorney from practice for an act of professional misconduct or convicted of serious crimes.

THIS BILL

This bill would provide discretionary authority to a state governmental licensing entity to withhold issuance or renewal of the license of an applicant or to suspend the license of a licensee that is on a certified list provided by the FTB.

This bill defines "certified list" as a list provided by the FTB in which the FTB verifies that the names contained therein are persons that have failed to pay taxes, including any penalties, interest, and any applicable fees, imposed under the Personal Income Tax Law and Corporate Tax Law for which a state tax lien has been recorded.

This bill would require the FTB to do the following:

- Submit a certified list of tax debtors with a license to a state governmental licensing entity,
- Create release forms to remove the licensee's name from the certified list,
- Provide a release to a state governmental licensing entity and licensee,
- Notify the state governmental licensing entity when the licensee falls out of an installment payment arrangement, and
- Allow the FTB to enter into interagency agreements with a state governmental licensing entity necessary to carry out this bill.

This bill would authorize the FTB to notify a licensee of suspension for unpaid tax debts if the state governmental licensing fails to take action within 90 days of a preliminary notice. Additionally, a state governmental licensing entity would be required to notify the FTB if no action is taken and the reason why.

The FTB suspension process is detailed below:

If a state governmental licensing entity does not suspend a licensee or applicant for unpaid tax liabilities, this bill would suspend an occupational or professional license by operation of law because of an unpaid income tax liability. The suspension would occur only after the following have been provided by the FTB to the debtor:

Notice of State Income Tax Due,
Final Notice Before Levy,
OTW is issued (if debtor's bank information is available to the FTB),
Notice of State Tax Lien (issued when a state tax lien is recorded) and,
60-day preliminary suspension notice.

This bill would require the FTB to disclose to the licensing boards the fact for the suspension--unpaid taxes.

This bill would specify that the FTB staff would provide a hearing, upon request of a debtor, for a license holder who believes he or she would experience a financial hardship as a result of the suspension. "Financial hardship" would be defined by reference to R&TC section 19008, as determined by the FTB, where suspension of a license will result in the licensee being financially unable to pay his or her taxes including penalties, interest, and applicable fees and is unable to qualify for an installment payment arrangement pursuant to R&TC section 19008. In order to establish that a financial hardship exists, the licensee shall submit any information, including information related to reasonable business and personal expenses, requested by the FTB for making the determination. The FTB would conduct the hearing within 30 days of receipt of the request, unless the FTB postpones the hearing upon a showing of good cause. Suspension would be deferred until the hardship hearing was completed. If a debtor substantiates financial hardship, the FTB would defer or cancel the suspension.

This bill would define the following:

- "Hardship" means financial hardship, as determined by the FTB, where the taxpayer is financially unable to pay any part of their taxes including penalties, interest, and applicable fees and is unable to qualify for an installment payment arrangement pursuant to Section 19008 of the R&TC.
- "License" includes certificate, registration, or any other authorization to engage in a business or profession issued by a state governmental licensing entity.
- "Licensee" means any entity authorized by a license, certificate registration, or other authorization to engage in a business or profession issued by a state governmental licensing entity.
- "State governmental licensing entity" means any entity included in Sections 101, 1000, or 19420 of the Business and Professions Code (approximately 41 licensing entities), the Office of Attorney General, the Department of Insurance, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing a person to engage in a business or profession. "State governmental licensing entity" excludes the Department of Motor Vehicles and State Bar of California.

But the provisions of the Business and Professions Code are made applicable to the licensure of persons authorized to practice law. Please see the Appendix for a list of licenses that would be affected by this provision.

This bill requires licensing boards to provide the FTB information at a time requested by the FTB.

TECHNICAL CONSIDERATION

It appears contractors were inadvertently removed from the Business and Professions Code Section 494.5 on page 10, lines 25-26. On page 10, ~~strikeout lines 25-26~~. This amendment was provided to the author's office.

