

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Perea Analyst: William Koch Bill Number: AB 1424
Related Bills: See Legislative History Telephone: 845-4372 Amended Date: June 7, 2011
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Update Top 250 Tax Debtor List Twice Each Year/License Suspension For Debtors On List/Prohibit State Contracts With Debtors On List/Reciprocal Refund Offsets With Other States/Collection Agreements With Other States Or IRS

SUMMARY

This bill would do the following:

- Require the Franchise Tax Board (FTB) to update the Top 250 tax debtor list at least twice each year.
- Provide authority for the suspension of occupational, professional and driver's licenses for debtors appearing on the Top 250 tax debtor list.
- Prohibit any state agency from entering into a contract for goods and services with a tax debtor on the Top 250 tax debtor list.
- Allow the FTB to offset tax refunds for delinquent tax debts owed to other states, but only upon a reciprocal agreement in which the other state's tax refunds are offset for delinquent tax debts owed to the FTB.
- Allow the FTB to contract with the IRS or other states to collect tax debts owed to the FTB.
- Allow the FTB to collect tax debts due the IRS or other states, as specified.

This is the department's first analysis of this bill and reflects the bill as amended June 7, 2011.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to narrow the tax gap by providing the FTB additional tools to collect delinquent tax debts.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and generally operative on January 1, 2012, and would be specifically operative and apply as follows:

- To any licensee whose name appears on a Top 250 tax debtor list on or after January 1, 2012.
- To any state contract executed on or after January 1, 2012.

Board Position:

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Executive Officer

Date

Selvi Stanislaus

06/27/11

ANALYSIS

FEDERAL/STATE LAW

Under both federal and state income tax laws, in general, if a taxpayer owes a delinquent tax amount, a tax lien automatically arises by operation of law for that amount, and is 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.

Current state law authorizes FTB to use a variety of 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, such as vacation trust funds, interest, financial assets, and 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.
- 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.
- A warrant can be issued to seize property and convert it to cash to satisfy a debt. Warrants are enforced by county sheriffs or the California Highway Patrol. The most common use of the warrant is to seize and sell vehicles.

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 occupational, professional, and driver's license denial and suspension for failure to pay court-ordered child support debts. 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. The DCSS reviews the list to verify the information is accurate and then sends the list of obligors to the various licensing boards/agencies. Once the list is received, those boards/agencies 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\agency 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/agency.

Current state law provides that the California Supreme Court may suspend or disbar an attorney from practice for an act of professional misconduct or conviction of serious crimes.

Current state law requires the FTB to compile and make publicly available an annual list that identifies the Top 250 tax delinquencies that exceed \$100,000, selected from both the Personal Income Tax and Corporation Tax records as of December 31st of the previous year. For purposes of the Top 250 list, a tax delinquency is defined as the total amount owed by a taxpayer to the State of California for which a Notice of State Tax Lien has been recorded in any county recorder's office in the state.

Under current state law, the California State Controller is authorized to offset money due an individual or entity from a state agency as payment for debts due to California state agencies, cities, counties, and colleges, as well as the IRS. Income tax refunds are available for offset only after all existing income tax debts have been satisfied.

If there is more than one offset request, the priority is as follows:

1. Delinquent child or family support cases enforced by a district attorney.
2. Delinquent child or family support cases enforced by someone other than a district attorney.
3. Delinquent spousal support cases enforced by a district attorney.
4. Delinquent spousal support cases enforced by someone other than a district attorney.
5. The nonpayment of penalties to the crime victims' Restitution Fund.
6. Unemployment benefits overpayment cases.
7. All other California state agencies.
8. California Cities and counties.
9. California Colleges.
10. IRS.

Current state law does not provide authority for California income tax refunds to be offset for debts owed to other states.

Current state law allows the FTB to contract with private collection companies to collect delinquent tax debts owed by California residents or those residing outside California. However, current state law lacks express authority for the FTB to contract with other states or the IRS for such services. In addition, current state law does not provide authority for the FTB to collect debts owed to other states and the only tool available to collect debts owed to the IRS is the above discussed tax refund offset tool.

