



SOURCE: Legislation, Research & Statistics Division

SUMMARY

This proposal extends the offer in compromise (OIC) provisions in the Alcoholic Beverage Tax Law for open and active businesses from January 1, 2023 to January 1, 2028, and increases the minimum threshold for which the Executive Director and Chief Counsel can compromise a tax liability from \$7,500 to \$10,000.

EXISTING LAW

Revenue and Taxation Code (RTC) section 32471.5 authorizes the Board to extend an OIC to allow taxpayers to offer less than the amount owed for final tax liabilities in relation to the Alcoholic Beverage Tax program.

In 2006, the BOE sponsored legislation to add RTC section 32471.5 into law that authorized an OIC program for closed and discontinued businesses for several tax and fee programs including the alcoholic beverage tax program.¹

In 2008, the BOE sponsored legislation to expand the OIC program to include “open and active” businesses.² The bill contained a repeal date of January 1, 2013 for the “open and active” OIC provisions, which have been subsequently extended several times in the Legislature.³

The Executive Director and Chief Counsel of the BOE may compromise any tax liability where the reduction of the tax is \$7,500 or less. The Board may delegate the Executive Director and Chief Counsel to compromise a tax liability where the tax reduction is between \$7,500 and \$10,000. The Board may compromise a tax liability when the reduction is greater than \$7,500 upon recommendation by the Executive Director and Chief Counsel.⁴

CODE SECTIONS TO AMEND

Revenue and Taxation Code (RTC) section 32471.5

IDENTIFICATION OF PROBLEM

The OIC program for open and active businesses allows taxpayers to offer less than the amount owed for final tax liabilities. These businesses may otherwise have to sell or discontinue their businesses due to their inability to pay in full a final tax liability. Accepting OIC's for open and active businesses results in additional revenues from businesses that remain open and continue to pay their taxes. The open and

¹ AB 3076 (Committee on Revenue and Taxation, Ch. 364, Stats. 2006).

² AB 2047 (Horton, Ch. 222, Stats. 2008).

³ A more detailed discussion is included in the Legislative History section.

⁴ RTC section 32471.5

active business OIC program will sunset January 1, 2023. Without an extension, OIC's would no longer be available to open and active businesses. Current statute authorizes three paths for how an offer in compromise may be accepted by the agency using dollar thresholds that have been unchanged since the OIC program for the Alcoholic Beverage Tax program was created in 2006.

PROPOSED SOLUTION

Amend RTC section 32471.5 to extend the open and active business OIC provisions for five additional years from January 1, 2023 to January 1, 2028 and increase the threshold for which the Executive Director and Chief Counsel can compromise a tax liability to increase government administration and efficiency of the Alcoholic Beverage Tax program.

JUSTIFICATION

A. Briefly describe the ramifications of not acting.

Without an extension of the sunset date, the OIC provisions for open and active businesses will expire January 1, 2023. These businesses may otherwise have to sell or discontinue their businesses due to their inability to pay a full tax liability that is due. Without increasing the threshold, the tax program would not align with how other similar special tax and fee programs are administered at other agencies.

B. State the reasons why the BOE should have the responsibility for this program and why it should not be placed at another level of government (if applicable).

Article 20, section 22 of the California Constitution authorizes the BOE to administer the Alcoholic Beverage Tax and is constitutionally responsible for the program. Through an Interagency Agreement (IAA), the California Department of Tax and Fee Administration (CDTFA) collects the alcoholic beverage tax and administers certain functions of the program in cooperation with the BOE. This proposal would allow the BOE to continue to receive offers in compromise from open and active businesses for the alcoholic beverage tax program for an additional five years.

C. Note whether a similar proposal has been submitted in the past and the outcome.

Several proposals have been submitted in the past and have been enacted by previous governors. A more detailed history is discussed in the program background and legislative history section.

PROGRAM BACKGROUND/LEGISLATIVE HISTORY

An OIC is a program that allows a taxpayer to settle tax liabilities for less than the full amount owed. OICs may be a legitimate option for a taxpayer that is not able to pay the full tax liability or if doing so would create a financial hardship. Tax agencies consider a taxpayer's ability to pay, income, expenses and asset equity in determining whether a taxpayer qualifies for an OIC. Additionally, the agency considers the amount offered and the time it would take the agency to collect that amount in lieu of an

OIC. Several tax agencies including the Internal Revenue Service (IRS), Franchise Tax Board (FTB), and the CDTFA administer an OIC program.

