

**Franchise Tax Board**

**ANALYSIS OF ORIGINAL BILL**

Author: Torrico Analyst: Angela Raygoza Bill Number: AB 2649  
 Related Bills: See Legislative History Telephone: 845-7814 Introduced Date: February 19, 2010  
 Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

**SUBJECT:** Failure To Resolve Outstanding Liabilities 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 Franchise Tax Board (FTB) to notify the applicable licensing agency of the suspension.

**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.

**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 language included in this bill.

**ANALYSIS**

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.

Board Position:

S       NA       NP  
 SA       O       NAR  
 N       OUA       PENDING

Department Director

Date

Selvi Stanislaus

05/19/10

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 FTB to use several collection tools to collect delinquent tax liabilities:

An Order to Withhold (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 Earnings Withholding Order for Taxes (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, 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.

## **PROGRAM BACKGROUND**

Current 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 EWOTs, 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.

## **THIS BILL**

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 FTB to the debtor:

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

This bill would allow FTB to disclose to the licensing boards the fact of the suspension--unpaid taxes.

This bill would require that the licensee pay the total unpaid tax liability or enter into an installment arrangement to cancel a suspension. This bill would specify that a licensee that enters into an installment payment agreement would have their license suspended if he or she fails to comply with the terms of the agreement. The license would be suspended 30 days after the date the agreement has been terminated and a notice of suspension would be provided to the licensing entity and mailed to the licensee.

This bill would allow a financial hardship hearing. 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 Revenue and Taxation Code (R&TC) section 19008, as determined by FTB, where suspension of a license would result in the licensee being financially unable to pay his or her taxes, including penalties, interest, and applicable fees and would be 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 FTB for making the determination. FTB would conduct the hearing within 30 days of receipt of the request, unless 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, FTB would defer or cancel the suspension.

The bill specifies that the administrative adjudication provisions of the Administrative Procedures Act<sup>1</sup> would not apply to the suspension of a license as result of delinquent tax liabilities.

In addition, this bill would require a license to be suspended if the deferral of a license suspension would be a result of a financial hardship that would no longer be operative. The license would be required to be suspended 30 days after the date the deferral would no longer be operative. This bill would require FTB to provide a notice of suspension to the licensing entity and mail a notice of suspension to the licensee.

This bill would allow a licensing entity to impose a fee on licensees who have had their license suspended as a result of a delinquent tax liability. The fee would be limited to the actual costs of suspension.

This bill would define the following:

- “Financial hardship” means financial hardship, as determined by FTB, where the taxpayer would be financially unable to pay any part of their taxes including penalties, interest, and applicable fees and would be unable to qualify for an installment payment arrangement pursuant to Section 19008 of the Revenue and Taxation Code.
- “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 State Bar of California, 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 or the Contractors’ State License Board. Please see revised Appendix for a list of licenses that would be affected by this provision.

This bill would remove licensees that hold a contractor’s license from this bill’s provisions and allow the Contractors’ License Board to be the only authority to suspend contractor’s licenses for unpaid tax liabilities.

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

The bill specifies that implementation of these provisions would be contingent upon funding approval.

---

<sup>1</sup> Administrative Procedures Act Government Code 11500 provides procedures for administrative hearings to be conducted by the licensing boards to determine whether a right, authority, license or privilege should be revoked or suspended.

## IMPLEMENTATION CONSIDERATION

Implementing this bill would require some changes to existing tax forms and instructions and information systems. Please see fiscal impact discussion for further detail.

## **LEGISLATIVE HISTORY**

AB 2038 (Eng, 2009/2010) would provide discretionary authority to licensing entities to determine whether to suspend occupational or professional licenses. If the licensing entity fails to act within 90 days, the license would be suspended as a matter of law and FTB would be required to notify the applicable licensing agency of the suspension. AB 2038 is currently in the Assembly Appropriations Committee.

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

This bill would result in revenue gains as follows:

Estimated Revenue Impact of AB 2649 As Introduced February 19, 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
\$18.5	\$18.5	\$18.5	\$17.6

**LEGISLATIVE STAFF CONTACT**

Legislative Analyst

Angela Raygoza

(916) 845-7814

[angela.raygoza@ftb.ca.gov](mailto:angela.raygoza@ftb.ca.gov)

Revenue Manager

Monica Trefz

(916) 845-4002

[monica.trefz@ftb.ca.gov](mailto:monica.trefz@ftb.ca.gov)

Legislative Director

Brian Putler

(916) 845-5521

[patrice.gau-johnson@ftb.ca.gov](mailto:patrice.gau-johnson@ftb.ca.gov)