THIS BILL

Top 250 Tax Debtor List

This provision would:

- Require the FTB to update the Top 250 tax debtor list at least twice each year and:
 - Include on the list the type and status of any occupational or professional license held by a debtor on the list and the names and titles of the principal officers of limited liability companies and corporations appearing on the list.
 - Require a taxpayer's proposed resolution of a tax delinquency to be "accepted" by the FTB rather than "not rejected" to avoid appearing on the list.
 - Allow the FTB to return a tax debtor's name to the list if he or she fails to comply with the terms of the resolution that resulted in the removal of his or her name from the list.

License Suspension for Delinquent Taxpayers Appearing on the Top 250 Tax Debtor List

This provision would provide discretionary authority to a state governmental licensing entity to withhold issuance or renewal of the license of an applicant or to suspend the license of a licensee whose name appears on a certified list provided by the FTB which indicates the licensee or applicant appears on a Top 250 tax debtor list. The FTB would be required to provide a release form to the state governmental licensing entity for any applicant or licensee that complies with his or her delinquent tax obligation by either payment in full or entry into an installment payment arrangement. The state governmental licensing entity would have five business days to process the release.

This provision would require the FTB to do the following:

- Submit a certified list of tax debtors appearing on a Top 250 tax debtor list to a state governmental licensing entity.
- Create release forms to remove the licensee's name from the certified list.
- Provide a release to a state governmental licensing entity and licensee as specified.
- Notify the state governmental licensing entity when the licensee fails to comply with an installment payment arrangement.

This provision would authorize the FTB to notify a licensee of suspension for unpaid tax debts if the state governmental licensing entity fails to take action within 90 days of a preliminary notice issued by the state governmental licensing entity. Additionally, a state governmental licensing entity would be required to notify the FTB if no action is taken and the reason why.

If a state governmental licensing entity does not suspend or withhold issuance of the license of an applicant for appearing on a Top 250 tax debtor list, the license would be suspended by operation of law. The suspension would occur only after the FTB provides the debtor a 60-day preliminary suspension notice.

This provision would require the FTB to disclose to the licensing boards the reason for the suspension—the licensee appearing on the Top 250 tax debtor list.

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 is unable to pay the liability due to a current financial hardship. “Financial hardship” would be defined by reference to Revenue and Taxation Code (R&TC) section 19008, as determined by the FTB. 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 the FTB for making the determination. The FTB would conduct the hearing within 30 days of receipt of the request, unless the 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, the FTB would defer or cancel the suspension.

This provision would define the following:

- “Hardship” means financial hardship, as determined by the FTB, where the taxpayer is financially unable to pay any part of his or her taxes including penalties, interest, and applicable fees and is unable to qualify for an installment payment arrangement pursuant to Section 19008 of the R&TC.
- “License” includes certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. “License” would include a driver’s license.
- “Licensee” means an individual authorized by a license to drive a motor vehicle or authorized by license, certificate, registration, or other authorization to engage in a profession or occupation 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 40 licensing entities-see Appendix), the Office of Attorney General, the Department of Insurance, the Department of Motor Vehicles, 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 profession or occupation. Licenses issued by the State Bar of California and Department of Alcohol Beverage Control would be excluded from the FTB suspension process and would only be subject to the state governmental licensing entity’s discretionary suspension process.

State Agency Contracts for Goods and Services

This provision would prohibit any state agency from entering into a contract for goods and services with a tax debtor on the Top 250 tax debtor list. Any contract entered into in violation of this provision would be void and unenforceable.

Tax Refund Offsets

This provision would allow the FTB to offset tax refunds for delinquent tax debts owed to other states, but only upon a reciprocal agreement in which the other state's tax refunds are offset for delinquent tax debts owed to the FTB. Offsets for delinquent income tax debts owed to other states would only occur after all other offset requests from California state agencies, cities, counties, and colleges, as well as the federal government, have been satisfied.

Collection Agreements with the IRS and Other States

This provision would:

- Provide authority for the FTB to contract with the IRS or any state imposing an income tax or tax measured by income to collect tax debts owed to the FTB.
- Provide authority for the FTB to collect tax debts due the IRS or any state imposing an income tax or tax measured by income, but only if the IRS or other state agrees to collect tax debts owed to the FTB.

