



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	07/12/11	Bill No:	<a href="#">AB 1424</a>
Tax Program:	Sales and Use	Author:	Perea
Sponsor:	Author	Code Sections:	See below
Related Bills:	AB 1307 (Skinner)	Effective Date:	01/01/12

## BILL SUMMARY

This bill would:

1. Increase the Board of Equalization's (BOE's) public list of the top 250 tax delinquencies to the top 500 tax delinquencies (Revenue and Taxation Code [RTC] Section 7063)
2. Provide authority for the suspension of occupational, professional and driver's licenses for tax debtors appearing on the public list of those top 500 tax delinquencies. (RTC Section 6834 and Business and Professions Code [BPC] 494.5, et al.)
3. Prohibit any state agency from entering into a contract for goods and services with a tax debtor on the top 500 tax delinquencies list (Public Contract Code Section 10295.4)
4. Allow the BOE to collect any delinquent tax debts owed to other states and the Internal Revenue Service (IRS), but only upon a reciprocal agreement in which the other states or IRS agree to collect the BOE's delinquent tax debts (RTC Sections 6835 and 6850)

Similar provisions would also apply to the Franchise Tax Board (FTB); however, this analysis only addresses the above provisions as they relate to the BOE.

### Summary of Amendments

Since the previous analysis, this bill was amended to delete the BOE-sponsored technical and housekeeping provisions related to the sales and use tax and special taxes and fees programs (now contained in AB 242 [Committee and Revenue and Taxation]), and add the new provisions explained above.

## ANALYSIS

### CURRENT LAW

Since January 1, 2007, Revenue and Taxation Code Section 7063 and 19195 require the BOE and the FTB, respectively, to make available as a matter of public record a list of the largest 250 tax delinquencies of more than \$100,000 in unpaid tax. Prior to making a tax delinquency a matter of public record, however, the law requires these tax agencies to provide a preliminary written notice by certified mail, return receipt requested, to the person or persons held liable for the tax. The law further specifies that for purposes of compiling the list, the tax delinquency must have been recorded as a notice of state tax lien in any county recorder's office in this state. Also, the law specifies that if a delinquency is currently under litigation, in bankruptcy, or the taxpayer

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is complying with an installment payment agreement, the delinquency may not be made public as a qualifying tax delinquency. Section 7063 requires that the BOE update its list quarterly.

Under existing law, there are two instances in which a tax debtor's license is suspended for unpaid BOE-related taxes: an alcoholic beverage license and a Department of Motor Vehicle (DMV) dealer license.

Under Business and Professions Code (BPC) Section 24205, a taxpayer's alcoholic beverage license is automatically suspended if the taxpayer is at least three months delinquent in the payment of sales or use or alcoholic beverage taxes or penalties. The suspension remains in effect until those liabilities are paid.

Under Vehicle Code Sections 11617 and 11721, the DMV is permitted to automatically cancel a dealer or lessor-retail license when the BOE has revoked or suspended the licensee's seller's permit. (Sales and Use Tax Law Section 6070 of the RTC authorizes the BOE to revoke or suspend a taxpayer's seller's permit whenever the taxpayer fails to comply with any provision of the Sales and Use Tax Law, including failing to pay sales or use taxes that are due).

Existing BPC Section 7145.5 allows the Contractor's State License Board (CSLB) 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, including taxes, penalties, interest, and any fees assessed by the CSLB, the FTB, the EDD, or the Department of Industrial Relations (DIR). Under current law, the BOE is not listed as one of the agencies to which Section 7145.5 applies (however, in a BOE-sponsored measure this year, AB 1307 (Skinner), the BOE is seeking to be included within this provision).

Existing Public Contracts Code Section 10295.1 prohibits state departments and state agencies from contracting with a vendor, contractor, or their affiliates (vendor) that does not possess a seller's permit or a certificate of registration for use tax. Under this section, these vendors are regarded as "retailers engaged in business in this state" and are required to collect the California sales or use tax on all their sales into the state in accordance with the Sales and Use Tax Law.

Under this provision, a state department or state agency is exempted from the provisions if the department or agency makes a written finding that the contract is necessary to meet a compelling state interest, as specified.

#### **PROPOSED LAW**

Among other things, this bill would:

1. Amend RTC Section 7063 to increase the top 250 public list of tax delinquencies to the top 500.
2. Add Section 494.5 to the BPC to require the BOE to provide the BOE's top 500 delinquencies list to state governmental licensing entities, and allow those entities to withhold issuance or renewal of the license of an applicant or to suspend the license of a licensee whose name appears on that list. The BOE would be required to provide a release form to the state governmental licensing entity for any applicant or licensee that complies with his or her delinquent tax obligation by either payment in full or entry into an installment payment arrangement. The state governmental licensing entity would have five business days to process the release.

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3. Add RTC Section 6834 to the Sales and Use Tax Law to require state governmental licensing entities that decline to issue, reactivate, or renew a license, or suspend a license, to notify the BOE, and require the BOE to mail a notice preliminary notice of suspension to the licensee. If the licensee fails to resolve the tax obligation by a date specified, this bill would provide that the license shall be suspended. The bill would require the BOE to provide notice of the suspension to the licensee.

This section would also allow the BOE to defer or cancel any suspension if a licensee is unable to pay the liability due to a current “financial hardship” as determined by the BOE. The bill would allow for an administrative hearing with the licensee and the BOE in such cases.

The bill would require all state licensing entities to collect the social security number or the federal taxpayer identification number from all applicants for licenses with the entities and would require those entities to provide the BOE with that information.

