LEGISLATIVE PROPOSAL A
EXECUTIVE SUMMARY

Title

Allow Electronic Delivery of Earnings Withholding Orders for Taxes, Earnings Withholding Orders, and Continuous Orders to Withhold (hereinafter referred to as “wage garnishments”), and Related Notices or Documents

Problem

Current law restricts the methods of serving the Franchise Tax Board’s (FTB) wage garnishments, and all related notices and documents, to first-class mail or in-person service. This restriction precludes the FTB and employers from developing and utilizing electronic service methods that could reduce the time and cost needed to process paper documents.

Proposed Solution

Modify Revenue and Taxation Code (R&TC) sections 18671 and 19264 to allow electronic service of the FTB’s wage garnishments, and all related notices or documents required in connection with a wage garnishment.

Fiscal Impact

FTB staff estimates cost savings from postage of approximately $197,000 per year, assuming participation by the larger employers (receiving more than 250 orders). Staff time no longer needed as a result of this change would be absorbed in other revenue producing collection efforts.

The implementation effort for this proposal, if approved, would be included in the department’s current technology modernization effort (Enterprise Data to Revenue 2 (EDR2)) planned to start in July 2021. The FTB is currently engaged in the Project Approval Lifecycle to request vendor services to assist in the modernization of the technology that supports the accounts receivable management program.

Economic Impact

Revenue Estimate

This proposal does not change the way income or franchise tax is calculated under the R&TC. However, it does create another option for service of wage garnishments.
This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

This legislative proposal would allow, in addition to current methods, the ability to serve wage garnishments, and all related notices or documents, by electronic transmission or other electronic technology. The FTB does not anticipate a change in the collection of debts as a result of the additional service methods and therefore there is no anticipated revenue impact to the General Fund.

Title

Allow Electronic Delivery of Earnings Withholding Orders for Taxes, Earnings Withholding Orders, and Continuous Orders to Withhold (hereinafter referred to as “wage garnishments”), and Related Notices or Documents

Introduction

This proposal would allow the FTB, in addition to existing methods of service, the ability to serve wage garnishments, and any other notice or document required in connection with wage garnishments, by electronic transmission or other electronic technology.

Problem/Recommended Solution

Current state law restricts service of the FTB’s wage garnishments, and any other notice or document required in connection with a wage garnishment, to first-class mail or in-person service, precluding the FTB from utilizing electronic service methods that could reduce the time and cost for employers and the FTB to process paper documents.

This proposal would modify R&TC sections 18671 and 19264 to allow the FTB’s wage garnishments, and any other notice or document required in connection with a wage garnishment, to be served electronically.

Program History/Background

Since the mid-1990s, the Internet has had a revolutionary impact on culture, commerce, and technology, including the rise of near-instant communication by electronic mail, instant messaging, voice over Internet Protocol (VoIP) telephone calls, two-way interactive video calls, and the World Wide Web with its discussion forums, blogs, social networking, and online shopping sites. In addition, e-services are now available through mobile devices.

As a result of changes in technology, citizens are increasing their interest in conducting business through electronic means, including engaging with government through their smart phones. California state and local government entities continue to increase services offered electronically, including vehicle registrations, required filings, and payments.

FTB’s Electronic Services

The FTB began receiving electronic payments in 1994 with the implementation of the requirement for certain corporations to pay by Electronic Funds Transfer (EFT)[1] The FTB also began processing electronically-filed (e-filed) tax returns in 1994. The requirement for e-filing began in 2004 for tax preparers of individual income tax returns, and the e-filing requirement for “business entities” began in 2014.[2]

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[1] R&TC section 19011 requires payments by EFT when a corporation’s estimated tax payments or total tax liability exceed thresholds, or upon an approved request to the FTB. R&TC section 19011.5 requires payments received after January 1, 2009, to be made electronically for individuals when estimated tax payments or total tax liability exceed thresholds.

[2] R&TC section 18621.9 requires tax preparers that prepare over 100 California individual income tax returns in any calendar year beginning January 1, 2003 or after, and in the following calendar year prepare one or more individual returns using tax preparation software, to file thereafter using electronic technology. R&TC section 18621.10 requires business entity returns that were prepared using a tax preparation software, to be filed using electronic technology. A business entity is defined as a corporation, including an “S” corporation, an exempt organization, a partnership, or a limited liability company.

Over time, the percentage of e-filed returns has continued to grow, and in 2018, 84 percent of personal income tax returns and 81 percent of business entity returns received by the FTB were e-filed, indicating increased acceptance and comfort with the electronic filing process.

Collection Tools

State Tax Liens

A state tax lien attaches to a taxpayer's real or personal property and expires in ten years unless a notice of the state tax lien is recorded. After recording a notice of state tax lien, the FTB's statutory lien is extended for the duration of the recorded lien. Under the "E-Lien" process, the FTB issues orders and other documents related to real property liens by electronic means to counties that have applicable technology.[3]

Orders to Withhold

An Order to Withhold (OTW) is a one-time order that allows the FTB to collect tax liabilities, court-ordered debt, and vehicle registration assessments.

