



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended: [Chapter 23 of the Fourth Extraordinary Session](#) Bill No: **SBx4 16**

Tax: **Sales and Use  
Special Taxes** Author: **Ducheny**

Related Bills:

***This analysis will only address the bill's provisions which impact the State Board of Equalization (Board).***

## **BILL SUMMARY**

Among its provisions, this 2009-10 Budget revision trailer bill would (1) increase the amount of debt which state agencies can discharge from collections activity from \$250 to \$500, and (2) authorize state agencies to impose a reasonable fee for the actual cost of its collections of past due accounts.

## **ANALYSIS**

### **CURRENT LAW**

Existing Government Code (GC) Section 13943.2 provides the State Victim's Compensation and Government Claims Board (SVCGC) with authority to approve state agency requests to discharge accounts receivable up to \$250, if the state agency's efforts have not resulted in payment and it would not be cost beneficial to pursue additional collection efforts.

Under Section 13943.2, the Board has established a "small balance" write-off process in which the Board writes off balances of \$250 or less, as specified, after a period of 180 days upon the liability becoming due and payable, with specified exceptions (e.g., security is available).

Existing 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 Act, requires state agencies to allocate collection resources based on giving highest priority to those accounts receivables with the highest expected return. The Accounts Receivable Management Act also authorizes each state agency to sell part or all of its accounts receivable to private debt collectors under specified conditions. This Act, however, does not authorize state agencies to charge a fee for their costs related to collecting delinquent accounts receivable. Further, there is no other statutory authority allowing the Board to charge a fee for its costs of collecting these delinquencies.

The State's collection procedures to collect delinquent accounts are detailed in the State Administrative Manual Section 8776 (et seq).

Existing law authorizes the Board to use various collection actions to collect delinquent accounts receivables, including but not limited to: bank levies, liens, wage garnishments, till-tap or keeper warrants, permit revocations, alcoholic beverage license suspensions, seizures of assets, offsets, and court actions. Of these collection actions, there are only four actions for which the Board charges the taxpayer a fee for its actual costs of collection:

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**Reinstatement Fee.** The Board may revoke a permit if a taxpayer does not file a tax return on time or pay a tax or fee liability on time. The Board is also authorized to revoke a permit if a taxpayer is required to post security but does not. Current law authorizes the Board to charge a \$50 reinstatement fee when a permit has been revoked and the taxpayer requests that its permit be reinstated. A \$50 reinstatement fee applies to each business location.

**Till-tap or Keeper Warrant.** If a taxpayer has not paid its tax or fee liability that is due and payable, the Board is authorized to serve a civil warrant to the California Highway Patrol or the local sheriff to enter the taxpayer's place of business and collect the gross receipts or contents of the cash register(s). Current law authorizes the Board to collect warrant fees that are assessed by the California Highway Patrol or local law enforcement agency to place an officer in the place of business.

**Sale of Alcoholic Beverage License.** The Board may seize and sell a liquor license upon termination of a business and for which a taxpayer is delinquent in the payment of taxes or penalties. The Board may charge taxpayers for any costs it incurs because of the seizure and sale, including but not limited to, advertising, long distance calls, postage, and notices of publication.

**Sale of Other Property.** The Board may seize and sell other types of real and personal property, such as a boat, home, or vehicle to satisfy a delinquent tax liability. The Board may charge taxpayers for any costs it incurs associated with the seizure and sale of such property. For example, the Board may issue a warrant to a county sheriff to seize and sell a tax debtor's vehicle. Any costs related to the seizure and sale are paid from the sale proceeds, with the remaining proceeds applied to the outstanding liability.

#### **PROPOSED LAW**

This bill amends GC Section 13943.2 to increase the amount of debt that state agencies can discharge from collection activity from \$250 to \$500.

In addition, this bill adds GC Sections 16583.1 and 16583.2 to do the following:

- Authorize a participant under the Accounts Receivable Management Act to impose a reasonable fee, not to exceed the actual costs, for its cost of collection on a past due account. GC Section 16581 defines "participant" to mean all state agencies, departments, and offices.
- Require a state agency to submit an annual report to the State Controller of its accounts receivables and discharged accounts. The Controller is required to inform a state agency, not less than 60 days before the annual report is due, of both the format and submission date for the annual report.

As an urgency measure, this bill became effective July 28, 2009.

