

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Anderson Analyst: Deborah Barrett Bill Number: AB 273
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: February 12, 2009
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Court Ordered Debt/Superior Court Refer All Delinquent Fines, State Or Local Penalties, Forfeitures, Restitution Fines, Restitution Orders Or Any Other Amounts Imposed To FTB For Collection

SUMMARY

This bill would make the existing voluntary Court Ordered Debt (COD) statutes mandatory for any amount of debt over 90 days delinquent to be referred to Franchise Tax Board (FTB) for collection. This bill would also authorize the courts to add actual and reasonable costs of collection to the amounts referred to FTB.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to improve the efficiency in the collection of debts owed to the courts and counties of California.

EFFECTIVE/OPERATIVE DATE

If enacted in the first year of the two-year session, this bill would be effective January 1, 2010, and would be operative for referrals from the courts and counties on or after that date.

POSITION

Pending.

ANALYSIS

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. Current law requires the amount of the delinquent debt to be \$100 or more. 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 the distribution of the amounts collected from the restitutions orders.
- 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.

Board Position:

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Department Director

Date

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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 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.

THIS BILL

This bill would change existing court ordered debt provisions by requiring a superior court to refer fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by the court that are due and payable and over 90 days delinquent to the FTB for collection. This bill would also authorize delinquent debts owed to a county or the state to be referred to FTB for collection. This bill would remove the minimum balance requirements for referral.

This bill would authorize the following to be treated as final and due and payable to the State of California:

- Any amount referred to FTB,
- Any interest accrued on the debts, including interest that accrued prior to the date of referral, and
- Any actual and reasonable costs of collection.

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. Phase 1 of the CODE project was launched February 17, 2009. CODE is expected to administer an inventory of approximately 8 million cases from potentially 190 different courts. FTB currently collects debts for 28 superior courts.

IMPLEMENTATION CONSIDERATIONS

This bill would require an additional 20 superior courts to refer their debts to FTB for collection. FTB would be required to initiate a memorandum of understanding and establish a secure data transmission protocol with each court. FTB would phase each new court into the program as the details are worked out with the court.

This bill provides for the “actual and reasonable costs of collection” to be added to the amounts referred for collection; however, because FTB’s cost reimbursement is provided under a different Revenue and Taxation Code section¹, FTB interprets this to mean the collection costs incurred by the courts and not the statutorily prescribed reimbursement for FTB’s costs. If this is not the result anticipated by the author, clarification is necessary to ensure the bill is implemented as the author intends.

LEGISLATIVE HISTORY

AB 1389 (Committee on Budget, Stats. 2008, Ch. 751), among other things, authorized courts to refer bail amounts to FTB for collection. This provision of the bill was chaptered out by the enactment of AB 2928 (Spitzer, Stats. 2008, Ch. 752).

AB 2487 (Berg, 2007/2008) would have authorized 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 Stats. 2008, Ch. 752) authorized 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.

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 the costs of adding the new courts into the program and collecting the increased volume of accounts would be fully reimbursed through the amounts of debt collected, this bill would not impact department costs.

ECONOMIC IMPACT

The provisions of this bill would not impact state income tax revenues.

LEGISLATIVE STAFF CONTACT

Legislative Analyst

Deborah Barrett

(916) 845-4301

Deborah.Barrett@ftb.ca.gov

Revenue Manager

Jay Chamberlain

(916) 845-3375

Jay.Chamberlain@ftb.ca.gov

Asst. Legislative Director

Patrice Gau-Johnson

(916) 845-5521

Patrice.Gau-Johnson@ftb.ca.gov

¹ Revenue and Taxation Code section 19282