



Bill Analysis

Author: Blanca Rubio

Sponsor:

Bill Number: AB 879

Related Bills: See Legislative
History

Amended: May 03, 2021

SUBJECT

California Tax Amnesty and Revenue Recovery Act

SUMMARY

This bill would require the Franchise Tax Board (FTB) and the California Department of Tax and Fee Administration (CDTFA) to administer the California Tax Amnesty and Revenue Recovery Act, a tax amnesty program.

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), create a tax amnesty program for certain taxpayers that 1) did not file required income tax returns, 2) underreported tax liabilities on a previously filed tax returns, and/or 3) did not pay any taxes previously assessed.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 03, 2021, amendments resolved several implementation, policy and all technical considerations as discussed in the department's analysis of the bill as introduced on February 1, 2021.

REASON FOR THE BILL

The reason for this bill is to create a tax amnesty program that would help taxpayers pay overdue tax liabilities without penalties, bring taxpayers into compliance, and help them recover from the closures caused by the COVID-19 pandemic.

ANALYSIS

This bill would require the FTB to conduct an amnesty program for taxpayers subject to the PITL and CTL. The program would provide an opportunity for eligible taxpayers to apply to participate in an amnesty program in which they would receive a waiver for unpaid penalty and fee amounts assessed on the taxable year beginning on or after January 1, 2020, and before January 1, 2021. The FTB would accept applications for the program starting September 1, 2022, and ending October 31, 2022, inclusive.

The following taxpayers would be ineligible to participate in the amnesty program, if as of September 1, 2021, any of the following applies:

- The taxpayer is on notice of a criminal investigation by a complaint having been filed against the taxpayer.
- The taxpayer is under criminal investigation.
- A criminal court proceeding has already been initiated.

The amnesty program would not apply to any nonreported or underreported tax liability amount attributable to tax shelter items that could have been reported under a state voluntary compliance initiative, the Internal Revenue Service's (IRS) Offshore Voluntary Compliance Initiative, or the IRS's Voluntary Disclosure Program, as discussed below under Federal Law and Program Background.

No refund or credit would be granted with respect to any penalty or fee paid with respect to a taxable year prior to the time the taxpayer makes a request for a waiver under the amnesty program for that taxable year. A taxpayer may not file a claim for refund or credit for any amounts paid in connection with this bill's amnesty program.

A taxpayer could participate in the amnesty program if the following requirements were met:

- During the tax amnesty period, the taxpayer is eligible to participate in the amnesty program.
- During the tax amnesty period, the taxpayer files a completed waiver application with the FTB, signed under penalty of perjury, electing to participate during the amnesty program.
- The taxpayer, within 60 days after the conclusion of the tax amnesty period, does both of the following:
 - Files a completed original tax return for the taxable year eligible for the Amnesty Program for which the taxpayer has not filed a return or an amended return for the taxable year eligible for the Amnesty Program where the taxpayer underreported income on the (original) tax return; and

- Pays in full any taxes and interest due for the taxable year for which the amnesty program is requested, or applies for an installment payment agreement. For taxpayers who have not paid in full any taxes previously proposed to be assessed, pays in full the taxes and interest due for that portion of the proposed assessment for the taxable year for which amnesty is requested or applies for an installment payment agreement.

The FTB could enter into an installment payment agreement, but only if final payment under the terms of that agreement is due and is paid no later than December 31, 2023. This installment payment agreement would include interest on the outstanding amount due. A taxpayer that would default on an installment agreement entered under amnesty would have their amnesty status revoked. The total amount of tax, interest, fees, and all penalties would be immediately due and payable, unless the FTB would determine that the failure was due to reasonable cause and not due to willful neglect. In the case of any failure, the total tax, interest, fees, and all penalties would become immediately due and payable.

The term “due and payable” would have the same meaning as the collectible tax lien provision, Section 19221.

If the full amount due is paid within 15 days after the date the FTB mails a notice resulting from the filing of an amnesty application or the full amount is paid within 60 days after the conclusion of the tax amnesty period, the full amount due shall be treated as paid during the amnesty period.

A taxpayer under federal bankruptcy court protection could participate in amnesty if a court order is obtained from the federal bankruptcy court with jurisdiction over the taxpayer’s case approving the taxpayer’s participation, and the approved plan is submitted to the FTB with the application to participate in the amnesty program.

The application for amnesty would be in a form and manner specified by the FTB, but in no case would a mere payment of any taxes and interest due, in whole or in part, constitute an acceptable amnesty application. In addition, the application of a tax refund from one tax year to an amnesty eligible tax year would not constitute an acceptable amnesty application.

