



## **Bill Analysis**

Author: Committee on  
Revenue & Taxation

Sponsor: Franchise Tax  
Board

Bill Number: AB 1765

Introduced: March 16, 2023

Related Bills: See Legislative  
History

## **SUBJECT**

Franchise Tax Board Installment Agreement Expansion & Revivors for Limited Liability Companies

## **SUMMARY**

This bill would do the following:

### *Provision No. 1 – Franchise Tax Board Installment Agreement Expansion*

This provision, under the Administration of Franchise and Income Tax Laws (AFITL), makes several changes to the current installment agreement (IA) authority to allow more taxpayers the right to enter into an IA with Franchise Tax Board (FTB) if they meet specified requirements and extend the time for full payment of an IA in certain situations. Additionally, this provision would clarify when FTB could alter, modify, or terminate any IA under certain circumstances.

### *Provision No. 2 - Revivors for Limited Liability Companies*

This provision would allow Limited Liability Companies (LLCs) that are classified as partnerships or disregarded entities and who are suspended, to be granted an opportunity to revive without payment in full if the FTB determines that the revivor will improve collection prospects.

## **RECOMMENDATION**

Support

On December 2, 2021, the three-member Franchise Tax Board voted in support of the language in Provision 1.

On December 8, 2022, the three-member Franchise Tax Board voted in support of the language in Provision 2.

Introduced March 16, 2023

**SUMMARY OF AMENDMENTS**

Not applicable.

**REASON FOR THE BILL**

The reason for this bill is to expand FTB’s current IA authority and to allow all LLCs the opportunity to be revived without payment in full. These provisions would increase taxpayer compliance, improve accounts receivable collections, and reduce taxpayer burden.

*Economic Impact – Summary Revenue Table (\$ in Millions)*

<b>Fiscal Year</b>	<b>2021-2022</b>	<b>2022-2023</b>	<b>2023-2024</b>
Provision No. 1 – FTB Installment Agreement Expansion	N/A	N/A	N/A
Provision No. 2 – Revivors for Limited Liability Companies	\$0	+\$9.2	+\$9.4

**Effective/Operative Date (All Provisions)**

This bill would be effective and operative January 1, 2024.

**ANALYSIS**

**Analysis Provision No. 1:**

*FTB Installment Agreement Expansion (Section 1 of the Bill)*

This provision would make the following changes:

Increase the monetary thresholds for IAs that FTB is required to enter into from \$10,000 to \$25,000 for individuals with personal income tax liabilities that have a financial inability to pay their liability in full, which is presumed with the filing of an IA application. For these IAs:

- Extend the period for full payment of the liability from 3 years to 5 years.
- Remove the requirement barring a taxpayer from entering into an IA if the taxpayer failed to pay a personal income tax liability or liability under the AFITL.
- Modify the bar on a taxpayer entering into a subsequent IA to situations where a taxpayer has failed to satisfy any term of an IA, versus just having previously entered into one.

Introduced March 16, 2023

For IAs entered into after January 1, 2024, the FTB would be able to alter, modify, or terminate an IA entered into when a breach of the original terms has taken place. The FTB could alter, modify, or terminate an IA if any of the following apply:

- Taxpayer provided information to the FTB before the agreement was entered into was inaccurate or incomplete,
- FTB determines that the collection of any IA liability is in jeopardy,
- FTB determines that the financial condition of a taxpayer with whom the FTB has entered into an IA with has significantly changed,
- The taxpayer fails to make an installment payment in a timely manner under the agreement,
- The taxpayer does not file a required tax return or pay any other liability at the time that the liability is due, or
- The taxpayer does not provide a financial condition update upon the FTB's request.

The FTB would also be able to modify or alter an agreement to add a liability that the taxpayer fails to pay at the time that the liability is due. If any taxpayer is currently in an IA, the FTB could require financial hardship to alter or modify the IA.

The FTB would be prohibited from altering, modifying, or terminating any agreement unless both of the following occur:

- A notice of the alteration, modification, or termination is provided to the taxpayer not later than 30 days before the date of that action, and
- The notice includes an explanation of the rationale of the FTB for altering, modifying, or terminating the agreement.