In 2013, the FTB began using an "E-Levy" process to issue OTWs to depository institutions. Under this process, the financial institution receives the OTW electronically, notifies the account holder by written notice, and remits payment electronically to the FTB within 10 business days.

Wage Garnishments

A wage garnishment is a notice sent to an employer when an individual or business entity taxpayer[4] has a balance due, following the issuance of required notices of tax due.

Currently, the FTB's wage garnishments, modifications, terminations, and releases of wage garnishments are sent by first-class mail to the taxpayer's employer. Similarly, the employer's communication with regard to the FTB's wage garnishments are done via the U.S. Postal Service.

Legislation enacted in 1996 authorized the FTB to establish a pilot program to issue wage garnishment orders to employers using magnetic media, electronic transmission, or other electronic technology. Systems limitations within the FTB and with employers precluded the implementation of the pilot project.

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[3] R&TC section 19221 provides for the enforcement of a state tax lien when a taxpayer fails to pay a tax liability. Government Code section 27279 allows the FTB to record a notice of state tax lien with the applicable county recorder. The notice may be filed by electronic means if the technology is available to the county.

[4] In the case of a taxpayer that is an independent contractor, the wage garnishment is mailed to the payer of the Independent Contractor Agreement (referred to as an employer for purposes of this discussion).

Current Federal Law

Internal Revenue Code section 6331 provides that the Secretary may authorize collection of tax by levy, including levies on salary or wages, when any person liable to pay any tax neglects or refuses to pay after notice and demand.

Under current federal law, the IRS's wage garnishments may be sent to the employer by first-class mail or served in person.

Federal law requires that wage garnishments for federal employees be sent via certified or registered mail, return receipt requested, or by personal service to either the head of the federal employee's agency, as defined, or the agency's designated agent. (5 USC 5520A(c)(1)).

Current State Law

Generally, under the Code of Civil Procedures (CCP), current state law limits service of wage garnishments, and any other notice or document required in connection with a wage garnishment, to first-class mail or in-person service.

There are exceptions under the Family Code (FC) sections 5246(h) and 17454(d) that allow a local child support agency to transmit an order or notice to withhold income for child support, and other related, required forms, through electronic means, and allow the Department of Child Support Services to serve a notice to withhold by magnetic media, electronic transmission, or other electronic technology, respectively.

R&TC section 18671 specifically limits service of the FTB's continuous orders to withhold to first-class mail or in-person delivery.

Effective/Operative Date of Solution

If this proposal were enacted during the 2020 legislative session, it would be effective and operative on January 1, 2021.

Justification

This proposal would, by allowing the FTB's wage garnishments, and any other notice or document required in connection with a wage garnishment, to be served electronically, bring efficiencies and cost savings to both the FTB and employers. Additionally, this proposal will allow employers to decide the method of service that best meets their needs to respond to the FTB's wage garnishments (first-class mail, in-person service, or electronic service).

Implementation

Implementing this proposal would require systems modification, taxpayer education and outreach efforts, the revision of procedures and forms, and staff training to respond to questions regarding the electronic service of wage garnishments.

Fiscal Impact

FTB staff estimates cost savings from postage of approximately $197,000 per year, assuming participation by the larger employers (receiving more than 250 orders). Staff time no longer needed as a result of this change would be absorbed in other revenue producing collection efforts.

The implementation effort for this proposal, if approved, would be included in the department's current technology modernization effort (EDR2) planned to start in July 2021. The FTB is currently engaged in the Project Approval Lifecycle to request vendor services to assist in the modernization of the technology that supports the accounts receivable management program.

Economic Impact

Revenue Estimate

This proposal does not change the way income or franchise tax is calculated under the Revenue and Taxation Code. However, it does create another option for service of wage garnishments.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

This legislative proposal would allow, in addition to current methods, the ability to serve wage garnishments by electronic transmission or other electronic technology. The FTB does not anticipate a change in the collection of debts as a result of the additional service methods and therefore no anticipated revenue impact to the General Fund.

Policy Considerations

This proposal is specific to the FTB. Policy makers may wish to consider expanding the proposal to request the FTB to work cooperatively with our external partners and sister agencies for statutory parity allowing electronic communication methods for serving wage garnishments.

Other Agency/Industry Impacted

The ability to accept electronic service of the FTB's wage garnishments is expected to increase efficiencies and accuracy for employers.

Other States

The states surveyed include 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.

Illinois, Minnesota, and *Michigan* allow the service of a wage garnishment order by mail, and *New York* allows service by County Sheriff. Research of Massachusetts law was unsuccessful in identifying statutory authority on service of wage garnishments.

In addition to the surveyed states a current effort involving *Wisconsin* was identified. *Wisconsin*, with the assistance of the Federation of Tax Administration (FTA), is in the process of developing a pilot program to deliver wage garnishments electronically with ADP Payroll Services. An FTA survey indicates that 20 states, including *California*, are currently interested in delivering wage garnishments electronically, and 5 other states are interested in following the process.

