STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Nazarian | Sponsor: | Bill Number: AB 2369

Analyst: Cristina Perfino | Phone: (916) 845-4313 | Introduced: February 18, 2020

Attorney: Shane Hofeling | Related Bills: See Legislative History

SUBJECT

Statute of Limitation on Franchise and Income Tax Collection

SUMMARY

This bill would, under the Administration of the Franchise and Income Tax Law (AFITL), modify the statute of limitations (SOL) on collections of outstanding tax liabilities.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to clarify the statute of limitations on the collection of tax liabilities.

ANALYSIS

This bill would, under the AFITL, modify the 20 year SOL on collections of outstanding tax liabilities by:

- Redefining "tax liability" to mean a liability due and payable on the date prescribed by Revenue and Taxation Code (R&TC) section 19221, subdivision (b), exclusive of interest, penalties, costs, or fees other than the limited liability company fee.
- Updating a cross reference to more precisely define "due and payable."
- Specifying that the 20 year SOL on collection for interest, penalties, costs, or fees other than the LLC fee would run concurrently with the underlying tax liability.

Effective/Operative Date

This bill would become effective January 1, 2021, and be operative for any liability "due and payable" before, on, or after July 1, 2006.

Federal/State Law

Under federal law, the Internal Revenue Service (IRS) is precluded from taking any collection action 10 years after the assessment of tax, unless the taxpayer agrees to waive this period of limitation. The 10-year limitation on collection is extended or suspended under a number of circumstances, such as bankruptcy actions, installment agreements, offers in compromise, wrongful levies, or pending court actions. The federal 10-year limitation on collection applies to all taxpayers.

Under current state law, the Franchise Tax Board (FTB) is precluded from taking collection action on tax liabilities associated with a taxable year as of the date that is 20 years after the latest tax liability for that taxable year becomes due and payable. When an additional tax liability, including fees, interest, and penalties, is assessed for a taxable year, the 20-year limitation for all outstanding liabilities associated with that taxable year is typically extended based on the date the most recently assessed amount becomes due and payable. For liabilities unassociated with a taxable year (e.g., a non-tax debt referred to the department for collection), the FTB is precluded from taking collection action as of the date that is 20 years after that liability becomes due and payable.

The 20-year SOL on collections is extended or suspended under a number of circumstances, such as bankruptcy actions, installment agreements, or pending court actions.

Implementation Considerations

Implementing this bill would require systems changes and staffing to confirm that the correct 20-year collections statute date is applied to all existing and future accounts with an outstanding tax liability.

Technical Considerations

None noted.

Policy Concerns

The bill's specified operative date is unchanged from current law, thus the changes would apply both retroactively and prospectively to any liability due and payable before, on, or after July 1, 2006.

LEGISLATIVE HISTORY

AB 357 (Nazarian, 2019/2020) similar to this bill, would have, under the Administration of the Franchise and Income Tax Law, modified the statute of limitations on collections of outstanding tax liabilities. AB 357 was vetoed by the Governor, whose veto message stated in part, "AB 357 significantly limits the Franchise Tax Boards' ability to collect valid tax liabilities and at a significant cost to the state general fund."

AB 911 (Chu, Chapter 398, Statutes of 2005) limited the collection period to 20 years beginning from the date the last tax liability became due and payable, except for a liability related to the amnesty penalty assessed under Revenue & Taxation Code section 19777.5.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2369 as Introduced February 18, 2020
For Collections on Tax Liabilities that are 20 Years or Older as of January 1, 2021

Assumed Enactment after June 30, 2020

($ in Millions)

Fiscal Year	Revenue
2020-2021	-$5.1
2021-2022	-$10.0
2022-2023	-$11.0

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

Using FTB collection data for debts where the first assessed date is 20 years or older, it is estimated revenue loss, from modifying the statute of limitations, would be approximately $10 million per year. The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts shown in the above table.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

Cristina Perfino
Legislative Analyst, FTB
(916) 845-4313
cristina.perfino@ftb.ca.gov

Tiffany Christiansen
Revenue Manager, FTB
(916) 845-5346
tiffany.christiansen@ftb.ca.gov

Annette Kunze
Legislative Director, FTB
(916) 845-6333
annette.kunze@ftb.ca.gov