



Bill Analysis

Author: Ashby

Sponsor:

Bill Number: SB 1035

Related Bills: See Legislative
History

Introduced: February 6, 2024,
Amended: April 25, 2024

SUBJECT

Collection of Restitution Orders

SUMMARY

This bill would make several changes related to restitution orders, including:

- Under the Code of Civil Procedure (CCP), this bill would require the Franchise Tax Board (FTB) to use a sliding scale model to determine the amount to be withheld for a withholding order.
- Under the Penal Code (PEN), this bill would make modification to the interest rate of accrual for restitutions orders, specifies that the collecting entity may only use funds collected for restitution orders, and makes a technical change.
- Under the Administration of Franchise and Income Tax Law (AFITL), this bill would change the interest rate of accrual for specified amounts referred to the FTB for collection.

RECOMMENDATION

No position—The FTB has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

The April 25, 2025, amendments modified the interest rate to apply to restitution orders and explained when it should begin to accrue.

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

REASON FOR THE BILL

The reason for the bill is for a sliding scale model to be used to determine the amount to be withheld in a withholding order, and to reduce the interest rate of accrual for certain amounts referred for collection.

ANALYSIS

This bill would, under the CCP, require the FTB, for purposes of fulfilling a restitution order, to use a sliding scale model that considers income and ability to pay in determining the amount to be withheld in a withholding order.

Under the PEN, this bill would require the interest rate for restitution orders collected to be adjusted annually, as provided in Section 19521 of the Revenue and Taxation Code (RTC). This bill also states that the interest rate to be applied would be either the rate during the year in which the loss occurred or the rate during the year of sentencing, as determined by the court. The interest rate applied would not exceed 10%.

A collecting entity would not be able to use the restitution orders collected to fulfill any restitution fine or administrative cost of the agency before fulfilling a restitution order to a victim or victims.

Additionally, under the AFITL, this bill would decrease the interest rate of accrual to a rate not to exceed 1% annually for the following amounts that are referred to the FTB for collection on behalf of the juvenile or superior court of the State of California, the Department of Corrections and Rehabilitation, a county, the state, or the State Bar:

- Fines
- Monetary sanctions
- State or local penalties
- Bail
- Forfeitures
- Restitution fines
- Restitution orders
- Any other amounts imposed by a juvenile or superior court of the State of California or the Supreme Court of the State of California upon a person or any other entity
- Any payment from the State Bar of California's Client Security Fund that is part of a final determination from the Client Security Fund

Effective/Operative Date

This bill would be effective and operative January 1, 2025.

*Federal/State Law**Federal Law*

Current federal law provides that the Secretary may assess and collect the amount of restitution for any defendant who has been found guilty of an offense, for not paying any tax imposed, in the same manner as if the amount were a tax.

State Law

Current state law authorizes the FTB to use administrative collection tools to collect delinquent tax and nontax debt liabilities. Collection actions include, but are not limited to, attaching bank accounts and garnishing wages.

Fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, or any other amount imposed by a superior, juvenile, or the California Supreme Court, or a California government entity, totaling no less than \$100 and delinquent for 90 days or more, can be referred by the courts, the county, the state, or the State Bar to the FTB for collection.

Current state law provides that any victim of a crime who incurs an economic loss as a result of the commission of a crime is entitled to receive restitution from a defendant convicted of a crime. After a person is convicted of a crime in the State, a court will order a defendant to pay a restitution fine and restitution to the victim or victims. Restitution fines vary by case, however in each case where a person is convicted of a crime, the court will impose a separate and additional fine. A defendant's inability to pay is not considered in determining the amount of a restitution order.

Amounts referred for collection accrue interest at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521 of the AFITL (currently 7%). Amounts paid within 15 days after the date of a mailed notice that includes interest do not accrue additional interest for the period after the date the notice is issued.

For taxable years beginning on or after January 1, 2024, the Controller is prohibited from offsetting delinquent accounts against the personal income tax refunds of an individual who received the California Earned Income Tax Credit or the Young Child Tax Credit for the taxable year. This prohibition does not apply to delinquent accounts for the nonpayment of child or family support.

