

LEGISLATIVE PROPOSAL 22-01

EXECUTIVE SUMMARY

Title

FTB Installment Agreement Expansion

Problem

FTB currently has authority to enter into installment agreement (IA) with any taxpayer upon either a determination of an inability to pay a liability in full or a determination of financial hardship. For those with the inability to pay in full, the current IA statute requires Franchise Tax Board (FTB) to enter into IAs with taxpayers that meet specified criteria, including that they have personal income tax liabilities of \$10,000 or less and have indicated an inability to pay the debt in full and meet other criteria such as having filed prior year returns and committing to remain in compliance in the future for the terms of the agreement. All of these criteria are shown as being met with the filing of an installment application, which serves as the taxpayer's self-attestation that they have met the criteria.

FTB has the discretion to enter into an IA for liabilities in excess of \$10,000. FTB generally enters into an IA for up to five years with the taxpayer's self-attestation of a financial hardship if the liability is less than \$25,000. For liabilities of \$25,000 or more, FTB asks for documentation to support a financial hardship, which would not change with this proposal.

FTB has found that allowing taxpayers an avenue to resolve their debts as quickly as possible serves the State's interest and taxpayers. Under the current statute, barriers to a simplified IA process exist as follows:

- FTB is required to enter into IAs with individuals for amounts of \$10,000 or less which may be more restrictive than necessary.
- Repayment terms for amounts of \$10,000 or less may be too short at three years.
- To enter into an IA, the statute requires taxpayers to meet the criteria of not having paid any tax required to be shown on the return or not have entered into a prior IA for personal income tax liabilities or liabilities imposed under the Administration - Franchise and Income Tax Law (AFITL). Both of these criteria are inconsistent with the need for an IA.
- There is limited flexibility to modify a current IA under existing authority, which affects the number of IAs that can be modified rather than terminated, even when circumstances may be more conducive to a modification. For IAs with liabilities at or below \$10,000, FTB has adopted the procedure allowing for these agreements to be retained or modified.

Proposed Solution

This proposal will amend Section 19008 of the Revenue and Taxation Code (RTC) to do the following:

- Increase the monetary thresholds for IAs that FTB is required to enter into from \$10,000 to \$25,000 for individuals with personal income tax liabilities that have a financial inability to pay their liability in full, which is presumed with the filing of an IA application. For these IAs:
 - Extend the period for full payment of the liability from 3 years to 5 years.
 - Remove the requirement barring a taxpayer from entering into an IA if the taxpayer failed to pay a personal income tax liability or liability under the AFITL.¹
 - Modify the bar on a taxpayer entering into a subsequent IA to situations where a taxpayer has failed to satisfy any term of an IA, versus just having previously entered into one.
- Clarify authority for FTB to alter or modify IAs in defined situations to help taxpayers continue their IAs when a breach of the original terms has taken place, including incurring additional liabilities or payment defaults;
- Clarify when FTB should review existing IAs for compliance;
- Remove expired language that provides for an IA exemption for the 2005 Amnesty program; and
- Allow the FTB to adopt any appropriate regulations as necessary.

Fiscal Impact

No departmental costs are associated with this proposal.

Economic Impact

This legislative proposal would not impact state income or franchise tax revenue.

Revenue Discussion

The proposed modifications to the current IA process would have no impact on the state's income tax revenue because they do not change the computation or collection of tax.

As IA plans are only captured as a snapshot in time, it is not possible to monitor specific changes in the amount or timing of collection activity.

¹ By virtue of being in collection and requesting an IA, they have already technically failed to pay a return liability.

Title

FTB Installment Agreement Expansion

Introduction

This proposal would make changes to the current IA authority to allow more taxpayers the right to enter into an IA with FTB if they meet specified requirements and extend the time for full payment of an IA in certain situations. Additional proposed changes would clarify when FTB is required to enter into an IA and would clarify when FTB could alter, modify, or terminate any IA under certain circumstances.

Problem

FTB currently has authority to enter into IAs with any taxpayer upon either a determination of an inability to pay a liability in full or a determination of financial hardship. For those with the inability to pay in full, the current IA statute *requires* FTB to enter into IAs with taxpayers that meet specified criteria, including that they have personal income tax liabilities of \$10,000 or less and have indicated an inability to pay the debt in full and meet other criteria such as having filed prior year returns and committing to remain in compliance in the future for the terms of the agreement. All of these criteria are shown as being met with the filing of an installment application which serves as the taxpayer's self-attestation that they have met the criteria.

