



## **Analysis of Amended Bill**

Author: Nazarian

Sponsor:

Bill Number: AB 357

Analyst: Cristina Perfino

Phone: (916) 845-4313

Introduced February 4, 2019,  
and Amended March 7, 2019,  
April 11, 2019, May 16, 2019,  
and June 19, 2019

Attorney: Shane Hofeling

Related Bills: See Legislative  
History

**Subject:** Statute of Limitations 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 on collections of outstanding tax liabilities.

**Recommendation – No position.**

### **Summary of Amendments**

The bill as introduced on February 4, 2019, and as amended March 7, 2019, made several nonsubstantive, technical changes to the statute of limitations (SOL) on collections under the AFITL.

The April 11, 2019, amendments replaced the bill's provision with a provision that would modify the SOL on collections of outstanding tax liabilities by redefining several defined terms.

The May 16, 2019, and June 19, 2019, amendments further modified defined terms, and clarified the date the SOL for collections begins.

This is the department's first analysis of the bill.

### **Reason for the Bill**

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

### **Effective/Operative Date**

This bill would become effective and operative January 1, 2020, and would specifically apply to any liability "due and payable" before, on, or after July 1, 2006.

Introduced February 4, 2019, and Amended March 7, 2019, April 11, 2019, May 16, 2019, and June 19, 2019

## **Federal 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.

## **State Law**

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 interest and penalties, is assessed on 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.

## **This Bill**

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, as defined 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.

## **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.

Introduced February 4, 2019, and Amended March 7, 2019, April 11, 2019, May 16, 2019, and June 19, 2019

**Legislative History**

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 R&TC section 19777.5.

**Other States' Information**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Although similar collection authority was identified, no provision similar to California's 20 year collection SOL was identified.

**Fiscal Impact**

The departmental costs to implement this bill would be absorbable in fiscal year 2019-2020, increasing to \$1,413,000 in fiscal year 2020-2021, then decreasing to \$1,180,000 in fiscal year 2021-2022, \$1,013,000 in fiscal year 2022-2023, and \$273,000 for fiscal years 2023-2024 and thereafter.

**Economic Impact**

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 357 as Amended June 19, 2019  
Assumed Enactment after June 30, 2019

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2019-2020	-\$5.2
2020-2021	-\$11.0
2021-2022	-\$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.

Introduced February 4, 2019, and Amended March 7, 2019, April 11, 2019,  
May 16, 2019, and June 19, 2019

## Revenue Discussion

Using FTB collection data for debts where the first assessed date is 20 years or older the 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.

## Policy Concerns

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

## Legislative Staff Contact

Cristina Perfino  
Legislative Analyst, FTB  
(916) 845-4313

[cristina.perfino@ftb.ca.gov](mailto:cristina.perfino@ftb.ca.gov)

Jame Eiserman  
Revenue Manager, FTB  
(916) 845-7484

[jame.eiserman@ftb.ca.gov](mailto:jame.eiserman@ftb.ca.gov)

Jahna Carlson  
Acting Legislative Director, FTB  
(916) 845-5683

[jahna.carlson@ftb.ca.gov](mailto:jahna.carlson@ftb.ca.gov)