BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Harkey**	**AB 672**

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.

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 a fiduciary's final account of an estate that is allowed by a probate court on or after January 1, 2014. The denial of a deduction related to a fiduciary's failure to obtain a tax clearance would be limited to taxable years beginning before January 1, 2014.

ANALYSIS

FEDERAL/STATE LAW

The administration of a decedent's estate is exclusively a matter of state law. The Internal Revenue Service 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.

Tax Clearance Program for Estates in Probate

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 in probate court for outstanding tax liabilities against an estate 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 and 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 that is used to reimburse the FTB for the cost of administering the expedited service.

Under existing law, if the fiduciary fails to obtain a tax clearance from the FTB, an otherwise allowable deduction to an estate with respect to amounts attributable and taxable to nonresident beneficiaries will be denied.

PROGRAM BACKGROUND

The tax clearance requirement for estates with nonresident beneficiaries was enacted in 1935[1] to prevent assets under the control of the Probate Court of California from being distributed out of state until all state income taxes have been paid or secured.

California repealed its state inheritance tax by ballot measure in 1982. However, a final decedent tax return is required to be filed to account for the decedent's final tax year. If any income is generated by the estate prior to distribution, a fiduciary income tax return is required to be filed.

In 2007, the FTB's legislative proposal that was enacted, and became operative on July 1, 2008, requires an administrator or executor of a decedent's estate to provide notice of the administration of the estate to the FTB no later than 90 days after the date letters are first issued to a general personal representative. This current law, provides the FTB with notice of probate proceedings and provides the FTB the ability to file a Creditor's Claim in the probate proceedings to protect the state's tax liability interest in the estates distributable assets. Because, all claims filed against an estate in probate must be resolved prior to closing the administration of the estate, this notice requirement allows the FTB to prevent assets under the control of the Probate Court of California from being distributed before tax delinquencies are paid. Since the notice requirement became operative the compliance rate for all estates has reached 99 percent within 12 months of the liability becoming due.

In addition, the collection of out-of-state delinquencies has been made easier by the department's usage of the Federal Treasury Offset Program. This federal offset program collects federal tax and non-tax debt, child support debt, and state debts, including state income tax. A similar state-to-state intercept program is anticipated in the future.

[1] Stats. 1935, Ch. 329, Section 26.

Because of the voluntary compliance from executors, the notice requirements provided under current law referenced previously, and new collection tools available, the tax clearance requirement has become unnecessary to protect the state's interests in estate assets going through probate.

THIS BILL

This bill would eliminate the tax clearance program discussed above for estates that have an appraised value in excess of $1,000,000 and aggregate distributions to nonresident beneficiaries in excess of $250,000.

LEGISLATIVE HISTORY

AB 361 (Ma, Chapter 105, Statutes of 2007) required that an estate's 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, an estate subject to probate 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.

APPOINTMENTS

None.

SUPPORT/OPPOSITION

Support: Franchise Tax Board.

Opposition: None provided.

VOTES

Assembly Floor	04/18/13	Y: 76	N: 0
Senate Floor	08/15/13	Y: 38	N: 0
Concurrence	08/19/13	Y: 76	N: 0

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