Amend Government Code Section 13943.1 to allow the Board of Equalization (BOE) to provide relief of liability when a discharge from accountability has been granted, under specified conditions.

Source: Honorable Michelle Steel

Existing law. Current Government Code (GC) Section 13943.1 allows the Franchise Tax Board (FTB) to provide relief of liability to the taxpayer if those liabilities are discharged from accountability (deemed uncollectable) and if at least one of the following conditions are met:

- The liability is for an amount less than five hundred dollars ($500).
- The liable person has been deceased for more than four years and there is no active probate for that person.
- The FTB has determined that the taxpayer has a permanent financial hardship.
- The liability has been unpaid for more than 30 years.

The FTB also has a 20 year statute of limitation (SOL) on collection. Revenue and Taxation Code (RTC) Section 19255 provides that after 20 years from the latest tax liability for a taxable year, the FTB may not collect the amount owed and the liability is abated. There are also provisions related to tolling the statute of limitations, but in general, the 20 year SOL applies to liabilities that are due and payable before, on, or after July 1, 2006.

Under existing law, the BOE has no statutory authority to *extinguish* a tax liability when the debt has been discharged. An account that has been deemed uncollectable does not have the effect of relieving the taxpayer of the responsibility to pay.

Background. The BOE and FTB have similar organizational functions, responsibilities, Board Members, statutes, and policies. With respect to collections, the agencies share similar collection policies and procedures. The BOE follows the Compliance Policy and Procedures Manual, Chapter 7, Collections, while the FTB has the Collection Procedures Manual | California Franchise Tax Board. Both agencies use the same California statutes to enforce collections (GC, Civil Code, Code of Civil Procedures, et.al.), and they operate under similar general statewide statutes (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 (ARM) Act), and policies (State's collection procedures to collect delinquent accounts are detailed in the State Administrative Manual (SAM) Section 8776 (et seq).

Moreover, both agencies abide by the GC provisions related to discharge from accountability (discharge), which provides that when the agency is unable to collect the liability, or collection of the liability is not cost effective, the agency is to make an application for discharge to relieve the agency of the responsibility for collection, thereby removing the item from the accounts receivable (AR). The discharge provisions are as follows:

- Chapter 3 (commencing with 13940) of Part 4 of Division 3 of Title 2 of the GC allows an agency to make an application to the State Victim's Compensation and Government Claims Board (SVCGC) for discharge from accountability to relieve the agency of the responsibility for collection, thereby removing the item from the AR.
- GC Section 13943.2 provides the SVCGC with authority to approve state agency requests to discharge AR up to $500, if the state agency's efforts have not resulted in payment and it would not be cost beneficial to pursue additional collection efforts.

Recently, the Governor signed legislation[1] that allows the BOE to utilize tax collection efforts that the FTB already has authority to use. These compliance tools include the BOE's ability to: (a) request a denial or suspension of a contractor's license for failure to resolve any outstanding BOE-related tax liability; and (b) use the new employee registry information for tax enforcement purposes. In addition, both the FTB and BOE were recently provided statutory authority[2] to (1) increases the list of the top 250 tax debtors to the top 500; and (2) require state governmental licensing entities to refuse to issue, reactivate, reinstate, or renew an occupations, professional, or driver's license, or suspend a license of a person on the top 500 debtor list.

According to the Delinquent Account Report prepared by the Department of Finance, for the fiscal years (FY) 2006-07 through 2008-09, the BOE has averaged 6,805 AR's discharged, worth an average of $81.5 million per FY[3]. Of that amount, it is estimated that the BOE could collect voluntary or involuntary payments of $227,622 on 50-100 AR's.

This Proposal. This proposal would begin to align the SOL on collections between the State's largest tax collection agencies. Existing SOL statutes allow a tax debtor to be relieved of the liability owing to FTB, under specified conditions, after the 20 or 30 year SOL period has expired. This proposal would not alter the BOE discharge criteria, nor would it allow tax debtors relief of liability without the BOE first having determined that the liability is uncollectable. Considering the extensive collection tools the BOE now has, it seems appropriate to provide relief from liability to a limited number of tax debtors.

Section 13943.1 of the Government Code is amended to read:

> 13943.1. (a) Except as provided in subdivision (b), a discharge granted pursuant to this chapter to a state agency or employee does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the state.
>
> (b) A discharge granted pursuant to this chapter to the Franchise Tax Board <u>or the State Board of Equalization</u> shall release a person from a liability for the payment of any tax, fee, or other liability deemed uncollectible that is due and owing to the state and extinguish that liability, if at least one of the following conditions is met:

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[1] AB 1307 (Ch. 734, Stats. 2011). BOE analysis: http://www.boe.ca.gov/legdiv/pdf/1307abenr.pdf
[2] AB 1424 (Ch. 455, Stats. 2011). BOE analysis: http://www.boe.ca.gov/legdiv/pdf/1424abenrstw.pdf
[3] DOF Delinquent Accounts Report: Reports and Periodicals - California Department of Finance

(1) The liability is for an amount less than five hundred dollars ($500).

(2) The liable person has been deceased for more than four years and there is no active probate with respect to that person.

(3) The Franchise Tax Board <u>or the State Board of Equalization</u> has determined that the liable person has a permanent financial hardship.

(4) The liability has been unpaid for more than 30 years.