



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

**DRAFT**

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|----------------|--------------------------|-----------------|---|
| Date:          | <b>Enrolled</b>          | Bill No:        | <a href="#"><u>Senate Bill 1548</u></a> |
| Tax Program:   | <b>Business Taxes</b>    | Author:         | <b>Wyland</b>                           |
| Sponsor:       | <b>BOE</b>               | Code Sections:  | <b>See page 2</b>                       |
| Related Bills: | <b>AB 658 (Calderon)</b> | Effective Date: | <b>01/01/13</b>                         |

**BILL SUMMARY**

This Board of Equalization (BOE) sponsored bill allows the BOE to continue to compromise for another five years the final tax liabilities of (1) businesses that are not discontinued or transferred if the final tax liability arises from transactions in which the taxpayer did not collect tax or tax reimbursement, (2) persons liable as successors, and (3) consumers who incurred a use tax liability.

**ANALYSIS**

**CURRENT LAW**

Under the existing Sales and Use Tax Law (7093.6), Use Fuel Tax Law (9278), Cigarette and Tobacco Products Tax Law (30459.15), Alcoholic Beverage Tax Law (32471.5), Emergency Telephone Users Surcharge Act (41171.5), Oil Spill Response, Prevention, and Administration Fees Law (46628), Underground Storage Tank Maintenance Fee Law (50156.18), Fee Collection Procedures Law (55332.5), and Diesel Fuel Tax Law (60637), the BOE is allowed to compromise a final tax liability if certain requirements are met.

Beginning January 1, 2009 and ending on January 1, 2013, the BOE has the authority to compromise certain final tax, fee, and surcharge (tax) liabilities of (1) businesses that are not discontinued or transferred if the final tax liability arises from transactions in which the taxpayer did not collect tax or tax reimbursement, (2) persons liable as successors, and (3) consumers who incurred a use tax liability. The tax law sections affected included those mentioned previously. The BOE is specifically authorized to do the following:

- 1) Allow a qualified final tax liability to be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business.
- 2) Define “qualified final tax liability” to mean that part of the final tax liability, including interest, additions to tax, penalties, or other amounts assessed, arising from a transaction or transactions in which the BOE finds no evidence that the taxpayer collected the tax from the purchaser or other person and which was determined against the person, or a final tax liability against a successor, or that part of a final use tax liability, as specified.
- 3) Specify that a qualified final tax liability may not be compromised with a taxpayer who previously received a compromise, as specified.
- 4) Allow the BOE to enter into a written installment payment agreement that permits a taxpayer to pay the compromise installments for a period not exceeding one year.

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*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.*

- 5) Allow the BOE to enter into any collateral agreement deemed necessary for the protection of the interests of the state, as specified.
- 6) Require a taxpayer that has received a compromise to file and pay by the due date all subsequently required returns and/or reports for a five-year period, as specified.

#### PROPOSED LAW

This bill amends Revenue and Taxation Code (RTC) Sections 7093.6, 9278, 30459.15, 32471.5, 41171.5, 46628, 50156.18, 55332.5, and 60637 to extend the repeal date of these provisions to January 1, 2018. These provisions allow the BOE to consider offers in compromise (OIC) from (1) open and active businesses that have not collected tax or tax reimbursement for the taxes owed, (2) successors of businesses that may have inherited tax liabilities of their predecessors, and (3) consumers that have incurred a use tax liability.

#### IN GENERAL

In general, an offer in compromise is a process whereby the taxpayer offers to pay an amount that he or she believes to be the maximum amount that he or she can pay within a reasonable time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount.

In the offer in compromise process, the BOE administers the program consistent with procedures followed by the Franchise Tax Board (FTB) and the Employment Development Department (EDD) with respect to:

- The terms of the offer;
- The process leading up to the acceptance of the offer, including high levels of review; and
- The refunding of rejected offers without interest, at the taxpayer's discretion.

The BOE has an OIC Section that is solely responsible for making compromises under the current provisions of law. Among other things, an OIC is processed depending on whether the business is closed and discontinued, or open and active.