FTB has the discretion to enter into an IA for liabilities in excess of \$10,000. FTB generally enters into an IA for up to five years with the taxpayer's self-attestation of a financial hardship if the liability is less than \$25,000. For liabilities of \$25,000 or more, FTB asks for documentation to support a financial hardship, which would not change with this proposal.

FTB has found that allowing taxpayers an avenue to resolve their debts as quickly as possible serves the State's interest and taxpayers. Under the current statute, barriers to a simplified IA process exist as follows:

- FTB is required to enter into IA with individuals for amounts of \$10,000 or less which may be more restrictive than necessary.
- Repayment terms for amounts of \$10,000 or less may be too short at three years.
- To enter into an IA, the statute requires taxpayers to meet the criteria of not having paid any tax required to be shown on the return or not have entered into a prior IA for personal income tax liabilities or liabilities imposed under the Administration - Franchise and Income Tax Law (AFITL). Both of these criteria are inconsistent with the need for an IA.
- There is limited flexibility to modify a current IA under existing authority, which affects the number of IAs that can be modified rather than terminated, even when circumstances may be more conducive to a modification. For IAs with liabilities at or below \$10,000, FTB has adopted the procedure allowing for these agreements to be retained or modified.

Proposed Solution

This proposal will amend Section 19008 of the RTC to do the following:

- Increase the monetary thresholds for IAs that FTB is required to enter into from \$10,000 to \$25,000 for individuals with personal income tax liabilities that have a financial inability to pay their liability in full, which is presumed with the filing of an IA application. For these IAs:
 - Extend the period for full payment of the liability from 3 years to 5 years.
 - Remove the requirement barring a taxpayer from entering into an IA if the taxpayer failed to pay a personal income tax liability or liability under the AFITL.²
 - Modify the bar on a taxpayer entering into a subsequent IA to situations where a taxpayer has failed to satisfy any term of an IA, versus just having previously entered into one.
- Clarify authority for FTB to alter or modify IAs in defined situations to help taxpayers continue their IAs when a breach of the original terms has taken place, including incurring additional liabilities or payment defaults;
- Clarify when FTB should review existing IAs for compliance;
- Remove expired language that provides for an IA exemption for the 2005 Amnesty program; and
- Allow the FTB to adopt any appropriate regulations as necessary.

Program History/Background

In 1986, AB 3060 (Stats. 1986, Ch. 1361) authorized FTB to allow PIT taxpayers to enter into IA.

In 2005, Section 19008 of the RTC was amended to change “individual/fiduciary” to “taxpayer” to allow non-individuals to enter into IAs. In 2009, FTB began allowing Provisional Payment Plans to enter into IA’s, which allowed a taxpayer to enter into an IA for filing enforcement liabilities and provided a short period of time to file the returns to meet the requirements in Section 19008 of the RTC.

Current Federal Law

Current federal law provides that the Internal Revenue Service (IRS) may enter into written agreements with any taxpayer under which that taxpayer may make payments on any tax in installment payments if it determines that the IA will facilitate full or partial collection of the tax liability. Taxpayers are not required to have a financial hardship to enter into an IA, and accepted IA’s remain in effect for their stated term or until succeeded by a new agreement.

² By virtue of being in collection and requesting an IA, they have already technically failed to pay a return liability.

Current State Law

The FTB may allow a taxpayer to enter into an IA with the FTB to make full or partial payment of taxes due, plus applicable interest and penalties over the life of the installment period. The FTB is required to enter into IAs with taxpayers who have personal income tax liabilities of \$10,000 or less and meet other requirements specified below. These taxpayers need to indicate their inability to pay in full, which they do so by completing the IA application (a form of self-attestation). For personal income tax and AFITL purposes, liabilities of individuals in excess of \$10,000 and liabilities under the Corporation Tax Law, a determination regarding financial hardship is required and the FTB either requests self-attestation to financial hardship on the IA application or proof of a financial hardship. If a taxpayer fails to comply with the terms of the IA, the agreement shall be null and void, unless the FTB determines that there was reasonable cause, and the total amount of tax, interest and all penalties will be due and payable immediately. In addition, the FTB shall review partial payment IAs at least once every two years.

