

amnesty. Unpaid penalties and criminal prosecution were waived, but not taxes and interest. The amnesty program covered 1983 and all earlier tax years.

Amnesty was viewed as part of a long-term strategy to improve taxpayer compliance, not solely as a means of raising revenue. The enhanced detection and enforcement provisions called for in the amnesty legislation were targeted at the most obvious sources of the tax gap: the self-employed, capital gains, "under the table" wages, abusive tax shelters, investment and barter income, and false withholding statements.

Before the amnesty program began, the FTB significantly increased the visibility of its enforcement program. The FTB publicized its "get tough" attitude toward nonfilers by announcements of property seizures and criminal prosecutions. The upcoming, one-time only amnesty was mentioned at every opportunity. The message: Detection methods, penalties, and collection tools will be improved and enhanced, so "get to us before we get to you," as advised by 500 billboards throughout the state. The department received 725,000 public contacts concerning the amnesty program, two-thirds of which were received during March 1985.

The amnesty program produced total gross revenue of \$154 million in income tax and interest. However, the department estimates it could have collected \$119.5 million from those individuals through its ongoing enforcement programs had amnesty not been adopted. Departmental costs were \$6.5 million (\$5.2 million for personnel and \$1.3 million for operating costs). Though the amnesty program ended in March 1985, the processing of amnesty applications and returns continued through June 1986.

This department currently identifies approximately 325,000 nonfilers of personal income tax returns resulting in approximately \$1.2 billion in assessments each year, largely due to the enforcement tools provided by the 1984 legislation associated with amnesty.

SPECIFIC FINDINGS

Under the Bank and Corporation Tax Law, **existing state law** allows the FTB to enter into a voluntary disclosure agreement and waive tax, additions to tax, interest, or penalties with respect to each taxable or income year ending prior to six years from the signing date if the unidentified bank or corporation will (1) voluntarily file all required returns, (2) pay all the tax, penalties, and interest with respect to each six taxable or income years ending immediately preceding the signing date of the agreement, and (3) agree to subsequently comply with all franchise and income tax laws of this state. To be eligible, the bank or corporation must not be organized or registered in this state and must meet special qualifying criteria.

This bill would establish a tax penalty amnesty program for individuals to be developed and administered by the FTB. The amnesty program would be conducted from May 1, 1999 through August 31, 1999, inclusive, and apply to personal income tax liabilities due and payable for taxable years beginning before January 1, 1998.

This bill would transmit all revenues derived from the proposed tax penalty amnesty program to the Treasurer for deposit into the Uninsured Motorists Victims

Fund, which would be created by this bill to provide relief for damages caused by, and victims of, uninsured motorists.

This bill would allow amnesty to any individual taxpayer who:

- Files an application for tax penalty amnesty between May 1, 1999, and August 31, 1999, inclusive;
- Files completed tax returns for all taxable years not previously filed;
- Files completed amended tax returns for all taxable years for which the taxpayer underreported the tax liability; and
- Pays in full the taxes and interest due from the returns listed above. An installment payment agreement may be authorized, but failure to fully comply with the terms of that agreement would render the waiver of the penalties null and void, unless the FTB determines reasonable cause exists.

This bill would allow a waiver of penalties imposed and criminal action brought against the taxpayer as a result of nonreporting or underreporting tax liabilities for the taxable years for which amnesty is requested. Amnesty would not be granted for penalties imposed as a result of nonpayment of taxes previously assessed or other issues, e.g.: fraud, underpayment of estimated tax, or underpayment/monthly penalties.

This bill would allow FTB to impose penalties on a deficiency assessment upon a return filed under the amnesty program without reversing the waiver previously granted. However, the FTB shall have the authority to impose penalties and criminal action may be brought with respect to the difference between the amount shown on the return and the correct amount of tax.

This bill would not allow amnesty to a taxpayer who has been issued a notice of deficiency proposed to be assessed for nonpayment of any taxes or who has received notice of a criminal investigation or against whom a court proceeding has been initiated.

This bill would not allow a refund or credit for any penalties paid prior to a request for amnesty.

This bill would require the FTB to adequately publicize the tax amnesty program in a coordinated effort with the BOE, as much as possible, to maximize public awareness.

Policy Considerations

When the 1984/85 amnesty was announced, it was publicized as a one-time-only event. The legislative intent language indicated that the amnesty was not to be repeated in the future, "since taxpayers' expectations of future amnesty programs could have a counterproductive effect on compliance today." Having another amnesty program that is relatively close to the last one may create cynicism among law-abiding citizens who see non-law-abiding citizens benefiting from recurring relief from noncompliance penalties. This may undermine the integrity of the self-assessed tax system.

The prior amnesty provided relief for tax years prior to 1984. This bill would allow a second amnesty opportunity for those same years.

