

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Vasconcellos Analyst: Gloria McConnell Bill Number: SB 1310

Related Bills: See Legislative History Telephone: 845-4336 Amended Date: 07/06/00

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Franchise Tax Board's Court-ordered Debt Collection Program

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as proposed to be amended.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS proposed to be amended STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would:

1. Extend for one year, until January 1, 2003, the termination (sunset) of the court-ordered debt (COD) collection pilot program administered by the Franchise Tax Board (FTB);
2. Require FTB to address in its report that is due to the Legislature on or before April 1, 2001, the feasibility and advisability of expanding the COD collection program to accept referrals from all 58 counties;
3. Require the Department of Justice (DOJ), in consultation with FTB and other specified state entities, to examine ways to enhance the use and effectiveness of the Controller's offset program, which is administered by the FTB, through integration with the DOJ's Wanted Persons System, and require that DOJ report to the Legislature on or before January 1, 2002;
4. Require the DOJ, in consultation with FTB, to examine ways to enhance the use and effectiveness of FTB's COD collection program through integration with the DOJ's Wanted Persons System and report to the Legislature on or before January 1, 2002; and
5. Require any state or local governmental agency, including the FTB, to provide to the DOJ, a court, or other governmental agency authorized by the DOJ, the address of any person represented to be a person for whom there is an outstanding arrest warrant.

SUMMARY OF AMENDMENT

During August of 1999, FTB staff received proposed amendments to the August 16, 1999, version of SB 1310 and was asked to analyze the proposed amendments rather than the August 16, 1999, amendments.

Board Position:

_____ S _____ NA _____ NP
_____ SA _____ O _____ NAR
_____ N _____ OUA PENDING

Department Director

Date

Johnnie Lou Rosas

07/26/2000

FTB staff raised numerous considerations regarding the proposed amendments. The author indicated that because of overall concerns regarding the proposed amendments, the bill would become a "two-year bill" to provide time to resolve all concerns.

The July 6, 2000, amendments resolve the policy, implementation and technical considerations raised in FTB's previous analysis of the bill as proposed to be amended. However, these amendments raise new technical considerations as explained below.

EFFECTIVE DATE

This bill would be effective and operative on January 1, 2001.

SPECIFIC FINDINGS

Under current law, FTB's COD collection program would sunset January 1, 2002, unless legislation is enacted to extend it or make it permanent. The FTB is required to report the results of the COD collection program and include any recommendations for legislation that would be necessary for FTB to be more effective in administering the program. That report to the Legislature is due on or before April 1, 2001.

Under this bill, the termination of the COD collection program would be delayed 12 months to January 1, 2003. This bill would require that FTB, in the report to the Legislature that is due April 1, 2001, address the feasibility and advisability of expanding the program to accept referrals from all 58 counties.

Under this bill, DOJ, in consultation with FTB, would be required to examine ways to enhance the offset program and COD collection program through integration with the DOJ's Wanted Persons System and report the findings and recommendations to the Legislature. The report would be due on or before January 1, 2002.

Under current law, FTB may exchange tax information with other taxing agencies, including the Internal Revenue Service (IRS). In addition, FTB may disclose tax information for other specified purposes, such as child support enforcement. Such disclosures are expressly authorized under Article 2 of Chapter 7 of Part 10.2 of the Revenue and Taxation Code (RTC). Unless authorized under Article 2 of Chapter 7 of Part 10.2, disclosure of tax information by employees of FTB is a misdemeanor (RTC Section 19542). In any event, FTB may be prohibited under federal law from disclosing IRS tax information that FTB may receive, which could include a taxpayer's address.

Under this bill, FTB would be required to disclose to DOJ, a court or another governmental agency authorized by DOJ the address of any person represented to be a person for whom there is an outstanding arrest warrant. However, the disclosure would be without the expressed authority required by Article 2 of Chapter 7.

Policy Consideration

In the past, the three-member FTB has expressed concern with disclosing taxpayer information for a purpose unrelated to tax administration.

Implementation Considerations

FTB staff could implement the provisions of this bill. Extending the sunset date by one year would allow the DOJ study/report to be taken into consideration if the COD collection program were made permanent. However, as further discussed under "Technical Considerations," the pilot period cannot be extended beyond the sunset date.

With FTB's existing COD collection program resources, staff anticipates it would be able to consult with the DOJ for purposes of examining enhancements to the offset and COD collection programs through integration with the DOJ's Wanted Persons System, as required by this bill.

However, FTB staff can disclose a person's address information to DOJ, a court, or another governmental agency only with express authorization under Article 2 of Chapter 7 of Part 10.2 of the RTC. (As previously noted, in no event can such disclosure include IRS information.) As previously discussed with DOJ staff, the attached Amendment 5 would resolve this consideration.

