

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Saldana Analyst: William Koch Bill Number: AB 1251
See Legislative
Related Bills: History Telephone: 845-4372 Amended Date: April 13, 2009
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Interest On Tax Refunds If Controller Determines Insufficient Moneys In General Fund & Postpones Issuance Of Refund Warrants

SUMMARY

This bill would modify the period the Franchise Tax Board (FTB) is required to pay interest on Personal Income Tax (PIT) overpayments.

SUMMARY OF AMENDMENTS

The April 13, 2009, amendments replaced the bill's language regarding public health as introduced February 27, 2009, with language that would modify the period FTB is required to pay interest on PIT overpayments.

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

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to compensate taxpayers whose PIT overpayment refunds are delayed due to the state's cash crisis.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and specifically operative for refunds delayed by the State Controller after February 1, 2009.

POSITION

Pending.

SUMMARY OF SUGGESTED AMENDMENTS

Amendments 1 and 2 are provided as suggested language to resolve the Technical Considerations identified.

Board Position:

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Department Director

Date

Lynette Iwafuchi for
Selvi Stanislaus

04/23/09

ANALYSIS

FEDERAL/STATE LAW

Federal and state law generally requires the Internal Revenue Service (IRS) and FTB, respectively, to pay interest on PIT overpayments as follows:

from the later of	to the date
<ul style="list-style-type: none">the original due date of the tax return, or	<ul style="list-style-type: none">preceding the date of the refund warrant by not more than 30 days, or
<ul style="list-style-type: none">the date the tax return is filed	<ul style="list-style-type: none">credited to the taxpayer's account

However, under federal and state law, no interest is allowed on PIT overpayments refunded or credited within the **later** of 45 days after the date the return is filed, or 45 days after the due date of the return, without regard to extension.

Under state law, the annual interest rate for PIT overpayments is the federal short-term rate, rounded to the nearest percent, plus 3 percent. The rate determined in January of each year applies during the following July through December period, and the rate determined in July of each year applies during the following January through June period. The current annual interest rate on state PIT overpayments is 5 percent, compounded daily. The current annual interest rate on federal PIT overpayments is 4 percent, compounded daily.

Existing state law authorizes state agencies the option to refrain from issuing a refund for an overpayment of \$10 or less. FTB automatically issues a refund of \$1 or more and will issue a refund of less than \$1 upon written request from a taxpayer.

The California State Controller's Office accounts for and controls the disbursement of all state funds, including tax refunds.

THIS BILL

This bill would require FTB to pay interest, at the same rate as under current law, on PIT overpayment refunds that are delayed by the State Controller, as a result of a determination by the State Controller that moneys in the General Fund are insufficient to pay all appropriations by the Legislature in the then-current fiscal year, after February 1, 2009, as follows:

- Beginning 15 days after the date a return is filed, or 15 days after the date the State Controller delays the issuance of refunds, whichever is later, and
- Ending on a date not more than 30 days preceding the date the refund is issued as determined by FTB.

This bill would require the State Controller to transfer, as specified, an amount not to exceed \$5 million for the payment of interest under this bill.

This bill would also declare that the interest allowed to taxpayers with respect to the 2008 taxable year serves a public purpose and does not constitute a gift of public funds.

IMPLEMENTATION CONSIDERATIONS

Because no payments of refunds held on or after February 1, 2009, were delayed long enough to trigger interest due under this bill, the computer system programming changes needed to implement this bill, in the event of future refund postponements, would occur during the department's normal annual update.

TECHNICAL CONSIDERATIONS

Amendment 1 is provided to clarify that FTB has the authority to pay interest before the original due date of a return in the event the State Controller postpones the issuance of refunds, as specified.

This bill would be operative with respect to refunds postponed after February 1, 2009. The Legislative finding regarding the gift of public funds only pertains to the 2008 taxable year. Amendment 2 is provided to apply the Legislative finding to all refunds postponed after February 1, 2009.

LEGISLATIVE HISTORY

SB 137 (Maldonado, 2009/2010) would require FTB to pay interest on PIT overpayments refunded or credited more than 60 days after the date a return is filed. This bill is currently referred to the Senate Revenue and Taxation Committee.

SB 704 (Knight, et al, 2001/2002) would have required FTB to allow simple interest on overpayments from the date of the taxpayer's payment, whether the payment was wage withholding or an estimated tax payment, to the date refunded or credited by FTB. SB 704 failed to pass out of the Senate Revenue and Taxation Committee by the constitutional deadline.

BACKGROUND

On February 2, 2009, the State Controller, due to the state's cash crisis, implemented a 30-day delay on many types of payments, including tax refunds. Over 3 million PIT tax refunds totaling in excess of \$2 billion were delayed. On March 6, 2009, the State Controller announced he had begun issuing the delayed payments.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida only has a corporation income tax; therefore, interest on personal income tax overpayments is not applicable.

Illinois, Massachusetts and Minnesota generally allow interest on PIT overpayments refunded after the later of:

- 90 days after the return's due date
- 90 days after the date the return is filed

Michigan and New York generally allow interest on PIT overpayments refunded after the later of:

- 45 days the return's due date
- 45 days after the date the return is filed

FISCAL IMPACT

This bill would require the department to make computer system programming changes. The additional costs have not been determined at this time. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, this bill would result in the following revenue losses under PIT law:

Estimated Revenue Impact of AB 1251 as amended on 4/13/09 For All Refunds Postponed After February 1, 2009 Enactment Assumed After 6/30/09			
Fiscal Year	2009-10	2010-11	2011-12
Revenue Loss	No impact	Unknown	Unknown

This analysis does not consider the possible changes in investment activity, employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill depends on: (1) the amount of refunds that are delayed after February 1, 2009, due to the state's cash crisis, (2) the number of days refunds are delayed, and (3) the rate of interest that would be paid. Based on department data, it appears no payments of refunds held on or after February 1, 2009, were delayed long enough to trigger interest payments under this bill. As such, there would be no additional interest under this bill for these delayed refunds. In the outer years, any revenue impact would depend on if another delay in refunds occurs, and the length of the delay, which is unknown.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1251
AS AMENDED APRIL 13, 2009

AMENDMENT 1

On page 3, line 3, strikeout "Interest" and insert:

Notwithstanding Sections 19002, 19351, and 19363, interest

AMENDMENT 2

On page 3, lines 21 through 22, strikeout "the 2008 taxable year" and insert:

refunds postponed after February 1, 2009,