**Business Closed and Discontinued.** Compromises are accepted when a tax liability is final and the OIC Section finds that the amount the taxpayer proposes to pay represents the maximum amount the BOE can expect to collect from that taxpayer in a reasonable period of time – typically five to seven years.

Prior to the passage of AB 2047 (Ch. 222, Stats. 2008), the OIC program only applied to businesses that had been discontinued or had transferred their operations, and only if the taxpayer making the offer no longer had a controlling interest or association with the transferred business or with a similar type of business.

**Business Open and Active.** In July 2007, the BOE adopted a legislative proposal to allow compromises with those taxpayers who may otherwise have to sell or discontinue their businesses because of their inability to pay in full a final tax liability that arose from transactions in which the taxpayers did not collect tax from the purchasers or other persons. These situations arose because taxpayers mistakenly believed that their transactions were not subject to the tax. Upon audit, the taxpayer first learned that the transactions were subject to tax, but the taxpayer cannot legally or realistically collect the tax from his or her customers. In addition, the proposal allowed compromises with

respect to successor liabilities where the successor is still in business,<sup>1</sup> and from use tax assessed by the BOE against a consumer who is not required to hold a seller's permit. The BOE found that these liabilities often came as a surprise to the taxpayer and were financially crippling to otherwise law-abiding taxpayers.

The proposal and subsequent passage of the bill addressed those unique situations where the BOE believed that it would be in the best interest of the state to compromise a tax debt, when the taxpayer does not have the means to pay more than the amount offered now or in the near future. The OIC program continues to provide for a voluntary resolution that is agreeable to both taxpayers and the BOE.

### BACKGROUND

The authorization for the BOE to accept OICs was added into law by AB 1458 (Stats. 2002, Ch. 152) and applied to final tax liabilities under the Sales and Use Tax Law, the Use Fuel Tax Law, and the Underground Storage Tank Maintenance Fee Law. In 2006, AB 3076 (Stats. 2006, Ch. 364) added similar provisions under the Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

In 2008, the Legislature passed AB 2047 (Horton, Ch. 222), which expanded the offer in compromise program to businesses that are not discontinued or transferred, under the following conditions: (1) if the final tax liability arises from transactions in which the taxpayer did not collect tax or tax reimbursement; (2) persons liable as successors; and (3) consumers who incurred a use tax liability.

### COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the BOE and is intended to extend the BOE's ability to compromise certain final tax liabilities of (1) businesses that are not discontinued or transferred if the final tax liability arises from transactions in which the taxpayer did not collect tax or tax reimbursement, (2) persons liable as successors, and (3) consumers who incurred a use tax liability.
- 2. The May 8, 2012 amendments** provide a sunset date of January 1, 2018 instead of the indefinite extension provided by the introduced version of the bill.
- 3. The sunset date was again accepted as a committee amendment.** As explained under "Background," AB 2047 originally expanded the OIC program to open and active businesses. At the time the bill was being considered by the Senate Revenue and Taxation Committee, the committee suggested a sunset date of January 1, 2013, so that the Legislature could evaluate the program and determine if any changes or improvements were necessary. The BOE originally estimated \$2.25 million in revenues for the open and active OIC provision.

This year the Senate Governance and Finance Committee suggested that the committee "consider whether the amounts forgiven are sufficiently consistent with sound tax collection practices to merit sunset removal, another five year sunset, or terminating the authority." The BOE explained to the Senate committee that the

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<sup>1</sup> Current law holds a purchaser of a business personally liable for the unpaid sales and use tax liability of the seller up to the purchase price of the business, if the purchaser fails to withhold sufficient funds to cover the liability when purchasing the business.

BOE revenue estimate for AB 2047 was overstated because the BOE estimated the revenue based on our experience with OICs for closed and discontinued businesses – the assumptions we used led to an inflated revenue estimate.

The committee explained that, since the cost/benefit ratio was so much lower than originally anticipated, the committee felt that it would be good for the Legislature to provide the opportunity for BOE to prove that the program can be improved and show the Legislature a more positive result before eliminating the sunset outright.