The FTB would not have to satisfy these two requirements if the FTB determines that collection of the liability related to an IA is in jeopardy. In these cases, the FTB could terminate the IA and issue demand for immediate payment of the liability or the deficiency that is in jeopardy.

This provision also modifies the review of IAs to a representative sample of existing IA's rather than reviewing each IA every 2 years.

Finally, this provision makes other technical, nonsubstantive changes and allows the FTB to adopt any regulations as necessary or appropriate. The Administrative Procedures Act would not apply to any standard, criterion, procedure, determination, rule, notice, guideline, or any other guidance issued by FTB for the IA program.

Introduced March 16, 2023

### *Federal/State Law*

#### *Federal Law*

Current federal law provides that the Internal Revenue Service (IRS) may enter into written agreements with any taxpayer under which that taxpayer may make payments on any tax in installment payments if it determines that the IA will facilitate full or partial collection of the tax liability. Taxpayers are not required to have a financial hardship to enter into an IA and accepted IAs remain in effect for their stated term or until succeeded by a new agreement.

#### *State Law*

The FTB may allow a taxpayer to enter into an IA with the FTB to make full or partial payment of taxes due, plus applicable interest and penalties over the life of the installment period. The FTB is required to enter into IAs with taxpayers who have personal income tax liabilities of \$10,000 or less and meet other requirements specified below. These taxpayers need to indicate their inability to pay in full, which they do so by completing the IA application (a form of self-attestation). For personal income tax and AFITL purposes, liabilities of individuals in excess of \$10,000 and liabilities under the Corporation Tax Law (CTL), a determination regarding financial hardship is required and the FTB either requests self-attestation to financial hardship on the IA application or proof of a financial hardship. If a taxpayer fails to comply with the terms of the IA, the agreement shall be null and void, unless the FTB determines that there was reasonable cause, and the total amount of tax, interest and all penalties will be due and payable immediately. In addition, the FTB shall review partial payment IAs at least once every two years.

For individuals with a liability for tax under the Personal Income Tax Law (PITL) or the AFITL, the FTB is required to enter into an agreement to accept full payment of the tax in installments, if as of the date the individual offers to enter into an agreement, the following apply:

- The total amount of the liability does not exceed \$10,000 (not including interest, penalties and additional amounts).
- The taxpayer has not failed to file any return of tax imposed under the PITL or the AFITL.
- The taxpayer has not failed to pay any tax required to be shown on the return.
- The taxpayer has not entered into an IA for tax under the PITL or the AFITL.
- The FTB determines that the taxpayer is financially unable to pay the liability in full when due, and the taxpayer submits any information as required by the FTB to make the determination.
- The agreement requires full payment within 3 years.
- The taxpayer agrees to comply with the provisions of the PITL and the AFITL for the period the agreement is in effect.

Introduced March 16, 2023

Unless the FTB finds collection of a tax to which an IA relates to be in jeopardy, or there is mutual consent to terminate, alter or modify the agreement, the agreement may not be considered null and void, or otherwise terminated, unless both of the following occur:

- A notice of termination is provided to the taxpayer no later than 30 days before the date of termination, and
- The notice includes an explanation of why the FTB intends to terminate the agreement.

A levy may not be issued on the property or rights to the property of any person with respect to any unpaid tax.

If an IA is rejected or terminated by the FTB, the taxpayer has the right to an administrative review by the Taxpayers' Rights Advocate.

#### *Implementation Considerations*

None noted.

#### *Technical Considerations*

None noted.

#### *Policy Considerations*

None noted.

### **LEGISLATIVE HISTORY**

SB 516 (Skinner, (2023/2024), amongst other provisions, would under the AFITL, allow all taxpayers to submit an offer for an IA online or by phone. Additionally, this provision would add an additional requirement of requiring a taxpayer who failed to comply fully with the terms of the IA to be given reasonable opportunity to cure the failure before an IA could be considered null and void or otherwise terminated. SB 516 has been referred to the Senate Governance and Finance Committee.

AB 3060 (Chapter 1361, Statutes of 1986) authorized the FTB to allow taxpayers under the PITL to enter into IAs.

