

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Governance & Finance

Author: Committee Analyst: Janet Jennings Bill Number: SB 184

Related Bills: None Telephone: 845-3495 Amended Date: April 9, 2013

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Offsets/Amounts Due Special Districts

SUMMARY

This bill would allow special districts to submit certain delinquent accounts for offset of personal income or bank and corporation tax refunds, lottery winnings, unclaimed property, and sales and use tax refunds.

RECOMMENDATION

No position.

Summary of Amendments

The April 9, 2013, amendments added language that would expand the offset provisions afforded to cities and counties to special districts, as discussed in this analysis.

This bill would also make changes to facilitate local government. These changes do not affect the department and are not discussed in the analysis. This is the department's first analysis of the bill

REASON FOR THE BILL

The reason for the bill is to allow collection of unpaid special district debts through offset personal income and corporation tax refunds, lottery winnings, unclaimed property, and sales and use tax refunds.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative for debts referred to the Franchise Tax Board (FTB) for offsets occurring on or after January 1, 2014.

Board Position:

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Executive Officer

Date

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5/22/13

ANALYSIS

FEDERAL LAW

Under federal law, the Treasury Offset Program (TOP) is administered by the Financial Management Service, a bureau of the U.S. Department of Treasury. TOP collects delinquent non-tax debts owed to federal agencies, child support owed to county and state authorities, and tax debts owed to state taxing agencies by offsetting the debts against a debtor's federal tax refund.

STATE LAW

Under state law, the California State Controller is authorized to offset money due an individual or entity by a state agency as payment for debts due California state agencies, cities, counties, and colleges, as well as the IRS. The FTB operates the Interagency Intercept Collection (IIC) Program on behalf of the State Controller's office. Agencies wishing to participate in the IIC Program are subject to approval by the State Controller. Participating agencies may send accounts to the FTB for offset only after other avenues of collection have failed and the debtor has been sent a notification of the impending offset. The agency referring the debt to the IIC Program is responsible for the accuracy of the debt.

If there is more than one offset request, the priority for payment is as follows:

1. Delinquent child or family support cases enforced by a district attorney.
2. Delinquent child or family support cases enforced by someone other than a district attorney.
3. Delinquent spousal support cases enforced by a district attorney.
4. Delinquent spousal support cases enforced by someone other than a district attorney.
5. Penalties due to the Crime Victims' Restitution Fund.
6. Unemployment benefits overpayment cases.
7. All other California state agencies.
8. California cities and counties.
9. California colleges.
10. The IRS.

The administrative costs of processing an offset payment is deducted by the Controller from any amounts collected prior to distribution.

State law allows for an offset to a city or county as long as the debt meets at least one of the following conditions:

- The amount has been reduced to a judgment.
- The amount is contained in an order of a court.
- The amount is from a bench warrant for payment of any fine, penalty, or assessment.
- The amount is delinquent unsecured property taxes on which a certificate lien has been filed for record in the office of the county recorder pursuant to Section 2191.3 of the Revenue and Taxation Code.

State law defines a special district as any agency of the state for the local performance of governmental or proprietary functions within limited boundaries.

THIS BILL

This bill would allow debts owed to a special district that meet at least one of the following conditions to be submitted for offset:

- The amount has been reduced to a judgment.
- The amount is contained in an order of a court.
- The amount is from a bench warrant for payment of any fine, penalty, or assessment.
- The amount is delinquent unsecured property taxes on which a certificate lien has been filed for record in the office of the county recorder pursuant to Section 2191.3 of the Revenue and Taxation Code.

IMPLEMENTATION CONSIDERATIONS

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

TECHNICAL CONSIDERATIONS

The bill utilizes the term Bank and Corporation Tax Law, which has been changed to Corporation Tax Law. The bill should be amended to correct the term.

On page 3, line 23, strike out ~~Bank and~~

On page 5, line 2, strike out ~~Bank and~~

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.

The *Florida* Department of Revenue (which administers corporate income tax), will offset any refund credit amount with any debt or obligation owed by a taxpayer.

The *Illinois* Comptroller may reduce or take in its entirety any check being issued by the state for any debt owed to the state.

The *Massachusetts* Comptroller is authorized to intercept payments to individuals and organizations that function both as vendors for and customers of, the Commonwealth of Massachusetts for payment of amounts due to state authorities, cities, and towns.

The *Michigan* Department of Treasury withholds income tax refunds or credits for payment of certain debts, such as delinquent taxes, state agency debts, garnishments, probate or child support orders, overpayment of unemployment benefits and IRS levies on individual income tax refunds.

The *Minnesota* Revenue Recapture Program authorizes the Department of Revenue to intercept or offset part or all of a state tax refund or other payment to collect a debt that the taxpayer owes to a government agency or other authorized creditor.

The *New York* State Department of Taxation and Finance is authorized to offset state tax refunds to pay outstanding New York state tax obligations or amounts owed another state agency.

FISCAL IMPACT

This bill would not impact the department's costs. The department's cost is reimbursed at the rate of \$2.50 per successful offset.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some may argue that special districts should be afforded the same collection opportunities as cities and counties as they provide a direct service to the residents.

Opponents: Some may argue that special districts are not a city or county and should not be allowed to submit delinquent accounts for offset.

LEGISLATIVE STAFF CONTACT

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