- 4. This bill will provide for the continuation of the OIC program for open and active businesses to January 1, 2018.** If the provisions authorizing the BOE to compromise tax liabilities of open and active businesses are allowed to expire on January 1, 2013, the OIC program will be limited to persons with businesses that have been closed and discontinued. In fiscal year (FY) 2009-10 and FY 2010-11, the BOE accepted offers from eight open and active businesses; the offer amounts totaled \$532,668. Of the eight, seven of the businesses have remained open.

One of the requirements of open and active businesses for which the BOE has accepted an OIC is that they must file and pay by the due date all subsequently required returns and/or reports for a five-year period, or until the business closes, whichever is earlier. Even though the offer amounts accepted totaled only \$532,668, the businesses that remained open continued to pay their sales and use taxes and, for the 2009-10 and 2010-11 FYs, paid over \$238,000, to the benefit of state and local governments.

- 5. Related legislation.** AB 658 (Calderon) would also amend RTC Sections 30459.15 (Cigarette and Tobacco Products Tax Law), 50156.18 (Underground Storage Tank Maintenance Fee Law), and 55332.5 (Fee Collection Procedures Law), to make technical, non-substantive corrections to the offer in compromise provisions.

## COST ESTIMATE

The BOE would not incur additional costs to administer this bill.

## REVENUE ESTIMATE

Based upon a review of OIC's accepted for open and active businesses during the past two-and-a-half FYs, the estimated revenue is approximately \$286,034 per year. This amount does not include additional revenues realized from businesses that remained open and continued to pay their sales and use taxes after their OIC was accepted; that revenue is estimated to be approximately \$119,000.

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| Analysis prepared by: | John Cortez     | 916-445-6662 | 08/17/12             |
| Contact:              | Robert Ingenito | 916-322-2376 |                      |
| ls                    |                 |              | 1548sbenrolledjc.doc |

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| History of OIC's | Authority                                   | Tax/Fee Programs  | Business Types          | Type of Liability   | Sunset Date |
|------------------|---|---|-------------------------|---|-------------|
| Pre-2003         | Administrative – court action/ suit for tax | <ul style="list-style-type: none"> <li>• Sales &amp; Use Tax</li> <li>• Special Taxes &amp; Fees</li> </ul>   | Closed and Discontinued | Final Liabilities   | N/A         |
| 2003-2006        | AB 1458 (Ch. 152, Stats. 2002)              | <ul style="list-style-type: none"> <li>• Sales &amp; Use Tax</li> <li>• Use Fuel Tax</li> <li>• Underground Storage Tank Maintenance Fee</li> </ul>   | Closed and Discontinued | Final Liabilities   | None        |
| 2007-2008        | AB 3076 (Ch. 364, Stats. 2006)              | <ul style="list-style-type: none"> <li>• Cigarette &amp; Tobacco Products Tax</li> <li>• Alcoholic Beverage Tax</li> <li>• Timber Yield Tax</li> <li>• Energy Resources Surcharge</li> <li>• Emergency Telephone Users Surcharge</li> <li>• Hazardous Substances Tax</li> <li>• Integrated Waste Management Fee</li> <li>• Oil Spill Response, Prevention and Administration Fees</li> <li>• Diesel Fuel Tax</li> <li>• Fee Collection Procedures Law (various fee programs)</li> </ul> | Closed and Discontinued | Final Liabilities   | None        |
| 2009-2013        | AB 2047 (Ch. 222, Stats. 2008)              | <ul style="list-style-type: none"> <li>• Sales &amp; Use Tax</li> <li>• Use Fuel Tax</li> <li>• Cigarette &amp; Tobacco Products Tax</li> <li>• Alcoholic Beverage Tax</li> <li>• Emergency Telephone Users Surcharge</li> <li>• Oil Spill Response, Prevention and Administration Fees</li> <li>• Underground Storage Tank Maintenance Fee</li> <li>• Diesel Fuel Tax</li> <li>• Fee Collection Procedures Law (various fee programs)</li> </ul>                                       | Open and Active         | <p>“Qualified” final liabilities</p> <ul style="list-style-type: none"> <li>• TP did not collect tax from the purchaser.</li> <li>• Successor liability.</li> <li>• Consumer Use Tax</li> </ul> | 01/01/2013  |