#### **BACKGROUND**

Assembly Bill 2591 (Chapter 506, Stats. 2006) required seven specified state agencies to submit an annual report to the Department of Finance (DOF) on the status of that agency's delinquent accounts receivables, and its efforts to collect these accounts during the previous fiscal year. The DOF must submit an annual report to the Legislature on the status of delinquent accounts receivable of state agencies. The reporting agencies are: The Board, Franchise Tax Board (FTB), State Lands Commission, Department of General Services, Department of Motor Vehicles, Department of Real Estate, and the Department of Corrections.

Since the enactment of AB 2591, there have been two reports submitted to the Legislature. As a result of the findings from the first report, 2006-07 Delinquent Accounts Report, the DOF established an Accounts Receivable (AR) Workgroup for purposes of improving administrative procedures and collections on delinquent accounts. The AR Workgroup, over the past year, evaluated existing AR processes and procedures, implemented new administrative procedures for locating debtors and for performing reviews of ARs, evaluated and submitted initial recommendations on the feasibility of selling the state's discharged debts or ARs, identified that statewide AR amounts may be misleading, and made updates to the State Administrative Manual.

On April 3, 2009, the DOF submitted the second report, 2007-08 Delinquent Accounts Report, to the Assembly Budget Committee, Senate Budget and Fiscal Review Committee, and Assembly and Senate Appropriations Committees. The report discusses actions taken, and recommendations made by the AR Workgroup. Two of these recommendations proposed to increase the threshold to discharge delinquent accounts and allow state agencies to charge a fee for their costs of collecting delinquent accounts receivables.

According to the DOF, over the course of next year, the AR Workgroup will continue to meet periodically to identify additional improvements to the overall management of AR practices and processes, which will include evaluating ways that the state can increase potential revenues.

## COMMENTS

- 1. Purpose.** The purpose of this bill is to enact statutory changes necessary to implement improvements to state agencies collection of accounts receivable that have been adopted as part of the 2009-10 Conference Budget package.
- 2. Implementation considerations.** Discharging accounts receivable under \$500. Board staff does not see a problem administering the new threshold amount. It would continue to discharge balances of \$500 or less in accordance with the procedures outlined in the State Administration Manual Section 8776.6, and the Board's existing criteria for write-offs of small balances.

Imposing reasonable fees to cover collection costs. Numerous issues would need to be addressed by Board staff in order to successfully administer the proposed collection fee. In part, these issues are as follows:

- Would the same amount of fee be imposed on all types of ownership (sole owner, limited partnership, general partnership, corporation, limited liability company)? In general, collection of corporation accounts can involve an additional workload to verify corporate entity status, mail additional notices, search for corporate assets, and more. This added workload might warrant imposing a higher collection fee on corporation accounts, versus individual accounts.
- When would the fee be assessed? At what point in the collection process would a fee be assessed? For Board liabilities, once a liability becomes due and payable, collection action may be initiated. There are two types of liabilities—self-assessed and Board-assessed. Self-assessed liabilities are when a taxpayer files a return, but 1) does not make a payment, 2) makes a partial payment, 3) makes a payment with a check that is dishonored by the bank, and 4) files a late payment or return without penalty and interest charges included in

the payment. When a self-assessed liability occurs, a receivable is established, and collection action begins.

Board-assessed liabilities are liabilities for which a notice of determination (billing) has been issued by Board staff. They become due and payable 30 days from the date on which a determination is issued (unless a taxpayer has filed a timely petition for redetermination). Collection action may begin immediately after a determination is due and payable. At what point in the collection process would a delinquent receivable be subject to the proposed fee? As an alternative, a fee may be imposed on delinquent accounts that remain unpaid for 120, or 180 or more days after the liability was first due to the Board. These are just a few of the alternatives to be considered by Board staff.

