

SUMMARY ANALYSIS OF AMENDED BILL

Author: Wolk Analyst: Deborah Barrett Bill Number: SB 402
 Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: April 28, 2009
 Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Financial Institution Record Match (FIRM) System for Collection of Delinquent Debts

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 16, 2009, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This Franchise Tax Board (FTB) sponsored bill would establish a record match process between financial institution customer records and FTB debtor records. FTB would use match information to collect delinquent state income tax debts and non tax debts using existing laws and computer systems.

SUMMARY OF AMENDMENTS

The April 28, 2009, amendments would modify the provision that allows suspension of a financial institution’s data match obligation when a financial institution is found to be undercapitalized so that the finding of undercapitalization would be made by the financial institution’s regulatory agency, rather than by FTB.

“This Bill” and “Fiscal Impact,” discussions are revised. The “Implementation Consideration” and “Economic Impact” discussions are included below for convenience. The remainder of the department’s analysis of the bill as amended April 16, 2009, still applies.

Board Position:	Legislative Director	Date
<input checked="" type="checkbox"/> S	Brian Putler	05/21/09
<input type="checkbox"/> NA		
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NP		
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<input type="checkbox"/> NAR		
<input type="checkbox"/> PENDING		

POSITION

At its meeting of March 6, 2008, the three-member Franchise Tax Board voted 2-0, with the Member from the Department of Finance abstaining, to support the provisions of this bill.

THIS BILL

This bill would require FTB to coordinate with financial institutions doing business in this state to establish a Financial Institution Record Match system (FIRM) using automated data exchanges to the maximum extent feasible. The bill would require FTB to promulgate rules or regulations necessary to implement the provisions of the bill that include the following.

- A structure by which financial institutions or their designated data processing agent shall receive from FTB the file or files of delinquent debtors that the institution will match with its own list of accountholder to identify delinquent tax debtor accountholders at that institution.
- An option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third party data processor to process the data exchange to forward to FTB a list of all account holders and their Social Security Numbers, or other taxpayer identification numbers so the FTB can match that list with file or files of delinquent tax debtors.
- Authority for the FTB to exempt a financial institution from the requirements of this bill if the FTB determines that the financial institution's participation would not generate sufficient revenue to be cost effective for the department.
- Authority for the FTB to suspend the requirements of this section temporarily for a financial institution if a financial institution provides FTB with a written notice from its supervisory banking authority that it is determined to be undercapitalized, significantly undercapitalized, or critically undercapitalized, as defined. Any notice provided to FTB for this purpose is subject to the same confidentiality restrictions that exist for taxpayer or tax return information obtained by FTB.

This bill would provide that any use of the information obtained under this bill's provisions for any purpose other than the collection of delinquent franchise or income tax or other debts referred to FTB for collection would be a violation of existing disclosure restrictions. The bill provides express authority for FTB to provide confidential taxpayer data to the financial institutions for purposes of the tax data match.

On a quarterly basis, this bill would require financial institutions to provide FTB the name, record address and other addresses, social security number or other taxpayer identification number, and identifying information for each delinquent tax debtor as identified by FTB who maintains an account at the financial institution as defined. Financial institutions may not disclose to the accountholder, depositor, co-acountholder, or co-depositor that their identifying information has been received for furnished to the FTB, unless required to do so by law.

This bill would provide that a financial institution will not incur liability or obligation for any of the following:

- Furnishing information to FTB as required by this bill,
- Failing to disclose to a depositor or accountholder that their personal identifying information was included in the data exchange with FTB, or
- Any other action taken in good faith to comply with the requirements of this bill.

The bill authorizes FTB to institute civil proceedings to enforce the provisions of this bill.

The bill would provide that if a financial institution willfully fails to comply with the requirements of the rules promulgated by FTB, unless that failure is due to reasonable cause satisfactory to FTB, the financial institution shall be subject to a penalty upon notice and demand in the amount of \$50 for each debtor's record not provided up to a maximum of \$100,000 in any calendar year.

The bill would provide the following definitions for the terms used:

(1) "Account" means any demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account, regardless of whether the account bears interest.

(2) "Financial institution" means:

- A depository institution, as defined in Section 1813(c) of Title 12 of the United States Code.
- An institution-affiliated party, as defined in Section 1813(u) of Title 12 of the United States Code.
- Any federal credit union or state credit union, as defined in Section 1752 of Title 12 of the United States Code, including an institution-affiliated party of a credit union, as defined in Section 1786(r) of Title 12 of the United States Code.
- Any benefit association, insurance company, safe deposit company, money-market fund, or similar entity authorized to do business in this state.

(3) "Delinquent tax debtor" means any person liable for any income or franchise tax or other debt referred to the FTB for collection as imposed under Part 5 (commencing with Section 10878), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 19280), or Part 11 (commencing with Section 23001), including tax, penalties, interest, and fees, where the tax or debt, including the amount, if any, referred to the FTB for collection remains unpaid after 30 days from demand for payment by the FTB, and the person is not making current timely installment payments on the liability under an agreement.

The bill would provide for reimbursement of one time start up costs in an amount up to \$2,500 for each financial institution, and would provide for reimbursement for the quarterly data matches conducted in an amount up to \$250 per quarter per financial institution.

The bill would limit the initial size of the FTB data match file sent to financial institutions to no more than 600,000 records and would allow for an incremental increase each quarter of no more than an additional 600,000 records until the full universe of tax debtors is included in the data file.

The bill would be specifically operative 120 days after the date funding is received.

IMPLEMENTATION CONSIDERATIONS

FTB would utilize existing systems and functionality to implement this new process. Implementing this bill would have a significant impact on the department, as described below under Fiscal Impact. Due to the changes required, the department anticipates it would be able to initiate levies within 12 months of receiving funding through manual efforts and would be fully automated within 18 months from the date funding is received.

