STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Skinner	Sponsor:	Bill Number: SB 516
	Related Bills: See Legislative History	Introduced: February 14, 2023

SUBJECT

Franchise Tax Board Debtor Bill of Rights

SUMMARY

This bill would do the following:

Provision No. 1 – Offsets (Section 2)

Under the Government Code (GC), this provision would make several changes related to the treatment of offsets.

Provision No. 2 - Installment Agreements (Section 3)

Under the Administration of Franchise and Income Tax Law (AFITL), this provision would allow a taxpayer to submit an offer for an installment agreement online or by phone, as well as adds a requirement for an installment agreement to be considered null and void or otherwise terminated.

Provision No. 3 - Amounts Referred to Franchise Tax Board (FTB) for Collection (Section 4)

Under the AFITL, this provision would make changes to the timeframe of amounts provided by a juvenile or superior court, county, state, or the State Bar to the FTB for collection.

Provision No. 4 - Lien Notice Requirements (Sections 5 and 6)

Under the Revenue and Taxation Code (RTC), this provision would add additional information required to appear on the notices of unpaid tax.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to provide more rights to taxpayers.

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

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

ANALYSIS

Analysis Provision No. 1:

Offsets (Section 2 of the Bill)

This provision would, under the GC, make several changes related to the treatment of offsets. Specifically, this bill would do the following:

- Prohibit a city, county, or special district from sending a bill for any amount due that the city, county, or special district has submitted an offset request to the Controller.
- Require the Controller, when the Controller satisfies an offset request, to give the person or entity owed an amount by a state agency a receipt, on a monthly basis, specifying the offset amount and the remaining amount due a city, county or special district.
- Allow a person or entity to file a claim with the Controller for reimbursement of any amount erroneously or illegally offset. The Controller would be required to refund any amount erroneously or illegally offset within one year of the filing of a claim with the Controller.

Federal/State Law

Federal Law

Internal Revenue Code section 6331 provides that the Treasury Secretary may authorize collection of tax by levy, including levies on salary or wages, when any person liable to pay any tax neglects or refuses to pay after notice and demand.

State Law

Under state law, the Controller is authorized to offset delinquent accounts, as specified, against personal income tax refunds that have been certified by the FTB.

Implementation Considerations

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

The provision would require the Controller to send out the monthly receipt, specifying the offset amount and the remaining amount due a city, county, or special district. It is unclear whether the FTB would have a role in providing information to the Controller to facilitate the monthly receipts. If FTB is required to participate in this requirement, it may create a new workload for FTB requiring lead time and costs to administer.

In Section 12419.8, the author may want to remove subdivision (e) because if an amount is collected by FTB erroneously, it is the city, county, or special district that reimburses money.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 194 (Committee on Budget, Chapter 55, Statutes of 2022) amongst other provisions, specified that the Controller cannot offset delinquent accounts against personal income tax refunds of an individual who received the California Earned Income Tax Credit or the Young Child Tax Credit for taxable years beginning on or after January 1, 2024.

SB 954 (Liu, Chapter 650, Statutes of 2012) authorized the State Controller's Office to offset unclaimed property held by the state against debts owed to cities and counties.

PROGRAM BACKGROUND

FTB's Collections Program collects tax owed through self-assessment, audit, settlement, and filing enforcement. The automated systems collect revenue from taxpayers who voluntarily comply; while manual collection efforts ensure taxpayers who do not voluntarily comply pay their liabilities. FTB is authorized to issue orders to withhold to collect past due income taxes or amounts owed to local or state agencies.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This provision as introduced February 14, 2023, does not change the computation of franchise or income tax.

LEGAL IMPACT

None noted.

Analysis Provision No. 2:

Installment Agreements (Section 3 of the Bill)

This provision would, under the Administration of Franchise and Income Tax Law (AFITL), require FTB to allow all taxpayers to submit an offer for an installment agreement (IA) online or by phone. Additionally, this provision would add an additional requirement for 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.

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 IA's 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 IA's 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, 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 is 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 must review partial payment IA's at least once every two years.

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.
- The notice includes an explanation of why the FTB intends to terminate the agreement.

Implementation Considerations

The department 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.

This provision uses terms that are undefined. For example, it is not clear what is meant by the term "offer." This term should be defined, or it should be more specific as to what exactly a taxpayer would be able to submit to the FTB. Additionally, "reasonable opportunity to cure" should also be defined to include a specific amount of time and clarify what would be considered "cured". The absence of definitions to clarify these terms could lead to confusion for taxpayers. For clarity, it is recommended that the bill be amended.

Technical Considerations

If the author intends to apply the authorization to submit an offer via online or phone to IA in subdivision (a) and (b), then the author may want to include that authorization in its own subdivision for clarity.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

No legislation similar to this bill has been identified.

PROGRAM BACKGROUND

Currently, taxpayers under the Personal Income Tax Law (PITL), can apply online or call the FTB to enter into an IA. Taxpayers must meet the criteria below to apply for an IA:

- Amount due is less than $25,000.
- Taxpayer can pay the amount in 60 months or less.
- Taxpayer has filed all their income tax returns for the past 5 years.

Businesses who are unable to pay their tax liability, may also apply for an IA by calling the FTB.

In 1986, AB 3060 (Stats. 1986, Ch. 1361) authorized FTB to allow PITL taxpayers to enter into IA's.

