

Add Sections 7157, 8407, 30483 and 60709 to, and amend Section 30474 of, the Revenue and Taxation Code to provide the Board of Equalization (BOE) and the State Controller's Office with express authority to collect orders of restitution awarded to the BOE in criminal proceedings in the same manner as tax liabilities.

Source: Legal Department, Sales and Use Tax Department, and Property and Special Taxes Department.

Existing Law

Victims of crimes are entitled to restitution under Section 28 of Article 1 of the California Constitution and Penal Code Section 1202.4. All persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted. Courts are required to award an order of restitution from a convicted offender in every case that a crime victim suffers a loss, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. An offender's inability to pay shall not be a compelling and extraordinary reason (Penal Code Section 1202.4 (f) and (g)).

Under existing law, the BOE may refer cases for criminal prosecution in state courts against a person for certain offenses and the court may order restitution. The most common offenses referred by the BOE for criminal prosecution include the following:

- Tax evasion,
- Operating without a permit,
- Possession and sale of unstamped cigarettes,
- Unlicensed sales of cigarettes and tobacco products, and
- Grand theft.

The BOE may also obtain federal court orders of restitution for criminal charges referred to a federal court. The most common charges pursued in federal court include federal offenses such as:

- Wire fraud,
- Mail fraud, and
- Transportation and sale of contraband tobacco products.

Criminal restitution is a permanent order that does not expire and is not dischargeable through bankruptcy.

Under existing Penal Code Sections 1202.4, 1214, and 1214.2, enforcement of a criminal restitution order for tax, penalties, fines and investigative costs are enforceable as if the order were a civil judgment.

Orders of restitution issued in a federal criminal action for certain crimes are enforceable in the same manner as a civil judgment.

For the State (as a victim of the crime), a restitution order covers its economic loss from a person convicted of a crime. The State's economic loss in these cases is the amount of tax, including applicable penalties, interest, and costs of investigation or prosecution that the taxpayer failed to pay as a result of the crime for which the taxpayer is guilty.

Under existing Sales and Use Tax Law (Sections 6701 through 6832.6), Cigarette and Tobacco Products Tax Law (Sections 30301 through 30358), and Diesel Fuel Tax Law (Sections 60401 through 60493.5), the BOE is authorized to use specified collection tools in the pursuit of delinquent liabilities, including tax, interest and penalties. With respect to the Motor Vehicle Fuel Tax Law, administrative and collection responsibilities are split between the BOE and the State Controller's Office (SCO), respectively. Under existing Motor Vehicle Fuel Tax Law (Sections 7851 through 7983), the SCO is authorized to use the same tools as the BOE to collect delinquent liabilities¹. The collections methods for both the BOE and SCO include, but are not limited to, the ability to issue a levy, file a lien, and utilize an earnings withhold order.

However, since an order of restitution issued by a court is not a tax or a tax penalty, the BOE's and SCO's tax collection tools are unavailable for use in collecting restitution orders owed to the State. Instead, the BOE and SCO must file the order in the civil court and use civil enforcement methods to collect the money. When the BOE or SCO attempts to collect an order of restitution as a civil money judgment, the BOE or SCO must use the collection remedies available to any creditor under the Code of Civil Procedure, which are generally inefficient and cumbersome.

Currently, BOE's orders of restitution may be collected either (1) by referring the restitution order to the FTB for collection under the Court-Ordered Debt (COD) program, or (2) as a civil money judgment. The California Department of Corrections and Rehabilitation (CDCR) refer restitution orders to FTB on our behalf. The CDCR assists with the collection of restitution for those offenders sentenced to state prison or on parole. When an offender is on parole, but restitution has not been paid in full, the CDCR refers the restitution to the FTB for collection under the COD program. Additionally, the BOE is not an authorized government entity under the COD program. Authorized government entities include (1) courts, (2) county probation and revenue collections departments, (3) county or city jails or juvenile halls, (4) CDCR, and (5) the Victim Compensation and Government Claims Board. Only a small number of restitution orders awarded to the BOE are referred to the FTB for collection under the COD program. Restitution orders awarded to the BOE in federal cases do not meet the requirements for referral under the COD provisions.

When the BOE and SCO collect an order of restitution as a civil money judgment, both agencies must use the collection remedies available to any creditor under the Code of Civil Procedure. The statutory procedures for obtaining levies and liens can delay the collection of the order of restitution, and the BOE must rely on the availability of external resources to collect amounts owed as a civil money judgment. The BOE must also pay fees for services performed by outside sources such as levy and process server fees.

