

Amend Government Code Sections 17280.1 and 17280.2 to specifically provide that the Board of Equalization (BOE) shall accept registered warrants as payment for any tax, surcharge, or fee liability to the BOE if the registered warrant is issued specifically to that tax, fee, or surcharge payer.

Source: Honorable Betty T. Yee

Current Law

Under existing law, there is no statute that requires the BOE to accept registered warrants. Government Code Section 17280.1 does require the Franchise Tax Board (FTB) to accept registered warrants as payment for personal income or bank and corporation taxes.

The BOE does, however, have the authority to accept registered warrants as payment of liabilities at its own discretion. Statutes in the Government Code provide that registered warrants issued by the State *may be* used as security for public or private debts (Government Code Section 17203), and are considered to be "negotiable instruments" (Government Code Section 17205). Section 17203 states: "Such registered warrants are acceptable and may be used as security for the faithful performance of any public or private trust or obligation or for the performance of any act, including the use of such registered warrants by banks and savings and loan associations as security for deposits of funds of any county, municipal or public corporation, district, political subdivision, or state agency." Section 17205 provides, "Notwithstanding any provision of the Uniform Commercial Code, all registered warrants are negotiable instruments." Under this body of law, a "negotiable instrument" is a form of payment that *may be* accepted by the payee in a particular transaction. A negotiable instrument however, is not the same as "legal tender," which *must* be accepted as a form of payment. Based on these statutes and the lack of any legal authority that clearly prohibits it, State-issued registered warrants *could be* accepted by the BOE as valid remittances for purposes of crediting payment of a tax, surcharge, or fee liability for the "payee."

The BOE has no legal obligation or authorization to accept a registered warrant from a third party; that is, a taxpayer or entity other than the payee named on the warrant. Existing BOE practice and procedures do not allow a taxpayer to make a payment using a third party check, due to the increased possibility of fraud inherent in such a transaction. The same concerns would apply to third party registered warrants.

Background

On June 24, 2009, the State Controller announced that he would be forced to issue registered warrants beginning July 2, 2009, if immediate budget and cash solutions were not quickly adopted by the Governor and the Legislature. Because of the specific reference in the California Government Code to personal income and bank and corporation taxes, the FTB was able to announce in advance that it would be accepting registered warrants in the event the State

began to issue them. Having specific authority made it simple for that tax agency to answer any questions from taxpayers and to begin implementing a plan to accept the registered warrants.

At the July 21, 2009 BOE hearing, the BOE Members decided to accept the state-issued registered warrants as payment of sales and use taxes and other taxes, surcharges, or fees owed to the BOE. During the BOE hearing, there was discussion about a similar State budget situation that occurred in 1992 that also resulted in the BOE Member's decision to accept state-issued registered warrants for payment of outstanding tax, surcharge and fee liabilities. The BOE Members also directed staff to draft a legislative proposal that would clarify in law the BOE's current practice to accept registered warrants.

At the August 31, 2009 BOE Legislative Committee meeting, the Members voted to support a proposal that would give the BOE the same exact authority as the FTB. The proposal would require the BOE to accept registered warrants as payment for any tax, surcharge, or fee liability to the BOE if the registered warrant is issued specifically to that tax, fee, or surcharge payer.

In addition, the BOE Members unanimously voted to support the application of AB 1506 (Anderson) provisions to the BOE. AB 1506 would have required all state agencies, upon the Controller making a specified determination, to accept a registered warrant for payment of any state obligation. The provisions of AB 1506 would have sunsetted on July 1, 2012, unless extended by another statute.

The BOE legislative proposal was incorporated into the BOE-sponsored omnibus bill, SB 1494. However, the measure was recommended for the suspense file because of the provision requiring the BOE to accept registered warrants. In the Assembly Appropriations Committee analysis (dated August 4, 2010), under the "COMMENTS" section, the following was stated:

"Trade-off. While addressing potential inequities related to individuals that have received registered warrants and owe money to the state, from a broader prospective, the main effect of allowing payment with registered warrants is simply to shift IOUs from one entity to another. Given the dire circumstances leading to IOU issuance by the state, any reduction in cash payments by one taxpayer will have to be made up through additional state payments of registered warrants to other entities. Given that the controller ranks payments according to priorities, the additional warrants will, by definition, go for higher priority payments. In extreme circumstances, mandatory acceptance of IOUs by the BOE could adversely affect the state's ability to make higher priority payments."

In order to move the BOE-sponsored bill off suspense, the BOE staff accepted the Committee recommendation to eliminate the registered warrant provisions from the bill.