IMPLEMENTATION CONSIDERATIONS

The department has identified the implementation concerns listed below.

- This bill would require the FTB to add the names and titles of the principal officers of limited liability companies and corporations appearing on the Top 250 tax debtor list but fails to indicate how the FTB would identify such principal officers.
- This bill would provide authority for the FTB to collect tax debts due the IRS or other states but fails to identify the payment priority of such debts in the event the debtor has more than one debt type being collected by the FTB.

For convenience, the department is including amendment language to resolve the above implementation concerns.

LEGISLATIVE HISTORY

ABX8 8 (Committee on Budget, 2009/2010), ABX3 19 (Evans, 2009/2010), SBX8 8 (Committee on Budget, 2009/2010), SBX 3 17 (Ducheny, 2009/2010), AB 484 (Eng, 2009/2010), and AB 1925 (Eng, 2007/2008) all would have provided occupational and professional license suspension for tax debtors, but none would have limited the authority to those appearing on the Top 250 tax debtor list. ABX8 8 failed passage out of the Assembly. ABX3 19 passed the Legislature but was withdrawn from enrollment. SBX8 8 failed passage out of the Senate and SBX3 17 was vetoed by Governor Schwarzenegger on June 30, 2009. AB 484 and AB 1925 failed passage out of the Senate Revenue and Taxation Committee.

AB 1418 (Horton, Stats. 2006, Ch. 716) requires FTB to compile and make publicly available an annual list that identifies the largest 250 tax delinquencies that exceed \$100,000 and for which a Notice of State Tax Lien has been filed with a county recorder's office.

FISCAL IMPACT

First-year costs to implement this bill would be approximately \$750,000 and annual ongoing costs would be approximately \$600,000. The provision of the bill that would allow the FTB to collect tax debts due the IRS or other states is not reflected in this cost estimate because implementation is contingent upon the IRS or other states enacting similar legislation, which has yet to occur. Once the IRS or other states enact similar legislation, the department would utilize the normal budget change proposal process to obtain funding for this provision of the bill.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB1424 For Taxable Years Beginning On or After January 1, 2012 Enactment Assumed After June 30, 2011				
(In Millions)				
2011-12	2012-13	2013-14	2014-15	2015-16
\$19	\$24	\$25	\$28	\$30

The above estimate does not reflect any revenue from the provision of the bill that would allow FTB to contract with the IRS or other states to collect tax debts owed to the FTB because the IRS and other states do not currently have the statutory authority to collect debts owed to the FTB.

This estimate does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Proponents of this bill could state this bill would improve the state's fiscal situation by facilitating the collection of delinquent income tax debts owed by the most egregious tax debtors, those debtors appearing on the Top 250 list.

Con: Opponents of this bill could state this bill may limit the income earning ability of tax debtors whose licenses have been suspended.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO
AB 1424 AS AMENDED JUNE 7, 2011

AMENDMENT 1

On page 14, line 40, after "corporation." insert:

For purposes of the preceding sentence, the Franchise Tax Board shall refer to the limited liability company's or the corporation's Statement of Information filed with the Secretary of State or to the limited liability company's or the corporation's tax return information to determine the principal officers.

AMENDMENT 2

On page 21, after line 21, insert:

SEC. 11. Section 19533 of the Revenue and Taxation is amended to read:

19533. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any delinquencies transferred for collection under Article 5 (commencing with Section 19270) of Chapter 5.

(b) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, and amounts authorized to be collected under Section 19722.

 I Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due that are referred for collection under Article 5.5 (commencing with Section 19280) of Chapter 5.

(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.

(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

(i) Payment of delinquencies referred by the Student Aid Commission.

(j) Payment of any amounts due that are referred for collection under Article 7 (commencing with Section 19291) of Chapter 5.

(i) (k) Notwithstanding the payment priority established by this section, voluntary payments designated by the taxpayer as payment for a personal income tax liability or as a payment on amounts authorized to be collected under Section 19722, shall not be applied pursuant to this priority, but shall instead be applied as designated.

AMENDMENT 3

On page 21, renumber "SEC. 11" on line 22 and "SEC. 12" on line 37.

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