In addition, this bill would provide the following:

- Upon the conclusion of the tax amnesty program period, the FTB may propose a deficiency upon any return filed, impose penalties and fees, or initiate criminal action for the difference between the amount shown on that return and the correct amount of tax.
- The Legislature intends for the FTB to make the amnesty application process as streamlined as possible to ensure participation in the amnesty program by as many taxpayers as possible without compromising the FTB’s ability to enforce and collect personal income taxes and corporation taxes.

- No interest would be allowed if any overpayment of tax shown on an original or amended tax return filed during amnesty is refunded or credited within 180 days after the return is filed.
- FTB could issue forms, instructions, notices, rules, or guidelines and take any necessary action needed to implement the amnesty program, including specifying the form and manner of any acceptable form of amnesty application. The provisions of the Administrative Procedures Act (APA) would not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the FTB for the amnesty program.
- The Taxpayers' Rights Advocate Office, in coordination with the FTB, would be required to conduct a public outreach program and adequately publicize the tax amnesty program and the new and increased penalties associated with a taxpayer's failure to participate in the tax amnesty program.
- FTB would be required to make reasonable efforts to identify taxpayer liabilities and, to the extent practicable, send written notice to taxpayers of their eligibility for tax amnesty.
- Any taxpayer with an existing installment payment agreement as of the start of the amnesty program, and who does not participate in the amnesty program, would not be subject to the penalty imposed for taxable years that amnesty could have been requested.

This bill would provide the following for the taxable year for which a taxpayer could have requested amnesty:

- Create two new mandatory amnesty "penalties" equal to 1) for amounts that are due and payable on the last day of the amnesty period, 7.75 percent of the unpaid interest amount, accrued from the original due date to the last day of amnesty, on the tax year for a taxpayer that failed to take advantage of amnesty, and 2) for amounts that become due and payable after the last date of the amnesty period, 7.75 percent of the unpaid interest, accrued from the original due date to the last day of amnesty, subsequently assessed on deficiency amounts, including final deficiencies and self-assessed amounts, where the taxpayer could have but failed to take part in amnesty.
- These penalties would be in addition to any other penalty imposed under Part 10, Part 10.2, or Part 11. The provisions of the Revenue and Taxation Code (RTC) relating to deficiency assessments would not apply with respect to the assessment or collection of these penalties.
- The penalties would not apply to amounts treated as paid during the amnesty period.
- Amnesty participants could file returns and submit payment(s) within the 60-day extension period, while still avoiding the new 7.75 percent end of amnesty penalty that applies to amounts not actually paid during the tax amnesty period.

- The 7.75 percent amnesty penalties would not apply to a taxpayer that: 1) initiates and is compliant with an installment agreement to pay amounts due under the amnesty program, or 2) pays the final payment under the agreement by December 31, 2023.
- A taxpayer that did not take advantage of amnesty may not file a claim for refund of the penalty except on the grounds that the amount of the penalty was not properly computed by the FTB.

Taxpayers with amounts in dispute as of the start of the amnesty program, or subsequent to the closing of the amnesty period, including under audit, protest, litigation, or claim for refund, would not be subject to the amnesty penalty with respect to those amounts.

This bill would provide that a penalty would not be imposed under Chapter 9.5 of the RTC if the taxpayer shows that there was reasonable cause for, and the taxpayer acted in good faith with respect to, that amount.

Effective Date/Operative Date

This bill would be effective January 1, 2022, and would specifically apply to tax liabilities for taxable years beginning on or after January 1, 2020, and before January 1, 2021. The amnesty program would be conducted during a two-month period beginning September 1, 2022, through October 31, 2022, inclusive.

Federal/State Law

Federal Law

Federal law has never allowed a general income tax amnesty.

The IRS provided an Offshore Voluntary Disclosure Program (2009 OVDP), an Offshore Voluntary Disclosure initiative (2011 OVDI), and an Offshore Voluntary Disclosure Program (2012 OVDP and 2014 OVDP). IRS closed 2014 OVDP in September 2018. These programs allowed taxpayers to voluntarily disclose their offshore accounts and assets to avoid prosecution and limit their exposure to civil penalties.

State Law

Under state law, the department has conducted two general tax amnesty programs and three targeted tax amnesty programs called the Revenue Acceleration Project, Voluntary Compliance Initiative 1, and Voluntary Compliance Initiative 2. There is currently no tax amnesty program being administered by the FTB.

Under the state PITL and CTL law, penalties may be imposed on individual and corporate taxpayers that fail to file returns and report or underreport income. Further, certain fees are imposed against taxpayers that fail to file returns or pay their tax liabilities.

Taxpayers that fail to report or underreport their income also may be subject to criminal prosecution and sanctions. Depending upon the gravity of the offense, such taxpayers may be guilty of either a misdemeanor or felony. Upon conviction, such taxpayers are subject to fines or imprisonment or both, together with costs of investigation and prosecution. Typically, the district attorney acts as the prosecuting attorney.