For example, in order for the BOE to file a state lien on an offender's real property, the BOE must convert the Order of Restitution to an Abstract of Judgment and have the Abstract of Judgment endorsed by the court clerk. Once the Abstract of Judgment is obtained, BOE staff can then file the judgment with a County Recorder's office in any county where the

¹ The SCO has the statutory responsibility for collection of amounts due under the Motor Vehicle Fuel Tax Law (MVF). Initial discussions with SCO staff have indicated that it would be appropriate to include MVF in this proposal.

offender owns real property. This establishes an automatic lien against an offender's current or future real property.

To enforce an Order of Restitution on an offender's income or personal assets, BOE staff must obtain a Writ of Execution. Once a Writ of Execution is obtained, BOE staff must deliver this document to a levying officer (County Sheriff or Marshal) with instructions identifying which property to levy. Payment of a fee is required. The Writ of Execution allows the BOE to levy the offender's bank accounts, business receipts, and personal property to satisfy any unpaid balance remaining on a restitution order. In general, depending on the nature of the assets involved (bank accounts, wages and vehicles), the civil collection process can take anywhere from 90 days to one year from the date of seizure to the date of the auction to complete.

Currently, restitution orders are not maintained on the BOE's two automated systems—the Integrated Revenue Information System (IRIS) and the Automated Compliance Management System (ACMS). Instead, restitution orders are monitored and collected separately from tax and fee liabilities.

This Proposal

This proposal would add Sections 7157 (sales tax), 8407 (motor vehicle fuel tax), 30483 (cigarette and tobacco products tax), and 60709 (diesel fuel tax) to, and amend Section 30474 of, the Revenue and Taxation Code, to provide both the BOE and SCO with express authority to collect an order of restitution, awarded to the State of California in criminal proceedings, in the same manner as tax liabilities. This change would:

- Streamline and accelerate the collection process on orders of restitution received in criminal cases; and,
- Utilize the efficient collection tools available to both the BOE and SCO for tax administration, thereby improving the collection process for orders of restitution awarded to the BOE in criminal proceedings.

Background. During the 2010 Legislative session, the Franchise Tax Board (FTB) sought and was granted similar authority for enhancing collections of restitution orders. Enactment of Assembly Bill 1530 (Stats. 2010, Chapter 359, Skinner) allows FTB to collect restitution orders or any other amounts awarded to the FTB by a court of competent jurisdiction (federal or state court) in criminal proceedings in the same manner and with the same priority as tax liabilities. This bill passed the Assembly with a 78-0 vote and the Senate with a 30-2 vote.

Fiscal Impact. The BOE uses a manual process for tracking restitution orders awarded for felony and misdemeanor cases. Since 2000, the BOE has been awarded 100 orders of restitution for felony cases. Of those 100 cases², 34 cases have been paid in full for a total amount collected of \$8,577,400. The remaining 66 cases, however, are unpaid, for a total uncollected amount of \$31,619,028.

² Four of the 100 felony cases represent Federal Court ordered restitution totaling \$5,023,980; no payments have been received for these four cases.

In July 2008, the responsibility for misdemeanor cases was transferred from the BOE's district offices to the BOE's Investigations Division (ID). Since July 2008, the BOE has been awarded 51 misdemeanor orders of restitution. Of those 51 cases, 18 have been paid in full for a total amount collected of \$328,388. The remaining 33 cases, however, are unpaid, for a total uncollected amount of \$2,508,079. An additional 22 misdemeanor cases have been adjudicated and the conviction required the taxpayers to "file and pay all back taxes" as a condition for reinstatement of their seller's permit, but no specific court ordered restitution amount was set. The total outstanding liability of those 22 accounts is estimated at \$488,600 based on liability on record at the time the ID received the referral and liability due at the time of adjudication, reinstatement or close out of the account.

Of the total uncollected restitution of \$34,615,707 (\$31,619,028 uncollected felony cases + \$2,508,079 uncollected misdemeanor cases + \$488,600 uncollected misdemeanor cases without specified restitution amount), the BOE anticipates collecting 5 percent of that amount, or \$1,730,785 as a result of this proposal. In determining the 5 percent, BOE staff considered its limited ability to collect an order of restitution debt due to the offender's incarceration, prior asset forfeiture, and payment of restitution to additional victims. In addition, BOE staff considered its collection return on aged accounts receivable.

In estimating BOE's ongoing revenue, an annual average number of cases and average dollar amount was computed. For felony cases, during a 10-year period, the ID received 100 restitution orders for a total dollar amount of \$40,196,428 (\$8,577,400 + \$31,619,028). This computes to an annual average number of cases of 10 (100/10) and an average dollar amount of \$4,019,643 (\$40,196,428/10). For misdemeanor cases, over a 2-year period, the ID received 73 restitution orders for a total dollar amount of \$3,325,067 (\$328,388 + \$2,508,079 + \$488,600). This computes to an annual average number of cases of 36 (73/2) and an average dollar amount of \$1,662,533 (\$3,325,067/2).

