



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/11/11	Bill No:	Assembly Bill 1044
Program:	Registered Warrants	Author:	Butler
Sponsor:	Board of Equalization	Code Sections:	GC 17280.1 & 17280.2
Related Bills:	SB 11 (Anderson) SB 120 (Anderson)	Effective Date:	01/01/12

BILL SUMMARY

This bill provides that the Board of Equalization (BOE) shall accept registered warrants as payment for any tax, surcharge, or fee liability to the BOE if the registered warrant is issued specifically to that tax, fee, or surcharge payer, upon the Controller making a specified determination.

Summary of amendments

Since the previous analysis, this bill was amended to add the provision that requires the Controller to make a specified determination.

ANALYSIS

CURRENT LAW

Existing Chapter 2 (commencing with Section 17200) of Part 4 of Division 4 of Title 2 of the Government Code provides that the Controller is responsible for issuing warrants drawn from the General Fund for payment of obligations of the state. In instances where the amount payable out of the General Fund is in excess of the balance remaining in the General Fund after deducting amounts earmarked or reserved for payment by law, the Controller can issue a "registered warrant."

A registered warrant carries a promise to pay the bearer the amount shown on the warrant plus interest, by a date prescribed on the warrant, usually within one year of the date of issuance. Registered warrants bear interest at a rate fixed by current state law from the date of registration to the date of maturity, or the date upon which the State Treasurer advertises that they are payable upon presentation if they bear no date of maturity.

Under existing law, there is no statute that requires the BOE 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.

While the BOE is not obligated to accept registered warrants issued by the State as payment for tax liabilities, it is not prohibited from doing so. Statutes in the Government Code (GC) provide that registered warrants issued by the State *may be* used as security for public or private debts (GC Section 17203), and are considered to be "negotiable instruments" (GC 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

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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 BOE as valid remittances for purposes of crediting payment of a tax, surcharge, or fee liability for the "payee."

The BOE 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 BOE 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.

PROPOSED LAW

This bill would amend GC Sections 17280.1 and 17280.2 to require the BOE 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, upon the Controller making a specified determination.

The bill would prohibit a taxpayer, feepayer, or surcharge payer from submitting a registered warrant to the BOE as payment of any tax, fee, surcharge liability unless the Controller determines that all of the following conditions are satisfied:

- 1) Acceptance of registered warrants will not jeopardize the ability of the state to issue regular warrants for all of the following: education programs, debt service, state payroll, pensions, In-Home Support Services, Medi-Cal providers, or any other payment required by federal law, the California Constitution, or a court order.
- 2) Acceptance of registered warrants will not result in a net cost to the state. For purposes of this paragraph, the calculation of "net cost" includes, but is not limited to, all of the following factors:
 - Interest savings related to redemption of the registered warrant.
 - Interest costs related to any new registered warrants issued to replace the registered warrant accepted for payment of a state obligation.
 - Costs related to any other internal or external borrowing required to offset the loss of resources due to acceptance of the registered warrants for payment of a state obligation.
 - Forgone interest earnings related to loss payments due to acceptance of the registered warrants for payment of a state obligation.
 - Significant new administrative costs to the BOE related to acceptance of registered warrants for payment of a state obligation.

This bill 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

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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.

BACKGROUND

At the July 21, 2009 BOE 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 BOE. A similar State budget situation in 1992 also resulted in the BOE's decision to accept State-issued registered warrants for payment of outstanding liabilities.

Because of the specific reference to personal income taxes 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.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the BOE in order to codify the BOE's current administrative practice to accept registered warrants as payment for tax liabilities. Current law requires the FTB to accept payment by registered warrants from a taxpayer. However, BOE is not required to accept registered warrants, but is not prohibited from doing so. Having clear statutory authorization to accept registered warrants would eliminate any future ambiguity. And, given that the fiscal situation of the State may necessitate further use of registered warrants, it will be clear that the BOE is required to accept them as payment.
2. **The May 11, 2011 amendments** prohibit a taxpayer, feepayer, or surcharge payer from submitting a registered warrant to the BOE as payment of any tax, fee, or surcharge liability unless the Controller makes a specified determination.
3. **BOE already has procedures in place for taxpayers to pay with registered warrants.** During 2009, the BOE accepted State-issued registered warrants as payment of sales and use taxes and other taxes and fees owed to the BOE. Because procedures already exist to allow taxpayers to pay with a registered warrant, implementing the bill's provisions do not pose any problem for the BOE.
4. **Related legislation.** SB 11 (Anderson) would prohibit a state entity from assessing a fine, interest, or penalty, based on a debt owed to the state by an individual or entity that is a payee named in a registered warrant, from the date the state issued the registered warrant until at least 30 days after the date the registered warrant is payable by the state.

SB 120 (Anderson) would require a state agency, upon the Controller making a specified determination, to accept a registered warrant issued by the Controller for payment of any state obligation.

COST ESTIMATE

Because the BOE is already accepting registered warrants as payment for outstanding liabilities, this measure would have no administrative cost impact.

REVENUE ESTIMATE

This bill would have no impact on state and local revenues, as well as any special fund revenues. However, because payment of taxes, fees, and surcharges using a registered warrant would require the warrant to be held until the warrant redemption date, there could be a deceleration of cash receipts.

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