- If a taxpayer enters into an installment payment agreement and fully complies with all terms of the agreement, would the taxpayer be subject to a collection fee? For example, an audit of a taxpayer's business discloses an underreporting of taxable sales. During an exit discussion, the taxpayer requests to pay the audit liability by making monthly payments. If the taxpayer is eligible for an installment payment agreement and complies with the terms of the agreement, would the Board assess a collection fee?
  - Does the Board have sufficient authority under GC Section 16583.1 to impose collections fees? Section 16583.1 provides general statutory authority for state agencies to impose collection fees, however, it does not contain administrative provisions with regard to imposing the proposed fees and the amount of the fees.
  - If a taxpayer disagrees with the assessment of the fee, would the taxpayer be able to contest the assessment by filing an appeal?
  - GC Section 16583.1 allows, but does not require, a state agency to impose a reasonable fee, not to exceed the actual costs, to recover that agency's collection costs on a past due account. What do actual costs include? Would actual costs include those costs for the Board's collection program as specified in the annual Budget Act?
  - Under current law, when a tax or fee becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus interest, penalties, and other costs. The lien attaches to real and personal property of a tax debtor by operation of law, and continues in effect for ten years from the date of its creation, unless it is sooner released or otherwise discharged. This is referred to as a "statutory lien." Would the proposed collection fees be covered under these statutory lien provisions?
- 3. Proposed collection fees would require approval by the Board Members.** Board staff's recommendations to impose a collection fee must be placed on a Board Agenda for discussion and approval by the Board Members.
- 4. The Legislative Analysts Office (LAO) recommends that the Board assess fees for dishonored checks, installment payment agreements, and offers in compromise agreements.** In its 2009-10 Budget Analysis, the LAO recommended that the Legislature require the Board and FTB to make certain changes for purposes of generating additional General Fund revenues and deterring taxpayers from making payments from accounts with insufficient funds. Those changes are as follows:

Penalties for bad checks and money orders. According to the LAO, “Bad checks and money orders disrupt the tax collection process and delay the deposit of funds into the state’s General Fund. FTB assesses a \$15 penalty on bad checks and money orders of less than \$750, and if the dishonored check or money order exceeds \$750, the penalty increases to 2 percent of the face value. The Board does not charge a penalty on bad checks or money orders. The federal government assesses greater penalties for bad checks and money orders than the state.” According to the LAO, aligning the amount of California penalties with federal penalties would serve as a greater deterrent to taxpayers paying taxes with checks and money orders that have insufficient funds. In addition, increasing the penalties for bad checks and money orders would result in General Fund revenues of approximately \$400,000 for 2009-10 and nearly \$1 million beginning 2010-11, and thereafter.

Fees for installment payment agreements. The Board does not charge a fee for installment payment agreements. In contrast, the FTB and Internal Revenue Service (IRS) do charge fees for this service. FTB charges a flat fee of \$20 per agreement, which according to FTB, does not cover the cost to provide the service or reflect the higher cost of processing non-electronic fund transfer (EFT) payments. The IRS charges \$52 per agreement for EFT payment agreements and \$105 per agreement for paper check agreements. According to the LAO, if the Board implements a fee and the FTB increases their existing fee this would result in combined annual General Fund savings of approximately \$4 million annually.

Fees for offers in compromise agreements (OIC). According to the LAO, “since OICs are a service provided to taxpayers, it would be appropriate to assess a fee. The IRS charges a flat fee of \$150 per OIC. If FTB and BOE charged an application fee of \$75 for each OIC, it would result in General Fund savings of approximately \$400,000 annually.”

## **COST ESTIMATE**

This bill would only authorize state agencies and departments to charge a fee for the collection of their delinquent accounts receivable. As previously stated, implementation of a new collection fee would require approval by the Board Members.

If the Board were to administer a collection fee, administrative costs would be incurred by Board staff to develop notices, revise computer programs, revise publications and manuals, develop and mail a special notice, train staff, and answer numerous inquiries from the public. The extent of these costs is unknown due to the uncertainty on how many delinquent accounts would be subject to the collection fee. With these uncertainties, it is difficult to clearly identify the administrative costs to the Board.

## **REVENUE ESTIMATE**

With regard to increasing the threshold amount for discharging uncollectible receivables, Board staff notes that the purpose of this provision is to allow state agencies to spend their efforts on more cost effective accounts receivables. For the fiscal year 2007-08, we estimate that approximately 0.47 percent of the Board’s total accounts receivable represent outstanding liabilities between \$250 and \$500. The Board would redirect its resources to collect more cost beneficial accounts receivable. While it is impossible to quantify the additional revenue collected from shifting collection efforts, we believe that the net revenue impact would be minor.

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With regard to charging a collection fee, this bill only allows state agencies to charge a fee for the collection of their delinquent accounts receivable. The bill's provisions do not specify the amount of the fee, or the specific delinquent accounts to which the fee would apply. Accordingly, a revenue estimate cannot be prepared.

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