FISCAL IMPACT

To ensure that existing collection processes can handle the increased volume of data expected under this bill, modifications to core processes would be required. This bill would impact core functions in the collection system and would require system programming, development, and testing to ensure successful integration. In an effort to bring in revenue as soon as possible, FTB will implement a semi-automated effort in phase I of the project, whereby collection staff will manually generate the OTWs. Upon full project implementation, which is estimated to take 18 months, an automated process would be available to issue the OTWs generated from the new data obtained under this proposal. The table below reflects the summary of costs for the phased project, including reimbursement to the financial institutions for start up costs and quarterly match costs.

The fiscal estimate assumes that the start up costs incurred by financial institutions would be incurred over two fiscal years. Additionally, it is assumed that the coordination of data file exchanges with 800 financial institutions would take approximately 10 to 12 months to complete, which would result in a delay of cost reimbursement to all financial institutions.

Additionally, the fiscal cost estimate has been revised from the previous analysis to reflect updates in project and program costs.

**Financial Institutions Record Match
 Summary of Costs, Revenue
 (dollars in thousands)
 Assumes a project start date of July 2009**

	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	Total
Total Project Costs	\$3,155	\$4,484	\$2,216	\$1,251	\$11,106
Total Program Costs	\$1,005	\$5,359	\$4,214	\$4,640	\$15,714
Total Financial Institution Reimbursement Costs	\$495	\$2,155	\$800	\$800	\$4,250
Total Project + Program Costs	\$4,655	\$9,844	\$6,430	\$5,891	\$26,821

ECONOMIC IMPACT

Based on data and assumptions discussed below, this bill would result in the following revenue gains.

Estimated Revenue Impact of FIRM Proposal Effective For Accounts Past Due After 1/1/2010 Assumes Funding After 7/1/2010 Collections Begin After 7/1/2011 (\$ in Millions)			
	2010/2011	2011/2012	2012/2013
Vehicle Registration Collections		\$1	\$2
Court Ordered Debt		\$2	\$4
General Fund	\$35	\$63	\$99

Tax Revenue Discussion:

The revenue impact of this bill would be determined by the number of successful matches identified by financial institutions and the collection rate on those accounts. Because, on average, tax accounts have larger delinquent balances than non-tax accounts, the revenue estimate is determined by the volume and balance of delinquent tax accounts. Due to the difference in average balances, the estimate of accelerated and additional collections starts by analyzing tax accounts and then adjusted to include non-tax accounts.

Under this bill, the department would obtain current financial account information on tax debtors from financial institutions. The department sends approximately 125,000 OTWs annually to financial institutions based on information obtained from Form 1099 interest information returns. These OTWs result in \$75 million in collections (\$70 million tax + \$5 million non-tax accounts). Assuming that the ability of financial institutions to process additional OTWs would be limited, FTB would limit the increase in volume of OTWs to an increase of 50,000 accounts for the first full year and increase by 50,000 accounts each year thereafter. This bill would result in both accelerated revenue and new money.

Acceleration

Based on delinquent tax account data, of the \$70 million currently collected using OTWs, the department estimates that the issuance of additional OTWs could accelerate 50 percent of collections by one year, or approximately \$35 million during the first year of implementation. However, because of the assumed processing limitations of the financial institutions, this potential acceleration is reduced 80 percent to approximately \$7 million ($\$35 \text{ million} \times 20\%$).

New Money

FTB estimates the matches would identify approximately \$2.5 billion in assets maintained at financial institutions from 1.5 million debtors. Assuming that financial institutions could process 15 percent of these levies with 8 percent of the balance collected based on historical Accounts Receivable Management collection rates. Thus, during the first-year, new money would equal approximately \$30 million ($\$2.5 \text{ billion} \times 15\% \times 8\%$). The combined impact of accelerated collections and additional collections would total \$37 million ($\$7 \text{ million} + \30 million).

To include non-tax accounts, the additional 50,000 OTWs that financial institutions would be able to process during the first year are allocated between tax and non-tax accounts, 80 percent and 20 percent respectively. The average balance for tax accounts pursued through the new match process is \$740 ($\$37 \text{ million} \div 50,000 \text{ additional OTWs}$). Allocating 40,000 OTWs to tax account collections reduces the revenue impact for the first year from \$37 million to \$30 million ($\$740 \times 40,000$). The average collection for non-tax accounts that would be pursued through the new match process is estimated to total \$280. Allocating 10,000 OTWs to the non-tax program would accelerate collections by approximately \$3 million ($\$280 \times 10,000$).

Growing this estimate using the Consumer Price Index and since the new collection process would begin twelve months after enactment, the revenue impact for the first fiscal year (2011-12) would total \$38 million. General fund revenue in the table has been accrued back one year and attributed to fiscal year 2010-11.

Based on these implementation dates, the 50,000 OTW limit would be applicable to the first twelve months of collection, which runs July, 2011, to July, 2012. Subsequent to fiscal year 2011-12, as financial institutions are able to process additional OTWs, accelerated and additional collections would increase. However, it is assumed that financial institutions would not be able to process OTWs for the entire population of matches until 2017-18. Additionally, it is assumed that 30 percent of new OTWs would lead to installment agreements and would generate revenue for the following two years. Finally, over the first few years, as FIRM is implemented and enhanced, increased functionality will allow collection staff to refine the selection process for issuing OTWs by prioritizing accounts with the highest yield. When the proposal is fully phased-in by 2017-18, additional collections are projected at \$150 million per year for both tax and non-tax programs.

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