LEGISLATIVE HISTORY

ABX8 8 (Committee on Budget, 2009/2010), ABX3 19 (Evans, 2009/2010), SBX8 8 (Committee on Budget, 2009/2010), and SBX 3 17 (Ducheny, 2009/2010) all contained provisions similar to this bill. ABX8 8, ABX3 19, SBX8 8, and SBX3 17 would have allowed a 60-day preliminary notice of suspension and allow the licensing entities to impose a fee for suspended licenses. ABX8 8 failed passage out of the Assembly. ABX3 19 was sent to enrollment but was withdrawn from enrollment without action by the Governor. SBX8 8 failed passage out of the Senate. SBX3 17 was vetoed by Governor Schwarzenegger on June 30, 2009.

AB 484 (Eng, 2009/2010) and AB 1925 (Eng, 2007/2008) both contained similar provisions in this bill. AB 484 would have required a 150-day preliminary suspension notice. AB 484 failed passage out of the Senate Revenue and Taxation Committee. AB 1925 would have allowed a 60-day preliminary suspension but would not have allowed the licensing entities to impose a fee for suspended licenses or exclude administrative adjudication provisions of the Administrative Procedures Act. AB 484 failed passage out of the Business and Professions Committee. AB 1925 failed passage out of the Senate Revenue and Taxation Committee.

OTHER STATES' INFORMATION

Illinois, Massachusetts, Minnesota, Oregon, and Wisconsin tax laws provide for suspension of licensees for unpaid personal income tax liabilities. The revenue department for each of those states directs the licensing authority to suspend the licenses.

Missouri income tax laws provide that the revenue department can suspend a professional or occupational license for delinquent income tax liability. The revenue department suspends the license and then notifies the licensing board of the suspension of the license holder.

Recently, *Pennsylvania* enacted an information exchange program to ensure that individuals and businesses licensed by the state pay their state income, sales and use, cigarette, liquor, and property taxes. The revenue department will notify a licensing board when it determines that an applicant or licensee has a state tax delinquency. The licensing board will deny or suspend a license for failure to comply with state tax laws.

Florida, Michigan, and New York do not have statutory authority to suspend occupational and professional licenses for delinquent tax liabilities.

FISCAL IMPACT

Staff estimates a one-time cost of approximately \$2.4 million (27.9 PYs) to program, develop, and test a new process within existing systems and add collection staff to review, process, and suspend accounts that have been matched to licensees. Staff estimates on-going annual costs of approximately \$1.1 million (12.4 PYs) for mailing notices and responding to taxpayer inquiries resulting from those notices. This new function would be operative in the latter part of the 2010-11 fiscal year.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2038 As Amended April 5, 2010 and April 7, 2010 Operative For Tax Years Beginning On or After January 1, 2011 Enactment Assumed After September 30, 2010 (\$ in Millions)			
2010-11	2011-12	2012-13	2013-14
\$12.5	18.5	18.4	10.6

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APPENDIX
Governmental Licensing Entities
(Licensing Boards that are affected by this bill)

1. Section 101 of the Business and Professions Code

The Dental Board of California
The Medical Board of California
The State Board of Optometry
The California State Board of Pharmacy
The Veterinary Medical Board
The California Board of Accountancy
The California Architects Board
The Bureau of Barbering and Cosmetology
The Board of Professional Engineers and Land Surveyors
The Contractors' State License Board
The Bureau for Private Postsecondary and Vocational Education
The Structural Pest Control Board
The Bureau of Home Furnishings and Thermal Insulation
The Board of Registered Nursing
The Board of Behavioral Sciences
The State Athletic Commission
The Cemetery and Funeral Bureau
The State Board of Guide Dogs for the Blind
The Bureau of Security and Investigative Services
The Court Reporters Board of California
The Board of Vocational Nursing and Psychiatric Technicians
The Landscape Architects Technical Committee
The Bureau of Electronic and Appliance Repair
The Division of Investigation
The Bureau of Automotive Repair
The State Board of Registration for Geologists and Geophysicists
The Respiratory Care Board of California
The Acupuncture Board
The Board of Psychology
The California Board of Podiatric Medicine
The Physical Therapy Board of California
The Arbitration Review Program
The Committee on Dental Auxiliaries
The Hearing Aid Dispensers Bureau
The Physician Assistant Committee
The Speech-Language Pathology and Audiology Board
The California Board of Occupational Therapy
The Osteopathic Medical Board of California
The Bureau of Naturopathic Medicine

2. Section 1000 of the Business and Professions Code

State Board of Chiropractic Examiners

3. Section 19420 of the Business and Professions Code

California Horse Racing Board