Implementation Considerations

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

The bill uses the term “collecting entity” however it is silent on who is considered the collecting entity. It is unclear if the term is referring to the agency who requested the restitution, or the FTB who is collecting the restitution order.

To implement this bill, FTB would need to understand how the interest rate is determined. The bill specifies a rate not exceeding 1% but does not indicate a reference point as to how an interest rate is determined.

This bill would be effective and operative on January 1, 2025. However, the bill does not clarify whether the new interest rate would apply only to debts referred to FTB after that date or also to debts that have been referred to FTB prior to that date for collection. This bill should be amended to clarify whether the new interest rate would apply to debts currently collected by FTB.

This bill would require the FTB to use a sliding scale model that considers income and the ability pay to determine the amount to withhold when fulfilling a restitution order. It is unclear what the sliding scale would be. The author must amend this bill to provide clarity and details as to what the sliding scale would be.

Technical Considerations

None noted.

Policy Considerations

This bill provides that a collecting entity would not be able to use the restitution orders collected to fulfill any restitution fine or administrative cost of the agency before fulfilling a restitution order to a victim or victims. This provision may infringe on current agreements the FTB has with the courts. FTB may be required to continue to collect on restitution orders without being reimbursed leading to a shortfall in reimbursements to cover FTB costs. This shortfall would need to be covered by increasing the reimbursement rate for all other accounts, reducing the scope of the program, or solicit approval to have program costs covered by the General Fund.

This bill would allow individuals involved in criminal activity who have been ordered to pay restitution, to pay less in interest than compliant taxpayers who are paying their tax balances. If this is contrary to the authors intent, this bill should be amended.

LEGISLATIVE HISTORY

AB 176 (Committee on Budget, Chapter 256, Statutes of 2021), amongst other provisions, under the RTC, limited the amount of disposable earnings subject to collection to a specified amount for an order or levy issued on or after January 1, 2022, for debts related to court-ordered debt or vehicle registration collections. It also excluded an amount for minimum basic standard of care, as specified. Furthermore, restitution orders and restitution fines are excluded from these thresholds.

AB 3362 (Committee on Judiciary, Chapter 360, Statutes of 2020), under the AFITL, allowed the FTB to collect monetary sanctions and costs related to the State Bar of California's Client Security Fund reimbursement provisions.

AB 3249 (Committee on Judiciary, Chapter 659, Statutes of 2018) allowed amounts imposed by the Supreme Court of the State of California for certain amounts due to the State Bar as a debt type that can be referred to the FTB Court Ordered Debt collection program.

AB 855 (Jackson, et al., 2023/2024), would have under the AFITL, changed the interest rate of accrual for specified amounts referred to the FTB for collection. AB 855 did not pass out of the Assembly before the constitutional deadline.

SB 144 (Mitchell, et al., 2019/2020) would have, under the Business and Professions Code, Government Code, Vehicle Code, Penal Code, and Welfare and Institutions Code, among other changes, eliminated a number of administrative fees and costs imposed on a person related to involvement in the criminal justice system and would have specified that the unpaid balance of specified fees or costs eliminated by these provisions are unenforceable and uncollectable. SB 144 did not pass out of the Assembly before the constitutional deadline.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

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

Generally, FTB's Court Ordered Debt program is covered by reimbursements determined as a percentage of collections. This proposal may impact the ability of FTB to recover sufficient reimbursements to cover costs. This would impact the program, program participants, or the General Fund.

ECONOMIC IMPACT

Revenue Estimate

This bill as introduced on February 6, 2024, and amended April 25, 2024, would not impact state income or franchise tax revenue. However, it may affect the amount of interest collected on non-tax related debt.

LEGAL IMPACT

None noted.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Senate Revenue and Taxation Committee analysis 04-19-2024.

Support:

Fiona Ma, California State Treasurer (Co-Sponsor); California Attorneys for Criminal Justice; California Public Defenders Association; Los Angeles Regional Reentry Partnership (LARRP); Secure Justice; Smart Justice California, a Project of Tides Advocacy

Opposition:

California Association of Judgment Professionals and California District Attorneys Association.

ARGUMENTS

Senate Revenue and Taxation Committee analysis 04-19-2024.

Proponents:

None on file.

Opponents:

None on file.

LEGISLATIVE CONTACT

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