



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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| Date Amended: | 04/12/05 | Bill No: | AB 1418 |
| Tax: | Sales and Use | Author: | J. Horton |
| Related Bills: | | | |

BILL SUMMARY

This bill would require the Board, after providing a 30-day advance written notification to taxpayers, to make available as a matter of public record, a quarterly list of the top 250 delinquent taxpayers who are delinquent for amounts collected as tax or tax reimbursement in excess of \$100,000, as specified.

ANALYSIS

Current Law

Under existing law, Section 7056 of the Sales and Use Tax Law prohibits the Board to make known in any manner whatever, the business affairs, operations, or any other information pertaining to any retailer or any other person required to report to the Board or pay a sales and use tax. However, some exceptions exist in current law where confidential tax information is released to the public. For example, an exception exists under the settlement provisions of Section 7093.5 where the Board settles tax matters in dispute that are the subject of protests, appeals or refund claims. The law requires that a public record be made with respect to a settlement whenever a reduction in tax in excess of \$500 is approved. The public record must include, among other things, the name of the taxpayer, the total amount in dispute, and the amount agreed to pursuant to the settlement. Another exception includes cases where a taxpayer is delinquent in his or her tax obligations and the Board files a lien. The recording of the tax lien pursuant to Section 6757 establishes a public record of the existence of the lien against all property belonging to the taxpayer and located in this state.

Proposed Law

This bill would add Article 1.5 (commencing with Section 7063) to Chapter 8 of the Sales and Use Tax Law to require the Board to make available as a matter of public record each quarter, a list of the 250 largest sales and use tax delinquencies in excess of \$100,000 for which the person has received tax or tax reimbursement. A delinquency is described in the bill as an amount of tax that has been delinquent for more than 90 days for which a state tax lien has been filed, but would not include:

- Any delinquency that is under litigation in a court of law;
- Any delinquency under which the person has filed a petition for redetermination;

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- Any delinquency for which suitable payment arrangements have been made with the Board; or
- Any delinquency for which the taxpayer has filed bankruptcy.

Prior to making a tax delinquency a matter of public record, however, the bill would require the Board to provide a preliminary written notice by first-class mail, return receipt required, to the person or persons held liable for the tax. If within 30 days of receipt of that written notice, the person or persons do not either remit the amount due, or otherwise make arrangements with the Board for payment of the amount due, the tax delinquency would be required to be included on the list.

The bill would specify that the quarterly list include:

- The telephone number and address of the Board office to contact if a person believes placement of his or her name on the list is in error.
- The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.

The bill would require the Board to remove any delinquencies from the list, as promptly as feasible, but no later than five business days, if any of the following occur:

- The person liable for the tax has contacted the Board and resolution of the delinquency is or has been arranged.
- The Board has verified that an active bankruptcy proceeding has been initiated.
- The Board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount.
- The Board has determined that the delinquency is uncollectible.

The bill would further specify that any person whose delinquency appears on the quarterly list, and who satisfies that delinquency in whole, or in part, may request the Board to include in its quarterly list any payments the person made to satisfy the delinquency. Upon receipt of that request, the bill would specify that the Board shall include those payments on the list as promptly as feasible.

The bill would become operative January 1, 2006.

Background

From January 1, 2000 to January 1, 2005, similar provisions were in the Sales and Use Tax Law, as added by AB 790 (Honda, Stats. 1999, Ch. 443), except that bill limited the list to the top 12 delinquent taxpayers in excess of one million dollars. The Board sponsored that measure in an effort to induce taxpayers to clear their accounts with the Board. At that time, those 12 delinquent taxpayers owed the Board over \$52 million. However, the Board only collected from one account that appeared on the list, and the collection of that delinquent account was not attributable to the posting of the

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delinquency on the Internet. Instead, the collected amount (totaling \$1.7 million) was a result of the Board's other enforcement efforts.

Because the statute at that time was so limiting, it did not create an avenue to significantly reduce the past due delinquencies. Most of the taxpayers' businesses had been closed, and the liabilities would normally have been written off as uncollectible anyway.

COMMENTS

1. **Sponsor and purpose.** This measure is sponsored by the Assembly Member Jerome Horton to serve as an inducement for delinquent sales and use taxpayers to clear their accounts with the Board and to reduce the Board's accounts receivables.
2. **Sales tax should be held at a higher standard.** Proponents argue that since customers generally reimburse retailers for the tax, the fact that the retailer collecting the tax diverts these funds dedicated to public schools, safety, and other purposes to his or her private use, public disclosure of their delinquencies seems appropriate. This measure provides the mechanism to publicize the most flagrant of these irresponsible taxpayers.
3. **Delinquent taxes are already a matter of public record.** Proponents note that these lists aren't violating privacy laws because tax delinquencies are already a matter of public record, through the filing of tax liens in the county recorder's offices.
4. **Public disclosure of tax delinquencies is gaining interest.** The state of Connecticut was the first state to begin a public listing of delinquent taxpayers. Its program began in January 1997. Since then, 11 other states began publicly disclosing the names of their top tax delinquents. These states include Georgia, Maryland, Colorado, Rhode Island, Washington, Louisiana, North Carolina, South Carolina, Minnesota, and New Jersey.
5. **Suggested amendments.** The criteria for tax delinquents who would be publicly listed is essentially the same as that contained in the previous statute, except the list would be expanded from 12 to 250 taxpayers, and the delinquency amount is reduced from \$1 million to \$100,000. However, in order to make the statute more effective, the following changes are suggested:
 - To be on the list, the language requires that liability has to have been assessed by the Board, rather than self-assessed by the taxpayer (see page 4, lines 1 through 6). In other words, any taxpayers that collected tax reimbursement and filed returns with the Board without payment of the tax would not be placed on the list. This unnecessarily eliminates even more egregious tax delinquents. To address this issue, it is suggested that on page 4, line 6, "or self-assessed by the person" be added after "Chapter 5".

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- The language would require that the person received tax or tax reimbursement in order to be placed on the list. This would exclude any taxpayers that are found to be liable for use tax due, or those that failed to properly report their taxable sales. To address this issue, it is suggested that on page 4, lines 10 to 12, “for which the person has received tax or tax reimbursement, including any additions, penalties, or interest” be stricken.

COST ESTIMATE

Some costs would be incurred in identifying affected accounts, issuing notices, arranging for the public record, and maintaining the list. An estimate of these costs is pending.

REVENUE ESTIMATE

It is anticipated that enactment of this measure will provide an inducement for taxpayers to come forward and settle their accounts with the Board, thereby increasing state and local tax revenues. The sales and use tax program’s accounts receivable balance is approximately \$675 million. Currently, the top 250 tax delinquents that meet the conditions of the proposed statute owe, in the aggregate, approximately \$300 million.

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