

**Add Section 7093.6 to the Revenue and Taxation Code to allow for the administrative authority to accept offers in compromise on final tax liabilities.**

**Source: Customer Services and Administrative Efficiency Committee**

Under existing administrative procedures, when a final sales and use tax liability is not paid by a taxpayer when due, the Board will bill the taxpayer, negotiate for payments, search for the taxpayer's assets and take collection actions to use the assets to satisfy the tax debt. Collection actions may include manually searching records for assets, making telephone calls, or seizing and selling vehicles, vessels, or stocks. In the event of a hardship, existing law allows installment payment arrangements, or collection may be deferred until the financial situation of the tax debtor improves. However, if taxpayers can obtain loans or can use credit lines to pay their tax debts, they are expected to do so.

If a debt remains unpaid for a number of years, and a lien has been filed and assets cannot be located, the Board may write-off the debt under the Government Code (discharge from accountability). When a debt is written-off, the debt is still due and owing and any liens recorded still valid, but routine billing and collection action are discontinued unless assets are subsequently located. There is no statute of limitations on the Board's collection of a tax debt, and interest and applicable penalties continue to accrue. The debt also remains on the taxpayer's credit record, impeding his or her ability to obtain credit.

Under existing law, the Board does not have the statutory authority to compromise a tax debt, and instead must bring a civil action against the tax debtor. Such an action requires the assistance of the Attorney General (AG). 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 can be paid within a reasonable period of time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount. Currently, taxes administered by the Board may be compromised only based on doubt as to the collectibility, and through the AG's statutory authority to obtain a judgment against the taxpayer to collect the tax. After the offer is reviewed for completeness and reasonableness, the Board collects the amount offered and the review process commences, with final approval by the Chief Counsel. A stipulated judgment is obtained followed by the filing of a satisfaction of the judgment when all terms of the agreement have been met. The court documents, which include a stipulation setting forth the terms of the compromise, are a matter of public record. In the offer in compromise procedure, the Board generally follows the Franchise Tax Board's (FTB) procedures and Employment Development Division's (EDD) law 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.

This proposal would provide the Board with the administrative authority to compromise a tax debt, comparable to the authority provided the FTB. For the smaller compromises (reductions in tax of \$7,500 or less), the proposal would allow the Executive Director and Chief Counsel, jointly, to compromise the debt or delegate the authority to others within the Board. For those cases in which the reduction in tax exceeds \$7,500, the proposal would provide that the Board, itself, would have the authority to compromise the debt upon recommendation by staff. However, for those cases in which the reduction in tax exceeds \$7,500, but is less than \$25,000, this proposal would provide that the Board, by resolution, could delegate to the Executive Director and Chief Counsel, jointly, its authority to compromise the debt. The proposal would provide that a public record would be placed on file, comparable to those required by laws governing EDD and FTB offers in compromise as well as the Board's settlement procedures. The record would include a summary statement as to why the compromise would be in the best interests of the state.

The FTB and EDD have the authority to administratively compromise final tax debts that are due and payable and the processes and procedures generally are similar. However, the oversight/review provisions differ. For EDD, the criteria for a compromise and its procedures and processes are codified, and for the FTB, the codified authority is general in nature.

The benefits of this proposal include:

- The existing stipulated judgment process affords the state nothing that cannot be achieved administratively through this proposal. The stipulated judgment proceeding is cursory in nature, without the formality of a full judicial proceeding, and information now available to the public through the court proceedings would be on file with the Board, available to the public. This proposal would remove an unnecessary (though acknowledged relatively small) workload from the court system. In addition, in cases of little overall benefit to the state (compromises of \$5,000 and under) but costly for the staff to conduct court-related activities, the process would be significantly more efficient. Additionally, because this proposal will remove a non-tax related obstacle (the court and state's costs relating to the civil action) from the offer in compromise process, it should enhance the relationship between the public and the Board. This proposal makes sense from the perspective of the taxpayer and the state.
- Under current procedures, going through the court delays the process by many months and requires a time-consuming process for AG staff to prepare and file the pleadings and meet the court's calendar.

- This proposal would streamline and expedite the offer in compromise process which benefits the state and the taxpayer. Under this proposal, tax debtors who are the most needy can become taxpayers, with the stigma of the debt removed. Whereas when the Board discharges these accounts, under current practice for these very small cases, the tax lien remains on record and these taxpayers still have the worry about our lien affecting their credit record and potential collection action.
- Because under the current process, the debt is reduced to a judgment, it is unclear whether the Board could administratively assess/reinstate the total unpaid amount or take collection actions in the case of misrepresentation of assets or income. If the Board were required to litigate the reinstatement of the assessment and collection thereof, enforcement generally would not be cost-effective. Therefore, there is no effective consequence for noncompliance.
- By eliminating the court proceeding, the offer in compromise process would be expedited. Greater efficiency in resolving these collection cases would be realized.
- Eliminating the court proceeding would also increase the number of taxpayers that could be considered under the current offer in compromise program. Taxpayers whose liabilities have been discharged in bankruptcy or whose liens have expired are precluded from the current process because the Board is not able to obtain a stipulated judgment .
- Historically, compliance is maximized by the ability to effectively enforce the law. If the taxpayer defaults on the terms of the compromise agreement or misrepresents his or her assets or income, this proposal would provide that the Board could reinstate the entire unpaid amount, which is comparable to the FTB, EDD and Internal Revenue Service (IRS) authorities. In addition, if the facts warrant, this proposal would provide for criminal penalties, which would be in conformity with the IRS and settlement sanctions.

In addition, this proposal should be adopted to include authority for offers in compromise under the Use Fuel Tax Law and Underground Storage Tank Fee Law.

*Section 7093.6 is added to the Revenue and Taxation Code to read:*

7093.6 (a)(1) Beginning January 1, 2002, the executive director and chief counsel of the board, or their delegates, may compromise any final liability in which the reduction of tax is seven thousand five hundred (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in

compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3)(a) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500) but less than twenty five thousand dollars (\$25,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 1 (commencing with section 6001), Part 1.5 (commencing with section 7200), Part 1.6 (commencing with section 7251), and Part 1.7 (commencing with section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that the:

(A) Amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income, and

(B) Taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a

public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the taxpayer.
- (2) The amount of unpaid tax, and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

- (1) The board determines that any person did any of the following acts regarding the making of the offer:
  - (A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax;
  - (B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax;
- (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

- (1) conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or
- (2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(k) For purposes of this section "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.