

**Amend Business and Professions Code Section 7145.5 to authorize the BOE to request the Contractor's State License Board for a denial or suspension of a contractor's license for failure to resolve any outstanding final tax or fee liabilities.**

**Source: Sales and Use Tax Department**

### **Existing Law**

Under existing Business and Professions Code (BPC) Section 7145.5, the Contractor's State License Board (CSLB) is authorized to refuse to issue, reinstate, reactivate, or renew or suspend a contractor's license for the failure of a licensee to resolve any outstanding final liabilities, which include taxes, penalties, interest, and any fees assessed by the CSLB, the Franchise Tax Board (FTB), the Employment Development Department (EDD), or the Department of Industrial Relations (DIR). However, current law does not authorize the Board of Equalization (BOE) to request the CSLB to suspend a contractor's license for failure to pay any outstanding taxes, penalties, interest, or fees.

Since the BOE does not have such authority, it has examined using BPC Section 7071.17(b) to request a suspension after filing an abstract of judgment. Section 7071.17 allows the registrar of the CSLB to suspend a contractor's license for any "unsatisfied final judgment that is substantially related to the construction activities of a licensee ... or to the qualifications, function, duties of the license." Civil Code of Procedure (CCP) Section 1235.120 defines a final judgment as "a judgment with respect to which all possibility of direct attack by way of appeal, motion of a new trial, or a motion under CCP Section 663 to vacate judgment have been exhausted." However, BOE staff and CSLB believe that the BOE's perfected lien procedure does not appear to be comparable to a final judgment since the taxpayer may challenge the assessment upon which the lien is based by filing a claim for refund after the tax has been paid. Therefore, the CSLB would require the BOE to submit an abstract of judgment relating to the contractor as a condition for the registrar to initiate the proceeding to suspend the license under Section 7071.17.

While both CSLB and BOE staff believe that the BOE can rely on Section 7071.17 to request the CSLB to suspend a contractor's license, the procedure used pursuant to Section 7071.17 would be extremely cumbersome for both agencies and would require that BOE obtain an abstract of judgment and file that judgment with CSLB. Further, CSLB does not use this procedure on a routine basis. For this reason, CSLB staff recommended that the BOE pursue legislation to amend BPC Section 7145.5 to be included in the list of governmental agencies that may request a contractor's license be suspended based on an outstanding final liability owed by the contractor to that entity.

The BOE currently has 85,096 delinquent sales and use accounts. Of the 85,096 delinquent accounts, 1,717 represent outstanding final liabilities due to the BOE by construction contractors (see the following table).

<b>Breakdown of Accounts</b>	
<ul style="list-style-type: none"> <li>The total number of sales and use tax accounts with an outstanding liability is 85,096. Of the 85,096 accounts, 1,717 represent accounts that are coded under the following <sup>1</sup>North American Industry Classification System (NAICS) codes: 236, 237, 2381, 23821, 23822, 23829, 2383, and 2389.</li> <li>Construction of Buildings (236); Heavy and Civil Engineering Construction (237); Foundation, Structure, and Building Exterior Contractors (2381); Electrical Contractors and Other Wiring Installation Contractors (23821); Plumbing, Heating, and Air-Conditioning Contractors (23822); Other Building Equipment Contractors (23829); Building Finishing Contractors (2383); and Other Specialty Trade Contractors (2389).</li> </ul>	
Active accounts for construction contractors	967
<sup>2</sup> Closed accounts for construction contractors	750
<b>Total number of accounts for construction contractors</b>	<b><u>1,717</u></b>
Accounts receivable for active construction contractor businesses	\$ 9,814,194
Accounts receivable for closed construction contractor businesses	<u>\$41,591,906</u>
<b>Total</b>	<b><u>\$51,406,100</u></b>

The number of accounts and outstanding final liabilities shown in the table above were compiled using the account balances of the Sales and Use Tax Department's accounts receivables for those taxpayers coded as a construction contractor as set forth in the NAICS. The amounts do not include accounts in bankruptcy and installment payment agreements. The amounts also do not include any final liabilities that are in the appeals process.

### **Background**

Since the enactment of legislation in 1990 (Ch. 1386, AB 2282, Eastin) the CSLB has been authorized to suspend or refuse to issue or renew a contractor's license, upon notification, for failure to resolve all outstanding final liabilities imposed by the DIR, EDD, and FTB. The purpose of this legislation was to establish joint enforcement action among the three agencies in order to enforce collection of taxes and compliance with the laws.