With regard to AB 1506, this bill received bipartisan support throughout the legislative process. The measure was passed by the Assembly 78-0 on

September 2, 2009, and by the Senate 35-0 on August 23, 2010. However, the Governor vetoed the measure with the following message:

“This measure would require all state departments, upon a specified determination made by the State Controller's Office, to accept registered warrants, also known as IOUs, in lieu of cash payments. The issuance of IOUs represents an embarrassing failure on the part of the state to manage its finances. Unfortunately, if the Legislature does not pass a balanced budget soon, the possibility that the Controller will be forced to issue IOUs this year becomes all too real. I sympathize with businesses that were issued IOUs last year and those businesses that may receive them this year. IOUs place enormous financial strains on recipients who are unable to use them to pay their own obligations, including debts owed to the state. However, requiring state departments to accept IOUs in lieu of cash payments defeats the purpose of issuing IOUs in the first place. It would exacerbate the state's cash crisis and would accelerate the possibility of the state defaulting on its debt service and payroll obligations.

Since IOUs could be avoided if the Legislature passed a balanced budget, I am unable to sign this bill.”

This Proposal

This proposal would require the BOE to accept registered warrants from a taxpayer with any tax, surcharge, or fee obligation owed when the registered warrant has been paid directly to that tax, surcharge, or fee payer.

This change would eliminate any future ambiguity on the issue and thereby avoid any future uncertainty on whether or not an outstanding liability may be satisfied with a state-issued registered warrant.

This proposal would also delete confusing language in subdivision (c) of Section 17280 related to a taxpayer receiving interest on a registered warrant. Currently, if a taxpayer submits the warrant before it matures (redeemable), the taxpayer does not receive any interest. The current language can be misleading since taxpayers may incorrectly read it to mean they are entitled to interest from the issue date of the warrant to the taxpayer to the date the taxpayer submits the warrant as payment of tax. The proposed changes to Section 17280.1 protect a taxpayer's right to receive interest on a mature warrant.

Section 17280.1 of the Government Code is amended to read:

17280.1. (a) A taxpayer who has a tax liability, including any liability for periodic estimated tax payments, with respect to personal income taxes or bank and corporation taxes required to be remitted to the Franchise Tax Board or a taxpayer, fee payer, or surcharge payer who has a liability for taxes, fees or surcharges required to be remitted to the State Board of Equalization, and who is a payee named in a registered warrant as defined in Section 17221 which is received in payment of an obligation of the State of California to the taxpayer, fee payer, or surcharge payer may pay any tax, fee, or surcharge liability specified above, in whole or in part, by a check submitting the original registered warrant, signed on the reverse side by the payee and endorsed as payable to the agency to which the liability is owed. ~~in an amount not to exceed the amount of the registered warrant, exclusive of any interest thereon. That check shall not be presented for payment by the state or paid by the bank on which it is drawn until the registered warrant payable to the taxpayer is payable upon its presentation to the Treasurer. The provisions of this section shall be applicable only if the taxpayer's check in payment of a tax liability pursuant to this section is accompanied by a copy of the registered warrant, as specified above, which clearly discloses the name of the payee, the amount to be paid, the number of the warrant, and the completed and signed legend as provided for in subdivision (d).~~

(b) Any taxpayer, fee payer, or surcharge payer submitting a check registered warrant for the payment of taxes pursuant to subdivision (a) shall be precluded from receiving interest on his or her registered warrant from the date the check for the payment of taxes is submitted except as provided in Section 17280.2.

~~(c) In the event that a taxpayer who submits a check for the payment of taxes pursuant to subdivision (a) presents his or her registered warrant to a bank or other institution for payment, the taxpayer shall make a declaration upon presentment that he or she is ineligible pursuant to subdivision (b) to receive interest from the date he or she submitted the check.~~

~~(d) To facilitate the taxpayer in making the declaration required by subdivision (c), all registered warrants issued shall bear a legend on the reverse side in substantially the following form:~~

~~"In endorsing this warrant, I declare that I have () or have not () (check one) submitted a check on _____ (date) for the payment of tax, surcharge, or fee liability in an amount not to exceed the amount of this warrant. I further declare that by submitting that check, I am ineligible for the receipt of interest on this warrant after the above date."~~

Section 17280.2 of the Government Code is amended to read:

17280.2. In the event a tax liability, fee or surcharge is paid pursuant to Section 17280.1, in whole or in part, with a registered warrant which is redeemable at the time the tax liability, fee or surcharge is paid, interest as specified in this article, shall be credited to the ~~taxpayer's~~ account of the taxpayer, fee payer or surcharge payer.