In 2005, Section 19008 of the RTC was amended to change "individual/fiduciary" to "taxpayer" to allow non-individuals to enter into IA's. In 2009, FTB began allowing Provisional Payment Plans to enter into IA's, which allowed a taxpayer to enter into an IA for filing enforcement liabilities and provided a short period of time to file the returns to meet the requirements in Section 19008 of the RTC.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This provision as introduced February 14, 2023, does not change the computation of franchise or income tax.

LEGAL IMPACT

None noted.

Analysis Provision No. 3:

Amounts Referred to FTB for Collection (Section 4 of the Bill)

Under the AFITL, this provision would specify that a juvenile or superior court, county, state, or the State Bar could not refer to the FTB amounts that are unenforceable pursuant to Section 683.020 of the Code of Civil Procedure, unless renewed. This bill would prohibit a juvenile or superior court, county, state, or the State Bar from referring a renewed amount to FTB for collection after five years from the date of filing the application of renewal. This provision would apply to judgments for a:

- fine;
- monetary sanction;
- state or local penalty;
- bail;
- forfeiture;
- restitution fine; and
- restitution order or any other amount.

Federal/State Law

Federal Law

No comparable provision in federal law.

State Law

Under current state law, fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, any payment from the State Bar of California's Client Security Fund or any other amount imposed by a Superior or Juvenile court, the Supreme Court of the State of California, State Bar, or a governmental entity in California, totaling no less than $100, and delinquent for 90 days or more, can be referred by the courts, the State Bar, or the governmental entity to the FTB for collection. Judgments become unenforceable 10 years after the date of entry of the judgment.

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, levying bank accounts and garnishing wages.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 1765 (Committee on Revenue and Taxation, 2023/2024) includes a provision that would under the AFITL, make several changes to the current IA authority to allow more taxpayers the right to enter into an IA with FTB if they meet specified requirements and extend the time for full payment of an IA in certain situations. AB 1765 is pending referral in the Assembly.

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, specifically excludes restitution orders and restitution fines from these thresholds.

AB 3362 (Committee on Judiciary, Chapter 360, Statues 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.

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 failed to pass out of the Assembly before the constitutional deadline.

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.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this provision have not been determined, but staff anticipates costs would be minor.

ECONOMIC IMPACT

Revenue Estimate

This provision as introduced February 14, 2023, does not change the computation of franchise or income tax.

LEGAL IMPACT

None noted.

Analysis Provision No. 4:

Levy Notice Requirements (Sections 5 and 6 of the Bill)

This provision, under the RTC, would make changes to information required to appear on the notices of levies for unpaid tax. The notices would be required to also include the following:

- The source of the unpaid tax.
- Type of money or property exempt from any levy.

This provision would additionally require the brief statement to include the requirements and procedures to enter into an IA and the legal requirements and procedures to release a levy on money or property that is exempt from any levy.

In addition, this provision would permit a person to file a claim with the FTB for a refund of any amount, or for property that has been erroneously or illegally levied or collected on by the FTB. The FTB would be required to refund any amount or property erroneously or illegally levied or collected within one year of the date the claim was filed with the FTB.

Federal/State Law

Federal Law

No comparable provision in federal law.

State Law

Existing law requires that the notice include the proposed actions the FTB can take and the rights the person has with respect to that action, and requires a brief statement regarding certain procedures and laws.

Current state law provides that the FTB must notify a person in writing no less than 30 days before a levy can be made on any property or property right of any person. The notice must include the following in nontechnical terms:

- Amount of unpaid tax.
- A telephone number to call for questions.
- The right of the person to request a review during the 30-day period before a levy can be made.
- The proposed action or actions that may be taken by the FTB and the rights of the person with respect to the action or actions, including a brief statement that set forth all the following:
  - The provisions of California law relating to levy and sale of property.
  - The procedures applicable to the levy and sale of property under California law.
  - The independent departmental administrative review available to the taxpayers with respect to the levy and sale and the procedures to obtain that review.
  - The alternatives available to taxpayers that could prevent levy on property, including installment agreements under Section 19008.
  - California legal requirements and procedures with respect to the release of levy.

Taxpayers may request a one-time review by the Taxpayer's Rights Advocate.

Implementation Considerations

The department 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.

This provision uses the undefined term of "source." It is unclear what would and wouldn't be considered "source of unpaid tax." The absence of definitions to clarify this term could lead to confusion for taxpayers. For clarity, it is recommended that the bill be amended.

This provision would require notices to be updated with information FTB does not currently provide. Updating the notices by the effective date of the bill may present challenges for the department due to system constraints and resource limitations.

Technical Considerations

For consistency of terminology, the following changes are recommended.

In Section 21018.5 remove the phrase "or illegally," which is listed twice, as it is not necessary.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

No legislation similar to this bill has been identified.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this provision have not been determined, but staff anticipates costs could be significant. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT

Revenue Estimate

This provision as introduced February 14, 2023, does not change the computation of franchise or income tax.

LEGAL IMPACT

None noted.

APPOINTMENTS (All Provisions)

None noted.

SUPPORT/OPPOSITION (All Provisions)

To be determined.

ARGUMENTS (All Provisions)

To be determined.

LEGISLATIVE CONTACT

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