

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Anderson Analyst: Janet Jennings Bill Number: SB 11

Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: December 6, 2010

Attorney: Patrick Kusiak Sponsor:

SUBJECT: State Entities Prohibited From Assessing Fine, Interest, Or Penalty On Debt Owed To State By Individual Or Entity That Is Payee Of Registered Warrant

SUMMARY

This bill would prohibit a state entity from assessing certain fines, interest, or penalties on certain debts owed to the state by a payee of a registered warrant.

This analysis only addresses the impact to personal income and corporate tax debts.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to alleviate the imposition of any state fines, interest, or penalties on debts owed to the state if the debtor is the payee of a registered warrant.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2012, and specifically operative for payees named in a registered warrant and subject to a fine, interest, or penalty based on a debt owed to the state that was imposed between January 1, 2006, and December 31, 2009.

ANALYSIS

STATE LAW

Generally, under state law, the Controller is responsible for issuing warrants drawn from the General Fund for payment of obligations of the state. In instances where the amount payable out of the General Fund is in excess of the balance remaining in the General Fund after deducting amounts earmarked or reserved for payment by law, the Controller can issue a "registered warrant".

Table with Board Position (S, SA, N, NA, O, OUA, NP, NAR) and Department Director (Selvi Stanislaus) and Date (03/21/11).

A registered warrant is a warrant that carries a promise to pay the bearer the amount shown on the warrant plus interest, by a date prescribed on the warrant, usually within one year of the date of issuance. Interest accumulates at the rate determined by the Pooled Money Investment Account.

Under state law, if a taxpayer has a Personal Income or Corporate tax liability and is a payee named in a registered warrant, the taxpayer may pay any tax liability, in whole or in part, either by submitting the warrant to the tax agency, or by a check in an amount not to exceed the amount of the registered warrant. State law provides that the check may not be presented for payment by the state or paid by the bank until the registered warrant is payable upon its presentation to the Treasurer. These provisions apply only if the check is presented with a copy of the registered warrant.

During 2009, the Franchise Tax Board (FTB) accepted registered warrants at face value as satisfaction of tax liabilities if the warrant was presented before the redemption date and at face value plus accrued interest if the warrant was presented after the redemption date.

THIS BILL

This bill would, for debts imposed between January 1, 2006, and December 31, 2009:

1. Prohibit a state entity, including the FTB, from assessing a fine, interest, or penalty based on any debt, owed to the state by an individual or entity that is a payee in a registered warrant, in an amount not to exceed the amount of registered warrant, from the date the state issued the registered warrant until 30 days after the date the registered warrant is payable.
2. Establish that any debt owed to the state by a payee of a warrant shall not be due before at least 30 days after the date the registered warrant is payable upon presentation to the state.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Until data can be secured from the State Controller's Office and the affected tax accounts identified, the impact to the department's resources is unable to be quantified. It is expected to have a significant impact on the department's Accounts Receivable Division.

The bill is silent about the hierarchy for penalty and interest relief, including relief for debts of multiple state entities. It is recommended that the bill be amended to indicate the hierarchy of relief. If, for example, a taxpayer was issued a registered warrant on June 30, 2009, for \$500 and owed a qualified individual FTB tax debt of \$600 and a Board of Equalization (BOE) debt of \$800, should the first \$500 of both debts have the interest and or associated fee's waived?

It is recommended that the author amend the bill to clarify if the change in the due date of the tax would extend the statute of limitation for collection on the debt and the statutory lien date and if the statute of limitation for a claim for refund is altered. The lack of clarity for these items could lead to disputes between the department and taxpayers, thus complicating administration of this bill.

LEGISLATIVE HISTORY

AB 1044 (Butler, 2011/2012) would allow holders of registered warrants to remit them for payment of their tax liability with the FTB and the BOE. This bill was read for the first time on February 18, 2012.

SB 506 (Simitian, 2011/2012) would provide a procedure for a beneficial owner of a state bond that receives a registered warrant to utilize the warrant to pay an FTB liability and would recast the interest provisions. This bill was referred to the Senate Rules Committee on February 17, 2011.

AB 1506 (Anderson, 2009/2010) would have required state agencies to accept a registered warrant for payment of any state obligation. This bill was vetoed by Governor Schwarzenegger on September 30, 2010.

OTHER STATES' INFORMATION

A comparison with other states would not be meaningful as this bill pertains to administrative procedures that are specific to California.

FISCAL IMPACT

This bill would require the department to secure data from the State Controllers' Office to determine which individuals and business entities issued registered warrants were also subject to a penalty or interest on a debt imposed by the department. Department systems would need to be reprogrammed to reverse previously assessed penalties or interest and issue appropriate refunds. Notices to advise the affected taxpayers would need to be developed, tested, and issued. As a result, this bill would significantly impact the department's resources. 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.

ECONOMIC IMPACT

Information is not readily available that would enable the department to match warrant amounts against taxpayer liabilities. If, for example, 10 percent of the warrant holders had outstanding tax liabilities equal to the average amount of warrants issued, abatement of interest and penalties for this group would result in a one-time revenue loss of approximately \$13 million in fiscal year 2010/2011.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: This bill would alleviate the imposition of any state fines, interest, or penalties on debts owed to the state if the debtor is the payee of a registered warrant.

Con: This bill could be viewed as rewarding delinquent taxpayers that failed to pay their tax liability simply because they received a registered warrant.

POLICY CONCERNS

As stated under the "State Law" discussion above, a taxpayer is able to utilize a registered warrant for payment of a tax liability. This bill could be viewed as rewarding delinquent taxpayers that failed to pay their tax liability simply because they received a registered warrant.

Since January 1, 2006, the California State Controller issued registered warrants between June 2, 2009, and September 4, 2009. The registered warrants are payable on and after September 4, 2009. This bill would waive penalties, interest, and fines for state debts that were due and payable between January 1, 2006, and December 31, 2009. Due to the retroactive provisions in this bill and the lack of a public purpose statement, this bill could be construed as a gift of public funds.

LEGISLATIVE STAFF CONTACT

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