For individuals with a liability for tax under the Personal Income Tax Law (PITL) or the AFITL, the FTB is required to enter into an agreement to accept full payment of the tax in installments, if as of the date the individual offers to enter into an agreement, the following apply:

- The total amount of the liability does not exceed \$10,000 (not including interest, penalties and additional amounts).
- The taxpayer has not failed to file any return of tax imposed under the PITL or the AFITL.
- The taxpayer has not failed to pay any tax required to be shown on the return.
- The taxpayer has not entered into an IA for tax under the PITL or the AFITL.
- The FTB determines that the taxpayer is financially unable to pay the liability in full when due, and the taxpayer submits any information as required by the FTB to make the determination.
- The agreement requires full payment within 3 years.
- The taxpayer agrees to comply with the provisions of the PITL and the AFITL for the period the agreement is in effect.

Unless the FTB finds collection of a tax to which an IA relates to be in jeopardy, or there is mutual consent to terminate, alter or modify the agreement, the agreement may not be considered null and void, or otherwise terminated, unless both of the following occur:

- A notice of termination is provided to the taxpayer no later than 30 days before the date of termination.
- The notice includes an explanation of why the FTB intends to terminate the agreement.

A levy may not be issued on the property or rights to the property of any person with respect to any unpaid tax.

If an IA is rejected or terminated by the FTB, the taxpayer has the right to an administrative review by the Taxpayers' Rights Advocate.

Program Background

IA Scenario	Current Process	Process Under Proposed Law
\$10K or less	FTB is required to approve agreements with taxpayers self attestation they meet the specified criteria, including the inability to pay in full. Applicable payment period is 36 months.	Same as current. Applicable payment period is 60 months.
Greater than \$10k and less than \$25K	FTB approves <u>with</u> taxpayer self certification of financial hardship. Applicable payment period is 60 months.	FTB is required to approve agreements with taxpayers self attestation they meet the specified criteria, including the inability to pay in full. Applicable payment period is 60 months.
OVER \$25K	Financial hardship evaluation required (at or over \$25K)	Financial hardship evaluation required (over \$25K)
Additional Liability: Balance \$10K or less	System automatically continues IA & issues notice to taxpayer	Same as current
Additional Liability: Balance exceeds \$10K but less than \$25K	System automatically begins IA default process: <ul style="list-style-type: none"> • Issues notice to taxpayer • Taxpayer contact required to reset • If no contact, IA terminated 	System automatically continues IA & issues notice to taxpayer for liabilities of \$25K or less.
Additional Liability: Balance exceeds \$25K	System automatically begins IA default process: <ul style="list-style-type: none"> • Issues notice to taxpayer • Taxpayer contact required to reset • If no contact, IA terminated 	Same as current for balances over \$25K

Effective/Operative Date of Solution

If enacted in the 2022 legislative session, this proposal would be effective and operative beginning January 1, 2023, and would apply to IA entered into on or after that date.

Justification

The proposed changes would make it easier for a taxpayer to qualify for an IA for liabilities up to and including \$25,000 by allowing a taxpayer to submit an application for an IA, which is presumed to be proof of the taxpayer’s inability to pay the liability in full and the taxpayer’s compliance with other requirements. This would increase the amount of liability and the length of the payment period of the IAs that FTB is required to enter and ultimately reduce barriers to enter into the process. FTB’s experience is that the sooner a taxpayer enters into an IA, the more likely they are to pay their liability; and as more time passes, the collection rate decreases, and it can become more expensive for the FTB to pursue collection activity. The proposed modifications to the overall IA process would enhance the taxpayer experience by expanding the scope of taxpayers with the right to enter into an IA.

Implementation

Implementing the proposed changes would occur during the department's normal annual update.

Fiscal Impact

No departmental costs are associated with this proposal.

Economic Impact

Revenue Estimate

This legislative proposal would not impact state income or franchise tax revenue.

Revenue Discussion

The proposed modifications to the current IA process would have no impact on the state's income tax revenue because they do not change the computation or collection of tax.

As IA plans are only captured as a snapshot in time, it is not possible to monitor specific changes in the amount or timing of collection activity.

Policy Considerations

None noted.

Other Agency/Industry Impacted

None noted.

Other States

The states surveyed include New York, Illinois, Pennsylvania, Ohio, and New Jersey. These states were selected due to their similarities to California's economy.

New York has a \$20,000 balance threshold with a repayment term of 36 months. Taxpayers (business entities included) wishing to enter into an IA are required to state a financial hardship, have all returns filed, and are required to pay all liabilities. A taxpayer may request an IA online, and may request to add additional liabilities to the IA.

Illinois has a \$10,000 balance threshold with a repayment term of 24 months. Taxpayers (business entities included) wishing to enter into an IA are required to state a financial hardship, have all returns filed, and are required to pay all liabilities. Taxpayers may request an IA online and may request to add additional liabilities to the IA.

