



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date:	05/15/12	Bill No:	Senate Bill 1419
Tax Program:	Business Taxes	Author:	Correa
Sponsor:	BOE	Code Sections:	GC 13945
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

This Board of Equalization (BOE) sponsored bill authorizes the BOE to extinguish an outstanding liability for the payment of any tax, fee, or other liability deemed uncollectible that is due and owing to the state under specified conditions.

Summary of Amendments

Since the previous analysis, the bill was amended to establish a new Government Code (GC) section, separate from the section authorizing the Franchise Tax Board (FTB) to extinguish an outstanding liability, since the proposed amendments to GC Section 13943.1 would have inadvertently affected the FTB.

ANALYSIS

CURRENT LAW

Under existing law, GC Section 13943.1 allows the FTB to provide relief of liability to a taxpayer if those liabilities are discharged from accountability (deemed uncollectable) and if at least one of the following conditions is met:

- The liability is for an amount less than five hundred dollars (\$500).
- The liable person has been deceased for more than four years and there is no active probate for that person.
- The FTB has determined that the taxpayer has a permanent financial hardship.
- The liability has been unpaid for more than 30 years.

The FTB also has a 20-year statute of limitation (SOL) on collection. Revenue and Taxation Code (RTC) Section 19255 provides that, after 20 years from the date the latest tax liability for a taxable year becomes due and payable, the FTB may not collect the amount owed and the liability is abated. RTC Section 19255 also includes provisions related to the tolling of the statute of limitation, but in general, the 20-year SOL applies to liabilities that are due and payable before, on, or after July 1, 2006.

Under existing law, the BOE has no statutory authority to extinguish a tax liability when the debt has been discharged. Deeming an account uncollectable does not have the effect of relieving the taxpayer of the responsibility to pay.

PROPOSED LAW

This bill would add Section 13945 to the GC to authorize the BOE to extinguish an outstanding liability for the payment of any tax, fee, or other liability deemed uncollectible that is due and owing to the state, if at least two of the following conditions are met:

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- The liability is for an amount less than five hundred dollars (\$500).
- The liable person has been deceased for more than four years and there is no active probate for that person.
- The BOE has determined that the taxpayer has a permanent financial hardship.
- The liability has been unpaid for more than 30 years.

For purposes of determining a permanent financial hardship, “financial hardship” means that a liable person is unable to pay any part of the outstanding liability and is unable to qualify for an installment payment arrangement as provided by RTC Section 6832. The liable person must submit any information, including, but not limited to, information related to reasonable business and personal expenses, requested by the BOE for purposes of determining whether a financial hardship exists.

BACKGROUND

The BOE and FTB have similar organizational functions, responsibilities, Board Members, statutes, and policies. With respect to collections, the agencies share similar collection policies and procedures. The BOE operates in accordance with the Compliance Policy and Procedures Manual, Chapter 7, [Collections](#), while the FTB operates according to the [Collection Procedures Manual | California Franchise Tax Board](#). Both agencies rely on the same California statutes in the GC, Civil Code, and Code of Civil Procedure to enforce collections, and they operate under the same general statewide statutory provisions (i.e., Chapter 4.3 (commencing with Section 16580) of Part 2 of Division 4 of Title 2 of the GC, known as the Accounts Receivable Management (ARM) Act) and policies (i.e., the State’s procedures for collecting delinquent accounts are detailed in the State Administrative Manual (SAM), Section 8776 et seq.).

Moreover, both agencies abide by the GC provisions related to discharge from accountability (discharge), which provide that, when the agency is unable to collect the liability, or collection of the liability is not cost effective, the agency is to make an application for discharge to relieve the agency of the responsibility for collection, thereby removing the item from the accounts receivable (AR). The discharge provisions are as follows:

- Chapter 3 (commencing with 13940) of Part 4 of Division 3 of Title 2 of the GC allows an agency to make an application to the State Victim’s Compensation and Government Claims Board (SVC GC) for discharge from accountability to relieve the agency of the responsibility for collection, thereby removing the item from the AR.
- GC Section 13943.2 provides the SVC GC with authority to approve state agency requests to discharge AR up to \$500, if the state agency’s efforts have not resulted in payment and it would not be cost beneficial to pursue additional collection efforts.

