Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Speier	Analyst:	Kristina North	Bill Number:	SB 603
Related Bills:	AB 1347 (Stats. 1995, Ch. 926)	Telephone:	845-6978	Introduced Date:	02/23/99
	AB 3583 (Stats. 1990, Ch. 409)	Attorney:	Doug Bramhall	Sponsor:	Franchise Tax Board

SUBJECT: Credit Card Payments/Abatement Of Interest-Allow FTB To Abate Interest For Same Period As IRS

SUMMARY

Under the Administration of Franchise and Income Tax Law (AFITL), this bill would allow the Government Code provisions to control the Franchise Tax Board (FTB) credit card program by removing the current discount rate limitation.

Under the Government Code, this bill would require the FTB and any other state agency accepting credit cards for payment to notify each eligible payer and to provide the payer either a space on the billing statement or complete instructions on how to pay the agency by credit card.

Under the AFITL, this bill would allow the FTB to abate interest for the same period as the Internal Revenue Service (IRS) for delays resulting from an error or delay in the performance of a ministerial or managerial act by an Internal Revenue Services officer or employee that occurred on or before the final federal determination was made.

These issues will be discussed separately in this analysis.

CREDIT CARD PAYMENTS

EFFECTIVE DATE

This provision would apply to payments made on or after January 1, 2000; however, under current law, the department is accepting credit card payments consistent with the provisions which are clarified by this bill.

PROGRAM HISTORY/BACKGROUND

AB 3583 (Stats. 1990, Ch. 409) authorized the FTB to accept credit card payment for taxes, interest, penalties and fees.

AB 1374 (Stats. 1995, Ch. 926) required that all state agencies accept payment by credit card or payment device by January 1, 1997, unless granted an exemption by the Director of the Department of General Services (DGS Director).

In August 1996, the FTB requested and was granted an exemption from accepting credit card payment for taxes as not cost-effective. The FTB indicated to the DGS Director its intention to pursue and ultimately implement a cost-effective credit card program to meet the needs of taxpayers and the department.

Board Position:			Department Director	Date
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In November 1996, the DGS entered into master service agreements (MSAs) with American Heritage Bankcard, First USA Paymentech and NOVUS Services, Inc. to process credit card transactions for the State of California.

In September 1998, citing the department's readiness to implement a credit card program, the FTB requested from the DGS Director the withdrawal of the department's original exemption request. Department staff has received verbal acknowledgment that the FTB has been removed from the exemption list.

FTB recently contracted with NOVUS Services, Inc./First Data Merchant Services for a six-month pilot program to accept credit card payment (from MasterCard, NOVUS/Discover and American Express) of taxes targeting approximately 1.1 million delinquent personal income taxpayers via an FTB bill insert. The pilot program includes a tiered convenience fee. The convenience fee includes the discount rate (generally 1% to 4%) imposed by the credit card company for its authorization to accept payment by credit card and related administrative costs. After the pilot program, credit card payments for involuntary notices, notices of proposed assessment, return information notices, estimated tax payments and remit tax returns will be phased in. The program may ultimately include bank and corporation taxpayers and non-tax debt collection payments.

The FTB insert provides specific instructions on how a taxpayer may use a credit card to pay his or her state income tax bill by phone through U.S. Audiotex (the automated payment system provider and a subcontractor of NOVUS Services, Inc.). The insert provides spaces for the taxpayer to write down information in preparation for a phone call to U.S. Audiotex, including the taxpayer's credit card number and expiration date and a payment confirmation number. FTB employees do not have access to taxpayer credit card numbers. U.S. Audiotex transfers daily to FTB moneys collected for state income taxes.

Beginning in 1999, federal income taxpayers will be able to pay federal taxes by credit card.

SPECIFIC FINDINGS

Current federal tax law provides that payment of federal income taxes by credit card is not subject to the federal Truth-in-Lending Act governing disputes between cardholders and merchants (resolved exclusively by the credit card issuing company) or any similar provisions of state law if the error alleged is an error relating to the underlying tax liability rather than an error relating to the credit card account, such as a computational error or numerical transpositions in the credit card transaction.

Current federal consumer credit law defines "creditor" as a person, in connection with loans, sales of property or services, or otherwise, who regularly extends consumer credit payable in more than four installments and for which a finance charge is or may be required. **Current federal tax law** specifies that, in the case of credit card payments of federal income taxes, the term "creditor" does not apply to the Secretary of the IRS.

Under current state tax law, for acceptance of credit card payments, two statutes could affect the FTB - Revenue and Taxation Code (R&TC) section 19005 and the Government Code. Section 19005 authorized FTB to accept payment by credit card for taxes, interest, penalties and fees, and the discount fee was limited to 2%

of the transaction amount. Because the FTB has successfully withdrawn its original exemption to the provisions in the Government Code, department staff believes Government Code controls.