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Franchise Tax Board's Proposed Amendments for LP A

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Subject: Allow Electronic Delivery of Earnings Withholding Orders for Tax and Continuous Orders to Withhold and Related Notices or Documents

Amendment 1

Section 18671 of the Revenue and Taxation Code is amended to read:

18671 (a) Subject to the limitations in subdivisions (b) and (c), the Franchise Tax Board, may, by notice, served personally by first-class mail, or by electronic transmission or other electronic technology, require any person, officer, department of the state, or political subdivision or agency of the state including the Regents of the University of California, a city organized under a freeholder's charter, or a political body not a subdivision or agency of the state, to withhold the amount of any tax, interest, or penalties due from a taxpayer, or the amount due from an employer or person who has failed to withhold and transmit amounts due pursuant to this article, from any payments due the taxpayer, employer, or person and from any payments becoming due the taxpayer, employer, or person after receipt of the notice. The amounts withheld shall be transmitted to the Franchise Tax Board at those times as it may designate.

(b) The effect of a levy made pursuant to subdivision (a) shall be continuous from the date the notice is received until the amount due stated on the notice has been withheld, until the notice has been withdrawn, or until one year after the date the notice is received, whichever occurs first.

(c) The amount required to be withheld pursuant to a notice issued under subdivision (a) is the lesser of the amount due stated on the notice, or either of the following:

(1) If the taxpayer, employer, or person is not a natural person, 100 percent of the amount of each payment due or becoming due the taxpayer, employer, or person during the period the levy is in effect as provided in subdivision (b).

(2) If the taxpayer, employer, or person is a natural person, 25 percent of the amount of each payment due or becoming due the taxpayer, employer, or person during the period the levy is in effect as provided in subdivision (b).

(d) Any notice or document required to be served or provided in connection with the notice to withhold described in subdivision (a) may be served personally, by first-class mail, or by electronic transmission or other electronic technology.

~~(d)~~ (e)For purposes of this section, the term "payments" does not include earnings as defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights.

(2) Payments or credits due or becoming due as a result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(3) Any other payments or credits due or becoming due periodically as a result of an enforceable obligation to the taxpayer, employer, or person.

(f) The changes made to this section by the act adding this subdivision shall apply to notices served or provided on or after the effective date of the act.

Amendment 2

Section 19264 of the Revenue and Taxation Code is amended to read:

19264 (a) Notwithstanding Sections 706.071, 706.073, 706.080, 706.101, and 706.105 of the Code of Civil Procedure, the Franchise Tax Board ~~shall establish a pilot program to issue~~ may serve earnings withholding orders for taxes and any other notice or document required to be served or provided in connection with an earnings withholding order for taxes, pursuant to Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, to government and private employers by ~~magnetic media,~~ electronic transmission or other electronic technology. ~~The purpose of the pilot program is to study the feasibility and cost-effectiveness of the Franchise Tax Board issuing earnings withholding orders to employers using magnetic media, electronic transmission, or other electronic technology.~~

(b) ~~The pilot program shall apply to any earnings withholding order for taxes and any other notice or document required to be served or provided in accordance with subdivision (a) on or after January 1, 1997, and before January 1, 1999, to an employer who agrees to participate in the pilot program.~~ Notwithstanding Sections 706.071, 706.073, 706.080, 706.101, 706.125, and 706.126 of the Code of Civil Procedure, the Franchise Tax Board may receive the “employer’s return,” as described in Section 706.126 of the Code of Civil Procedure, by electronic transmission or other electronic technology.

(c) ~~For purposes of the pilot program, the Franchise Tax Board shall identify and work with employers who agree to be served as authorized by subdivision (a).~~ This section shall apply in the same manner and with the same force and effect and to the full extent as if this section had been incorporated in full into Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) ~~The pilot program shall be successful if the Franchise Tax Board can demonstrate all of the following:~~ The changes made to this section by the act adding this subdivision shall apply to notices served or provided on or after the effective date of the act.

~~(1) The Franchise Tax Board’s time to prepare and serve earnings withholding orders by magnetic media, electronic transmission, or other electronic technology, as authorized by subdivision (a), will be reduced by at least two days when compared to orders that would otherwise be prepared and served under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.~~

~~(2) The Franchise Tax Board's administrative cost to prepare and serve earnings withholding orders by magnetic media, electronic transmission, or other electronic technology, as authorized by subdivision (a), will be less than the cost to prepare and serve orders as specified under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.~~

~~(3) The employer's time and administrative costs to receive and comply with orders served in accordance with subdivision (a) do not exceed the time and administrative costs when compared to receiving and complying with orders served in accordance with Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.~~

~~(e) If the Franchise Tax Board determines that the pilot program is successful based on the criteria stated in subdivision (d), the Franchise Tax Board may continue to issue earnings withholding orders for taxes and any other notice or document required to be served or provided in connection with an earnings withholding order, pursuant to Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, to government and private employers who agree to accept service by magnetic media, electronic transmission, or other electronic technology.~~

~~(f) This section shall apply in the same manner and with the same force and effect and to the full extent as if this section had been incorporated in full into Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.~~