Recently, the Governor signed legislation¹ that allows the BOE to utilize tax collection efforts that the FTB already had authority to use. These compliance tools include the BOE’s ability to: (a) request a denial or suspension of a contractor’s license for failure to resolve any outstanding BOE-related tax liability; and (b) use the new employee registry information for tax enforcement purposes. In addition, both the FTB and BOE were

¹ AB 1307 (Ch. 734, Stats. 2011). BOE analysis: <http://www.boe.ca.gov/legdiv/pdf/1307abenr.pdf>

recently statutorily authorized² to (1) increase the list of the top 250 tax debtors to the top 500; and (2) require state governmental licensing entities to refuse to issue, reactivate, reinstate, or renew an occupations, professional, or driver's license or to suspend a license of a person on the top 500 debtor list.

According to the Delinquent Account Report prepared by the Department of Finance, for the fiscal years (FY) 2006-07 through 2008-09, the BOE has averaged 6,805 AR discharged, worth an average of \$81.5 million per FY.³

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the BOE and is intended to give the BOE the statutory authority to extinguish a tax liability when an outstanding debt has been discharged and to help reduce the burden of uncollectable tax liabilities placed on our state and California's taxpayers. Also, this bill would be a step forward in aligning the statutes of limitation on collections between the BOE and FTB, California's largest tax collection agencies.
- 2. The May 15, 2012 amendments** create a new GC section since the previously proposed amendment to GC Section 13943.1 would have inadvertently affected the FTB. **The May 1, 2012 amendments**, which were suggested by Senate Governance and Finance Committee, required that at least two of the discharge conditions must exist, rather than just one, in order for relief to be provided and also defined "financial hardship" for purposes of determining if a liable person has a permanent financial hardship.
- 3. The relief provided is not just about the status of the liability; it is also about the condition of the taxpayer.** This bill would provide that, if the BOE discharges a liability and if at least two of the specified discharge conditions exist, such as if a liability is under \$500 and the liability is unpaid after 30 years, then that liability is extinguished and the person is released from payment of the liability. In most cases, no state tax lien would be in effect for these liabilities. In the case of a liability amount of \$500 or less, it is the BOE's policy to only file liens for delinquent amounts of \$2,000 or more; and, in the case of an aged account, a tax lien may only be extended for a maximum of 30 years.

With respect to the condition of the taxpayer, if the BOE discharges a liability because the liable person is deceased and there is no active probate and if the BOE determines the person has a permanent financial hardship, then that liability is extinguished and the person is relieved of the liability. It should be noted that, as opposed to the other two conditions, which are based on the age or amount of the liability and can apply to any type of taxpayer, these last two conditions, which are based on the taxpayer being deceased or being found to be in a permanent financial hardship, apply only to individual taxpayers – not to business entities.

- 4. Financial hardship is defined.** This bill would provide that, if the BOE discharges a liability after making a determination that the taxpayer has a permanent financial hardship and another discharge condition exists, as specified in this bill, then that liability would be extinguished and the person would be relieved of the liability. As amended, this bill defines "financial hardship" to mean that a liable person is unable

² AB 1424 (Ch. 455, Stats. 2011). BOE analysis: <http://www.boe.ca.gov/legdiv/pdf/1424abenrstw.pdf>

³ DOF Delinquent Accounts Report: [Reports and Periodicals - California Department of Finance](#)

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to pay any part of the outstanding liability, and is unable to qualify for an installment payment agreement as provided by RTC Section 6832. In order to make this determination, the bill requires the liable person to submit any information, including, but not limited to, information related to reasonable business and personal expenses, as requested by the BOE.

