

Amend Government Code Sections 17280.1 and 17280.2 to specifically provide that the Board shall accept registered warrants as payment for any tax, surcharge, or fee liability to the Board if the registered warrant is issued specifically to that tax, fee, or surcharge payer.

Source: July 21, 2009 Board Meeting

Current Law

Under existing law, there is no statute that requires the Board to accept registered warrants. Government Code Section 17280.1 does require the Franchise Tax Board (FTB) to accept registered warrants as payment for personal income or bank and corporation taxes.

The Board does, however, have the authority to accept registered warrants as payment of liabilities at its own discretion. Statutes in the Government Code provide that registered warrants issued by the State *may be* used as security for public or private debts (Government Code Section 17203), and are considered to be "negotiable instruments" (Government Code Section 17205). Section 17203 states: "Such registered warrants are acceptable and may be used as security for the faithful performance of any public or private trust or obligation or for the performance of any act, including the use of such registered warrants by banks and savings and loan associations as security for deposits of funds of any county, municipal or public corporation, district, political subdivision, or state agency." Section 17205 provides, "Notwithstanding any provision of the Uniform Commercial Code, all registered warrants are negotiable instruments." Under this body of law, a "negotiable instrument" is a form of payment that *may be* accepted by the payee in a particular transaction. A negotiable instrument however, is not the same as "legal tender," which *must* be accepted as a form of payment. Based on these statutes and the lack of any legal authority that clearly prohibits it, State-issued registered warrants *could be* accepted by the Board as valid remittances for purposes of crediting payment of a tax, surcharge, or fee liability for the "payee."

The Board has no legal obligation or authorization to accept a registered warrant from a third party; that is, a taxpayer or entity other than the payee named on the warrant. Existing Board practice and procedures do not allow a taxpayer to make a payment using a third party check, due to the increased possibility of fraud inherent in such a transaction. The same concerns would apply to third party registered warrants.

Background

At the July 21, 2009 Board Hearing, the Members directed staff to accept the State-issued warrants as payment of sales and use taxes and other taxes, surcharges, or fees owed to the Board. A similar State budget situation in 1992 also resulted in the Board's decision to accept State-issued registered warrants for payment of outstanding liabilities.

Because of the specific reference to personal income or bank and corporation taxes included in the law that was enacted in 1983, the FTB was able to announce in advance that it would be accepting registered warrants in the event the State began to issue them. Having specific authority made it simple for that tax agency to answer any questions from taxpayers and to begin implementing a plan to accept the registered warrants.

Assembly Bill 1506 (Anderson), as amended July 1, 2009, would require all state agencies to accept from any person or entity a registered warrant or other similar evidence of indebtedness issued by the State Controller that is endorsed by that payee, at full face value, for the payment of any obligations owed by that payee to that state agency.

This Proposal

This proposal would require the Board to accept registered warrants from a taxpayer with any tax, surcharge, or fee obligation owed when the registered warrant has been paid directly to that tax, surcharge, or fee payer.

This change would eliminate any future ambiguity on the issue and allow Board staff to immediately implement plans to accept and process any registered warrants and thereby avoid any future uncertainty on whether or not an outstanding liability may be satisfied in that manner.

This proposal would also delete confusing language in subdivision (c) of Section 17280 related to a taxpayer receiving interest on a registered warrant. Currently, if a taxpayer submits the warrant before it matures (redeemable), the taxpayer does not receive any interest. The current language can be misleading since taxpayers may incorrectly read it to mean they are entitled to interest from the issue date of the warrant to the taxpayer to the date the taxpayer submits the warrant as payment of tax. The proposed changes to Section 17280.1 protect a taxpayer's right to receive interest on a mature warrant.

Section 17280.1 of the Government Code is amended to read:

17280.1. (a) A taxpayer who has a tax liability, including any liability for periodic estimated tax payments, with respect to personal income taxes or bank and corporation taxes required to be remitted to the Franchise Tax Board or a taxpayer, fee payer, or surcharge payer who has a liability for taxes, fees or surcharges required to be remitted to the State Board of Equalization, and who is a payee named in a registered warrant as defined in Section 17221 which is received in payment of an obligation of the State of California to the taxpayer, fee payer, or surcharge payer may pay any tax, fee, or surcharge liability specified above, in whole or in part, by a check submitting the original registered warrant, signed on the reverse side by the payee and endorsed as payable to the agency to which the liability is owed. ~~in an amount not to exceed the amount of the registered warrant, exclusive of any interest thereon. That check shall not~~

~~be presented for payment by the state or paid by the bank on which it is drawn until the registered warrant payable to the taxpayer is payable upon its presentation to the Treasurer. The provisions of this section shall be applicable only if the taxpayer's check in payment of a tax liability pursuant to this section is accompanied by a copy of the registered warrant, as specified above, which clearly discloses the name of the payee, the amount to be paid, the number of the warrant, and the completed and signed legend as provided for in subdivision (d).~~

~~(b) Any taxpayer, fee payer, or surcharge payer submitting a check registered warrant for the payment of taxes pursuant to subdivision (a) shall be precluded from receiving interest on his or her registered warrant from the date the check for the payment of taxes is submitted except as provided in Section 17280.2.~~

~~(c) In the event that a taxpayer who submits a check for the payment of taxes pursuant to subdivision (a) presents his or her registered warrant to a bank or other institution for payment, the taxpayer shall make a declaration upon presentment that he or she is ineligible pursuant to subdivision (b) to receive interest from the date he or she submitted the check.~~

~~(d) To facilitate the taxpayer in making the declaration required by subdivision (c), all registered warrants issued shall bear a legend on the reverse side in substantially the following form:~~

~~"In endorsing this warrant, I declare that I have () or have not () (check one) submitted a check on _____ (date) for the payment of tax, surcharge, or fee liability in an amount not to exceed the amount of this warrant. I further declare that by submitting that check, I am ineligible for the receipt of interest on this warrant after the above date."~~

Section 17280.2 of the Government Code is amended to read:

17280.2. In the event a tax liability, fee or surcharge is paid pursuant to Section 17280.1, in whole or in part, with a registered warrant which is redeemable at the time the tax liability, fee or surcharge is paid, interest as specified in this article, shall be credited to the taxpayer's account of the taxpayer, fee payer or surcharge payer.