

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Committee on Revenue and Taxation Analyst: Janet Jennings Bill Number: AB 2686
Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: March 12, 2012
Attorney: Patrick Kusiak Sponsor: 3 Member Franchise Tax Board

SUBJECT: Reinstatement Taxpayer Advocate Equity Relief

SUMMARY

This bill would permanently authorize the Franchise Tax Board's (FTB) Taxpayers' Rights Advocate (Advocate) to waive penalties or additions to tax, fees, and interest that are a result of an FTB error.

RECOMMENDATION AND SUPPORTING ARGUMENTS

Support.

On December 1, 2011, the three-member Franchise Tax Board (Board) voted 2-0, with the Director of Finance abstaining, to sponsor the language included in this bill.

PURPOSE OF THE BILL

The purpose of this Board-sponsored bill is to re-enact the discretionary authority of the Advocate to grant relief to taxpayers from penalties, fees, additions to tax, or interest imposed on a tax liability because of erroneous actions of the department.

EFFECTIVE/OPERATIVE DATE

If enacted in the 2012 legislative session, this proposal would be effective January 1, 2013, and would be specifically operative on and after that date.

ANALYSIS

STATE LAW

Current law allows the FTB staff to abate penalties, fees, additions to tax, or interest in the following narrow circumstances:

- Interest may be abated in situations where the interest is attributable to an unreasonable delay by the FTB in performing a ministerial or managerial act. Interest abatement is limited to interest that accrues after the FTB's first contact with the taxpayer regarding the tax year.

Board Position:	Executive Officer	Date
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- Interest may be abated in situations where the FTB issues an assessment based on an Internal Revenue Service (IRS) assessment and the IRS abates interest due to an IRS delay.
- Interest may be abated in situations where a taxpayer is experiencing an extreme financial hardship caused by a significant disability or catastrophic circumstance.
- Interest, penalties, fees and/or tax may be abated in situations where a taxpayer reasonably relied on the written advice of a legal ruling by the Chief Counsel.
- Penalties may be abated in situations where the penalties carry reasonable-cause exceptions. Reasonable cause generally means that despite ordinary business care and prudence, the action that caused the penalty or addition to tax occurred. Not all penalties carry a reasonable-cause exception.
- Interest is suspended in situations where the FTB fails to provide a notice to the taxpayer stating the amount owed and the basis of the amount owed within 36 months from when the return was filed, or if later, the date it is due without regard to extension.
- Penalties or fees may be abated in situations where the Chief Counsel rescinds the application of tax shelter penalties or fees as authorized.

Taxpayers can appeal an action of the FTB to the State Board of Equalization (BOE). If a taxpayer loses the appeal at the BOE, the taxpayer can either file a lawsuit for refund of taxes or file a claim with the Victim Compensation and Government Claims Board (VCGCB). Taxpayers can file claims with the VCGCB for refund of tax or losses caused by the action or inaction of a state agency.

THIS BILL

This bill would re-enact the discretionary authority of the Advocate to grant relief from penalties or additions to tax, fees, and interest that are attributable to any of the following:

- Erroneous action or erroneous inaction by the FTB in processing documents filed or payments made by a taxpayer,
- Unreasonable delay caused by the FTB, or
- Erroneous written advice that did not qualify for relief under Chief Counsel authority.

Relief may be granted only in situations where no part of the error is attributable to the taxpayer and relief is not available under any other statute or regulation.

The Chief Counsel of the FTB must concur with the decision to grant relief when the total reduction in penalties, fees, additions to tax, or interest exceeds \$500. If the total relief granted exceeds \$7,500, the Chief Counsel must notify the three-member Franchise Tax Board. The threshold amounts are to be adjusted annually by the percentage change in the California Consumer Price Index for All Urban Consumers. Relief at any level requires a public record to be placed in the office of the Executive Officer of the Board that includes the following information:

- The taxpayer's name,
- The total amount involved,
- The amount payable or refundable due to the error or delay, and
- A summary of why the relief is warranted.

A refund may be paid as a result of the relief granted only if the written claim for refund is received by the Advocate within the applicable statute of limitations. Any decision for relief is not subject to review in any administrative or judicial proceeding and no other entity may participate in the grant or denial of relief.

The bill would make permanent the provisions were previously in statute from January 1, 2009, through January 1, 2012.

IMPLEMENTATION CONSIDERATIONS

Implementing this proposal would not impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 3078 (Committee on Revenue and Taxation, Chapter. 305, Statutes. 2008) provided discretionary authority to the Taxpayers' Rights Advocate to grant relief from penalties, fees, or interest imposed on a taxpayer because of erroneous actions of the department. This statute expired on January 1, 2012.

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. These states have interest waiver and reasonable-cause exceptions to certain penalty provisions that are similar to the existing federal and California provisions. Statutes granting administrative relief at the tax-agency level were not found in the laws of the compared states.

FISCAL IMPACT

Although the FTB is unable to quantify future case volumes, it is expected that this bill would ultimately save minor litigation and appeal costs incurred for the issues that the FTB is unable to resolve should the current statutory authority not be reinstated. It is estimated that any workload increases to the Advocate staff created by this bill would be absorbable.

ECONOMIC IMPACT

Cases of erroneous departmental action/guidance have been infrequent. To determine the magnitude of the potential impact to the General Fund going forward, both the frequency of erroneous actions and the dollar amount of those errors must be known. Because it is difficult to predict the frequency and the value of future FTB errors, the revenue impact to the General Fund is unknown; however, based on actual experience, it is expected to be minor.

SUPPORT/OPPOSITION

Support: The Board.

Opposition: None provided.¹

ARGUMENTS

Pro: Some may argue that by granting discretionary authority to the Advocate to resolve these cases at the lowest level possible, this bill would avoid unnecessary expense to both the taxpayer and the department.

Con: Some may argue that this bill would hold the FTB harmless from its errors by granting the FTB the ability to rectify its own errors.

LEGISLATIVE STAFF CONTACT

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¹ As reported on the Legislative Counsel's Web site: <http://www.leginfo.ca.gov/cgi-bin/postquery>
[as of March 15, 2012]