5. **What is the effect of requiring that more than one discharge condition exist prior to a taxpayer qualifying for relief?** As amended, this bill would require that at least two of the conditions exist at the time the account is discharged in order for the taxpayer to be released from payment of the liability. Under a normal collection matter, if an account had a delinquent liability under \$500 and collection attempts were unsuccessful, the BOE would submit the account for discharge if continued collection efforts would not be economical or productive. The BOE would not wait for the account to age for 30 years, nor would we wait to discharge the account until such time that the taxpayer was either deceased or had obtained a permanent financial hardship condition. At the time the BOE submits the account for discharge, the BOE would determine whether two of the specified conditions exist, and, if the account is subsequently approved for discharge, the liability would be extinguished.
6. **The FTB also has a 20-year SOL; why is the BOE not also conforming to that provision?** As mentioned previously, RTC Section 19255 provides a 20-year SOL from the date the latest tax liability for a taxable year becomes due and payable. After the 20-year period, the FTB may not collect the amount owed, and the liability is abated.⁴ In general, the period in which FTB may collect is extended if there is a timely civil action filed or a probate claim is filed. The period does not expire until the liability is satisfied or becomes unenforceable. The 20-year statute of limitation is tolled, generally speaking: (a) during the period FTB is prohibited from collection related to child support delinquencies; (b) during the period that FTB is prohibited from collection by reason of a bankruptcy case; (c) for a specified period related to an installment agreement; (d) for periods during which collection is postponed due to combat service or presidentially-declared disaster or terrorist or military action; and (e) for any other period during which collection is suspended, postponed, or extended by action of law.

FTB's [bill analysis](#) of AB 911 (Ch. 398, Stats. 2005) indicates that the 20-year SOL provision was substantially more complicated and costly to implement than was the relief of liability for certain discharged accounts authorized under GC Section 13943.1. FTB identified implementation costs of \$1.7 million and an annual revenue loss of \$2 million related to the 20-year SOL. As discussed below, both the costs and revenue loss related to this measure are considerably less.

7. **Technical suggestion.** Section 13943.1 pertains to discharges granted to any state agency, while providing a specific exception that applies to FTB. As such, Section 13943.1 should be amended to refer to Section 13945.

13943.1. (a) Except as provided in subdivision (b) or Section 13945, a discharge granted pursuant to this chapter to a state agency or employee does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the state.

⁴ The 20 year SOL applies to liabilities that are due and payable before, on, or after July 1, 2006.

In addition, Section 13945 should be amended so that it would not pertain to any agency except the BOE, and, with respect to the definition of “financial hardship” in paragraph (b)(3)(B), so that the list of sections providing for installment payment agreements is expanded to include the provision for all of the tax, fee, and surcharge programs to which Section 13945 would apply and to delete Section 19008, pertaining to FTB.

13945. ~~(a) Except as provided in subdivision (b), a discharge granted pursuant to this chapter to a state agency or employee does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the state.~~

~~(b)~~ A discharge granted pursuant to this chapter to the State Board of Equalization shall release a person from a liability for the payment of any tax, fee, or other liability deemed uncollectible that is due and owing to the state and extinguish that liability, if at least two of the following conditions are met:

(1) The liability is for an amount less than five hundred dollars (\$500).

(2) The liable person has been deceased for more than four years, and there is no active probate with respect to that person.

(3) (A) The State Board of Equalization has determined that the liable person has a permanent financial hardship.

(B) For purposes of this paragraph, “financial hardship” means that a liable person is unable to pay any part of the outstanding liability, and is unable to qualify for an installment payment arrangement as provided for by Sections 6832, 9033, 30354, 32389, 40167, 41127.6, 43448, 45609, 46464, 50138.6, 55209, or 60493, as applicable.~~49008~~ of the Revenue and Taxation Code. The liable person shall submit any information, including, but not limited to, information related to reasonable business and personal expenses, requested by the State Board of Equalization for purposes of determining whether a financial hardship exists.

(4) The liability has been unpaid for more than 30 years.

COST ESTIMATE

This measure would not alter the BOE discharge criteria, nor would it allow tax debtors relief of liability without the BOE first having determined that the liability is uncollectable. Therefore the BOE estimates costs to be absorbable.

REVENUE ESTIMATE

The BOE has averaged 6,805 AR discharged, worth an average of \$81.5 million per FY for the FYs 2006-07 through 2008-09. Of this amount, only those accounts discharged that meet at least two of the specified criteria (under \$500, 30 years old, taxpayer deceased with no probate, or permanent financial hardship) would be affected by this bill, and, of that amount, based on collection experience and discussions with staff, it is estimated that the annual revenue loss would not exceed \$227,000, but would most likely be substantially lower than that amount.

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