

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Eng Analyst: Angela Raygoza Bill Number: AB 484
 Related Bills: See Related Bills Telephone: 845-7814 Introduced Date: February 24, 2009
 Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Failure To Resolve Outstanding Liabilities As Grounds For Revoking A Professional Or Occupational License

SUMMARY

This bill would suspend occupational and professional licenses as a matter of law because of an unpaid income tax liability and would 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, 2010, 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.

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.

Board Position:	Department Director	Date
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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% of disposable income.

Current state law specifies that the Contractor's 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,
- OTW is issued (if debtor's bank information is available to FTB),
- Notice of State Tax Lien (issued when a state tax lien is recorded) and,
- 60-day preliminary suspension notice.

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

This bill would specify that 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 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 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.

This bill would define the following:

- "Hardship" means financial hardship, as determined by 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 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. Please see the Appendix for a list of licenses that would be affected by this provision.

This bill would allow the Contractors State License Board to continue to have authority to suspend a contractor's license.

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

Implementation of this bill would be contingent upon funding approval.

LEGISLATIVE HISTORY

AB 1925 (Eng, 2007/2008) would have allowed the FTB to suspend occupational and professional licenses because of unpaid tax liabilities and notify the applicable licensing agency of the suspension. 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. Implementing this bill would be contingent upon funding approval and prioritization of department projects.

ECONOMIC IMPACT

Revenue Estimate

The revenue gain from this bill would be as follows:

Estimated Revenue Impact of AB 484 Effective On or After January 1, 2010 Enactment Assumed After June 30, 2009 (\$ in Millions)			
Occupational	2009-10	2010-11	2011-12
License	\$14	\$25	\$13

Estimates reflect the following assumptions: 1) funding becomes available after June 30, 2010; and 2) collection begins after January 1, 2011. This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact for this bill would be determined by the number of delinquent taxpayers who are required to possess an occupational or professional license, and who pay their tax liabilities under either threat of or actual suspension of their license.

This estimate was calculated using the account balances of the department's accounts receivables for the affected taxpayers, excluding accounts in bankruptcy and installment agreements. Taxpayers subject to the bill would be those with an outstanding liability of \$1,000 or more and with a tax debt owing for a minimum of one year.

There is currently an inventory of approximately 25,000 delinquent taxpayers with occupational or professional licenses that are in the collection process. It is estimated that in taxable year 2011 nearly 9,500 taxpayers would pay their outstanding tax debt upon receipt of a notice from FTB warning that their license could be suspended. The average payment amount for these cases would be \$2,000 resulting in additional collections of approximately \$19 million (9,500 taxpayers x \$2,000 average tax payment). It is assumed that 75 percent or approximately \$14 million (\$19 million collections x 75% assumed to be collected) would be collected in 2010-11.

In addition, it is estimated that each year 17,200 taxpayers with occupational and professional licenses will enter the collection process. Of the 17,200 taxpayers, it is estimated 38%, or 6,600 (17,200 taxpayers with licensees x 38% assumed to pay) are expected to pay their delinquent debts upon notice from FTB, resulting in additional annual collections of approximately \$13 million (6,600 taxpayers x \$2,000 average tax payment).

In 2011-12, the other 25 percent of \$19 million, or approximately \$4.7 million (\$19 million collections x 25% assumption to be collections) would be collected. In addition, one-half of the \$13 million that is collected annually or approximately \$6.6 million (\$13 million collected annually x 50% assumption expected to pay) would be added to the full \$13 million, totaling approximately \$25 million (\$4.7 million + \$6.6 million + \$13 million) that would be collected in 2011-2012.

Thereafter, the bill would result in annual collections of \$13 million. Since these cash flows all relate to tax liabilities from prior years, they are accrued back one year. Therefore, the \$14 million estimated fiscal year cash flow increase for 2010-11 would actually be a \$14 million revenue increase for fiscal year 2009-10.

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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