STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Low

Sponsor:

Bill Number: AB 1397

Related Bills: See Legislative History

Introduced: February 17, 2023
Amended: March 23, 2023

SUBJECT

Mandatory E-Pay Penalty Limitation

SUMMARY

This bill, under the Personal Income Tax Law, would amend the mandatory electronic payment (e-pay) penalty to provide a maximum penalty amount of $25,000 per payment and would make other nonsubstantive changes.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 23, 2023, amendments removed intent language and replaced it with the provisions discussed in this analysis.

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

REASON FOR THE BILL

The reason for the bill is to establish a maximum e-pay penalty for individuals.

ANALYSIS

This bill would provide that the 1% mandatory e-pay penalty could not exceed $25,000 per payment. This would apply to any penalty relating to a payment made on or after January 1, 2024, or a payment made before January 1, 2024, that is, or may be, the subject of a timely filed protest or claim for refund.

Effective/Operative Date

This bill would be effective January 1, 2024, and specifically operative for payments made on or after January 1, 2024, and retroactively operative for payments made before January 1, 2024, that are, or may be, the subject of a timely filed protest or claim for refund.

Federal/State Law

Federal Law

No comparable provision in federal law.

State Law

An individual whose tax liability is greater than $80,000, or who makes an estimated tax or extension payment exceeding $20,000, is required to e-pay all future payments, regardless of the payment type, amount, or taxable year. Taxpayers who are required to e-pay but pay by any other means, are assessed a mandatory e-pay penalty of 1% of the payment.

Taxpayers can request a waiver from mandatory e-pay if:

- The taxpayer did not make an estimate tax or extension payment in excess of $20,000 for the previous taxable year.
- The tax liability for the previous year did not exceed $80,000.
- The amount paid was not representative of future payments or tax liability.

If the Franchise Tax Board (FTB) grants a waiver and the taxpayer subsequently meets the mandatory e-pay requirements, the taxpayer must resume e-pay. Certain taxpayers with permanent physical or mental impairment may request a permanent waiver of the mandatory e-pay requirement.

Implementation Considerations

None noted.

Technical Considerations

The FTB has identified the following technical consideration and is available to work with the author’s office to resolve these and other considerations that may be identified.

Section 19011.5(c)(2)(B)(ii) refers to a payment made "that is, or may be, the subject of a timely filed protest…;" however, a proposed deficiency is protested rather than the payment. Consider the following correction to resolve this, "(ii) A payment made before January 1, 2024,~~that is, or may be, the subject of~~ *relating to a taxable year for which* a timely filed protest or claim for refund *has been made*."

Policy Considerations

None noted.

LEGISLATIVE HISTORY

No legislation similar to this bill has been identified.

PROGRAM BACKGROUND

Individuals can make their tax payments using one of the following methods:

- Pay online with Web Pay.
- Request an electronic funds withdrawal (EFW) on their e-filed return.
- Pay by credit card.
- Use the pay-by-phone option.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Discussion

This bill would provide that the 1% mandatory e-pay penalty could not exceed $25,000 per payment. This would apply to any penalty relating to a payment made on or after January 1, 2024, or a payment made before January 1, 2024, that is, or may be, the subject of a timely filed protest or claim for refund.

To determine the revenue impact, both the frequency of penalties assessed and the amount of penalties that would exceed $25,000 must be known. Because it is difficult to predict the frequency and value of future penalties, the revenue impact is unknown.

However, for every $15 million in payments that would be required to be remitted electronically but made by other means, the revenue loss from penalties no longer assessed would be approximately $150,000.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None on file.

ARGUMENTS

None on file.

LEGISLATIVE CONTACT

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