The bill would define the following terms:

- “License” includes certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. “License” would include a driver’s license.
- “Licensee” means an individual authorized by a license to drive a motor vehicle or authorized by license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.
- “State governmental licensing entity” means any entity included in BPC Sections 101, 1000, or 19420, the Office of Attorney General, the Department of Insurance, the Department of Motor Vehicles, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing a person to engage in a profession or occupation. Licenses issued by the State Bar of California would be excluded from the BOE’s suspension process and would only be subject to the state governmental licensing entity’s discretionary suspension process.

In addition, the bill would add RTC Section 7057 to the Sales and Use Tax Law to authorize the BOE to disclose to state governmental licensing agencies regarding suspension of any license under these provisions.

The bill would additionally add RTC Sections 6835 and 6850 to the Sales and Use Tax Law to permit the BOE to enter into agreements with the IRS and other states that impose a sales and use tax to collect delinquent tax debts due them, and for them to collect BOE’s delinquent sales and use tax debts, provided no employee displacement occurs.

The bill would also add Section 10295.4 to the Public Contracts Code to prohibit any state agency from entering into any contract for the acquisition of goods or services with a contractor whose name appears on either the BOE’s or FTB’s list of the largest tax delinquencies.

The provisions of the bill would become effective January 1, 2012.

**COMMENTS**

1. **Sponsor and Purpose.** The author is the sponsor of this bill. It is intended to allow the state to suspend the professional and/or driver's licenses of debtors on the FTB's and the BOE's top debtor's lists until they begin making payments on the taxes they owe. This bill would also allow California to work with other states and the IRS to track down debtors who have moved funds out-of-state. According to the author, "Most Californians think it's important to pay their taxes on time, but there are still those who don't pay what they owe, yet still enjoy living lavish lifestyles. Delinquent debtors have avoided paying their fair share for long enough."
2. **Summary of amendments.** Since the BOE's previous analysis, this bill was amended to delete the BOE-sponsored technical and housekeeping provisions related to the sales and use tax and special taxes and fees programs (now contained in AB 242 [Committee and Revenue and Taxation]), and add new provisions expanding the public list of delinquencies to the top 500, providing for the license suspension authority, prohibiting state agencies from contracting with a tax debtor on the top 500 list, and the contracting authority with the IRS and other states for the collection of tax debts.
3. **BOE Members support expanding the top 250 list to the top 500.** Since the BOE began posting the top 250 largest tax delinquencies in 2007, we have received over \$5 million from 36 qualifying taxpayers. The list, updated quarterly, currently includes debtors with over \$400 million in tax liabilities. By increasing the list to the top 500 delinquencies, an additional \$105 million in sales and use tax liabilities would be added to the list, thereby increasing the potential for more taxpayers to come forward and resolve their outstanding tax liabilities. These 500 taxpayers have some of the largest tax debts due the state. The Members of the BOE recognize that if they continue ignoring their tax debts, the public should have a right to know who they are.
4. **Technical amendment.** On page 20, line 38, "6851" should be replaced with "6835".

**COST ESTIMATE**

Some administrative costs would be incurred in implementing and administering these provisions. By expanding the list to the top 500 tax debtors, an additional Business Tax Specialist position would be necessary to perform the additional workload related to identifying the appropriate taxpayers qualifying for placement on the list, preparing notifications, and maintaining and updating the list. These costs amount to \$75,000 in fiscal year 2011-12, and \$125,000 in fiscal year 2012-13 and ongoing. Additional absorbable costs would be incurred in administering the remaining provisions of the bill, including costs associated notifying licensees and suspending licenses, collecting debts owed to other states, and executing contracts with other states to collect such debts.

**REVENUE ESTIMATE**

**BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

Tax delinquencies for the top 250 sales and use tax accounts over \$100,000 amount to over \$400 million. Since the inception of this program, the BOE has received a total of \$5.1 million from 36 qualifying taxpayers that came forward to take care of their debts: 25 through installment payment agreements and 11 by making payment in full. The collection rate on existing delinquent accounts amounts to 0.32% (\$5.1 million/\$400 million) / 4 years).

Expanding the list to the 500 largest delinquent accounts would add over \$100 million in outstanding delinquencies to the list, for a total of over \$500 million. Nonetheless, only 48%, or \$240 million, of these outstanding delinquent accounts are for sole proprietors. We believe that these are the only accounts that would be affected by the expanded authority to suspend business entity licensing and driver’s licensing.

We are not certain of how much additional revenue from delinquent accounts the BOE may collect as a result of the its expanded authority to suspend business entities’ licenses and driver’s licenses. And, we are not certain of how much additional revenue that would be collected by increasing the delinquency list to the largest 500 tax delinquencies. However, as an order of magnitude, if the expanded authority to suspend licensing in this bill increased collections by the compliance rate of .032% of the existing outstanding balance on sole proprietor delinquent accounts with respect to the \$240 million noted above, the BOE would collect an additional \$768 thousand (\$240 million x 0.32%) both in installment agreements and payments in full. In addition, by expanding the list to the largest 500 delinquent accounts, this proposal could increase revenue by \$320,000 (\$100 million x 0.32%).

**REVENUE SUMMARY**

This bill could generate an additional \$1.1 million in annual state and local sales tax revenue collections on delinquent accounts as follows:

Jurisdictions	Rate	Revenue (000)
State General Fund	3.94%	\$ 528
Fiscal Recovery Fund	0.25%	34
Local Revenue Fund	0.50%	67
Local Public Safety Fund	0.50%	67
Bradley Burns	1.00%	134
New Local /GF Split	1.06%	143
Special Districts	0.86%	115
<b>Total</b>	<b>8.11%</b>	<b>\$ 1,088</b>

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