



## **Bill Analysis**

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Bill Number: AB 357

**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):

- Redefine "tax liability" for purposes of the 20 year statute of limitations (SOL) for collection activities. The revised definition of "tax liability" would exclude interest, penalties, costs, and fees (with the exception of the fee and tax assessed on Limited Liability Companies (LLC)), and
- Specify that the SOL for those excluded items would run concurrently with the related underlying tax liability.

### **Reason for the Bill**

The reason for the bill is to exclude interest, penalties, costs, or fees (other than the fee and tax assessed on (LLC), from the definition of tax liability so that the 20 year SOL would be unaffected by a subsequent imposition of interest, penalties, costs, or fees, as specified, and instead, the SOL period for any imposition of interest, penalties, cost, or fee would run concurrently with the related tax liability.

### **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.

### **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

California has stand-alone law that precludes the Franchise Tax Board (FTB) from collecting any tax liabilities, as defined, in which 20 years have lapsed after the date the latest tax liability, for that taxable year, becomes due and payable, as defined.

Under current state law "tax liability" means a liability imposed under the Personal Income Tax Law, Corporation Tax Law, or the AFITL, including any additions to tax, interest, penalties (other than the amnesty related penalty under Revenue and Taxation Code (R&TC) section 19777.5), fees and any other amounts relating to the imposed liability.

"Due and payable" is defined, pursuant to R&TC section 19221, as the date a self-assessed liability is established on the FTB's records, the date the notice of a jeopardy assessment is mailed, or, for all other assessments, the date the assessment is final. In other words, the "due and payable date" is the date that the FTB may legally initiate collection activity.

If more than one tax liability is "due and payable" for a particular taxable year, the "due and payable" date that is later in time is the date the 20-year collection period begins.

The 20-year SOL for collection activities is extended or suspended under a number of circumstances, such as bankruptcy actions, installment agreements, administrative activity, or pending court actions.

## This Bill

This bill would, under the AFITL, redefine "tax liability" to exclude interest, penalties, costs, or fees other than the LLC fee. As a result, the imposition of any of these items would no longer have an impact on the determination of the 20 year SOL on the underlying tax liability.

This bill would also specify that the 20 year SOL on collection activities for the related interest, penalties, costs, or fees, other than the LLC fee, would run concurrently with the underlying tax liability.

This bill would also update a cross reference within the R&TC to more specifically define "due and payable."

## Legislative History

AB 731 (Gallagher, Chapter 303, Statutes of 2015) made numerous technical, non-substantive changes as a matter of tax code maintenance to various California codes, including R&TC section 19255, the code section this bill would modify.

AB 911 (Chu, Chapter 398, Statutes of 2005) among other things, established a 20-year SOL period for collection activities beginning from the date the latest tax liability, as defined, becomes due and payable, as defined, with the exception of a liability related to the amnesty penalty assessed under R&TC section 19777.5. On March 29, 2005, the three-member Franchise Tax Board voted 3-0 to allow the department to proceed with a legislative proposal that was the foundation of AB 911, including the provision establishing the 20-year collection period for liabilities other than those related to the amnesty penalty.

### 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

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

(\$ in Millions)

Fiscal Year	Revenue
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.

## 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.

## Appointments

None.

## Votes

Location	Date	Yes Votes	No Votes
Concurrence	September 10, 2019	79	0
Senate Floor	September 9, 2019	40	0
Assembly Floor	May 23, 2019	78	0

## Legislative Staff Contact

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