The BOE's original OIC program was enacted in 2002 by BOE-sponsored AB 1458 and applied to closed and discontinued businesses with final tax liabilities under the Sales and Use Tax Law, the Use Fuel Tax Law, and the Underground Storage Tank Maintenance Fee Law.⁵ In 2006, the BOE sponsored AB 3076 to add similar provisions under the Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.⁶

In 2008, the BOE sponsored AB 2047 to expand the OIC program to "open and active" businesses.⁷ The bill contained a repeal date of January 1, 2013, for the "open and active" OIC provisions. Based on the success of the open and active business OIC program, the BOE sponsored SB 1548 to extend the provisions to January 1, 2018.⁸ CDTFA sponsored AB 525 in 2017 to extend the provisions to January 1, 2023.⁹

The passage of AB 102 (2017) transferred all tax and fee programs statutorily administered by the BOE to the newly created CDTFA.¹⁰ The BOE retained its constitutional programs of the property tax, tax on insurers and alcoholic beverage tax. While the BOE previously sponsored legislation creating OICs for the sales and use tax and other special taxes and fees, since 2017 the BOE only has jurisdiction over its three constitutional programs.

ARGUMENTS PRO AND CON

Pros

- OICs allow taxpayers to negotiate an agreed settlement to pay a portion of the outstanding tax liability in lieu of the full amount. These OICs can assist taxpayers who may face costly tax liabilities that in some circumstances, may result in the closure of a business. OICs may keep these businesses open and operating, thus continuing to provide additional tax revenues to the state.
- Extends a sunset date that allows agency flexibility to extend OICs to open and active businesses relating to the Alcoholic Beverage Tax Program.
- Increases efficiency and administration of the alcoholic beverage tax program by raising the threshold for which the Executive Director and Chief Counsel can reduce tax liabilities from \$7,500 to \$10,000.

⁵ AB 1458 (Kelley, Ch. 152, Stats. 2002).

⁶ AB 3076 (Revenue and Taxation Committee, Ch. 364, Stats. 2006).

⁷ AB 2047 (Horton, Ch. 222, Stats. 2008).

⁸ SB 1548 (Wyland, Ch. 285, Stats. 2012).

⁹ AB 525 (Aguilar-Curry, Ch. 272, Stats. 2017)

¹⁰ AB 102 (Assembly Budget Committee, Ch. 16, Stats. 2017)

Cons

- OICs result in less than the full tax liability being paid, thus a potential loss of tax revenue.
- The Board would no longer delegate to the Executive Director or Chief Counsel the authority to compromise a final tax liability where the reduction of the tax is between \$7,500 and \$10,000.
- Board's authority to compromise a tax liability would be adjusted to only tax liabilities that have been reduced by more than \$10,000.

PROBABLE SUPPORT AND OPPOSITION

Unknown

OTHER EXTERNAL PARTIES THAT MAY BE AFFECTED

California Department of Tax and Fee Administration

FISCAL IMPACT (If known)

A. Identify any computer or desktop programs that would be affected by this proposal.

This proposal will result in a minor business rule change in the CDTFA's Centralized Revenue Opportunity System (CROS) computer program.

B. Identify additional staffing and workload required to carry out the proposal.

None.

PERFORMANCE INDICATORS

Not applicable.

DRAFT LANGUAGE

Section 32471.5 of the Revenue and Taxation Code is amended to read:

32471.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is ~~seven thousand five hundred~~ **ten thousand** dollars ~~(\$7,500)~~ **(\$10,000)** or less.

(2) ~~Except as provided in paragraph (3),~~ **The board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of** ~~seven thousand five hundred~~ **ten thousand** dollars ~~(\$7,500)~~ **(\$10,000)**. A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

~~(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).~~

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and a compromise shall not be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final tax liability” means that part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected reimbursement or tax reimbursement from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 32271), Article 3 (commencing with Section 32291), or Article 4 (commencing with Section 32301) of Chapter 6.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer’s liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer’s liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining “sufficient annual income” for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required tax returns and reports for a five-year period from the date the

liability is compromised, or until the taxpayer is no longer required to file tax returns and reports, whichever period is earlier.

(h) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(l) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(m) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(n) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

(o) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that a person did any of the following acts regarding the making of the offer:
 (A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(p) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(q) For purposes of this section, "person" means the taxpayer, a member of the taxpayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2023~~38~~, and as of that date is repealed.

Section 32471.5 of the Revenue and Taxation Code is amended to read:

32471.5. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is ~~seven thousand five hundred~~ ~~ten thousand~~ dollars (~~\$7,500~~~~\$10,000~~) or less.

(2) ~~Except as provided in paragraph (3),~~ The board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of ~~seven thousand five hundred~~ ~~ten thousand~~ dollars (~~\$7,500~~~~\$10,000~~). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

~~(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).~~

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

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(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

(k) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that a person did any of the following acts regarding the making of the offer:

(A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, a member of the taxpayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(n) This section shall become operative on January 1, 2023~~8~~.