Technical Considerations

The attached amendments would resolve the following technical considerations:

- ?? This bill appears to extend the period during which FTB could limit referrals (pilot period) to June 30, 2003; however, the bill would extend the underlying COD collection program only to January 1, 2003 (sunset date). From a technical standpoint, the pilot period cannot be extended beyond the underlying sunset date. Therefore, the attached Amendment 1 would end the pilot period December 31, 2002, consistent with the COD collection program sunset date.
- ?? Currently, Section 19280 uses the word "obligor" to refer to the individual who owes a court ordered debt. However, an "obligor" generally has been used to refer to an individual who is obligated to pay child support, whereas "debtor" has a more general meaning. Therefore, the correct word for purposes of the COD collection program is "debtor." The attached Amendment 3 replaces "obligor" with "debtor."
- ?? Presently 17 counties participate in FTB's COD collection program. Therefore, to codify current practice the number of counties that may participate should be increased to 17. See attached Amendment 2.
- ?? This bill, AB 2371 and AB 524 all amend Section 19280 of the Revenue and Taxation Code. The author should consider amending this bill to "double-join" it to those other bills to prevent "chaptering" problems. However, according to the author's office, AB 524 will not be moved in its current form. Thus, the attached language (Amendments 4 and 6) addresses SB 1310 and AB 2371 only.

LEGISLATIVELY MANDATED REPORTS

The DOJ, in consultation with FTB, would be required to examine ways to enhance the use and effectiveness of both the offset program and FTB's COD collection program through integration with the DOJ's Wanted Persons System and report to the Legislature on or before January 1, 2002.

FISCAL IMPACT

With the adoption of the amendments to resolve the technical considerations, this bill would not significantly affect FTB's operations or programs or FTB's collections of CODs. Any increases in FTB's departmental costs as a result of extending the COD collection program sunset would be reimbursed through FTB's COD collections, not to exceed 15% of the amount it collects, as provided under current law (Revenue and Taxation Code Section 19282(b)).

BOARD POSITION

Pending.

Analyst Gloria McConnell
Telephone # 845-4337
Attorney Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1310
As Amended 07/06/00

AMENDMENT 1

On page 6, line 38, strike out "June, 30, 2003" and insert:

December 31, 2002

AMENDMENT 2

On page 6, line 40, strike out "15" and insert:

17

AMENDMENT 3

On page 7, lines 9 and 16, and on page 8, line 13, strike out "obligor" and insert:

debtor

AMENDMENT 4

On page 8, between lines 20 and 21, insert:

SEC. 3.5. Section 19280 of the Revenue and Taxation Code is amended to read: 19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior or municipal court of the State of California upon a person or any other entity that is due and payable in an amount totaling no less than two hundred fifty dollars (\$250), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) Restitution fines imposed by a superior or municipal court of the State of California upon a person or any other entity that are enforceable by the State Board of Control and are due and payable in an amount totaling no less than one hundred dollars (\$100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists be referred by the State Board of Control to the Franchise Tax Board for collection under

guidelines prescribed by the Franchise Tax Board. The debt collection caseload may be limited based on the current capacity of the Franchise Tax Board.

(3) For purposes of this subdivision:

(A) The amounts referred by the county or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by counties or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

~~(b) For the period January 1, 1995, to December 31, 1997, inclusive, for purposes of a manageable implementation and evaluation of the program authorized by this article, the Franchise Tax Board may limit referrals to nine counties.~~

(1) For the period January 1, 2001, to December 31, 2002, inclusive, the Franchise Tax Board may limit referrals under the program authorized by this article to 17 counties.

(2) The report required to be issued by the Franchise Tax Board pursuant to Section 13 of Chapter 1242 of the Statutes of 1994, as amended by Section 46 of Chapter 604 of the Statutes of 1997, is due to the Legislature on or before April 1, 2001, and shall specifically address the feasibility and advisability of expanding the program authorized by this article to accept referrals from all 58 counties.

(c) Upon written notice to the ~~obligor~~ debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the ~~obligor~~ debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy 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 in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article. (2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be

used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the ~~obligor~~ debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

AMENDMENT 5

On page 8, line 34, after "5." insert:

Section 19550 is added to the Revenue and Taxation Code to read:

Section 19550. Pursuant to Section 817.5 of the Penal Code, upon request from the Department of Justice, in a form and manner prescribed by the Franchise Tax Board, the Franchise Tax Board shall provide to the Department of Justice, a court, or any California law enforcement agency, the address of any person represented to be a person for whom there is an outstanding arrest warrant.
SEC. 6.

AMENDMENT 6

On page 9, after line 2, insert:

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 19280 of the Revenue and Taxation Code proposed by both this bill and AB 2371. Section 3.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 19280 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2371, in which case Section 3 of this bill shall not become operative.