

Amend Business and Professions Code Section 7145.5 to authorize the Board to request the Contractor's State License Board for a denial or suspension of a contractor's license for failure to resolve any outstanding final tax or fee liabilities.

Source: Sales and Use Tax Department

Existing Law

Under existing Business and Professions Code (BPC) Section 7145.5, the Contractor's State License Board (CSLB) is authorized to refuse to issue, reinstate, reactivate, or renew or suspend a contractor's license for the failure of a licensee to resolve any outstanding final liabilities, which include taxes, penalties, interest, and any fees assessed by the CSLB, the Franchise Tax Board (FTB), the Employment Development Department (EDD), or the Department of Industrial Relations (DIR). However, current law does not authorize the Board of Equalization (BOE) to request the CSLB to suspend a contractor's license for failure to pay any outstanding taxes, penalties, interest, or fees.

Since the BOE does not have such authority, it has examined using BPC Section 7071.17(b) to request a suspension after filing an abstract of judgment. Section 7071.17 allows the registrar of the CSLB to suspend a contractor's license for any "unsatisfied final judgment that is substantially related to the construction activities of a licensee ... or to the qualifications, function, duties of the license." Civil Code of Procedure (CCP) Section 1235.120 defines a final judgment as "a judgment with respect to which all possibility of direct attack by way of appeal, motion of a new trial, or a motion under CCP Section 663 to vacate judgment have been exhausted." However, BOE staff and CSLB believe that the BOE's perfected lien procedure does not appear to be comparable to a final judgment since the taxpayer may challenge the assessment upon which the lien is based by filing a claim for refund after the tax has been paid. Therefore, the CSLB would require the BOE to submit an abstract of judgment relating to the contractor as a condition for the registrar to initiate the proceeding to suspend the license under Section 7071.17.

While both CSLB and BOE staff believe that the BOE can rely on Section 7071.17 to request the CSLB to suspend a contractor's license, the procedure used pursuant to Section 7071.17 would be extremely cumbersome for both agencies and would require that BOE obtain an abstract of judgment and file that judgment with CSLB. Further, CSLB does not use this procedure on a routine basis. For this reason, CSLB staff recommends that the BOE pursue legislation to amend BPC Section 7145.5 to be included in the list of governmental agencies that may request a contractor's license be suspended based on an outstanding final liability owed by the contractor to that entity.

The BOE currently has approximately 85,096 delinquent sales and use accounts with an outstanding final liability in excess of \$2.1 billion. Of the 85,096 delinquent accounts, 2,469 represent outstanding final liabilities exceeding \$68 million (see the following table).

Breakdown of Accounts	
<ul style="list-style-type: none"> The Sales and Use Tax accounts receivable balance is approximately \$2.1 billion. The total number of sales and use tax accounts with a liability currently in the Automated Compliance Management System is 85,096. Of the 85,096 accounts, 2,469 represent accounts that are coded with Business Code 82 (construction contractor type businesses). Business Code 82 represents construction contractors, general contractors, cabinet shops, businesses that perform fabrication labor, contractors that install floor coverings, plumbing contractors, United States contractors, electrical contractors, and manufacturers and wholesalers of building materials. 	
Active accounts for construction contractors (business code 82)	1,494
Closed accounts for construction contractors (business code 82)	975
Total number of accounts for construction contractors	2,469
Accounts receivable for active construction contractor businesses	\$18,437,989
Accounts receivable for closed construction contractor businesses	\$49,795,416
Total	\$68,233,405

This Proposal

This proposal would amend BPC Section 7145.5 to allow the BOE to request that the CSLB suspend a contractor’s license for failure to resolve any outstanding final liabilities. The use of this collection tool would place the BOE on equal footing with FTB and EDD, in addition to promoting joint enforcement action among the three tax collection agencies. This proposal would give the BOE an additional collection tool that would also serve as an incentive for delinquent contractors to resolve their outstanding liabilities. BOE staff would use this collection tool as a last resort to bring the contractor into compliance.

Section 7145.5 of the Business and Professions Code is amended to read:

7145.5 (a) The registrar may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license for the failure of a licensee to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest, and any fees that may be assessed by the board, the Department of Industrial Relations, the Employment Development Department, or the Franchise Tax Board, or the Board of Equalization.

1) Until the debts covered by this section are satisfied, the qualifying person and any other personnel of record named on a license that has been suspended under this section shall be prohibited from serving in any capacity that is subject to licensure under this chapter, but shall be permitted to act in the capacity of a non-supervising bona fide employee.

(2) The license of any other renewable licensed entity with any of the same personnel of record that have been assessed an outstanding liability covered by

this section shall be suspended until the debt has been satisfied or until the same personnel of record disassociate themselves from the renewable licensed entity.

(b) The refusal to issue a license or the suspension of a license as provided by this section shall be applicable only if the registrar has mailed a notice preliminary to the refusal or suspension that indicates that the license will be refused or suspended by a date certain. This preliminary notice shall be mailed to the licensee at least 60 days before the date certain.

(c) In the case of outstanding final liabilities assessed by the Franchise Tax Board, this section shall be operative within 60 days after the Contractors' State License Board has provided the Franchise Tax Board with the information required under Section 30, relating to licensing information that includes the federal employee identification number or social security number.

(d) All versions of the application for contractors' licenses shall include, as part of the application, an authorization by the applicant, in the form and manner mutually agreeable to the Franchise Tax Board and the board, for the Franchise Tax Board to disclose the tax information that is required for the registrar to administer this section. The Franchise Tax Board may from time to time audit these authorizations.