Tax amnesty programs usually are designed to increase tax compliance as previously noncompliant taxpayers take advantage of the program. As compliance is increased, so is revenue. However, waiving current accounts receivable is not a revenue generating action, as the department will ultimately collect these taxpayers' liabilities in most cases.

Initiating a tax penalty amnesty program to fund the Uninsured Motorist Victims Fund may set a precedent of using "amnesty" as a revenue raising activity to benefit special funds.

Implementation Considerations

In its current form, this bill would greatly impact many programs within this department: personal income tax systems, forms design, taxpayer assistance and service, public affairs, and compliance. The program under this bill would be similar to, though absent new enforcement tools, the 1984-85 amnesty program, which was successfully administered by the department.

This bill would require extensive programming resources and may delay implementation of systems in progress and affect current systems to such an extent that they would not be ready in time for the proposed amnesty program.

Costs would continue after the four-month amnesty period; the 1984 Amnesty Program caused associated work for years after the program ended.

This bill does not specify the effect the amnesty program would have on other tax programs, such as the voluntary disclosure program.

Implementing this bill would impact the department's ability to implement timely the Year 2000 changes.

FISCAL IMPACT

Departmental Costs

This bill would significantly impact the department's costs. Exact costs are being determined and an appropriation would be required. While the anticipated universe of taxpayers is smaller than the original amnesty program, the relative increase in personnel and administrative costs over the last 14 years could result in departmental costs exceeding the \$6.5 million cost of the original amnesty program.

Tax Revenue Estimate

This proposal is estimated to impact PIT net revenue as shown in the following table:

Estimated Revenue Impact of AB 2635 For Tax Reporting Periods Ending On or Before January 1, 1998 Fiscal Year (In Millions)			
	1998-9	1999-0	2000-01
Total Gross Revenue	\$28	\$95	\$18
Collections Absent Amnesty	(\$26)	(\$87)	(\$17)
Net PIT Revenue	\$2	\$8	\$1

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

The number of taxpayers that file and are approved for tax amnesty will determine the revenue impact for this bill, and the resulting additional net tax collected.

The total number of taxpayers projected to file for tax amnesty was based on the results of FTB's 1984-85 Tax Amnesty Program under the Personal Income Tax Law. That amnesty program generated approximately \$34.5 million in excess of what the department estimated it would have collected through traditional enforcement activities. With over 147,000 individuals filing for amnesty, it was estimated that approximately 68,000 of the filers had previously been identified by FTB filing enforcement. (Unlike the previous amnesty program, these taxpayers would not be eligible for amnesty under this bill due to the issuance of a notice of deficiency proposed to be assessed.) In addition there were approximately 42,000 filers who (1) had previously escaped departmental detection (approximately 36,000) or (2) amended past year returns to increase their liabilities (approximately 6,000). The balance of amnesty filers (approximately 37,000) were individuals who already had an existing amount owing as the result of an audit or unpaid return liability, and unlike the previous amnesty would not be eligible for amnesty under this proposal. In addition, the following data and assumptions were used:

- Assumed approximately 50% of the individuals that previously escaped departmental detection under the prior filing enforcement system are currently being detected due to significant increases in enforcement measures and penalties. Many improved enforcement measures were included in the 1984-85 Amnesty bill; others have been developed over the years since amnesty. For example, FTB now uses a wide range of information from other state and local government sources to detect individuals who have not filed income tax returns or who have filed but underreported income/overstated expenses.

- Assumed that 50% of the individuals who amended returns in the 1984-85 amnesty would have been detected through the department's audit program.
- Assumed that half (50%) of all potential tax amnesty filers would not file under this tax amnesty proposal, due to the following:
 1. No new enforcement measures and penalties to encourage filing are envisioned in this bill.
 2. The one-time-only aspect of the previous amnesty program was critical for it to work as intended; there needed to be a literal "point of no return." Unlike the first amnesty program, this bill may not encourage a certain segment of taxpayers to file due to the expectation of future amnesties.
- The number of potentially qualifying filers who would eventually be identified through FTB's filing enforcement program was tripled to account for the 300% overall growth in filing enforcement effort from fiscal year 1984-85 to 1994-95. Annual growth thereafter was projected at 8%.

Based on the above data and assumptions it was estimated that approximately 34,000 individuals would file for tax amnesty with an average tax liability of \$477.

For the 1984-85 amnesty program, the average case value for amnesty filers was approximately \$1,100, and the average departmental case value for pre-amnesty non-filers was approximately \$1,000.

This analysis does not assume that a general improvement in the level of self-compliance would occur after this proposed amnesty program for a number of reasons, such as:

- Additional post-amnesty enforcement measures have not been added.
- Increased feelings by taxpayers in general that the tax system is unfair.
- Encouragement of future non-compliance, due to the expectation of future amnesties.

BOARD POSITION

Pending.