Under the Government Code, **current state law** required all state agencies to accept payment made by credit card or payment device by January 1, 1997, unless the Director of the Department of General Services (DGS Director) granted an exemption to a state agency or the DGS Director was unable to enter the necessary contracts. The DGS Director, or his or her designee, may negotiate and enter into any contracts necessary to implement or facilitate the acceptance of credit cards for payment. The DGS Director is authorized to negotiate and agree to specific terms applicable to each state agency, including the terms regarding the payment of any fees to third parties for the acceptance of credit cards, the type of payments, any limitations on amounts, liability limits and operational requirements. The Director also is authorized to allow a state agency to negotiate its own contractual terms. FTB’s contract complies with this law.

Under the Government Code, **this bill** would require a state agency accepting payment by credit card to provide, on its billing statement to an individual, either 1) a designated space on the payment form for the individual's credit card number, expiration date and signature or 2) complete procedural instructions for the individual to pay by credit card via telephone or other means.

Under the Revenue and Taxation Code, **this bill** would delete all references to FTB's prior credit card pilot program, clarifying the Government Code provisions as controlling the new FTB credit card program.

Implementation Consideration

By eliminating the 2% limitation and the references to the former pilot program procedures in current law and adopting the general state agency credit card provisions, this provision would allow the department to operate a cost-effective program that offers taxpayers the convenience of paying by credit card. The department's current pilot program follows this bill's intent by providing with the statement complete instructions for the taxpayer to pay by credit card and would continue to do so once the full program is implemented.

Technical Consideration

This bill specifies that a state agency accepting payment by credit card provide a designated space or provide complete instructions to pay by credit card <u>on</u> the billing statement. Author's staff has indicated that it is not author's intent to prohibit the use of an insert by specifying the designate space or payment information be <u>on</u> the billing statement. Department staff is working with author's staff to resolve this issue.

FISCAL IMPACT

Departmental Costs

This bill should not have a significant impact on department costs.

Tax Revenue Estimate

This bill would not have any identifiable impact on state income tax revenue.

ABATEMENT OF INTEREST

EFFECTIVE DATE

This bill specifies that interest may be abated only for ministerial acts for which interest accrued after September 25, 1987, or for managerial acts applicable to a taxable or income year beginning on or after January 1, 1998, for which the FTB may propose an assessment or allow a claim for refund. (These dates represent the operative dates for the two provisions in California law.) Since FTB could first abate interest for ministerial acts for years beginning on or after January 1, 1987, this bill would allow FTB to abate interest for any time since that date for which the IRS has abated interest, provided the statute of limitations for refunds or assessments is still open.

PROGRAM HISTORY

The FTB often makes adjustments to tax on California returns following a federal determination on a taxpayer's return for the same year. Although the FTB may abate interest in the case of an error or delay in actions conducted by the department, the department may not currently abate interest based on a delay in the performance of a ministerial action or an error by an officer or employee of the IRS. Therefore, if the FTB adjustment is based upon a final federal determination of tax and the taxpayer has received an abatement of interest from the IRS because of a delay in performance of an act, the taxpayer currently must pay interest to California for the period granted relief under federal law.

SPECIFIC FINDINGS

Under current federal law, the IRS has discretion to abate any interest that was assessed because of a deficiency attributable to any error or delay by an IRS officer or employee acting in his official capacity when performing a ministerial act, or any interest that is due on a notice of deficiency to the extent any error or delay in payment is attributable to an IRS employee or officer being erroneous or dilatory in performing a ministerial act. The abatement of interest is allowed only if no significant aspect of the error or delay can be attributed to the taxpayer involved. For interest accruing on deficiencies or payments for tax years beginning after July 30, 1996, the errors or delays must be unreasonable and may be attributable to the performance of managerial as well as ministerial acts.

Current state law allows the FTB to abate interest attributable to errors or delays caused by an FTB officer or employee performing a ministerial or managerial act.

Current state law allows the FTB to abate interest only due to the actions of FTB employees or officers. The law does not allow an abatement of interest during a time for which the IRS has abated interest.

This bill would conform state law to existing federal treatment of taxpayers with respect to the abatement of interest due to a delay or error by the IRS by allowing FTB to abate the interest, but only for the period of interest that is abated by the IRS.

Policy Considerations

This bill would allow FTB to abate interest for the same period interest is abated by the IRS and would allow the FTB to treat taxpayers more equitably with respect to the abatement of interest.

The provisions of this bill represent a departure from prior policy which characterized interest as merely compensation for the use of money and treats interest in defined circumstances as more in the nature of a penalty.

Implementation Considerations

Implementation of this bill would allow the department to assist taxpayers by giving relief in cases where the IRS has already abated interest.

FISCAL IMPACT

Departmental Costs

This bill is not expected to significantly impact the department's costs.

Tax Revenue Estimate

The specific data and information necessary to determine the impact of this bill are not available. Any foregone interest would depend on the extent to which interest would not have otherwise been abated under current law. To the extent FTB would abate additional interest as a result of this bill, a reduction would occur in the amount of interest assessed. However, based on discussions with FTB’s General Audit staff, this impact is expected to be minimal.

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

BOARD POSITION

Support.

At its meeting on December 16, 1998, the Franchise Tax Board voted to support the language eliminating the 2% limitation and the references to the former pilot program procedures in connection with credit card payments and the abatement of interest language in this legislation.