

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Baker, et al. Analyst: Janet Jennings Bill Number: AB 1257
Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: February 17, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: FTB Debt Collection Payment Priority Make Restitution Payments to Victims of Crimes First Priority for Collection

SUMMARY

This bill would change the priority of payment application for payments collected by the Franchise Tax Board (FTB).

RECOMMENDATION - NO POSITION.

REASON FOR THE BILL

The reason for this bill is to improve the collection of restitution payments when multiple debts owed by a taxpayer are being collected by the FTB.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2018, and would be operative for amounts collected by the FTB on or after January 1, 2018.

FEDERAL/STATE LAW

Federal law provides restitution pursuant to the Mandatory Victims Restitution Act,¹ which provides that restitution must be made to the victim of certain crimes regardless of the offender's ability to pay. Orders of restitution issued in a federal criminal action for certain crimes are enforceable in the same manner as a civil judgment.

Under existing state law, the FTB administers Court Ordered Debt (COD), where fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California on a person that are due and payable in an amount no less than \$100 and are at least 90 days delinquent can be referred to the FTB for collection.²

Restitution orders may be referred to the FTB only by a governmental entity that meets the following criteria:

- The governmental entity has the authority to collect on behalf of the state or the victim.

¹ See Title 18, U.S.C. section 3663A.

² Revenue and Taxation Code section 19280.

- The governmental entity is responsible for distributing the restitution order collections, as appropriate.
- The governmental entity ensures that it coordinates with any other related collection activities that may occur regarding that debt.

Restitution orders referred to the FTB for collection by other government entities are collected through an automated collection system.

In the event a debtor has more than one debt being collected by the FTB and the amount collected is insufficient to satisfy the total amount owed, current state law provides that the amount collected is to be applied as follows:

1. Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable for Non Admitted Insurance Taxes, Personal Income Taxes, or Corporation Income Taxes.
2. Payment of delinquent vehicle license fees.
3. Payment of any amounts due referred for collection under the COD Collection.
4. Payment of tax debts due to the IRS or other states.

The law specifies that voluntary payments made expressly for Non Admitted Insurance Taxes, Personal Income Taxes, or Corporation Income Taxes debts owed by a taxpayer must be applied as the taxpayer designates.

THIS BILL

This bill would modify the priority of payment application in the event a debtor has more than one debt being collected by the FTB and the amount collected is insufficient to satisfy the total amount owed, as follows:

1. Restitution payments to victims of crimes referred for collection to the FTB's COD program.
2. Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable for Non Admitted Insurance Taxes, Personal Income Taxes, or Corporation Income Taxes.
3. Payment of delinquent vehicle license fees.
4. Payment of any amounts due (except restitution orders) referred for collection under the COD Collection.
5. Payment of tax debts due to the IRS or other states.

Voluntary payments made expressly for Non Admitted Insurance Taxes, Personal Income Taxes, or Corporation Income Taxes debts owed by a taxpayer would still be applied as the taxpayer designates.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation considerations:

To prioritize payments of amounts collected pursuant to this bill, the FTB's and each County's Superior Court systems would be required to have the ability to identify and separate restitution orders from all other COD referrals. Implementing this proposal would require substantial changes to the accounting and collection systems for both the FTB's COD system and the Personal Income Tax Accounts Receivable Collection System. It is unclear that the department and the counties could complete the systems programming and testing necessary in order for a timely implementation of this bill's provisions.

The bill fails to provide a stay on the statute of limitations for income tax debt that remains outstanding because payments must first be applied to a restitution debt. This could result in outstanding tax debts becoming uncollectible because of the expiration of the statute of limitations on collections. To avoid this, it is suggested that this bill be amended to provide a stay on the statute of limitations for collection of tax due for the period that an outstanding restitution amount exists.

POLICY CONCERNS

This bill would shift the department's collections priority from taxes to delinquent restitution orders which is inconsistent with the department's core mission of assisting taxpayers in filing timely and accurate tax returns, and paying the correct amount of tax to fund services important to Californians.

LEGISLATIVE HISTORY

SB 1054 (Pavley, Chapter 718, Statutes of 2016) limited the ability of the State Department of Corrections or a county to refer specified debts to the FTB.

SB 1210 (Lieu, Chapter 762, Statutes of 2012) authorized the referral of delinquent fines, state and local penalties, forfeitures, restitution fines and orders, and other amounts imposed by a juvenile court to the FTB for collection.

OTHER STATES' INFORMATION

Since this bill would change the priority of payment application from the department's collection programs, a review of other states' income tax laws would not be relevant.

FISCAL IMPACT

This bill would impact the department's programming, printing, and processing costs. As the bill continues to move through the legislative process, costs will be identified, and a budget change proposal will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1257* As Introduced February 17, 2017 Assumed Enactment After June 30, 2017		
2017-18	2018-19	2019-20
- \$20,000	- \$90,000	- \$150,000

*This analysis assumes the FTB has implemented the necessary system changes prior to the bill's operative date.

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

Revenue Discussion

This bill would change the priority of payment application from tax liability to court ordered restitution payments to victims of crimes. Because victim's restitution would be collected before tax debt, this would delay collections on accounts where taxpayers also have an unpaid tax liability. Victim restitution is collected through the department's COD program. Although the FTB collects victim's restitution debts referred to the department, detail on account balances is not available.

Using FTB data, it is assumed that taxpayers ordered to pay victim's restitution also accrue an estimated \$700,000 in unpaid tax liability each year. Using historical collection data, it is assumed the department would collect 30 percent, or \$200,000, of the tax liability owed in the first 6 years. Prioritizing victim's restitution before tax liability, would delay the collection of approximately \$50,000 of tax debt in 2018, \$130,000 in 2019, and \$170,000 in 2020. It is assumed that 15 percent of the cases would be collected in full within the first 5 years and subsequent payments on these cases would be applied to the unpaid tax liability.

Because of the delay in collection, FTB would be unable to make up the lost revenue due to the statute of limitation on the tax debt and over time, the revenue loss would continue to grow. The tax year estimate is converted to fiscal years, and rounded to arrive at the amounts reflected in the above table.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some may argue that there is a moral and ethical obligation to satisfy delinquent restitution orders that outweighs the duty to collect state revenues for general needs.

Opponents: Some may argue that replacing taxes owed as the priority for collections, although for a noble purpose, is inconsistent with the department's primary mission.

LEGISLATIVE STAFF CONTACT

Janet Jennings
Legislative Analyst, FTB
(916) 845-3495
janet.jennings@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Diane Deatherage
Legislative Director, FTB
(916) 845-6333
diane.deatherage@ftb.ca.gov