Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Harkey	Analyst:	Brian Werking	Bill Number:	AB 672
Related Bills:	See Legislative History	Telephone:	845-5103	Introduced Date:	February 21, 2013
		Attorney:	Patrick Kusiak	Sponsor:	Franchise Tax Board

SUBJECT: Repeal Tax Clearance Requirement for Specified Estates with Nonresident Beneficiaries

SUMMARY

This bill would repeal the tax clearance requirement for specified estates and eliminate the associated authority to provide expedited tax clearance certificates.

RECOMMENDATION

Support.

On December 5, 2012, the three-member Franchise Tax Board voted 2-0 to sponsor the language included in this bill, with the representative from the Department of Finance abstaining.

REASON FOR THE BILL

The reason for this bill is to eliminate a burdensome process that is unnecessary to prevent assets under probate control from being distributed to nonresident beneficiaries before state income tax liabilities are paid.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2014, and would be operative with respect to final accounts by fiduciaries of estates that are allowed by a probate court on or after January 1, 2014.

ANALYSIS

<u>FEDERAL/STATE LAW</u>

The administration of a decedent's estate is exclusively a matter of state law. The IRS is treated as a creditor of an estate when an estate has a federal tax debt. There is no federal tax clearance certificate required for an estate to close probate.

Board Position:			Executive Officer	Date
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Existing state law requires a personal representative or attorney for an estate to provide the Franchise Tax Board (FTB) with notice of a decedent's death no later than 90 days after the date letters of administration are first issued to the personal representative. The FTB may file a claim for outstanding tax liabilities against an estate in probate court within 18 months of receiving written notice of the administration of the estate, or if no notice is provided, within 18 months of receiving a request for a prompt audit of the decedent's or estate's tax return by the estate's personal representative. If no notice or written request is given to the FTB and the estate has been distributed, the FTB may file a claim against any beneficiary of the estate that received the property.

For estates that have an appraised value in excess of $1,000,000 with aggregate distributions to nonresident beneficiaries in excess of $250,000, the California Superior Court, Probate Division, is prohibited from allowing the final account of that estate unless the FTB certifies to the court that all income taxes due have been paid and all taxes that may become due are secured by a security deposit or otherwise. Within 30 days after receiving a request for a certificate, the FTB is required to either issue the certificate or notify the person requesting the certificate of the amount that is required to be paid or the amount of bond, deposit, or other security that is required to be furnished as a condition of issuance of the certificate. To facilitate the probate administration of an estate, the FTB does provide expedited tax clearance letters to estates for a $100 fee, which is used to reimburse the FTB for the cost of administering the expedited service.

<u>THIS BILL</u>

This bill would eliminate the tax clearance requirement for estates that have an appraised value in excess of $1,000,000 with aggregate distributions to nonresident beneficiaries in excess of $250,000. This bill would also remove the FTB's authority to provide the tax clearance certificates and any related expedited services.

<u>IMPLEMENTATION CONSIDERATIONS</u>

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

LEGISLATIVE HISTORY

AB 361 (Ma, Chapter 105, Statutes of 2007) required that an estate representative provide notice to the FTB that the administration of a decedent's estate has been opened in Probate Court.

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.

Under *Michigan* law, a probate estate may be closed only after a clearance has been obtained from the Michigan Department of Treasury stating that all *Michigan* taxes which may be due have been paid.

Florida, *Illinois*, *Massachusetts*, *Minnesota*, and *New York* do not require a tax clearance letter before closing probate.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 672 Repeal Tax Clearance Requirement for Specified Estates with Nonresident Beneficiaries, Effective January 1, 2014 Enactment Assumed After June 30, 2013			
2012-13	2013-14	2014-15	2015-16
$0	-$3,000	-$6,000	-$7,000

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

SUPPORT/OPPOSITION

Support: Franchise Tax Board.

Opposition: None provided.

ARGUMENTS

Pro: Proponents could argue that the probate process is already a challenging and lengthy ordeal, and the elimination of the tax clearance requirement would make the probate process faster and easier.

Con: Opponents could argue that the elimination of the tax clearance requirement would make it easier for specified estates to avoid paying the state income taxes that are owed by the estate.

LEGISLATIVE STAFF CONTACT

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