<sup>1</sup> The North American Industry Classification System (NAICS) is the industry classification system of the United States, developed by the U.S. Economic Classification Policy Committee on behalf of the Office of Management and Budget. It is currently used by the United States, Canada, and Mexico's federal governments, state agencies and private industries to identify a business' principal activity within the retail, wholesale and service categories. In April 2010, the BOE completed the process of converting over one million sales and use tax accounts from the previous business coding system to the NAICS codes.

<sup>2</sup>Closed accounts represent a combination of (1) contractors whose businesses have been terminated, and (2) contractors who are still conducting business but are no longer required to hold a seller's permit because they install materials only on a lump-sum contract basis.

In 1993, by Executive Order, the Joint Enforcement Strike Force was established to combat the underground economy. The JESF is comprised of several agencies including the CSLB, DIR, EDD, FTB, and BOE. Reports indicate that the underground economy imposes burdens on businesses that comply with the law and properly pay tax obligations. Reports also indicate that while these agencies have authority to enforce liens and warrants to collect outstanding liabilities, these collection tools are ineffective against taxpayers who primarily operate on a cash basis because current information on their assets or income is unavailable.

Similar to EDD and FTB, the BOE finds that some delinquent contractors do not respond to its usual enforcement actions. Suspension of a contractor's license would be a last resort collection method. When the BOE cannot get a contractor to pay its outstanding liability in full or to enter into an installment payment agreement, and no other collection tools are effective, then the BOE would consider requesting CSLB to deny or suspend a contractor's license.

### **This Proposal**

This proposal is a duplicate of last year's Proposal 3-3, which was adopted on a 3-2 vote by the BOE's Legislative Committee on November 17, 2009 and introduced as [AB 2332](#) (Eng) during the 2010 Legislative Session. Although approved by the Legislature, Governor Schwarzenegger vetoed AB 2332, stating:

“Not resolving outstanding financial liabilities is a serious offense, but this bill is unnecessary. The BOE already has at its disposal a number of enforcement actions that it can take against contractors that are delinquent on tax payments. This bill proposes to shift some responsibility for tax collection from the BOE to a Board that is designed to protect the safety and well being of consumers.”

BOE staff does not equate this additional collection tool, which would only be used as a last resort effort to bring a contractor into compliance, as shifting of any responsibility to the CSLB. This proposal would give the BOE an additional collection tool that would also serve as an incentive for delinquent contractors to resolve their outstanding liabilities. The use of this collection tool would place the BOE on equal footing with FTB and EDD, in addition to promoting joint enforcement action among the three tax collection agencies.

*Section 7145.5 of the Business and Professions Code is amended to read:*

7145.5 (a) The registrar may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license for the failure of a licensee to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest, and any fees that may be assessed by the board, the Department of Industrial Relations, the Employment Development Department, or the Franchise Tax Board, or the State Board of Equalization.

1) Until the debts covered by this section are satisfied, the qualifying person and any other personnel of record named on a license that has been suspended under this section shall be prohibited from serving in any capacity that is subject to licensure under this chapter, but shall be permitted to act in the capacity of a non-supervising bona fide employee.

(2) The license of any other renewable licensed entity with any of the same personnel of record that have been assessed an outstanding liability covered by this section shall be suspended until the debt has been satisfied or until the same personnel of record disassociate themselves from the renewable licensed entity.

(b) The refusal to issue a license or the suspension of a license as provided by this section shall be applicable only if the registrar has mailed a notice preliminary to the refusal or suspension that indicates that the license will be refused or suspended by a date certain. This preliminary notice shall be mailed to the licensee at least 60 days before the date certain.

(c) In the case of outstanding final liabilities assessed by the Franchise Tax Board, this section shall be operative within 60 days after the Contractors' State License Board has provided the Franchise Tax Board with the information required under Section 30, relating to licensing information that includes the federal employee identification number or social security number.

(d) All versions of the application for contractors' licenses shall include, as part of the application, an authorization by the applicant, in the form and manner mutually agreeable to the Franchise Tax Board and the board, for the Franchise Tax Board to disclose the tax information that is required for the registrar to administer this section. The Franchise Tax Board may from time to time audit these authorizations.

(e) In the case of outstanding final liabilities assessed by the State Board of Equalization, this section shall not apply to any outstanding final liability if the licensee has entered into an installment payment agreement for that liability with the State Board of Equalization and is in compliance with the terms of such agreement.