When a taxpayer fails to file an income tax return, there is no statute of limitations for enforcing the filing requirement.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional considerations may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other considerations that may be identified.

Implementing this bill would have a significant impact on the department, as discussed below under Fiscal Impact.

The following consideration was identified for Section 19740.3 of this bill:

- Paragraph (3) of subdivision (b) provides that taxpayer's default on installment agreement would cause the revocation of the amnesty status. The total amount of tax, interest, fees, and all penalties would be immediately due and payable, unless the FTB determines that the failure was due to reasonable cause and not due to willful neglect. Normally, the FTB applies reasonable cause provisions for the abatement of penalties and not to procedural processes. For consistency within the RTC, it is recommended that the bill be amended.

The following considerations were identified for Section 19777.6 of this bill:

- Subdivision (a) of this section refers to the 7.75 percent amount as an amount that "shall be added" and does not state it is a penalty. For clarity purposes, Section 19777.6(a) should be amended to read: "There shall be added to the tax for each taxable year for which amnesty could have been requested a *penalty in the following amounts:*"
- Paragraph (1) of subdivision (a) provides that for amounts that become due and payable after the last date of amnesty, there will be a penalty based on the interest on any final amount, that is due from the original due date of the tax to the last day of amnesty specified in Section 19740.1 which is October 31, 2022. However, there is no direction as to the treatment of a payment or tax deposit that a taxpayer makes after amnesty but before the deficiency becomes final and due and payable. It is unclear as to whether that amount lessens the "due and payable" amount and the resulting interest upon which the penalty is calculated. For clarity purposes, the author may want to provide additional guidance.

- The paragraph (2) of subdivision (a) provides the penalty amount for taxpayers that have amounts due and payable after the last date of the amnesty period.
 - The period for which the penalty is calculated on a deficiency amount that becomes final after the end of the amnesty period begins on the date that the payment is due and ending on the last day of the amnesty period. However, where an amount is proposed to be assessed before the amnesty period began, and the dispute is not resolved until after the amnesty period is closed, the taxpayer would not be subject to the penalty even though the amount becomes final after the close of the amnesty period. If this is not the author's intention, then language should be amended to clarify this situation.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 567 (Gibson, 2015/2016) would have provided a targeted amnesty program for the medical cannabis related businesses. AB 567 was referred to the Senate Committee's on Health, and Governance and Finance and vetoed by the governor whose veto message stated, "While increasing tax compliance among medical marijuana businesses is important, it is premature to create a tax amnesty before the regulations that link enforcement to licenses are promulgated."

AB 2692 (Brough, 2015/2016) would have required the FTB and the Board of Equalization (BOE) to conduct a tax penalty and fee waiver program (Amnesty Program). AB 2692 did not pass the Assembly Appropriations Committee.

AB 1452 (Committee on Budget, Chapter 763, Statutes of 2008) repealed, among other things, would authorize FTB to conduct a tax amnesty for the 2003 through 2006 tax years for corporation and personal income taxpayers. SBX 28 (Senate Budget Committee, 2008) repealed the Tax amnesty provisions of AB 1452 on September 25, 2008.

AB 911 (Chu, Chapter 398, Statutes of 2005) made various clean-up amendments to the income and franchise tax amnesty program.

SB 1100 (Senate Budget Committee, Chapter 226, Statutes of 2004), among other things, established a tax amnesty program.

AB 3230 (Hannigan, Chapter 1490, Statutes of 1984) provided for an amnesty program for individual taxpayers relating to the nonpayment and underreporting of tax or the nonpayment of any previously assessed tax.

PROGRAM BACKGROUND

An income tax amnesty generally is understood to be an offer of forgiveness of any combination of tax, interest, penalties, and forgoing criminal prosecution for persons who fail to file a tax return, in exchange for filing the return and paying the associated tax liability. Amnesty legislation generally includes increased penalties or enhanced filing enforcement or collection authority as inducements to participate.

1984 Amnesty

The first California income tax amnesty was conducted in 1984.¹ It was a traditional amnesty focused on non-filers. The 1984 Amnesty provided enhanced filing enforcement and collection authority for the FTB. Taxpayers that participated were allowed waivers of penalties and forgoing of criminal prosecution in exchange for filing and paying the associated tax liability.

2002 Revenue Acceleration Project (RAP)

In 2002, legislation was enacted that allowed the FTB to identify eligible taxpayers with high-risk collection accounts and offer those taxpayers the opportunity to satisfy an unpaid tax liability by paying the tax in full and receiving a waiver of interest, penalties, and fees. This interest and penalty waiver program, also known as RAP, was in effect from October 1, 2002, through June 30, 2003. The RAP generated approximately \$32 million in revenue.

2003 California Voluntary Compliance Initiative 1 (VCI 1)

In 2003, California enacted a first-in-the-nation comprehensive anti-abusive tax avoidance transaction (ATAT) statute to curtail the use of ATATs and restore fairness to the tax system.