The total average dollar amount for restitution is \$5,682,176 annually (\$4,019,643 + \$1,662,533). Of the \$5,682,176, BOE anticipates collecting 20 percent annually, or \$1,136,435.

Finally, regarding costs to implement this proposal, one-time costs to modify existing computer systems and processes to incorporate orders of restitution to taxpayer accounts are estimated to be approximately \$106,000.

Section 7157 is added to the Revenue and Taxation Code to read:

7157. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the State Board of Equalization may be collected by the State Board of Equalization in any manner provided by law for collection of a delinquent sales and use tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of

California on the date that amount is established on the records of the State Board of Equalization.

(b) 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 7285) shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 7 (commencing with Section 6901), no refund or credit may be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the State Board of Equalization.

(e) Amounts authorized to be collected pursuant to this section are not subject to any statute of limitations set forth in Chapter 6 (commencing with Section 6701).

(f) Notwithstanding Section 6738 or Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a Notice of State Tax Lien. The State Board of Equalization may record or extend a recorded Notice of State Tax Lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the State Board of Equalization before, on, or after January 1, 2012.

Section 8407 is added to the Revenue and Taxation Code to read:

8407. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the State Board of Equalization may be collected by the Controller in any manner provided by law for collection of a delinquent motor vehicle fuel tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the State Board of Equalization.

(b) Part 2 (commencing with Section 7301) shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 7 (commencing with Section 8101), no refund or credit may be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the State Board of Equalization.

(e) Amounts authorized to be collected pursuant to this section are not subject to any statute of limitations set forth in Chapter 6 (commencing with Section 7851).

(f) Notwithstanding Section 7872 or Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a Notice of State Tax Lien. The State Board of Equalization may record or extend a recorded Notice of State Tax Lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the State Board of Equalization before, on, or after January 1, 2012.

Section 30474 of the Revenue and Taxation Code is amended to read:

30474. (a) Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined an amount not to exceed twenty-five thousand dollars (\$25,000), or be imprisoned for a period not to exceed one year in the county jail, or, at the discretion of the court, be subject to both fine and imprisonment in the county jail.

(b) In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars (\$100) for each carton of 200 cigarettes, or portion thereof, if that person knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization; collection of the penalty directed to the Board of Equalization may be enforced pursuant to Section 30483.

(c) This section does not apply to a licensed distributor that possesses, keeps, stores, or retains cigarettes before the necessary stamp or meter impression is affixed.

Section 30483 is added to the Revenue and Taxation Code to read:

30483. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the Board of Equalization may be collected by the State Board of Equalization in any manner provided by law for collection of a delinquent

cigarette and tobacco products tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the State Board of Equalization.

(b) Part 13 (commencing with Section 30001) shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 6 (commencing with Section 30361), no refund or credit may be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the State Board of Equalization.

(e) Amounts authorized to be collected pursuant to this section are not subject to any statute of limitations set forth in Chapter 5 (commencing with Section 30301).

(f) Notwithstanding Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a Notice of State Tax Lien. The State Board of Equalization may record or extend a recorded Notice of State Tax Lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the State Board of Equalization before, on, or after January 1, 2012.

Section 60709 is added to the Revenue and Taxation Code to read:

60709. (a) (1) Restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or any other entity that are due and payable to the State Board of Equalization may be collected by the State Board of Equalization in any manner provided by law for collection of a delinquent diesel fuel tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(2) Amounts imposed by a court of competent jurisdiction as an order of restitution for criminal offenses shall be treated as final and due and payable to the State of California on the date that amount is established on the records of the State Board of Equalization.

(b) Part 31 (commencing with Section 60001) shall apply to amounts collected under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(c) Notwithstanding Chapter 8 (commencing with Section 60501), no refund or credit may be allowed for any amounts paid or payments applied under this section.

(d) Amounts authorized to be collected pursuant to this section may accrue interest at the greater of the rate applicable to the amounts being collected or the rate provided under Section 6591.5 from and after the date the amounts are established on the records of the State Board of Equalization.

(e) Amounts authorized to be collected pursuant to this section are not subject to any statute of limitations set forth in Chapter 7 (commencing with Section 60401).

(f) Notwithstanding Sections 60441 through 60445 or Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, any portion of the amounts authorized to be collected under this section that remain unsatisfied may be collected by the recording of a Notice of State Tax Lien. The State Board of Equalization may record or extend a recorded Notice of State Tax Lien at any time until the amount due, including any accrued interest, is paid in full.

(g) This section shall apply on and after January 1, 2012, to amounts authorized to be collected pursuant to this section that are due and payable to the State Board of Equalization before, on, or after January 1, 2012.