Pennsylvania has a \$12,000 balance threshold with a repayment term of 12 months. Taxpayers (business entities included) wishing to enter into an IA are required to have all returns filed and are required to pay all liabilities. Taxpayers may request an IA online and are unable to add additional liabilities to the IA.

Ohio does not have a balance threshold for an IA, however they do have a repayment term of 12 months. The Ohio Attorney General administers the payments plans.

New Jersey does not have a balance threshold for IA's, and has a 72 month repayment term. In order for a taxpayer to enter into an IA, they must have a financial hardship, all returns must be filed and all liabilities paid for. Taxpayers may not request an IA online, however, they are able to add additional liabilities to the IA.

Legislative Contact

FTBLegislativeServices@ftb.ca.gov

Franchise Tax Board's Proposed Amendments LP 22-01

Subject: FTB Installment Agreement Expansion

Amend Section 19008 of the Revenue and Taxation Code, to read

19008.

~~(a) The Franchise Tax Board may, in cases of financial hardship, as determined by the Franchise Tax Board, allow a taxpayer to enter into installment payment agreements with the Franchise Tax Board to make full or partial payment of taxes due, plus applicable interest and penalties over the life of the installment period. Failure by a taxpayer to comply fully with the terms of the installment payment agreement shall render the agreement null and void, unless the Franchise Tax Board determines that the failure was due to a reasonable cause, and the total amount of tax, interest, and all penalties shall be immediately due and payable.~~

(a) The Franchise Tax Board may, in cases of financial hardship, enter into installment payment agreements with any taxpayer under which that taxpayer is allowed to make payment of any liability imposed or collected under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, including any additions to tax, interest, penalties, fees, and any other amounts relating to the imposed liability, in installment payments, pursuant to the agreement, if the Franchise Tax Board determines that the agreement will facilitate full or partial collection of the liability.

(b) In the case of a liability ~~for tax~~ of an individual under Part 10 (commencing with Section 17001) or this part, the Franchise Tax Board shall enter into an agreement to accept the full payment of the ~~tax liability~~ in installments if, as of the date the individual offers to enter into the agreement, all of the following apply:

(1) The aggregate amount of the liability (determined without regard to interest, penalties, additions to the tax and additional amounts) does not exceed ~~ten~~ *twenty-five* thousand dollars (~~\$10,000~~*25,000*).

(2) The taxpayer (and, if the liability relates to a joint return, the taxpayer's spouse) has not during any of the preceding five taxable years done any of the following:

(A) Failed to file any return of ~~tax liability~~ imposed under Part 10 (commencing with Section 17001) or this part.

~~(B) Failed to pay any tax required to be shown on the return.~~

~~(CB) Entered into~~ *Failed to satisfy any term of* an installment agreement under this section for payment of any ~~tax liability~~ imposed by Part 10 (commencing with Section 17001) or this part.

(3) The Franchise Tax Board determines that the taxpayer is financially unable to pay the liability in full when due, and the taxpayer submits any information as the Franchise Tax Board may require to make this determination.

(4) The agreement requires full payment of the liability within ~~three~~ *five* years.

(5) The taxpayer agrees to comply with the provisions of this part and Part 10 (commencing with Section 17001) for the period the agreement is in effect.

~~(c) Except in any case where the Franchise Tax Board finds collection of the tax to which an installment payment agreement relates to be in jeopardy, or there is a mutual consent to terminate, alter, or modify the agreement, the agreement shall not be considered null and void, or otherwise terminated, unless both of the following occur:~~

~~(1) A notice of termination is provided to the taxpayer not later than 30 days before the date of termination.~~

~~(2) The notice includes an explanation of why the Franchise Tax Board intends to terminate the agreement.~~

(c) (1) The Franchise Tax Board may alter, modify, or terminate any agreement entered into under this section if any of the following apply:

(A) Information which the taxpayer provided to the Franchise Tax Board prior to the date the agreement was entered into was inaccurate or incomplete.

(B) The Franchise Tax Board determines that the collection of any liability, to which an agreement under this section relates, is in jeopardy.

(C) The Franchise Tax Board determines that the financial condition of a taxpayer with whom the Franchise Tax Board has entered into an agreement has significantly changed.

(D) The taxpayer fails to pay any installment payment at the time the installment payment is due under the agreement.

(E) The taxpayer fails to file any required tax return under this part or pay any other liability at the time that liability is due.

(F) The taxpayer fails to provide a financial condition update upon the Franchise Tax Board's request.

