



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	<b>02/19/10</b>	Bill No:	<a href="#"><u>AB 2332</u></a>
Tax:	<b>Sales and Use Tax</b>	Author:	<b>Eng</b>
Related Bills:		Position:	<b>Support as Sponsor</b>

## BILL SUMMARY

This Board of Equalization (BOE) sponsored bill would 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.

## ANALYSIS

### CURRENT LAW

Under existing Business and Professions Code (BPC) Section 7145.5, the Contractors 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).

Under existing law, in general, if a taxpayer has a delinquent tax amount, a tax lien automatically arises by operation of law for that amount, known as a statutory tax lien. A statutory tax lien is a claim upon real and personal property for the satisfaction of a tax debt. The lien is in force for 10 years, unless the liability becomes satisfied or a Notice of State Tax Lien is recorded with a county recorder's office or the Secretary of State. The recording of the notice provides notice to all parties of the debt against real and personal property belonging to the tax debtor and located in California county where recorded.

Current state law authorizes the BOE to use several collection tools to collect delinquent tax liabilities:

- An Order to Withhold (OTW) can be issued to any third-person in possession of funds or properties belonging to the debtor, such as bank accounts, rental income, or accounts receivable. Upon receipt of an OTW, the entity notified is required to submit to the agency all cash or cash equivalents due the debtor that will satisfy the amount of the OTW.
- An Earnings Withholding Order (EWO) is used to collect delinquent tax liabilities for which a state tax lien is in effect. An EWO is a continuing wage garnishment based on a percentage of a debtor's earnings, not to exceed 25 percent of disposable income. The EWO remains in effect until the total amount owing has been paid, or the order has been withdrawn.
- A warrant can be issued to seize property and convert it to cash to satisfy a debt. Warrants are enforced by a marshal. "Till-tap" or "keeper" warrants are warrants served by the California Highway Patrol or the local sheriff to enter a tax debtor's business and collect the contents of the cash registers. A "till-tap" warrant typically gives instructions to the officer to collect the contents of the till (cash registers) upon arrival at the place of business. A "keeper" warrant typically instructs the officer to

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leave a representative at the place of business for a full day and to collect the proceeds of the business.

Current state law provides that an alcoholic beverage license may be suspended if the tax debtor is three or more months delinquent in the payment of taxes or penalties due. The suspension remains in effect until the taxes or penalties are paid.

Current state law also authorizes cancellation of a tax debtor's California dealer license issued by the Department of Motor Vehicles, if the tax debtor's seller's permit has been revoked for more than 30 days.

### PROPOSED LAW

This bill would amend BPC Section 7145.5 to authorize the BOE to request the Contractors State License Board for a denial or suspension of a contractor's license for failure to resolve any outstanding final tax or fee liabilities.

The bill would become effective on January 1, 2011.

### 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.

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.

### COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the BOE to provide an incentive for delinquent contractors to resolve their outstanding liabilities. The use of this 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.
2. **BOE staff would exhaust all collection actions before requesting that CSLB deny or suspend a contractor's license.** This new collection tool would be a last resort measure to motivate the delinquent contractor to pay the tax due or enter into an installment payment plan. Once payment has been received or a payment arrangement approved, BOE would notice CSLB to lift the suspension process.

**COST ESTIMATE**

This bill would not impact the BOE’s administrative costs.

**REVENUE ESTIMATE**

The BOE currently has approximately 2,469 delinquent accounts representing outstanding final liabilities over \$68 million (see the following table).

<b>Breakdown of Accounts</b>	
<ul style="list-style-type: none"> <li>• The Sales and Use Tax accounts receivable balance is approximately \$2.1 billion.</li> <li>• The total number of sales and use tax accounts with a liability currently in the Automated Compliance Management System is 85,096. Of the 85,096 accounts, 2,469 represent accounts that are coded with Business Code 82 (construction contractor type businesses).</li> <li>• Business Code 82 represents construction contractors, general contractors, cabinet shops, businesses that perform fabrication labor, contractors that install floor coverings, plumbing contractors, United States contractors, electrical contractors, and wholesalers of building materials.</li> </ul>	
Active accounts for construction contractors (business code 82)	1,494
<sup>1</sup> Closed accounts for construction contractors (business code 82)	<u>975</u>
<b>Total number of accounts for construction contractors</b>	<b><u>2,469</u></b>
Accounts receivable for active construction contractor businesses	\$18,437,989
Accounts receivable for closed construction contractor businesses	<u>\$49,795,416</u>
<b>Total</b>	<b><u>\$68,233,405</u></b>

This bill would increase the BOE’s ability to collect on \$68 million in outstanding liabilities (taxes and penalties) owed by construction contractors.

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<sup>1</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.

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