

BILL ANALYSIS

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| Department, Board, Or Commission | Author | Bill Number |
| Franchise Tax Board | Perea | AB 1424 |

SUBJECT

Revise Top 250 Tax Debtor List To Top 500/Update 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:

- Increase the Franchise Tax Board's (FTB) list of the top 250 tax debtors (hereinafter the "Top 500 tax debtor list") to the top 500 tax debtors.
- Require the FTB to update the Top 500 tax debtor list at least twice each year.
- Require state governmental licensing entities to suspend occupational, professional and driver's licenses held by debtors appearing on the Top 500 tax debtor list, except as specified.
- Prohibit any state agency from entering into a contract for goods and services with a tax debtor on the Top 500 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.

Most of the above provisions would also apply to the Board of Equalization (BOE); however, this analysis only addresses the above provisions as they relate to the FTB.

PURPOSE OF 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 500 tax debtor list on or after July 1, 2012.
- To any state contract executed on or after July 1, 2012.

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| Rnne Maitland, FTB Contact Person (916) 845-6333 (Office) | Executive Officer Selvi Stanislaus | Date 09/13/11 |
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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. Under federal law, the Treasury Offset Program (TOP) offsets federal tax refunds for delinquent non-tax debts owed to federal agencies, to child support authorities, and tax debts owed to state taxing agencies.

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 500 Tax Debtor List

This provision would:

- Increase the Top 250 tax debtor list to the top 500 tax debtors.
- Require the FTB to update the Top 500 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. Principal officers appearing on the list solely pursuant this provision would not be subject to license suspension or the prohibition on contracting with the state.
 - 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 500 Tax Debtor List

This provision would require state governmental licensing entities 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 applicant or licensee appears on a Top 500 tax debtor list. The Department of Motor Vehicles would only be required to suspend the license of a licensee whose name appears on a certified list and would not be required to withhold issuance or renewal of a license. The California State Bar and the Alcoholic Beverage Control would have permissive authority, rather than a requirement, to withhold issuance or renewal of the license of an applicant or to suspend the license of a licensee on such certified list. Within 30 days of receipt of a certified list from the FTB, state governmental licensing entities would be required to provide notice of the pending denial or suspension of a license to any applicant or licensee appearing on the certified list. State governmental licensing entities would be required to (1) issue a temporary license that would be valid for a period of 90 days to any applicant on a certified list who is otherwise eligible for a license, and (2) suspend or refuse to issue a license no sooner than 90 days and no later than 120 days from the mailing of the notice of pending denial or suspension, unless the state governmental licensing entity receives a release from the FTB. To receive a release from the FTB, the applicant or licensee would be required to (1) comply with the tax obligation by either paying it in full or entering into an installment payment arrangement or (2) establish a current financial hardship with the FTB. If the applicant or licensee submits a request for release to the FTB within 45 days after receiving the pending denial or suspension notice from the state governmental licensing entity, and the FTB is

unable to complete the release review within 45 days after receipt of the release request, the FTB would be required to issue a release.

This provision would require the FTB to do the following:

- Submit a certified list of tax debtors appearing on a Top 500 tax debtor list to every state governmental licensing entity. The certified list would be required to include the name, social security number or taxpayer identification number, and the last known address of the persons identified on the certified list.
- Create release forms.
- Provide release forms to the state governmental licensing entity, applicant or licensee as specified.
- Notify the state governmental licensing entity when an applicant or licensee fails to comply with an installment payment arrangement that was the basis for receiving a release from the FTB.

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 the outstanding liability 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” includes a driver’s license and specifically excludes vehicle registration.
- “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 A), 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. The Contractors’ State License Board would be specifically excluded from the definition of “State governmental licensing entity”.

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 500 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.

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 that provision of the bill.

ECONOMIC IMPACT

Revenue Estimate

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|---|---------|---------|---------|---------|
| Estimated Revenue Impact of AB1424 For License Suspension and State Contracts Executed On or After July 1, 2012 Enactment Assumed After June 30, 2011 (In Millions) | | | | |
| 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 |
| \$19 | \$24 | \$26 | \$28 | \$30 |

This estimate does not account for changes in employment, personal income, or gross state product that could result from this bill. This estimate does not include any impact on revenues administered by other departments. In addition, it does not reflect any revenue from the provision of the bill that would allow the 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.

APPOINTMENTS

None.

SUPPORT/OPPOSITION¹

Support:

- California/Nevada Community Action Partnership
- California Tax Reform Association
- Consumer Federation of California
- Jericho
- SEIU 1000
- Western Center on Law and Poverty

¹ Per the September 6, 2011, Senate Floor Analysis

Opposition:

California Association of Realtors
California Chapter of the American Fence Association
California Fence Contractors Association
California Landscape Contractors Association
Engineering Contractors Association
Flasher Barricade Association
Marin Builders Association

VOTES

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|----------------|----------|-------|-------|
| Concurrence | 09/09/11 | Y: 47 | N: 27 |
| Senate Floor | 09/07/11 | Y: 21 | N: 15 |
| Assembly Floor | 05/26/11 | Y: 75 | N: 0 |

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APPENDIX A
Governmental Licensing Entities
(Licensing Boards that are affected by this bill)

1. Section 101 of the Business and Professions Code

(The Contractors' State License Board is excluded from the bill and therefore not included in the list below.)

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| 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 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