Part of that legislation authorized a narrow amnesty called a VCI 1 to induce taxpayers who had used an ATAT on their previously-filed tax returns to file an amended return and pay the correct amount of tax. In exchange, taxpayers were able to avoid all current penalties and the new anti-ATAT penalties. Approximately 1,000 taxpayers participated, and the state collected an additional \$1.4 billion of revenue.

¹ AB 3230 (Hannigan et al., Stats 1984, Ch.1490).

2005 Amnesty

The second general income tax amnesty was conducted in 2005. The 2005 Amnesty was broader than the traditional non-filer amnesty in that it focused on all three major components of the tax gap:

- taxpayers that failed to file a return,
- taxpayers that understated their taxes on a previously filed return, and
- taxpayers that failed to pay their tax obligation timely and were in the department's collection system.

The 2005 amnesty, with the exception of taxpayers that had engaged in abusive tax shelters or were already under criminal investigation, allowed taxpayers an opportunity to pay any unpaid balances from tax years prior to 2003 in exchange for forgiveness of penalties, fees, and criminal prosecution. Eligible taxpayers that chose not to participate in the amnesty were subject to a penalty of 50 percent of the interest that accrued from the original due date to March 31, 2005, on any amnesty eligible year.

The 2005 amnesty produced total gross revenues of \$765 million in income tax and interest. Of that amount, the FTB estimated \$727 million was accelerated revenue that would have come in over the next three fiscal years, rather than new revenue.

Additionally, the FTB received approximately 2,100 protective tax deposits totaling more than \$3.7 billion. The Legislative Analyst's Office estimated that of the \$3.7 billion in protective tax deposits, \$2.9 billion was a combination of accelerated revenue collection and deposits that would be refunded.

2011 California Voluntary Compliance Initiative 2 (VCI 2)

In 2011, California enacted VCI 2² that provided an opportunity for taxpayers, who underreported their California income tax liabilities by utilizing ATATs or offshore financial arrangements, to amend their returns for 2010 and prior tax years and obtain a waiver of most penalties. VCI 2 raised \$350 million with \$293 million received in cash and later an additional \$57 million was raised from installment payments.

FISCAL IMPACT

To be determined, but expected to be significant. To provide some context, the estimated fiscal impact for AB 1452 (Committee on Budget, Chapter 763, Statutes of 2008) repealed, was approximately \$18M and 178 personnel years (PYs). With the recent amendments, the program could result in a more narrow amnesty program than originally proposed, which could reduce some anticipated costs; however, specific costs would need to be identified.

² SB 86 (Committee on Budget and Fiscal Review, Stats. 2011, Ch. 14).

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Estimated revenue impact of AB 879 as Amended on May 3, 2021
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2020-2021	\$50
2021-2022	\$9.2
2022-2023	-\$18

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

To compute the revenue impact of this bill, the expected revenue received under the amnesty program was compared to the revenue that would otherwise have been received under current law.

Based on FTB historical data, it is estimated the amnesty program would result in an additional \$150 million of previously unreported tax liability due and payable for the 2020 taxable year. Approximately 80 percent or \$120 million would be reported and paid during the 2022 taxable year.

This revenue is offset by approximately \$70 million of revenue, penalties and fees that would otherwise have been received under current law. The net impact would be a revenue gain of approximately \$50 million in the 2022 taxable year.

The revenue impact this bill is highly sensitive to the size of the tax liabilities for the participants. Any one account could significantly impact the revenue.

The revenue estimate is computed on a calendar year basis. Because the California annual budget is reported on a fiscal year basis, the calendar year amounts are adjusted to reflect the anticipated changes to cash flow. Revenues associated with prior tax years are accrued back one year.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The Assembly Committee on Revenue and Taxation analysis dated February 17, 2021, lists the following support and opposition.

Support: Bay Area Council; California Apartment Association; California Association of Winegrape Growers; California Beer and Beverage Distributors; California Building Industry Association; California Business Properties Association; California Chamber of Commerce; California Fuels & Convenience Alliance; California Independent Petroleum Association; California Manufacturers & Technology Association; California Taxpayers Association; Contra Costa Taxpayers Association; Council on State Taxation; Family Business Association of California ;Fountain Valley Chamber of Commerce; Greater San Fernando Valley Chamber of Commerce; Kern County Taxpayers Association; National Federation of Independent Business; North Orange County Chamber; Official Police Garages of Los Angeles; Orange County Business Council; Orange County Taxpayers Association; West Coast Lumber & Building Material Association; Ryan, LLC; San Gabriel Valley Economic Partnership; Solano County Taxpayers Association; Southwest California Legislative Council; Spidell Publishing, Inc. and Sutter County Taxpayers Association.

Opposition: No opposition noted.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov