

SUMMARY ANALYSIS OF AMENDED BILL

Author: Committee on Revenue and Taxation Analyst: Janet Jennings Bill Number: AB 2686

Related Bills: See Prior Analysis Telephone: 845-3495 Amended Date: July 5, 2012

Attorney: Patrick Kusiak Sponsor: 3 Member Franchise Tax Board (LP C)

SUBJECT: Reinstatement Taxpayer Advocate Equity Relief

SUMMARY

This bill would 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

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.

SUMMARY OF AMENDMENTS

The July 5, 2012, amendments would require the Executive Officer to concur with the Advocate for relief in excess of \$500, limit the total amount of relief that can be granted to \$7,500, and add a repeal date of January 1, 2016. Except for the "This Bill" discussion provided below, the department's analysis of the bill as introduced March 12, 2012, still applies. The "Fiscal Impact" and "Revenue Estimate" discussions have been restated for convenience.

ANALYSIS

THIS BILL

This bill would re-enact, with modification, 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.

Board Position: <input checked="" type="checkbox"/> S _____ NA _____ NP _____ SA _____ O _____ NAR _____ N _____ OUA	Legislative Director Date Gail Hall 07/18/12
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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 Executive Officer 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. This bill limits the total relief granted to \$7,500. 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 discretionary authority of the Advocate would be repealed on January 1, 2016, unless a later enacted statute extends that date.

IMPLEMENTATION CONSIDERATIONS

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

PROGRAM BACKGROUND

From January 1, 2009, to January 1, 2012, the FTB Taxpayer Advocate exercised the authority to grant relief on two occurrences:

The first occurrence involved a processing error of an individual tax return where the taxpayer had never received a notice from FTB; abatement under other statutes was not available. The second occurrence was attributable to incorrect instructions in the Fiduciary tax return booklet for tax years 2006 through 2009, which resulted in approximately 50 trusts underpaying the Mental Health Services Tax for up to four tax years each. The department identified the mistake and abated the interest when issuing the assessment for the additional tax.

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 Franchise Tax Board.

Opposition: None provided.¹

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]