(2) The Franchise Tax Board may modify or alter an agreement under this section to add a liability that the taxpayer fails to pay at the time that liability is due.

(3) If a taxpayer is currently in an installment agreement under subdivision (a) or (b), the Franchise Tax Board may require financial hardship to alter or modify the installment agreement.

(4) (A) Except as provided in subparagraph (B), the Franchise Tax Board shall not alter, modify, or terminate any agreement under this subdivision unless both of the following occur:

(i) A notice of the alteration, modification, or termination is provided to the taxpayer not later than 30 days before the date of that action.

(ii) The notice includes an explanation of the rationale of the Franchise Tax Board for altering, modifying, or terminating the agreement.

(B) In any case where the Franchise Tax Board finds collection of the liability to which an installment payment agreement relates to be in jeopardy, the Franchise Tax Board may terminate the installment agreement and issue demand for immediate payment of the liability or the deficiency declared to be in jeopardy.

(d) No levy may be issued on the property or rights to property of any person with respect to any unpaid ~~tax~~ liability:

- (1) During the period that an offer by the taxpayer for an installment agreement under this section for payment of the unpaid ~~tax~~ *liability* is pending with the Franchise Tax Board.
- (2) If the offer is rejected by the Franchise Tax Board, during the 30 days thereafter and, if a request for review of the rejection is filed within the 30 days, during the period that the review is pending.
- (3) During the period that the installment agreement for payment of the unpaid ~~tax~~ *liability* is in effect.
- (4) If the agreement is terminated by the Franchise Tax Board, during the 30 days thereafter (and, if a request for review of the termination is filed within the 30 days, during the period that the review is pending).
- (5) This subdivision shall not apply with respect to any of the following:
 - (A) Any unpaid ~~tax~~ *liability* if either of the following occurs:
 - (i) The taxpayer files a written notice with the Franchise Tax Board that waives the restriction imposed by this subdivision on levy with respect to the ~~tax~~*liability*.
 - (ii) The Franchise Tax Board finds that the collection of that ~~tax~~ *liability* is in jeopardy.
 - (B) Any levy that was first issued before the date that the applicable proceeding under this subdivision commenced.
 - (C) At the discretion of the Franchise Tax Board, any unpaid ~~tax~~*liability* for which the taxpayer makes an offer of an installment agreement subsequent to a rejection of an offer of an installment agreement with respect to that unpaid ~~tax~~*liability* (or to any review thereof).
 - (D) The period of limitation under Section 19371 shall be suspended for the period during which the Franchise Tax Board is prohibited under this subdivision from making a levy.
 - (e) The Taxpayers' Rights Advocate shall establish procedures for an independent departmental administrative review for the rejection of the offer of an installment payment and for installment payment agreements that are rendered null and void, or otherwise terminated under this section, for taxpayers that request that review. This administrative review shall not be subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code. Unless review is requested by the taxpayer within 30 days of the date of rejection of the offer of an installment agreement or termination of the installment agreement, this administrative review shall not stay collection of the ~~tax~~ *liability* to which the installment payment agreement relates.
 - (f) ~~In the case of an agreement entered into by the Franchise Tax Board under this section subdivision (a) for partial payment of a tax liability~~ *†*The Franchise Tax Board shall review *a representative sample of existing installment agreements entered into under this section* at least once every two years *to ensure taxpayers are in compliance with the terms of the agreement.*
 - ~~(g) (1) In the case of any taxpayer that is making payments to the Franchise Tax Board under an informal payment arrangement that was in existence prior to the effective date of the act adding this subdivision, that informal payment arrangement, for purposes of this section, shall be treated as an installment payment agreement that was entered into on the later of the following:~~

~~(A) January 1, 2005.~~

~~(B) The date on which the arrangement was established by the Franchise Tax Board.~~

~~(2) In any case where the date determined under the rules of paragraph (1) is a date prior to February 1, 2005, the amount due under the informal payment arrangement as of February 1, 2005, shall be treated as an installment payment agreement amount as of the start of the amnesty program within the meaning of Section 19738.~~

~~(3) Section 19591 does not apply to either of the following:~~

~~(A) Informal payment arrangements treated as installment payment agreements under paragraph (1).~~

~~(B) Installment payment agreements authorized by the amendments made by the act adding this subdivision that were entered into prior to July 1, 2005, or the effective date of the act adding this subdivision, whichever occurs later.~~

(g)(1) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

(2) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of the Government Code) shall not apply to any standard, criterion, procedure, determination, rule, notice, guideline, or any other guidance established or issued by the Franchise Tax Board pursuant to this section.