### **PROGRAM BACKGROUND**

None noted.

Introduced March 16, 2023

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

### *Revenue Estimate*

This provision would not impact state income or franchise tax revenue.

### *Revenue Discussion*

The proposed modifications to the current IA process would have no impact on the state's income tax revenue, because it does not change the computation or collection of tax.

As IA plans are only captured as a snapshot in time, it is not possible to monitor specific changes in the amount or timing of collection activity. Even so, we do not expect a measurable change, and the actual amount of tax liabilities would not be affected.

## **LEGAL IMPACT**

None noted.

### **Analysis Provision No. 2:**

#### *Revivors for Limited Liability Companies (Sections 2 through 11)*

This provision would, under the CTL, make several technical changes to numerous sections of the Revenue and Taxation Code related to suspension and revivor. The changes would replace the terms "corporation" or "corporate" with the terms "taxpayer" or "entity." This provision also makes other technical changes as needed.

These changes would allow LLCs that are classified as a partnership or a disregarded entity to obtain a conditional revivor.

### *Federal/State Law*

### *Federal Law*

No comparable provision in federal law.

Introduced March 16, 2023

### *State Law*

Current state law provides that taxpayers who are suspended may file an application with the FTB to be revived to good standing. The taxpayer must do the following:

- File all tax returns,
- Pay taxes and fees due, including any additions to tax, penalties, interest, and any other amounts for nonpayment of which the suspensions or forfeiture occurred,
- File form FTB-3557BC, Application for Certificate of Revivor (for Corporations),
- File form FTB-3557LLC, Application for Certificate of Revivor (for LLCs), and
- Contact the SOS to ensure all their requirements are met, and availability of name.

### *Conditional Revivors for Corporations*

The FTB may revive a corporation or LLC that is classified as an association, to good standing without full payment of the taxes, penalties, and interest due, if the FTB determines that the revivor will improve the prospects of collection of the full amount due. This type of revivor may be limited as to the function the revived corporation or LLC that is classified as an association, may perform. The entity may be suspended again, if the FTB determines that the prospects for collection of the full amount due have not improved by the revivor.

Current state law does not allow an LLC classified as a partnership or a disregarded entity, a conditional revivor, since the law was written in 2006, prior to when FTB first began suspending LLCs in 2010.

### *Implementation Considerations*

None noted.

### *Technical Considerations*

None noted.

### *Policy Considerations*

None noted.

## **LEGISLATIVE HISTORY**

No legislation similar to this bill has been identified.

Introduced March 16, 2023

**PROGRAM BACKGROUND**

There are many reasons why a business may be suspended by either the FTB or by the Secretary of State (SOS), or by both. A business may be suspended by the FTB for failing to file a return, failing to pay taxes, penalties, fees, or interest. A business may be suspended by the SOS for failing to file a timely Statement of Information. The Statement of Information must be filed in a timely manner, every two years or when there are changes in the business information.

**FISCAL IMPACT**

This bill would not significantly impact the department's costs.

**ECONOMIC IMPACT**

*Revenue Estimate*

This provision would result in the following revenue gain:

Estimated Revenue Impact of AB 1765 as Introduced March 16, 2023  
 Assumed Enactment after June 30, 2023

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2023-2024	+\$0.0
2024-2025	+\$9.2
2025-2026	+\$9.4

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's current accounts receivables inventory, it is estimated that in taxable year 2024 there would be approximately 65,000 active LLC accounts. Approximately 50%, or 32,500 accounts are anticipated to be suspended. Of those, an estimated 5%, or 1,600 entities, would be granted revival under this proposal. Using an average tax liability of \$8,000 and accounting for taxpayers that would pay their balances in full, it is assumed the total impact would be \$9 million for taxable year 2024.

Introduced March 16, 2023

The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

**LEGAL IMPACT**

None noted.

**APPOINTMENTS (All Provisions)**

None noted.

**SUPPORT/OPPOSITION (All Provisions)**

*Support*

The three-member Franchise Tax Board.

*Opposition*

To be determined.

**ARGUMENTS (All Provisions)**

To be determined.

**LEGISLATIVE CONTACT**

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